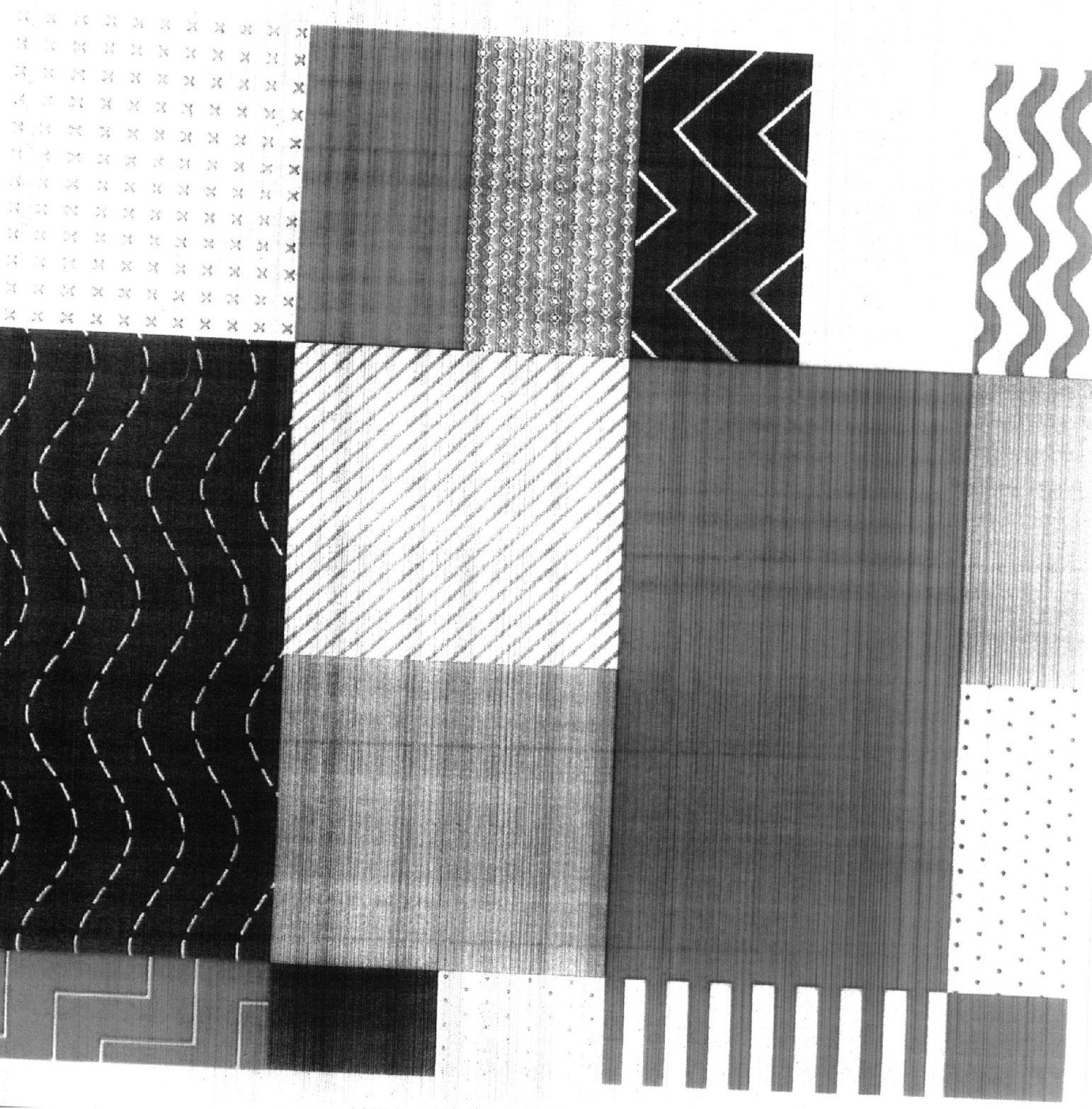


An
Bord
Pleanála

Examination of Certain Matters
October 2022



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Section A: Introduction and Context

1 Introduction and Context

1. As set out in a statement issued 27 May 2022, an internal team of senior Management personnel within An Bord Pleanála was established to examine issues and concerns raised about certain decided case files. The senior Management personnel were charged with carrying out an initial fact-finding review of a sample of files, with a view to identifying whether there are specific risks to the effectiveness of compliance with the internal controls, systems and procedures under the Board's relevant statutory framework and Code of Conduct, and whether any other specific matter needs to be brought to the Chairperson's attention.
2. This is the report of the senior Management team, which consists of:
 - Chief Officer, Ms. Brid Hill,
 - Director of Corporate Affairs, Mr. Gerard Egan, and
 - Head of Human Resources, Ms. Mary Kelly.

The roles of these personnel do not involve them in any active participation in the processing of, or the making of decisions on any planning cases that have been determined by the Board or that are the subject of this internal examination.

3. The internal review has focused on establishing relevant facts in respect of the following thematic areas of potential concern:
 - 1) Effectiveness of compliance with the current systems and procedures for avoiding potential conflicts and/or dealing with matters involving potentially connected persons.
 - 2) Effectiveness of compliance with the current systems and procedures for making statutory declarations of interests.
 - 3) Whether any concerns arise in relation to the allocation and/or distribution of files.
 - 4) Administrative arrangements in respect of internal file allocations to Board members.
 - 5) Procedures for amendments to be made to Inspectorate reports.

- 6) Whether there are any identifiable trends and/or patterns of decisions, including in relation to decisions of Board members on particular case types, or in the configuration of two-person Board meetings.
4. The internal review has been undertaken by the senior Management team through a factual examination of case files and this report includes several recommendations to enhance the effectiveness of existing controls, systems and procedures, and the practical application of same.
5. Ultimately, the objective of this internal review is to maintain public confidence in An Bord Pleanála and continue to protect and enhance its reputation for independence, impartiality, trust, integrity and transparency.
6. In carrying out this examination, the senior Management team is not exercising any investigative powers or functions into the conduct of any specific person or persons and has not made any findings in relation to any specific person or persons. Where necessary, this report identifies matters which may be subject to further review or examination or action by the Board or other body or person as appropriate.

2 Relevant Statutory Framework

7. An Bord Pleanála was established by the Local Government (Planning and Development) Act, 1976 (**1976 Act**). The Planning and Development Act 2000 (**2000 Act**) and the Planning and Development (Strategic Infrastructure Development) Act 2006 (**2006 Act**) introduced significant planning law reforms, including to the powers and functions of An Bord Pleanála. In addition to planning appeals, An Bord Pleanála was given responsibility for strategic infrastructure developments (**SID**), including major road and rail applications, local authority applications and compulsory purchase (**CPO**) applications. The Planning and Development (Housing) and Residential Tenancies Act 2016 (**2016 Act**) introduced strategic housing developments (**SHD**) as a distinct new class of SID, with special powers and procedures under the 2016 Act as amended. An Bord Pleanála is also responsible for a variety of other case types under other legislation.
8. Section 32 of the 1976 Act established an obligation on Board members, certain employees of the Board, and other persons, to declare certain interests (and any change to their interests), in accordance with that section. This obligation is now found in similar terms in Section 147 of the 2000 Act, as amended.
9. Section 33 of the 1976 Act established an obligation on Board members to disclose any pecuniary or other beneficial interest in, or which is material to, any matter which falls to be determined by the Board, and to recuse themselves from any discussion or consideration of the matter, and to not seek to influence the decision-making on that matter. Certain employees and other persons were also subject to obligations in relation to matters in respect of which they had a pecuniary or other beneficial interest. These obligations are now found in similar terms in section 148 of the 2000 Act, as amended.
10. The avoidance of conflicts of interest through positive obligations on Board members and employees to proactively disclose certain interests, and on Board members to recuse themselves from certain decision-making procedures, has been a fundamental principle of the statutory framework for An Bord Pleanála since its establishment under the 1976 Act. The importance of these obligations is underpinned by the fact that non-compliance constituted an offence under the 1976 Act, and remains an offence under the 2000 Act, as amended.
11. A statutory requirement for An Bord Pleanála to adopt a Code of Conduct was introduced under Section 150 of the 2000 Act and sets out the minimum statutory requirements for the Code of Conduct.
12. Section 150(4) of the 2000 Act provides that compliance with the Board's Code of Conduct is a condition of the appointment of Board members, and a condition of employment of certain Board employees and other prescribed persons.

13. The Ethics Act 1995 introduced disclosure obligations for certain persons in public sector bodies, and these obligations were further expanded under the Standards in Public Office Act 2001, including an obligation on certain public bodies to prepare a Code of Conduct. Members of the Board and employees of An Bord Pleanála are subject to further obligations under the Protected Disclosures Act 2014 and the Criminal Justice (Corruption Offences) Act 2018, and all these provisions and obligations apply in parallel to the provisions and obligations under the 2000 Act, as amended, and formerly under the 1976 Act.
14. The statutory requirement for a Code of Conduct at section 150 of the planning act was paralleled by a similar requirement for public bodies to have such a code in the various iterations of the **non-statutory** Code of Practice for the Governance of State Bodies in 2001, 2009 and 2016. These Codes of Practice have also suggested what matters should be addressed in such a Code of Conduct. The Code of Practice for the Governance of State Bodies is of general application and is framed to also cover organisations which may not have a statutory requirement for such a Code in their own governing legislation. The Board's general approach has been to seek to cover the applicable requirements of the statutory (section 150) and non-statutory requirements (Code of Practice) within its single Code of Conduct.
15. In parallel to the statutory provisions and the Code of Conduct, the members and staff of An Bord Pleanála, as public servants, are also subject to the kind of rules, conventions, procedures and standards of ethical behaviour – often unwritten – with which public servants have always been expected to comply in their official conduct. Personal responsibility to so behave, with the exercise of discretion based on common sense and appreciation of the necessity to act and be seen to act in alignment with the highest possible ethical standards, has been a **longstanding feature** of the **culture** of An Bord Pleanála.

3 Code of Conduct of An Bord Pleanála

16. An Bord Pleanála first adopted a Code of Conduct in 1996. This Code of Conduct was adopted on a non-statutory basis. The Code of Conduct was subsequently reviewed and updated in 2003 (in accordance with section 150 of the 2000 Act) and 2011.
17. The Code of Conduct reflects the basic requirements of sections 147, 148 and 150 of the 2000 Act. However, these statutory provisions were never intended to cover all situations where potential conflicts of interest could arise. They are therefore regarded as the starting point in the appropriate Management of conflicts of interest and real or perceived potential bias in the discharge of the Board's functions. The Code accordingly significantly expands on the statutory requirements to provide appropriate guardrails and mitigations to avoid risk of conflicts and perceptions of conflicts. The Code of Conduct also reflects the principles and requirements of the Ethics and Standards in Public Office Acts, and the Code of Practice for the Governance of State Bodies (as revised from time to time).
18. As noted, compliance with the Code of Conduct is a condition of appointment of Board members, and a condition of employment of certain Board employees and other persons. The Code of Conduct expressly provides:
"It is the intention that members and employees should adhere not just to the letter of the Code but also to the spirit of the Code in a manner that maintains the highest level of public confidence and trust in the Board and in the independence, impartiality and transparency of its operations."
19. The Code of Conduct provides that Section 147 of the 2000 Act applies to Board members and to certain employees, and that Section 148 of the 2000 Act applies to Board members and to employees, consultants etc, in case-specific situations where a potential conflict of interest may arise. The Code of Conduct also states that each member of the Board and each person holding a designated position of employment must ensure compliance with the Ethics and Standards in Public Office Acts.
20. A review of the Code of Conduct is currently underway.

4 Mission and Values of An Bord Pleanála

21. An Bord Pleanála has operated as an independent statutory body since 1977. It was set up primarily as an impartial body to adjudicate on planning appeals. The functions of An Bord Pleanála have evolved as noted above within the legislative framework to include direct applications, for example, for permission for SID and SHD, and approval of CPOs, as well as other applications and appeals under various other legislation.

22. As noted on the website of An Bord Pleanála (<https://www.pleanala.ie/en-IE/Our-mission,-mandate-and-values>), the core values of the organisation are

- Independence and Impartiality
- Professionalism and Integrity
- Participation and Transparency
- Respect, Dignity, Equality and Fairness
- Excellent Customer Service and Innovation

23. The Code of Conduct contains a further mission statement:

"To play our part as an independent body in ensuring that physical development and major infrastructure projects in Ireland respect the principles of sustainable development and are planned in an efficient, fair, and open manner."

24. Several objectives are set out, including:

"4. To carry out its work in an independent manner that embodies the public service ethos of integrity, impartiality and a desire to serve the public interest while giving due consideration to all legitimate viewpoints and interests."

"7. To show the maximum degree of accountability consistent with the quasi-judicial nature of the Board's functions."

"8. To ensure that decisions are based on clearly stated considerations and reasons."

5 Induction Procedures

25. It has been a longstanding feature of the legislative framework and culture of An Bord Pleanála that Board members and employees are expected to act in accordance with law, with the Code of Conduct, and exercise prudence and common sense aligned with the highest ethical standards. This approach is reinforced through induction procedures and various internal protocols.
26. All new Board members are briefed fully on their legal and ethical obligations as Board members during their induction process following their initial appointment. Similarly, all new employees, are briefed on their obligations and the expectations of An Bord Pleanála as part of their new employee induction. Additionally, reminders on the Code of Conduct (incorporating the relevant statutory framework), are issued to all Board members and employees on a regular basis. Similar reminders on the anti-fraud and protected disclosures policies and procedures are also issued. In short, the necessary procedures and protocols to be followed in avoiding conflicts of interest or the perception of conflicts of interest have been a core feature of induction of new Board members and employees, and the subject on-going periodic reminders and advice, throughout the Board's 45 years of operation.
27. In addition, senior staff with significant experience and expertise in the relevant legislation and good corporate governance principles and practice have been consistently available to explain and give advice on any queries that members of the Board or employees may have had in respect of their individual obligations. External legal opinion on any specific issue relating to these matters has been and continues to be available.

Internal Protocols, Transparency and File Movements

28. Like any organisation, An Bord Pleanála maintains a system of internal standard operating protocols and procedures which regulate processing of cases and associated matters. While these protocols and procedures are of course critical to ensuring the processing of cases is completed in a rational, ordered and efficient manner they are **also** aimed at providing mitigation against the potential for attempts at wrongdoing in the processing of cases. There has been a heavy emphasis in the organisation over many years for the necessity for strict compliance with all such basic operating protocols and procedures.

Such procedures include recording **any** movement of case files between personnel or sections in the organisation, physically on the hard copy file and also on the computer database record of the case. In addition to this being good basic administrative practice, it is also considered critical for the purpose of **full**

transparency and a clear **audit trail record** of who had a file, when, for how long, and for what purpose.

29. Adherence to such basic standard protocols and procedures is required to ensure regularity and uniformity of approach in order to protect the integrity of the organisation by grounding its ability to stand over the full transparency of its operations.
30. Certain universal and standard "internal control" measures are also **specifically** aimed at mitigating against the potential for fraudulent or other serious improper behaviour in any organisational setting. Fundamentals of such general internal control mechanisms, systems and structures are arrangements to provide for segmentation of processes and associated segregation of duties so that no one post or section within an organisation can control sensitive processes from **beginning to end**. Such systems and structures have existed in An Bord Pleanála since its formation.
31. For example, a typical case file moves through three distinct processes: (i) administrative (validation, organisation, allocation); (ii) inspection and assessment (site inspection, assessment, reporting); and (iii) consideration and decision (at Board level). Each time a file moves from one section to another, relevant documentation is completed, and entries associated with the file movement are recorded on both the physical file and the IT system.
32. This segregation of function and personnel involved, allied to the standard file movement and other standard documentary protocols, provide a system of internal controls which give assurance that all is regular and transparent in how cases are processed and decided. Statutory requirements under the Planning Acts provide that the full file of any case is made available for public inspection within 3 days of the final decision on the case being made. Any interested person can then inspect the file and be assured that what they see is the evidential material of how the particular case was processed and decided.
33. Such systems of internal control depend on regularity in carrying out processes in accordance with set protocols and procedures allied to a clear understanding and requirement that **all personnel without exception** must comply with the control system procedures.

6 Rationale underpinning this report

34. As noted above, the objective of this internal review is to maintain public confidence in An Bord Pleanála and continue to protect and enhance its reputation for independence, impartiality, trust, integrity and transparency, in fulfilment of the Mission and Values of the organisation.
35. The statutory framework and Code of Conduct set out the obligations and responsibilities of Board members and employees in clear terms, and An Bord Pleanála has in place internal controls which are designed to ensure that appeals and applications are handled in accordance with the statutory framework, the Code of Conduct, and the Mission and Objectives of An Bord Pleanála.
36. Every organisation must be live to the possibility that internal controls and procedures will be deviated from in certain instances and for a variety of reasons, which may be benign or possibly indicative of some other motivation. Accordingly, monitoring of compliance with internal controls is a necessary component of ensuring compliance with the statutory framework and Code of Conduct, and to ensure that the Mission and Objectives of the organisation are being continuously and vigorously upheld.
37. Where irregularities in the application of internal controls and deviations from procedures become evident, it is necessary to examine the circumstances to determine not only the cause but also to ensure that such controls are reinforced for the future. This approach ensures that deviations from established controls and procedures do not reoccur or become the norm. As the High Court (Hedigan J) stated in *Craig -v- An Bord Pleanála* [2013] IEHC 402, (para.7.2)

"sad and sobering experience has shown that the planning process attracts egregious forms of corruption and dishonesty" and that "constant vigilance is undoubtedly required to combat this plague".
38. As public servants, the members of the Board and employees of An Bord Pleanála should remain alert to the potential for errors and wrongdoing within the organisation and to fully examine and address those issues as and when they become evident. Such examination must be fully enabled and completed without fear or favour notwithstanding the potential that it may cause the organisation to get negative publicity. These values and approach are clearly endorsed and encouraged in the Board's internally adopted Anti-Fraud and Protected Disclosures Policies and Procedures.

7 Methodology and Approach

39. The senior Management team has examined approximately 300 case files, the selection of which was informed by the six thematic areas of potential concern identified at the outset of the review process. As noted, those thematic areas were informed by media reports and other communications received by the senior Management team regarding issues of potential concern. The contents of this report, including the recommendations of the senior Management team, are generally informed by the contents of the files that have been examined¹. The timeline reviewed is generally from January 2018 to September 2022.

¹ The contents of the report of the Office of the Planning Regulator (Phase 1) are noted, however the team considers that this internal review should be entirely independent of any other review process, which is why this report does not refer to the OPR report or take account of its findings and recommendations. It is considered, however, that this report may be helpful to the OPR in Phase 2 of its review process.

Section B: Case File Examination

1 Conflicts of Interest Compliance

40. The current processes around declaring and managing potential conflicts of interest or a perception of real or objective bias are primarily governed by section 148 of the 2000 Act and various provisions of the Code of Conduct. Beyond these, the general common-sense approach underlying the necessity for public servants to act with the utmost probity also prevails. Due to the nature of its functions, the culture of the organisation has generally tended towards an "err on the side of caution approach" to personal assessment of the potential for conflicts of interest or real or objective bias.
41. The section 148 requirements are more definitive and legalistic as they rely on the existence of specific and defined pecuniary or other beneficial interests to ground the necessity for recusal in individual cases. Other cases related to situations where issues beyond section 148 Code of Conduct provisions may have been relevant and, in particular, where potential for objective bias might be considered as a reason to consider recusal. In this regard, it is understood that the legal test for objective bias is whether a reasonable and fair minded objective observer, who is not unduly sensitive, but is in possession of all of the relevant facts, reasonably apprehends that there is a risk that the decision maker may not be fair or impartial.
42. An Bord Pleanála maintains a register of declarations which collates written disclosures on individual cases under section 148 or any of the other areas covered in the Code of Conduct where declarations and recusal from any involvement in a case is considered warranted by staff and Board members. These disclosures often go beyond the terms of those requirements out of an abundance of caution indicating awareness of the significance of this issue in the organisation.
43. Section 15 of the Code contains provisions addressing specific scenarios in addition to a general provision that Board members and personnel shall not deal with or participate in the decision-making process in any case in which he/she considers such involvement could give rise to an appearance of objective bias (paragraph 15.7 of the Code). In addition the Code provides that where there is any doubt in relation to a matter, a Board member should seek a ruling from the Chairperson (and personnel from the Chief Officer, Board Secretary or Director of Planning as specified in paragraphs 15.6 and 15.7 of the Code).
44. Paragraph 13.3 of the Code is also relevant in this context, providing that when a member is presenting a file at a Board meeting, every other member present should disclose any possible conflict of interest and where the Chairperson of

the meeting determines that a conflict exists the member in question shall not thereafter participate in or attend any meeting at which the case is discussed or determined.

45. Where a member raises a potential conflict of interest or concern for determination by the chairperson of the meeting/Chairperson of the Board in accordance with the foregoing provisions of the Code and the Chairperson determines that the member is **not** required to recuse themselves from the meeting/any discussions on that case file, currently this is not formally documented. We recommend that these decisions should be noted/recorded.
46. Board members have nominated locations or other connections in an in-house exclusions/restrictions list which is used as a general guide for administrative staff in random file allocation to members.
47. From our examination of case files, we have identified the following issues:
48. One of the case files examined included a decision made on a strategic housing development where a Board member retained a legal interest in lands situated in close proximity to the site the subject of the decision in which the Board member participated. It is considered that at a minimum this ought to have been raised as a possible conflict of interest. This decision is the subject of judicial review proceedings/external processes and it is not proposed to comment further for that reason.
49. A number of cases raise the question of personnel dealing with cases in their own immediate neighbourhood (covered by paragraph 15.3 of the Code of Conduct). The Code requires that personnel should not knowingly deal with or participate in a case in their own immediate neighbourhood. There are also a number of cases where the locational context of the proposed development, when cross referenced against Board members own nominated locations where they have believed they should not deal with files due to concerns of potential for objective bias, suggests at least consideration of potential self-directed recusal. However, there is no documentary evidence of any such recusal or that the matter was raised and considered prior to the Board deciding such cases.
50. Beyond immediate neighbourhood, our examination also identified several cases where Board members were involved in decisions on proposed developments in an area or with an association which was identified by the Board members in the file allocation restriction list as one that should probably be avoided or at least should generate consideration of recusal.
51. The fact that these areas or associations were included in the file allocation restriction list would suggest that recusal should obviously be considered at the relevant meeting/in the context of file allocation in circumstances where an entry

on the list would indicate a concern over the potential for a conflict or perception of real or objective bias. There is no documentary record that recusal was considered in these cases. It is recommended that where a file potentially involves any nominated area or connection in the Board exclusion list, then consideration of recusal should be undertaken and the outcome documented.

52. The 'Neighbourhood' case restriction principle within the Code of Conduct also applies to staff members and usually arises in the context of reporting planning Inspectors (given their role in the overall process) avoiding cases in their own neighbourhood (within the same common-sense principles). Examination of certain decided case files in this context indicates that a member of the Inspectorate completed reports within that general locational context.
53. Within the above context, it is acknowledged that there is no definition of the exact meaning and extent of "immediate neighbourhood" in the Code of Conduct. This was a conscious decision not to define these terms, for example, by a defined exclusion zone limit, in the various iterations of the Code over the years. This approach was taken by the Board for practical and pragmatic reasons. In essence, it is left to a common-sense awareness and analysis in any particular case having regard to location, locational context and the nature of the proposed development under consideration.
54. The pragmatic reasons for such an approach include concerns that there is a relatively small group from whom deciding Boards can be convened (based on a complement of ten Board members under current legislation). Definitive exclusion zones, such as 5 kilometres in urban areas within cities such as Cork or Dublin, could prove problematic in terms of possibly preventing convening a quorum of Board members for cases in such areas. It may also be unnecessary by reference to the nature of proposed developments that are common in such areas e.g., advertising signs, shopfronts or changes of use.
55. It is noted that such defined exclusion zones are in place in other jurisdictions. Their use could instead be considered as part of general advisory guidance in conjunction with other relevant considerations.
56. In that respect, the team notes that it is intended as part of the review of the Code of Conduct to include guidance around the concept of what might constitute a person's "immediate neighbourhood". However, we believe a common-sense approach should be retained to allow for assessment of potential conflicts on a case-by-case approach and bearing in mind that the responsibility for identifying any conflicts continues to rest with the Board member or official to ensure no real or perceived conflicts arise.

57. It would then be expected that there would be a documented record of at least *consideration* of recusal where a proposed development fell within the general guideline zone relative to a Board or staff member's home (or proximity to any other place with which they have a personal connection).
58. Paragraph 15.3 of the Code also provides that personnel shall not knowingly deal with a file or other matter or participate in determining a case concerning persons well known on a personal basis to him/her.
59. The examination has identified cases which appear to have involved applications where persons well known on a personal basis to a Board member and senior staff were involved on the applicant side.
60. The examination identified a case where a decision was made by a two-person Board where the applicant was a person likely well known on a personal basis to one of the deciding Board members. It was subsequently explained by the Board member that there was no awareness of this connection at the time of the decision. This was a domestic residence extension case with a limited number of participants.
61. The completed Board meeting record records that no conflict of interest was identified at this meeting. In this context it has been advised that the name of the applicant for permission (who was also the appellant) was not assessed as part of this conflict check process and that the location was not known as having any connection to a person well known to a Board member.
62. It is envisaged that at the very least the identity of the applicant for any permission (and appellant where different) would be identified to carry out a basic conflict check. However, what occurred in this case does not reflect the normal and appropriate approach to such matters undertaken by Board members (present and past) to check such detail as a matter of course in order to establish or rule out any potential conflict.
63. The examination of case files also identified a category of decided cases (11 decisions on strategic housing development applications) involving a close personal connection between one of the deciding Board members and the director of a company who had submitted a report on behalf of various applicants for permission as part of each planning application. The company in question was included on the Board member's file allocation restriction list. Again, it is considered that recusal should at least have been considered in circumstances where entries on the list indicate a concern over the potential for conflict or a perception of bias. There is no record of any consideration of recusal in these cases.

64. It is noted that a number of these cases are subject to current on-going judicial review proceedings, so it is not proposed to comment further at this point on these cases.
65. It has been suggested that a person involved as part of an applicant team in a number of cases may be well known to a member of staff who had a role in the processing of such cases. It is also alleged that a staff member attended a meeting at which a person supposedly well known to that staff member was also in attendance as part of an applicant team. The team understands that a separate process has been commissioned to look into and report on these allegations and that this process is on-going. Having regard to the foregoing, it is not proposed to comment further.
66. Third party written evidence was received from a credible external source advising of a close personal/romantic relationship between internal personnel in the chain of the decision making process. This communication raised the issue in the context of this potentially being a governance risk to the organisation.
67. There are multiple regimes governing the disclosure of interests and potential/actual conflicts of interest in relation to Board members and designated/prescribed persons, under legislation and the Code of Conduct, in respect of interests and relationships with parties to a case, external advisors etc.
68. Adopting a prudent and precautionary approach, it should be acknowledged that any close personal relationships between Board members and/or senior personnel centrally involved in the Board's decision-making processes may also *potentially* give rise to a risk of perceived/objective bias as a consequence of such a relationship.
69. There is also a general governance risk that such relationships could lead to a lapse in adherence to the critical operating procedures and processes including the segregation of functions/segmentation of processes and recording of file movements and decisions.
70. Notwithstanding the absence of any legislative requirement or requirement in the existing Code of Conduct expressly covering this issue, it is considered that the general common sense application of the principles underlying conflict of interest and/or objective bias, clearly suggest that those in senior and sensitive positions would as a matter of personal responsibility at least take advice on whether to disclose any such relationships so that appropriate measures can be put in place to mitigate the potential risk of any conflict of interests (whether real or perceived), or potential risks in relation to internal segmentation of processes and duties.

71. Furthermore, adopting a prudent and precautionary approach, it should be acknowledged that there is a possibility of such past, existing, or future relationships between personnel in senior and/or sensitive roles in the organisation. It is therefore considered essential that the current Code of Conduct review process covers this issue in an appropriate way. Draft suggested provisions and guidance on this will be developed by Management in the on-going Code review process.
72. It must be stressed that such suggested provisions are not intended to be intrusive or in any way reflecting on the appropriateness of such relationships. Nor is it suggested that such relationships should or could be restricted, but it is considered entirely reasonable and appropriate in an organisation such as An Bord Pleanála with a quasi-judicial role, that such relationships involving personnel **in certain roles** should be disclosed in order to protect public confidence in the impartiality and integrity of the processes upon which the decision-making functions of the Board are based.
73. A further issue has been raised which is relevant to the consideration of conflicts of interest and the Code of Conduct.
74. Paragraph 7.6 of the Code of Conduct provides that no Board member or employee may deliver a paper about the performance of the functions of the Board except with the written consent of the Chairperson.
75. Paragraph 7.7 of the Code provides that a Board member or employee must not allow a situation to arise where there is a conflict or potential conflict with his/her official duties. A Board member or employee shall not publish or publicly express personal views or opinions which could reasonably be interpreted as compromising his/her ability to carry out his/her official duties with the Board in an impartial manner or as compromising the Board in carrying out its functions in an impartial and objective manner.
76. Presentations made by staff members to external parties have been brought to the attention of this team. These presentations were made in a work role capacity and as such would likely to be understood to reflect not only the views of the presenter but also the views of An Bord Pleanála. In either circumstances however certain elements of these presentations raise concerns in respect of their compatibility with the terms of paragraph 7.7 of the Code of Conduct.
77. External presentations should not call into question, or risk being interpreted from a reasonable person's perspective, as calling into question the bona fides of participants in the planning process or otherwise call into question the impartiality of the Board.

78. In order to mitigate against this risk, it is considered critical that the procedure set out in paragraph 7.6 is followed and the written consent of the Chairperson is obtained (having reviewed the proposed presentation) before any presentation is made by a Board member or employee concerning the performance of the functions of the Board.

2 Statutory Declarations – Sections 147/148 and Ethics Acts 1995 and 2001

79. The declaration processes under the above statutory provisions are fundamentally based on the general duty on any public servant to act with full honesty and integrity by disclosing all matters that are required to be disclosed in accordance with the requirements of these provisions. Such statutory provisions (currently section 147/148 of the 2000 Act) have been in place in An Bord Pleanála since it commenced operation in 1977 (45 years).
80. An Bord Pleanála administers the later parallel and similar Ethics Acts annual declarations requirements but does so on behalf of the Standards in Public Office Commission.
81. The collation and administration of the annually required declarations (section 147 and the Ethics Acts) has been a central element in the Management of conflicts of interests and the transparency of such Management. In this regard the section 147 declarations register is available for public inspection as per a longstanding statutory provision.
82. The annual request for declarations is accompanied by explanatory memoranda and guidance. Furthermore, past and current staff fulfilling the role of Secretary of the organisation have been at all times available to provide any additional advice or guidance required to any personnel as to the nature of the details that may be required to be disclosed. Such consultations are regular occurrences.
83. It is noted that the obligations to make declarations/disclosures under the Planning Act, Ethics Act and Code of Conduct rest on the *individual* rather than the organisation, with An Bord Pleanála then maintaining registers of those interests/declarations, together with internal procedures to manage any conflicts/perceived conflicts.
84. This team has reviewed these arrangements and has noted concerns raised in the public domain concerning how, or if, these declarations are analysed for accuracy and completeness. It is considered that it may **not be feasible** to expect someone in this (or any equivalent organisation) to assess such declarations for completeness or veracity or to somehow independently go behind the declarations already made to check that the process was completed correctly (e.g. by checking property registers etc.) – if such a process was envisaged as appropriate it would likely have to be conducted for every relevant employee to avoid any suggestion of a lack of impartiality.

85. The provisions of sub-sections 11 and 12 of section 147 provide that breaches of the requirements of section 147 can constitute an offence under the Act. There are thus serious sanctions in the legislation where it emerges that declarations were deficient or false or were not made where required. It is clear that legal examination and determination of a question of any alleged breaches can only be made by a relevant Court of Law.
86. Within the above statutory context, it may be appropriate that An Bord Pleanála should only be expected to ensure that the system for making declarations is administered and maintained and that all personnel are fully aware of its importance and their personal responsibility to ensure full compliance on their behalf. This responsibility can of course continue to be facilitated by the availability internally of ongoing general confidential private advice and guidance on how to complete any necessary declarations and with the benefit of legal advice where that is considered necessary.
87. In the event that a serious complaint or allegation is made that there has been a potential breach of the statutory conflicts of interest procedures or the Code of Conduct then the organisation can raise this with the personnel concerned, in order to establish if there is substance to the complaint.
88. The same general principles and analysis applies to "in-case" declarations under section 148 of the 2000 Act with similar statutory sanctions under the Act.
89. Within the above context where personal responsibility is paramount, it is considered appropriate that the processes leading to appointment of Board members and recruitment of Board staff have a required candidate competency of demonstration of and a full appreciation of the highest levels of integrity in carrying out of public duties. This would reinforce how centrally important such knowledge and behaviour is to the organisation.

3 Allocation/Distribution of Files

90. The allocation and distribution of case files has been examined both as regards the allocation of files within Inspectorate for inspection/report and at Board level for decision.

Board Member File Allocation

91. Section 110(1) of the Planning and Development Act 2000, as amended provides that the Chairperson (and in certain instances the Deputy Chairperson) shall have the function of arranging the distribution of the business of the Board among its members.
92. The allocation of files pursuant to section 110 has generally taken place by way of a standing direction from the Chairperson that the relevant administrative staff should allocate files to Board members on a random basis having regard to a general assessment of availability and capacity.
93. When allocating files, administrative staff also have regard to a file allocation restriction list (used as a general guide) where Board members have expressed a wish not to have files from certain areas or involving certain organisations/companies allocated to them. This mechanism seeks to avoid the allocation of files which could cause a conflict of interest or a perception of real or objective bias (as set out in the relevant provision of the Code of Conduct). Any Board member who is inadvertently allocated a file which falls within the list is required to return it for reallocation. This exclusions/restrictions list has recently been updated.
94. There are additional and specific allocation protocols in respect of SHD and SID cases which are based on the legislative provisions governing those processes i.e. statutorily based SHD and SID divisions of the Board.
95. Finally, paragraph 15.8 of the Code of Conduct states that "Other than the Chairperson no member or employee shall request that a particular file be assigned to him/her". This provision is an internal control mechanism designed to provide a safeguard against the potential for personnel seeking files where there may be a personal interest of some nature in being involved in influencing the case outcome.
96. Generally, the evidence indicates that the allocation process has operated in accordance with the above requirements and procedures.
97. However, from our examination we have identified the following issues:
- (a) Approximately 30 cases being allocated to and handled by Board members where the case ought to have raised queries regarding that member's

exclusions list (as regards a geographical location, or connection with an applicant or adviser to an applicant / party to an application)

- (b) A notably high proportion of telecommunication mast appeal cases being allocated to a two-person Board composed of the same two individual Board members.
- (c) Allocation and determination of approximately 40 cases involving proposed alterations to SHD permissions, and certain other cases, being allocated to and handled by two-person Boards where the statutory framework requires a deciding Board quorum of at least three members.
- (d) Analysis of certain cases with a common applicant for permission was undertaken following receipt and consideration of correspondence raising concerns about such cases. The analysis suggests a statistical irregularity in the frequency of attendance of two Board members where cases involving this applicant were decided at the relevant Board meetings. While a total of 11 separate Board members was involved in 26 such decisions analysed (a total of 75 individual Board member involvements), two Board members accounted for 39% of such involvements. There were 23 three-person Board decisions and 3 two-person Board decisions in these cases.

98. The issue of file allocation in respect of the mast cases is addressed further in the section below addressing two-person Boards.

Inspectorate File Allocation

- 99. File allocation within Inspectorate has traditionally been based on geographically based teams. This has efficiency benefits in terms of familiarity with local development plans and areas. Additional allocation logic within the Board's Inspectorate is aimed at specialisation driving efficiency of processing with the same small team doing one category of cases on a regular basis. Familiarity with certain case types lends itself over time to being more efficient in dealing with certain issues that are common to such case types and so it is recognised that there is a coherent logic to such organisation within Inspectorate.
- 100. Within the above logic, there is also a competing requirement for rotation within and between such teams in order to facilitate professional development of Inspectors by way of access to working on a wide range of case types and geographical spread cases (both urban and rural locational contexts). Such rotation is however also required to mitigate against potential for too much familiarity/regularity in approach which could lead to at least a perception of 'routine' handling of individual cases with potential for similar outcomes in terms of Inspectors' recommendations if the same Inspectors, or groups of Inspectors,

are consistently doing the same case types or cases in the same areas all the time.

101. There has also been a longstanding approach that the pool of more experienced Inspectors in the Senior Planning Inspector grade would be utilised in the first instance to complete inspections, reports and recommendations for the more complex case types such as proposed strategic infrastructure developments (including strategic housing development) and also large scale and complex normal planning appeals. Those Inspectors in the Planning Inspector grade would traditionally be engaged in the first instance on less complex normal planning appeal cases but would gradually over time become involved in the suite of more complex cases. Otherwise, certain Inspectors would also have additional specialist areas of expertise (e.g. protected structures, foreshore etc.) which could lend itself to doing more cases where such particular expertise was desirable.
102. There would be other general parameters/principles that would guide allocation of files within Inspectorate outside of the above general principles, such as availability and current workloads which could disturb normal allocation patterns.
103. The SHD case allocation was based on selection of a dedicated SHD Inspector team among whom these files were allocated. Due to volumes of cases on hands at certain times, allocation outside of the dedicated team was also utilised. An analysis of strategic housing development files decided to date indicate that these files have not been predominantly or proportionally allocated to the more experienced senior planning Inspectors in the organisation. The selection of the composition of the SHD Inspector 'team' would have been the originating main factor in determining this distribution outcome.

4 Two-person Boards/Particular Case Types

104. Sections 108(1A) to 108(D) of the Planning and Development Act 2000 govern the operation of two-person Boards. These provisions were introduced in 2010 as a mechanism to assist in the efficient discharge of the business of the Board by reducing the longstanding requirement for a minimum Board quorum of three members.
105. Activation of the provision is discretionary. The Board may determine by resolution, if requested by the Chairperson (or the Deputy Chairperson in certain circumstances) where he or she is of the opinion that it is necessary to ensure the efficient discharge of the business of the Board, that the quorum for a meeting of the Board should be two.
106. The legislative provisions prevent certain categories of cases, including strategic infrastructure, EIA cases or cases involving material contravention of development plans, from being decided by a two-person Board. Board resolutions have been adopted pursuant to these provisions since 2011 and include listings of the type of cases considered admissible for decision at such two-person Boards.
107. Our examination of the operation of cases involving two-person Boards raised the following issues.
108. The examination identified a number of cases decided at two-person Boards which required a quorum of three by reference to the statutory requirements and/or the operative Board resolution.
109. With respect to the telecommunication mast appeal cases, our examination confirmed that the same two members determined 111 number of 147 cases in the period January 2018 to June 2022 (the composition of the two-person Boards which decided the balance of these cases was very varied). There is a very significant statistical irregularity in the incidence of departures from Inspector's recommendations to grant or refuse permission in these cases with the Board departing from the Inspector's recommendation in 26% of these 111 cases. This is far beyond the prevailing general statistical normal rate of departure from recommendations being 10 – 12% generally.
110. Explanation for this requires a case-by-case analysis, but this examination generally indicates the Board not agreeing with an Inspector's conclusion on issues like effects on visual and/or residential amenity and expressing that view as the reason for departing from the recommendation.
111. The issue of consistent consensus between certain Board members of itself does not necessarily raise any concern. However, when such consistent consensus is operating in the context of a two-person Board comprising the

same Board members, which is consistently dealing with large volumes of the same types of cases, and also results in the example of the most cases in an irregular degree of departure from Inspectors' recommendations. It is understood why participants in such cases could raise legitimate concerns about the decision-making process.

112. In addition, the allocation of such a high proportion of a particular case type to the same two-person Board is not consistent with the general principle of random allocation of files and rotation of members and mix of members at Board meetings.
113. More generally, the examination of files decided by two person Boards in the period 2018 to June 2022 indicates that the same two Board members dealt with the majority of all two-person Board cases which again is out of alignment with practices and procedures designed to avoid any apprehension of potential consistent and/or routine "group think" on cases. By way of example, the same two-person Board decided 25%, 57%, 55% and 76% of the cases decided by two-person Boards in the years 2018, 2019, 2020 and 2021 (and 60% in the period January to June 2022). The balance of decisions made by two-person Boards were made by a very varied composition of Board members.
114. Notwithstanding the arrangements put in place during Covid, it is considered that other alternative options to distribute cases to other Board members could have been exercised. It is also noted that Covid restrictions were not in place for the full duration of this period.
115. It appears that the convening of a two-person Board meeting was at the discretion of the then Deputy Chairperson and based on such files suitable for such meetings being batched for consideration of allocation to convened meetings of the two Board members. However there is no written evidence documenting the batching of this case type and allocation to this composition of the Board and they appear to have been arranged under the general governance provisions set out in section 110 of the 2000 Act.
116. It is considered that best practice would avoid, as far as practicable, consistent pairing of the same Board members at either two or three person Boards and rotation of members as far as practicable to avoid any apprehension of consistent and/or routine "group think" on cases. Systems of monitoring to provide the relevant information to the posts involved in convening Boards should be developed to assist as required in respect of this matter.
117. It is noted that the last two-person Board resolution has now been formally rescinded by the Board and that this Board composition is therefore not operable at present.

5 Amendments to Inspectors' Reports

118. A core feature of An Bord Pleanála's operations since 1977 is that almost every planning or related case which comes before it is subject to a process where a planning Inspector completes a site inspection and written report on the application having regard to all relevant planning considerations including consideration of any submissions from the public. Such Inspectors' reports must also include the Inspector's own recommendation as to whether the Inspector considers that the proposed development should be granted or refused planning permission. This report is then submitted to a panel of Board members which makes the decision on the case. Where the Board's decision to grant or refuse permission differs from the Inspector's recommendation in this respect, the Board is under an express statutory obligation to indicate the main reasons for not accepting the Inspector's recommendation to grant or refuse permission.
119. While Inspectors are employees of An Bord Pleanála (or contracted consultants engaged by the Board on a case-by-case basis), they are traditionally considered effectively independent in completing their role of reporting on cases. Inspectors use their own professional judgement in assessing applications and reach a conclusion and recommendation based on exercise of that independent personal professional judgement. This independent exercise of planning assessment and judgement has always been considered a necessary fundamental cornerstone of maintaining public confidence in the integrity and thoroughness of the decision-making process in An Bord Pleanála.
120. The 'independent' role of the Inspector has always been valued and respected in the organisation by staff and Board members. Similarly, the Board's entitlement to depart from an Inspector's recommendation is fully acknowledged as reasonable and appropriate subject to the requirement for the Board to document its reasons for doing so (recognising that planning is not an 'exact science' and that different but equally valid conclusions can be reached on whether proposed developments should or should not be granted planning permission).
121. Furthermore, the decision-making process is also fully transparent as the full case file including the Inspector's report and Board decision is made available for public inspection within three days after the decision has been made. The Inspector's report and Board decision is also posted to the Board's website within the same time period.
122. Access to the decided case file fulfils a transparency 'contract' between the organisation and the public by ensuring that what has happened in the case in terms of process is fully exposed by this public access facility – the process is open, complete and thus fully transparent and the intention is that the public can

be fully satisfied that what is seen on the file is the full picture of how the decision making process was undertaken and completed.

123. Against this background, significant concerns have been raised regarding amendments being made to Inspector's Reports. In addition to the importance of the segregation of functions, the recording of file movements, overall transparency of the decision-making process and integrity of the public file is also critical in this context.
124. It should be recognised at the outset that there are entirely legitimate scenarios where amendments are made to reports.
125. This can occur **before** reports are finalised and discharged to the Board for consideration as part of a normal quality control process by Management in respect of the on-going preparation of reports by less experienced Inspectors. This would entail examination and feedback on draft reports prior to their finalisation and subject to it being clear that an Inspector retains at all times an independent right to maintain the outcome of their own personal professional assessment and recommendation in any such case.
126. This can also occur **after** reports have been finalised and discharged to the Board for consideration. For example, at a convened Board meeting at which a case is being considered, a Board may decide that it wants an Inspector to cover some aspect of the case in greater detail or to clarify some matter. This is entirely legitimate, appropriate, and transparent and is no cause for concern provided this is done in the following way:
 - a) a formally documented on file request from the Board for a supplemental/addendum report (or in some instances a revised report) or clarification note from the reporting Inspector.
 - b) a record of associated file movements.
 - c) the retention of any report which was already before the Board on the file.
127. Such formal requests are generally transmitted from the Board to the Inspector via Inspectorate Management.
128. However, the files and associated records we have examined indicate examples of informal suggestions/requests, or what could be perceived as directions, to Inspectors to change their reports in substantive and material ways after discharge and submission to the Board and in the absence of any parallel documented record of these requests or related file movements on the physical file or computer database.

129. These requests appear to have originated from Board level. It is not clear whether they arose further to formally convened Board meetings at which such cases were being considered or from a single Board member who had been allocated the file as the presenting Board member and had not yet presented the file to a convened Board meeting. Such requests then appear to have been made to the reporting Inspector concerned via Inspectorate Management either in person or by telephone contact.
130. Examples of such undocumented suggestions/requests on case files examined by the team vary from:
- a) the correction of certain details.
 - b) suggested material alterations to elements of reports other than the substantive recommendation which appear to suggest attempts at increased alignment of Inspector's assessment and reasoning to prototype or intended Board decisions.
 - c) requests to reverse the Inspector's substantive recommendation to grant or refuse permission.
131. Associated file movements were generally not recorded. In this context, there are also examples of staff members seeking to establish the whereabouts of files, and when located, volunteering to make the required file movement entry on the basis that the lack of such a marking was an oversight. However, they were advised by a Board member that it was not necessary to so do.
132. It is the case that altered Inspector's report completed as a result of such approaches were in most of the cases examined not presented as such altered reports, but simply replaced previously finalised and discharged reports on the public file. In that scenario these decided files subsequently presented to the public as representing a full transparent record of the decision-making process were not such a full record and having regard to the organisation's contract with the public on openness and transparency post decision, thus breached the trust and transparency between the organisation and the public in those particular cases.
133. Such undocumented amendments to Inspector's reports arose in two decisions which were the subject of judicial review proceedings (and duly disclosed). Due to the absence of any records, this only became apparent following extensive examination of internal records and follow-on queries to relevant personnel.
134. The team identified a number of cases where this issue has arisen.

135. The issue of the appropriateness and continuation of such requests for amendments to Inspectors' reports was also raised by the Fórsa trade union at an industrial relations meeting with representatives of An Bord Pleanála Management in March 2022. Board representatives at that meeting advised that the concerns expressed would be raised with the full Executive Management Team and this was done.
136. It is clear that such requests were acted on and complied with in certain cases by reporting Inspectors. However, it must be fully understood and acknowledged that such approaches by superior senior officers and advancing the suggestion that the request was emanating from Board level can clearly exert considerable pressure on Inspectors to so comply. In such circumstances, it would be understandable if recipients felt fearful of not complying. It is the view of this team that these types of requests should not be made to reporting Inspectors and that they should not be put in such difficult situations when carrying out their roles.
137. In the team's experience, this issue of informal undocumented requests for changes to Inspector's reports has only arisen recently in the organisation's history. This team considers that, beyond appropriate and documented requests as noted above, these informal and undocumented requests should not take place. It appears however, that other personnel in An Bord Pleanála may consider that such approaches are okay, so it must be decided who is right or wrong in this scenario (see 140 below).
138. It would be reasonable to ask why this matter is not explicitly covered in the existing version (or previous iterations) of the Code of Conduct or in other internal protocols. Based on this teams' experience of the organisation this is explained by the longstanding belief within the organisation that the independence and integrity of the Inspector's reporting role was so sacrosanct that any attempts at interference (outside the range of legitimate documented requests for clarification or addendum etc.) could not be contemplated as a possibility and hence did not require such explicit mention in the Code.
139. It appears to this team that what once would not have been contemplated as even a possibility, thus defining a longstanding in-house cultured norm in the organisation around the independence and integrity of the Inspector role, may have in recent years seen the systems being disturbed to a degree where requests for such "off the record" alterations to discharged Inspectors' reports are sought to be institutionalised as "normal" and to be expected and received as "reasonable and appropriate" thus seeking to create a new cultural norm within the organisation which legitimises such activities.

140. Given the outcome of our examination, it is recommended that this issue be explicitly addressed in the on-going review of the Code of Conduct in conjunction with written internal protocols for Board consideration and approval. In addition, it is recommended that Fórsa should be further consulted on this matter prior to finalisation of any such protocols.
141. This Management team has already separately drafted internal protocols on how Board requests for addendums/clarifications can be managed in a completely open and transparent manner – informed by the consistent legal advice already provided to the organisation in respect of this matter.

6 Others Matters

Withdrawal of Applications

142. It has come to the attention of the team that the timing of withdrawal of certain applications in certain circumstances raises concerns and may require further examination.

Disciplinary Procedures

143. While each member of the Board is subject to the Code of Conduct, they are also individually and collectively accountable to the Minister under the relevant provisions of the 2000 Act. The Board has certain reporting obligations to the Minister under section 109 of the 2000 Act. For certain prescribed reasons, the Minister may decide to remove a member of the Board under section 106(15), or the Government can remove a Chairperson under section 105(15), of the 2000 Act. There is also a procedure under section 110(2) of the 2000 Act for a Chairperson to report to the Minister on the conduct of a Board member, in prescribed circumstances.
144. With respect to employees of An Bord Pleanála, there has been a Grievance and Disciplinary Procedure in place since 2004, which provides that an employee may be suspended on full pay pending the outcome of an investigation into an alleged breach of discipline. This policy has recently been reviewed and updated and it is expected that this updated procedure will be formalised shortly, once approved.

Legal Affairs

145. The increase in legal challenges, and the significant number of cases lost or conceded, has been raised as an issue of significant concern including by members of the Oireachtas. This issue has been linked to the decision-making process for SHD cases, and it has had a significant impact on the financial exposure of An Bord Pleanála to legal costs.
146. The team has noted concerns expressed about whether the Board has had sufficient access to expert legal advice, particularly in response to and the application of learnings from legal outcomes for subsequent cases.
147. The team is aware that external legal agents and counsel engaged by the organisation have consistently provided expert legal advice, including feedback on Court judgments, and the implications of such judgments to future processes and decisions. These various advices have been communicated to relevant personnel at Board and senior Management levels.

148. The two firms of legal agents currently engaged by the Board have a total of 6 solicitors working full-time for the Board and the Board regularly engages ten barristers (3 senior counsel and 7 junior counsel) to represent it in legal challenges and to provide on-going legal advice. There is, in the team's view, no lack of availability of expert legal guidance and advice to An Bord Pleanála on an ongoing and up-to-date basis, and this is evident from the documentation on file.
149. The Board and senior personnel are therefore in a position to fully consider and apply the legal advice received in their day-to-day functions, including decision-making, although the team would acknowledge that the volume of cases and judgments in recent years has increased significantly, as has the level of detailed content in those judgments which requires to be considered and disseminated.
150. An Bord Pleanála also has an in-house team dealing with its legal affairs work, comprising 8 personnel (four of whom are senior managers). These are not legal personnel, but rather liaise on a full-time basis with the external legal agents for the purpose primarily of providing ongoing instruction and administrative support on judicial review cases. Certain of the issues in this report explain the difficulties experienced by this in-house legal affairs team in providing clear instructions on a case, having regard to undocumented file movements and unrecorded amendments to internal documents on files and general deviation from internal procedures.

Recruitment/Human Resource Management

151. Additional emphasis on a core element of recruitment competitions competencies in An Bord Pleanála should be the competency of integrity and honesty with a demonstrated full understanding of the necessity to, at all times, operate with the fullest possible ethical standards in accordance with the requirement and expectations for public servants. This should be applied both to Board member appointments by the Minister for Housing, Local Government and Heritage and the Government and staff appointments whether for internal promotion or initial external recruitment of staff at any level.

Internal Audit Program

152. This team notes that the cycle of internal audit examinations and reports over the last 15 years has been heavily weighted to audits of areas considered typically "Corporate" and therefore within the Corporate Affairs Division of the organisation as distinct from areas relating to the planning decision making functions of the organisation covered by the Planning Operational Division and at Board level in the exercise of the Board's planning tribunal decision making executive role. This perceived imbalance has been brought to the attention of the

audit and risk committee and the internal audit function on a couple of occasions over that period.

153. Ultimately, it is the Board of the organisation that approves the audit plan for each year, usually following a recommendation from the audit and risk committee. While the Board has that governance role over this matter it is also an executive Board involved in the planning decision making processes and this role should be as exposed to such audit processes as the other parts of the organisation. There are usually three internal audit reports completed each year in addition to the annual standing audit report done every year on the systems of internal control as part of the annual accounting and report cycle.
154. In relation to this matter, this team recommends that the Board now commit to requiring each annual internal audit plan to generally provide that discretionary annual audits be divided equally between the three areas of Corporate Affairs Division, Planning Operational Division and Board level executive operations.

Section C: Conclusions/Draft Recommendations

155. Certain media outlets, journalists, and individuals (both within and outside the organisation) have raised concerns across a range of areas which, on examination of a significant number of files by this team, have generally been found to have factual substance.
156. These are matters which, due to their serious nature, have caused unprecedented harm to the reputation and standing of An Bord Pleanála.
157. The examinations reveal concerns across a range of matters which, on their own and when combined, suggest that there may be a concerted attempt to shift certain cultural norms in An Bord Pleanála away from those which have been in place, monitored and guarded by multiple past and present Board members and staff, upon whose efforts the reputation and good standing of the organisation has been built and maintained over 45 years of operation.
158. There is an opportunity to take action to re-assert the need to adhere to long-established practices and procedures in the organisation and to restore the reputation of An Bord Pleanála as an independent body which acts with integrity, independence, impartiality and transparency, and in accordance with law and its own Code of Conduct.
159. The culture of An Bord Pleanála has traditionally tended towards a precautionary approach to disclosures, declarations, and avoidance of any perception of a conflict of interest. All personnel and members of the Board are, and should continue to be, encouraged to act with an abundance of caution, demonstrating awareness of the sensitivity of the organisation to situations which could give rise to actual or perceived conflicts. The normalisation of a culture of any deviation from this is not acceptable.
160. In the first instance, this team recommends full acknowledgement of the serious nature of the issues raised and that full analysis of a number of matters is warranted.
161. In this regard, what is also recommended is appropriate action be taken swiftly, within the full parameters of natural justice requirements, where there is any clear evidence of alleged wrongdoing.
162. Such steps are considered reasonable and appropriate should such circumstances be established and will also assure the public that these matters are being dealt with by An Bord Pleanála in an appropriate and proportionate fashion.

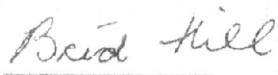
163. An Bord Pleanála should continue to adopt a proactive approach to full transparency within legal and statutory parameters to demonstrate its commitment to restore full public confidence in its integrity. This should now include full acknowledgement and thanks to both the public and media outlets who have raised legitimate concerns about significant issues in the organisation.
164. Strengthen case specific protocols relating to avoidance of conflicts of interest and/or objective bias. Some of these are listed below.
165. Before completing the 'no conflicts' check on a case file, every individual should ensure that they know, at the least, the name of the applicant or appellant, the nature of the proposed development, and its location.
166. Where an applicant or appellant, or other person involved in the application or appeal, is well-known to an Inspector or member of the Board, that fact should be disclosed and, in general, the individual should recuse themselves from dealing with the case in any way e.g. meetings internally/externally etc.
167. Where a case file is inadvertently allocated for decision by a Board involving an area or organisation listed on one of the Board members file allocation restriction list, the individual should generally recuse themselves. Recusal should also be considered where the file falls within the general guideline exclusion zone referred to earlier in this report if that approach is adopted in the revised Code of Conduct.
168. However, where it is considered that recusal is not necessary in the particular circumstances of the case, for example where there is (objectively) no actual or perceived conflict or potential for bias, an explanatory record of this consideration and conclusion should be kept on a register. All personnel should be reminded of their duty to raise any doubts in this regard with the Chairperson, the Secretary, or the senior Management team, before proceeding to deal with a case.
169. The team notes that the Code of Conduct is currently being reviewed. The team considers that such review should incorporate (at least):
 - a) Provisions specifically addressed to close personal connections and persons well known, both in respect of connections to external persons (applicants, appellants, and persons acting on their behalf), and in respect of internal connections between individuals with particular roles and responsibilities within the organisation including close personal/romantic relationships at certain levels.

- b) Further guidance on potential conflicts and scenarios which have the potential to give rise to objective bias concerns, to better inform the disclosures and declarations that individuals are required to make.
- c) Provisions detailing the responsibility of individuals to ensure that they have the necessary details to complete conflicts checks before they deal with a case.
- d) Provisions to incorporate a proposed protocol governing the amendment of Inspector's reports (see below)
- e) Further reinforcement of requirements for written approval by the Chairperson (following viewing of any proposed presentations)
- f) Specific reference in the Code (currently inferred) to the consequences of non-compliance and the sanctions that can be expected as per the Board's Grievance and Disciplinary Procedure.

- 170. The allocation of case files to Board members is subject to section 110(1) of the Planning and Development Act 2000, as amended. Authority to allocate case files randomly to Board members is delegated by the Chairperson to the administrative section of the organisation. This process should continue, and the Code requirement that no personnel can request that a particular file be assigned to him/her should be adhered to.
- 171. The practice of mixing the composition of deciding Boards and rotating Board members should be reaffirmed (whilst appreciating that there may be some limitations to this in the context of SID and SHD Divisions).
- 172. The composition of deciding Boards for particular applicants / appellants should be varied, such that no one Board member (or members) are consistently deciding cases involving a particular applicant or appellant. Systems to provide data to monitor this on a regular basis to be devised.
- 173. The composition of deciding Boards might also be subject to regular monitoring, to ensure no unusual patterns emerge. Systems to provide data to monitor this on a regular basis to be devised.
- 174. The allocation of files to Inspectors should be determined in accordance with generally applicable principles, subject to considerations including capacity, availability, and current allocation of case types, and the allocation of certain case types should be monitored to ensure no unusual patterns of allocation.
- 175. A draft protocol for the amendment of Inspector's reports has been prepared, informed by external legal advice already received on this issue, and this should be formally considered by the Board with a view to having clear approved

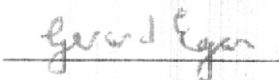
arrangements in place to govern the process by which issues with Inspector's reports may be addressed in the future, to ensure the transparency and integrity of the case file. The protocol should distinguish the situation where amendments to Inspector's reports are made *prior* to formal discharge to the Board, and those amendments which are made *after* discharge, and *after* the Board have met to consider the case file. The protocol should seek to ensure quality control, clarity, and transparency in the processing and deciding of cases.

176. The protocol, when adopted, should be appended to the revised Code of Conduct, to give it appropriate standing within the governance framework that is applicable both to members of the Board and to employees of the organisation.
177. The team notes that the two-person Board meetings have been discontinued.
178. Consider whether review of file allocation in Inspectorate in respect of strategic housing development applications is necessary.
179. Recruitment policy to be reviewed to provide for integrity competency to be central and weighted appropriately and interview panel members in all competitions to be provided with continued appropriate briefing on this and other requirements.
180. Interview panels established by An Bord Pleanála should continue to be composed of a diverse range of personnel, including external personnel, to ensure that all candidates (including repeat candidates) have an equal opportunity. It is recommended that a senior member of the HR team should now also be involved in all interview panels. The necessity for appropriate rotation of internal personnel sitting on such panels to be re-emphasised in recruitment policy as good practice and arranged as far as practicable for all competitions.
181. The Board commit to internal audits being conducted on an equally distributed basis within the organisation (Corporate Affairs Division, Planning Operational Division and Board level Planning Tribunal operations), to ensure that core elements of the planning and decision-making functions of An Bord Pleanála are proportionally included in such audit plans.



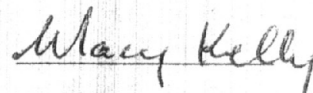
Brid Hill

Chief Officer



Gerard Egan

Director of Corporate Affairs



Mary Kelly

Head of Human Resources

19 October 2022