STRATEGIC INFRASTRUCTURE DIVISION REVIEW GROUP

Draft Final Report

February 2013
## Report Format

This report is set out under the follow headings:-

1. **Introduction** ................................................................. 5
   1.1 The Brief ................................................................. 7
   1.2 The Review Team .......................................................... 7
   1.3 The Methodology used for the Review ............................... 8

2. **Pre-application consultations** ........................................... 9
   2.1 The Facts ................................................................. 11
   2.2 Issues ........................................................................ 12
     2.2.1 Organisation of Consultations .................................... 12
     2.2.2 The format of pre-application consultations .................. 13
     2.2.3 Nature and extent of advice ...................................... 14
     2.2.4 Board record of consultation meetings ......................... 15
     2.2.5 Internal Procedures .................................................. 15
     2.2.6 Closure of Consultation ............................................. 16

3. **Scoping** ......................................................................... 18
   3.1 The Facts ................................................................. 18
   3.2 The Issues ................................................................... 18

4. **Planning Applications** ..................................................... 20
   4.1 The Facts ................................................................. 21
   4.2 Issues ........................................................................ 22
     4.2.1 Internal Administration ............................................. 22
     4.2.2 Allocation of File for Reporting ................................. 22
     4.2.3 Decision Making Process ......................................... 23
5. Oral Hearings .................................................................................................................. 25
   5.1 The Facts .................................................................................................................. 25
   5.2 The Issues ............................................................................................................... 25

6. Decision and Directing of Payment of Costs ................................................................. 28
   6.1 The Facts ............................................................................................................... 28
   6.2 The Issues ............................................................................................................... 31

7. Recommendations .......................................................................................................... 33
   7.1 Pre-application consultations – general ................................................................. 33
   7.2 Pre-application consultations – legislation ............................................................ 35
   7.3 Scoping – general .................................................................................................. 36
   7.4 Scoping – legislation .............................................................................................. 36
   7.5 Applications – general .......................................................................................... 37
   7.6 Applications – legislation ..................................................................................... 38
   7.7 Oral Hearings – general ....................................................................................... 38
   7.8 Decisions & Costs – general ............................................................................... 39
Figures

Figure 1 – Flowchart showing the results of the 233 Pre-Application Consultations Requests received by 31st December 2012

Figure 2 – Chart showing Requests by Type for the period up to 31st December 2012

Figure 3 – Flowchart showing results of Scoping Request received by the Board up to 31st December 2012

Figure 4 – Chart showing SID Applications granted or refused by the Board to 31st December 2012, with further breakdown of type of application refused

Figure 5 – Chart showing the 36 Oral Hearings in SID cases by duration in days in the period up to 31st December 2012

Figure 6 – An Bord Pleanála costs for SID cases versus the Oral Hearing duration with three most expensive casts excluded

Figure 7 – Total cost of hearing versus duration of the hearing in days for Oral Hearings up to 31st December 2012
1. Introduction

The Planning and Development (Strategic Infrastructure) Act, 2006 came into effect on 31st January 2007. It provided for the establishment of a Strategic Infrastructure Division in An Bord Pleanála and for the making of applications for permission/approval for specified private and public strategic infrastructure developments directly to the Board. The Board effectively became a one-stop shop for the determination of public and private strategic infrastructure development applications. There is no appeal mechanism against the environmental or planning merits of any decision relating to strategic infrastructure development.

Under the Planning and Development Act, 2000, as amended, applications for local authority developments requiring environmental impact assessment are to be made directly to the Board for approval of the proposed development. These are categorised as strategic infrastructure development under the 2006 Act, but are not the subject of this report. Under the 2006 Act the following categories of development are referred to as strategic infrastructure:

- Development of a class specified in the 7th Schedule of the Act where, in the opinion of the Board, the development falls within the criteria set for strategic infrastructure development set out in the Act
- Local authority development for which an EIS is prepared under S.175 or S.226
- Certain Environmental Impact Assessment type developments by the State which do not have to go through the normal planning procedures
- Electricity transmission/high voltage lines (110kv or greater), and interconnectors
- Strategic gas infrastructure development
- Road schemes and major road developments
- Railway orders
- Compulsory acquisition of lands relating to the above categories

In accordance with the brief, this report focuses on 7th Schedule, electricity, strategic gas and rail order developments deemed to be strategic infrastructure.

The 2006 Act includes provision for mandatory pre-application consultations for each of these types of developments. The legislation also provides for the directing and recovery of reasonable costs, as appropriate, to planning authorities, observers and the Board itself when deciding an application for strategic infrastructure development.

Section 146 of the 2000 Act, as amended, provides for requests to be made to the Board for alteration/amendments to permissions/approvals granted under SID.
provisions. These may be of a minor or clerical nature (section 146A) or may be more substantive (section 146B). In the case of requests made under Section 146B different procedures must be adopted by the Board depending on whether or not the amendment is deemed to be material and/or is likely to have significant effects on the environment.

This report includes a wide range of statistical information both in its main body and also in appendices. The statistics are up to date as of 31st December, 2012.
1.1 The Brief

The brief for this report is to critically examine the strategic infrastructure process, as introduced through the provisions of the Planning and Development (Strategic Infrastructure) Act, 2006, as amended, and as developed through later planning legislation and operated within the Board to date, to determine issues which have arisen at the various stages of that process, to analyse the effectiveness of staff resourcing in the operation of the process, and to make recommendations, as appropriate, including legislative changes.

1.2 The Review Team

The review was initiated in April 2012 and held its first meeting on Wednesday 9th May 2012. The review team consists of the following:-

Des Johnson (Director of Planning) (Convenor)
Conall Boland (Deputy Chairperson and Board Member)
Diarmuid Collins (Senior Administrative Officer, Strategic Infrastructure Division)
Neil Doherty (Inspectorate Support)
Marcella Doyle (Senior Executive Officer, Strategic Infrastructure Division)
Phil Green (Assistant Director of Planning)
Carol Moloney (Senior Administrative Officer, Finance)
Brendan Wyse (Senior Planning Inspector)
1.3 The Methodology

The Review group set out to critically analyse the efficiency and effectiveness of procedures and processes introduced by the 2006 Act and as followed to date. To achieve this, the team focused on the following:

- Pre-application consultations
- Scoping
- Planning applications
- Oral Hearings
- Board decisions and the awarding of Costs

In accordance with the brief and arising from issues identified under the above headings, the review team makes recommendations for improving procedures and processes, including possible legislative changes.

The Review adopted a staged process as follows:

- Establish the facts relating to Pre-Application consultations, scoping applications, oral hearings, and decisions
- Identify problems/issues emerging
- Broadly consult with Board Members, Inspectorate and Administrative staff
- Propose solutions, including possible legislative amendments
- Discuss options for possible external consultations
2. Pre-application Consultations

The 2006 Act introduced provisions for pre-application consultations for the type of proposed strategic infrastructure developments the focus of this report. Such consultations are mandatory for all strategic 7th Schedule, electricity, gas and rail order proposals; however, there is no provision for pre-application consultations for Local Authority SID proposals when the site is located within the Local Authority’s own jurisdiction or for proposals to amend strategic infrastructure permissions under Section 146.

In practice to date the Board’s ‘team’ for Pre-Application Consultations has generally consisted of Director of Planning / Assistant Director of Planning (Chair), Senior Planning Inspector (reporting), Senior Administrative Officer/Senior Executive Officer (legal & procedure) and an Executive Officer (Record).

Pre-application consultations are mandatory for the prospective applicants but the Board may also, as part of the process, consult with any other person/body with information which may be useful to the Board in relation to the proposed development. A significant change in approach has developed since the first pre-application consultations were held in 2007. These initial consultations were held exclusively with the prospective applicants with advice being given to consult with the relevant planning authority(s) and relevant Prescribed Bodies; more recently the Board has extended its own consultations to meeting with these authorities and bodies. There is no provision for Third Party input into pre-application consultations.

The purpose of pre-application consultations is for the Board to decide if a proposed development constitutes strategic infrastructure development under the provisions of the Act. In the case of 7th Schedule this decision is based on the proposed development coming within a class of development listed in the 7th Schedule and also meeting criteria detailed in Section 37(A)(2) of the Act. The Section 37 criteria, which effectively define strategic infrastructure development, also apply to strategic gas proposals but do not apply to other types of strategic infrastructure proposals. In the case of 7th Schedule proposals the Board must issue Notice of its decision before any application can be made but this requirement does not apply to other forms of strategic infrastructure developments although, in practice, the Board has adopted a similar approach. In the event of the Board declaring a proposal to be SID, the subsequent application must be made directly to the Board; if it is declared not to be SID the application is made to the relevant planning authority.

All meetings are recorded by the Board’s team and these records are made available to the public on the completion of the consultation process.

Other matters which the Board may advise on in consultations (and which have been advised on in all consultations to date) include the following:-
• Procedures for the making of a SID application, including public notice
• Procedures for the deciding a SID application
• Any consultations which the Board may require the prospective applicants to undertake with the public or other bodies
• Considerations which, in the opinion of the Board, may be important to the making of a decision in the event of a SID application being made
• List of Prescribed Bodies to be circulated with the SID application and invited to make submissions

These ‘other’ matters on which the Board may advise have been instrumental in dictating, to a large extent, the duration of consultations. The pace of consultations is generally dictated by the prospective applicant. Delays in setting up meetings experienced in the early stages of the process have been eradicated. In more recent times the Board has sought to speed up consultations, taking the view that prolonged consultations are not compatible with the meaning and thrust of the Act. A balance must, however, be struck between expediting the process while keeping consultations meaningful and productive.

During the consultation process the team meets with members of the SID Board to discuss progress and ascertain considerations which may be important to the Board in making a decision on any application for the proposed development. To date these meetings have, for the greater part, been informal and no record has been kept.

Pre-application consultations introduced a significant departure for the Board; they also introduce a significant challenge in order to be meaningful and productive but while maintaining the impartiality of the Board to decide the follow-on application when 3rd parties/observers may play an active role. There is no provision for 3rd party input into pre-application consultations.
2.1 The Facts

As of 31st December 2012 there have been 233 Pre-Application Consultations requests in total. Of these the majority (153) relate to 7th Schedule proposals with the remaining requests relating to electricity (63), gas (6) and railway (11). In total of the concluded consultations 142 were deemed to be SID and 68 were deemed not to be SID. The facts for Pre-Applications are illustrated in Figure 1 below. Figure 2 illustrates the percentage breakdown of the 233 requests to date.

![Flowchart showing the results of the 233 Pre-Application Consultation Requests received by 31st December 2012](image)

* denotes either Withdrawn, Consultations Closed, No Jurisdiction, Invalid and In Abeyance

Figure 1 – Flowchart showing the results of the 233 Pre-Application Consultation Requests received by 31st December 2012

To the end of 2012 the Board team has met with 13 different planning authorities, in relation to 22 different proposals, and has met with 17 other bodies (e.g. Government Departments, Regional Authorities, DDDA, NPWS and EPA) in relation to 13 proposals (see Appendix A).
2.2 Issues

The key issues arising in relation to pre-application consultations can be broadly categorised under the following headings:-

- The organisation of pre-application consultations
- The format of consultations
- The nature and extent of ‘advice’ given at consultations
- The keeping of the ‘Record’ of consultation meetings
- Internal procedures adopted during consultations
- The closure of consultations & the Inspectors report

2.2.1 Organisation of consultations

Initial issues involving delays in setting up consultation meetings following a request have been addressed and in most cases prospective applicants are now offered dates within 4 weeks of their request; in cases of urgency this period may be shorter.

The legislation requires the prospective applicant to supply sufficient information to the Board to enable it to decide if a proposed development constitutes strategic infrastructure development within the meaning of the Act. The Board interprets this requirement, together with the fact that the Board may refer in consultations to considerations which may be important to the Board in making a decision on a follow-up application, as meaning that, before pre-application consultations are convened, the proposal must be site specific and contain basic information similar to what might be expected with an application for outline permission. In some cases this has led to a request for additional information before consultations are convened. If such information is requested but not submitted the Board may regard the request for consultations as being invalid.

Experience shows that in some early cases consultations were convened before a proposed project had been given sufficient consideration by the prospective applicant; in most cases these consultations proved unproductive over a prolonged period of time and some remain in abeyance. The introduction of fees for pre-application consultations, together with a revised approach by the Board requiring more detailed information before consultations are convened, has, to a great extent, addressed this issue.

It is not clear if the legislation allows for the Board to close off prolonged and unproductive consultations without the consent of the prospective applicants. The making available to the public the pre-application consultation file, which may contain information which the prospective applicant considers ‘sensitive’ and would prefer to keep outside the public arena until an application is ready to be lodged, is a complicating factor. On the other hand, the meaning and purpose of the Act is clear in facilitating the making of applications and expediting decisions for strategic
infrastructure developments and prolonged pre-application consultations do not meet the tenor of the Act.

There is no time limit specified between the closing of pre-application consultations and the issue of Notice or a letter from the Board stating whether or not the proposal constitutes SID, and the submission of a follow-on application. This is unsatisfactory. Consultations (and the advices given) have regard to existing National, Regional and Local policy in addition to the existing planning and environmental conditions pertaining to the site and its environs at the time of the consultations. These factors may change over time. It is considered that a time limit should be specified between the closure of consultations and the submission of an application under SID.

2.2.2 The Format of pre-application consultations

A Board team is specifically appointed to each set of pre-application consultations. To date a typical team would comprise Director of Planning/Assistant Director of Planning (Chair), Senior Planning Inspector (Technical), Senior Administrative Officer/Senior Executive Officer (Administrative) and Executive Officer/Administrative Assistant (Record). On a couple of very large cases two Senior Planning Inspectors have been assigned.

Typically, at the first meeting the Chair would introduce the Board team, outline the purpose of pre-application consultations and the legal provisions relating to them and then hand over to the prospective applicants to elaborate on their proposal and to refer to any specific matters on which it seeks the Board’s views at this stage of the process. The Board team refrains for expressing opinions on the planning merits of a proposed development. A follow-up meeting(s) is used to express the preliminary view of the Board as to whether or not the proposal constitutes SID and specific issues identified by the Board at this stage of the process which would need to be addressed in any application being made to the Board. The Board’s team also advises on procedures for making an application to the Board, possible public consultation requirements and a list of Prescribed Bodies who should be sent a copy of the application and invited to make submissions to the Board within a specified time-frame.

An issue arises in relation to repeat requests for pre-application consultations and whether or not the same Board team should be appointed to such consultations. There are arguments for and against retaining the same team. Generally, the procedure adopted to date is to appoint a new Inspectorate team.

There is no legislative requirement for a prospective applicant to have ownership or any interest in a site before requesting pre-application consultations. Consultations have taken place with two separate sets of prospective applicants in relation to the same proposal on the same site. This is inefficient and ineffective and should be addressed in legislation.
2.2.3 Nature and extent of advice

Some comment has been publicly voiced in relation to the ‘restrained’ approach taken by the Board’s team and, in particular, its reluctance to comment on the likely success or otherwise of a future application to the Board. The Board’s approach is greatly influenced by the rights of 3rd parties in the planning process, and their absence from pre-application consultations, and also the relatively low level of information available at consultation stage. The lack of any appeal (other than through JR) of the Board decision on a follow up application is also an influencing factor.

The Board does not see its role as one of a substitute for a planning advisor to a prospective applicant and does not see the provisions of the legislation as supporting such a role. The Senior Planning Inspector involved in pre-application consultations is never allocated a subsequent application file for assessment. However, the views of the SID Board are conveyed to the prospective applicant during consultations and it is the same Board that will decide on any subsequent application. How could this Board offer substantive views on the planning merits of a proposal at consultations stage and then take an impartial and independent decision on a subsequent application when 3rd parties become involved?

In a small number of ‘extreme’ cases which have been the subject of consultations, the Board has expressed serious ‘concerns’ regarding planning aspects of the proposals. Very few of these cases have come before the Board by way of a subsequent application. However, such an approach would not be possible in cases where the planning merits and concerns may be more finely balanced.

Strategic infrastructure proposals, by their nature, include large and often complex developments, and the follow-on applications of some of the larger cases have necessitated the engagement of specialised consultants to assist the reporting Inspector at application stage. In a number of high profile cases the specialist consultant has found the information submitted with the application to be inadequate necessitating the submission of significant additional information. This can significantly extend the period required for the processing of the application leading to the Board’s decision. As one of the aims of pre-application consultations is to ensure that the follow-on application is as complete as possible and addresses all the key issues, there appears to be merit in considering the appointment of specialist consultants at pre-application consultation stage for large and complex proposals to advise on the nature and extent of information which should be submitted with the follow-on application. This could be done without involvement in consultation meetings and, in such circumstances, there appears no reason why the same specialist consultant could not be engaged to advise at application stage.

There is a detailed internal Guidance Note for Inspectors for Pre-Application Consultations detailing the purpose of consultations, format of consultations, and the
role of the reporting Inspector pre-meetings, at meetings and post meetings; this Guidance Note is currently under review.

### 2.2.4 Board Record of consultation meetings

The legislation requires the Board to keep a record of all pre-application consultations. This role is performed by an Executive Officer or Administrative Assistant. Training has been provided as appropriate. The draft record is sent to the other Board attendees usually within a week of the meeting and any corrections/amendments are made before signing off by the Chair of the meeting. The signed record is sent to the prospective applicant (stamped Private& Confidential) who may comment on the content either in writing or at a follow-up meeting. The record and any comments made are placed together on the pre-application file. This file remains confidential during the course of consultations but is made available to the public on the closure of consultations. By way of a recent initiative the records are also placed on the Board’s website following closure of the consultation process.

An issue arises as to whether or not the final record which is placed on the file should be an agreed record or, as currently operated, the Board’s record as commented upon by the prospective applicant. The legislation requires the Board to keep the record. While there may be merit in producing an agreed record, it may not always be possible to reach such agreement and it may not be a productive use of time and resources debating the record at consultation meetings.

To date records produced are relatively detailed and lengthy. Some prospective applicants have questioned the necessity for this and argue that the record should be confined to the broad topics and advice covered during the consultations.

The confidentiality of the record of pre-application consultations is an important consideration.

### 2.2.5 Internal Procedures

The setting up of pre-application consultation meetings is a task performed by the SID Administrative Section in consultation with the Chair and Reporting Inspector. Each request for consultations is allocated to an Executive Officer for processing and to a Senior Planning Inspector for reporting. This system is efficient and effective. To date all Senior Planning Inspectors have been involved in consultation meetings and it is considered that all SPIs should be available for allocation to such consultations. To date, all consultation meetings have been chaired by the Director of Planning or one of the Assistant Directors of Planning for reason of maintaining a consistency of approach to consultations as well as having a ‘second voice’ available for discussions on technical issues which may arise. The continuance of this practice in all cases should be considered. Could some cases be chaired by the
Should the advice from the SID Board during pre-application consultations be formally considered and recorded or should a less formal approach, as has been the general approach to date, be maintained? This is a matter for consideration. Any requirement for formal recording of the Board’s considerations needs to be balanced against the need for efficiency and timeliness, particularly in cases where no particularly complex issues arise. The following approach is suggested for consideration:

1. Pre-App files are forwarded to Deputy Chairperson with a covering memo at the appropriate stage(s).

2. The Deputy Chairperson (if necessary in consultation with the ADP) decides whether the pre-app file needs to be considered at a Board Meeting, or whether a brief note from Chairperson or Deputy Chairperson on the file is sufficient.

3. Where pre-app files are being considered at a Board meeting, this might be efficiently done if a cluster of files were brought to such a meeting (e.g. by the ADP) and the Board input was recorded in brief format on an overall record prepared by the ADP. If necessary a Board Direction could also be prepared.

While the Board team is tasked with expressing the views of the Board to prospective applicants at consultation meetings until recent times, there has been no formal platform for discussion between the team and the SID Board. Much of the discussion has taken place in an informal manner with senior Members of the SID Board. It is considered that this is a weakness in the process which may invite challenge at a future date.

Frequently Pre-Application discussions are kept open until the application is almost ready to be lodged because the prospective applicant wishes to keep consultations open in case any new issues arise at the last minute and he/she may be able to avail of further meetings.

2.2.6 Closure of Consultations

Pre-application consultations are closed generally with the mutual agreement of the Board (through its team) and the prospective applicant. Formally the Board seeks a letter from the prospective applicant requesting closure. Most closures occur close to the date of submission of an application for SID to the Board. In the case of 7th Schedule proposals the Board must issue a Notice to the prospective applicant stating whether or not the proposal constitutes SID.

Following the last meeting, the reporting Inspector prepares a report for the Board. In practice the content of these reports has varied from a brief assessment on the
issue of whether or not the proposal constitutes SID within the meaning of the Act to
a longer report which includes reference to the matters discussed, assessment of the
SID issue and a list of Prescribed Bodies to which the application should be sent and
comments requested. Following consultation with the Board (end user) it is
considered that there should be a standard format for the report of the reporting
Inspector which should address the following:

- Brief background to the proposed development
- Key issues discussed at pre-application meetings with emphasis on any
  aspect of particular advice or any critical issues. Cross referencing to the
  meeting ‘records’ should be used where appropriate
- Assessment of the SIDS issues – is it or is it not SID
- Proposed list of Prescribed Bodies.

Subject to acceptance of this proposed format for reports, the internal Guidance
Note for Inspectors engaged in consultations, will be amended as part of its review.
3. Scoping

Under the provisions of the 2000 Act, as amended (provisions introduced in the 2006 Act) a prospective applicant may request the Board to provide an opinion on the information to be contained in an environmental impact statement (otherwise known as scoping). This is optional for the prospective applicant and is a process separate from pre-application consultations. In the case of proposed S37 projects a request for scoping an EIS can only be made following the issuing of a Notice at the closure of pre-application consultations but there is no similar restriction in the legislation in the case of non S37 proposals such as electricity, strategic gas and rail orders. In practice no such requests have been made during the course of Pre-Applications Consultations.

The process of scoping an EIS takes approximately 12 weeks and this period includes the time taken by the Board to seek the views of relevant Prescribed Bodies. Prospective applicants are advised of likely timelines for scoping at pre-application consultations. The preparation of a scoping opinion is carried out by an assigned Inspector, who is not involved in the pre-application consultations relating to the case. The prepared opinion is signed off at Inspectorate Management level before issuing; copies of all submissions / observations received from Prescribed Bodies are issued with this opinion. It is not submitted to the Board before issuing.

This procedure has worked satisfactorily to date. There is no provision for the public to participate in the scoping process.

3.1 The Facts

To end 2012 there have been 11 scoping requests with 7 scoping opinions issued and 4 requests withdrawn in advance of an opinion being issued. The breakdown of the 7 issued opinions indicates that they relate to 3 x S37 type cases, 1 x electricity and 3 x rail order type cases. The breakdown of the withdrawn cases shows that one related to a S37 type case and 3 to rail order type cases. (See Figure 3)

3.2 The Issues

The option of seeking a scoping opinion has not been widely used by prospective applicants and there appear to be several reasons for this:

- It may be perceived that there is a certain amount of overlap between the scoping process and information which can be gleaned at pre-application consultations where ‘considerations’ which may be important to the making of a decision on any follow-up application may be discussed
- The time taken for the scoping process
- The time taken for scoping combined with the fact that a scoping request for S37 cases can only be made following the closure of pre-application consultations
• The extent of generic advice already widely available on the production of an EIS

![Flowchart showing results of Scoping Requests received by the Board to 31st December 2012]

**Figure 3** Flowchart showing results of Scoping Requests received by the Board to 31st December 2012

It is not clear to the Review Group why the legislation should provide for different processes for S37 cases in comparison to electricity, strategic gas and rail order cases. From experience gained to date such difference is not justified and serves no useful purpose.

It is not clear why, in S37 cases, the request for a scoping opinion can only be made following the issuing of a Notice at the closure of the pre-application consultation process. Scoping and consultations are two separate processes and there seems little reason why the two processes should not run parallel to each other where the Board is of the view that the proposal constitutes SID, given that the general thrust of the SID provisions is to expedite the application and decision making processes.
4. Planning Applications

All planning applications, declared by the Board to constitute strategic infrastructure development within the meaning of the Act must be submitted directly to the Board for permission/approval. In such circumstances there is no option available to submit the application to the relevant planning authority.

In the case of S37 proposals the application must be accompanied by an Environmental Impact Statement but this is not a requirement for some other types of development e.g. certain electricity developments. It is not clear why the EIS requirement is in place for all S37 proposals and it is recommended that an amendment to the legislation should reconcile the requirement for EIA for 7th Schedule development with the legislative requirement for EIA generally. In such circumstances certain small scale 7th Schedule proposals may not require EIA.

All applications are assigned to a Senior Planning Inspector for assessment and recommendation. This is always a different SPI to the one involved in pre-application consultations in order to protect the independence and integrity of the process. On very large and complex cases a second in-house Inspector, who has not participated in the Pre-Application Consultation process, may be appointed to report on specific issues. He/she reports to the reporting Inspector. Specialised consultants have been engaged to advise the reporting Inspector in a number of the larger and more complex cases.

There is a presumption in favour of an Oral Hearing for all strategic infrastructure applications although, in some non-complex electricity applications where there have been few or no observers involved, no hearing has been held.

The legislation requires the Board’s decision to be made within 18 weeks of the date of final submissions from observers. In the case of 7th Schedule applications final submissions may be made by the planning authority up to 10 weeks from the date of the application but in the other types of cases this period is 7 weeks. There does not appear to be any logical basis for this difference.

The Inspectors report and recommendation goes directly to the SID Board for decision. This may be transferred to the full Board at the discretion of the Chairperson, or in his/her absence, Deputy Chairperson. The Board has the power to recover its costs and also has a discretionary power to award reasonable costs to a planning authority and/or observers who have made submissions. The award of costs must form part of the decision issued by the Board in all cases with the exception of Railway Orders where it is not specified in legislation to include costs in the order. There is no appeal mechanism of a Board decision on a SID other than by way of Judicial Review to the High Court.
4.1 The Facts

To end 2012 the Board has decided 45 SID applications. Twenty-six (approximately 59%) have been decided within the statutory 18 week period. The average length of time to decide a case is 30.7 weeks.

Twenty-six of SID cases coming before the Board have been decided within the statutory 18 weeks period. Of the 26 cases decided within time none involved requests for further information but 16 involved Oral Hearings.

In 14 of the 19 delayed cases the time period for decision exceeded the 18 week period by more than 50% (i.e. took more than 27 weeks to decide). All of these 14 cases involved Oral Hearings varying from 1 day to 62.5 days. Ten of the 14 cases involved further information.

Figure 4 - Chart showing SID Applications granted or refused by the Board to 31st December 2012, with further breakdown of type of application refused.

Six cases have been refused to date; 2 relate to ports, 3 to waste developments and 1 to a hospital proposal (See Figure 4). The issues relating to the reasons for refusal were flagged in 5 out of these 6 cases at pre-application consultations, and strategic issues were cited in the refusals for the 3 waste cases. The flagging of key considerations at consultation stage is critical to the operation of the SID process.
4.2 Issues

The key issues arising at application stage can be broadly categorised under the following headings:

- The internal administration of the file from submission to issue of decision
- The allocation of the file and appointment of Inspector(s) & consultants
- The decision making process
- The determination of costs

4.2.1 Internal Administration

A separate section is in place within the organisation to carry out the administration of all SIDs and LAPs applications and associated matters, and pre-application consultations relating to SIDs proposals. This section currently consists of a Senior Administrative Officer, Senior Executive Officer, 3 Executive Officers and 3 Administrative Assistants.

The overall responsibility for the efficient and effective operation of the SIDs/LAPs process lies with the Director of Planning. Responsibility for the day to day operation of SIDs and LAPs in the Inspectorate lies with the Assistant Director of Planning and responsibility for the administration of SIDs/LAPs lies with the Senior Administrative Officer. Regular liaison meetings are held between Inspectorate Management and the SIDs administrative section to discuss on-going issues and plan ahead for the reporting of applications.

The Review concludes that the internal administration of SID applications is efficient and effective.

4.2.2 Allocation of File for Reporting

Upon completion of processing an application, the file is forwarded to the Assistant Director of Planning for allocation to a reporting Inspector. This allocation is made in consultation with the other members of the Inspectorate Management team. All Senior Planning Inspectors are deemed to be available to report on SID applications – there is no specialist team. Allocation of the file to an Inspector for reporting is based on a number of factors, including availability, experience, and technical expertise suited to the particular application. In some larger cases assistant Inspectors have been appointed to assist the lead Inspector; this has been an effective use of resources leading to time savings in the reporting of cases. It is Board policy not to allocate the application to an Inspector who has participated in pre-application consultation meetings. Having regard to the nature and complexity of some of the applications, specialist consultants may be engaged to advise the reporting Inspector (and ultimately the Board) on specific aspects of the application. The reporting Inspector identifies issues requiring such specialist input and is
responsible for the provision of a brief for the advice sought; This is submitted to the Board before issuing. The brief is placed on the public file. The review concluded that the use of specialist consultants to date is not excessive and a similar level of engagement into the future can be expected. There is an established administrative procedure within the Board for the engagement of specialist consultants which includes ensuring that no conflict of interest exists.

4.2.3 Decision Making Process

There is a view amongst some stakeholders that the skill sets and experience within the organisation at Inspectorate level are not necessarily well matched to the assessment of some infrastructure cases. The SIDs process contrasts with the ‘normal’ planning system with applications submitted to planning authorities and where their assessment has the benefit of input from a range of experts from different backgrounds (roads, wastewater, heritage etc.). There is a low level of hands on experience within An Bord Pleanála in the development/construction/operation of infrastructure such as motorways, railways, pipelines, wastewater plants, electricity/energy plants etc. In recent years the Board has lost the experience it had relating to these areas of expertise. Different approaches could be taken to addressing this issue. The Board could seek the employment of such expertise in-house which could be used at a ‘global’ level within the organisation to assist reporting Inspectors as the needs arise. Alternatively, it could expand the panels of experts which it already has to assist, as required, while, at the same time, continuing to up-skill the permanent Inspectorate. There are merits in both options. Another option would be to avail of expertise from the planning authorities. This could be done by availing of the services of staff by temporary secondment to the Board for a short period to provide expertise outside of their own planning authority area. For example, the services of a ‘roads engineer’ from Cork could be availed of for an application in Galway. The benefits of this would include reduced costs and a large and varied pool of expertise. It is not clear if this could be achieved under current procedures. In present circumstances the option of expanding expert panels would appear to be better option on economic grounds.

The review concludes that given the number of available internal Inspectors (SPIs) that have been utilised in cases to date, and which is indicative of the need to draw on a wide pool of expertise and competencies, there is not a persuasive case for a dedicated SIDs Inspector team.

It is clear that the two principal reasons for not meeting the statutory objective period (SOP) relate to requests for additional information and the length of Oral Hearings; these reasons, in turn, generally relate to the complexity of the proposed development. Having regard to the nature, scale and complexity of some of the
applications which have come before the Board, the SOP has proved impossible to achieve, although overall it has been achieved in almost 60% of SID cases to date.

Additional information may be sought by the reporting Inspector (8 cases) before, during or after the closing of an Oral Hearing; the Board has also sought additional information (5 cases) following completion and discharge of the Inspectors report. In total, additional information has been sought in approximately 25% of all applications to date. Is this figure too high given that pre-application consultations, designed to ensure as complete an application as possible in the first instance, have been held in all cases?

This review indicates that a request for additional information is generally the most important factor in prolonging the time for decision. It is clear that there may be a necessity to request essential additional information in any particular SID case coming before the Board – not everything can be anticipated at consultations stage and issues may be raised by Observers at application stage, which generate a request. While it is considered that the percentage of cases generating requests for additional information is not unduly high, having regard to the nature, scale and complexity of many of the infrastructure cases coming before the Board and to the national average\(^1\), the engagement of specialist consultants, as appropriate, at pre-application consultation stage could be beneficial in advising as to the nature and extent of specialised information required to be submitted with an application; this may short-circuit the need to request such information at application stage. There is a cost factor associated with such an approach, particularly where the proposal may not go to application stage, and there is a question as to whether or not the same specialist consultant should be re-engaged to advise on any follow-up application.

The timing of request for Further Information is a critical factor. In all but 2 of the 15 cases requiring FI the time taken to issue the request was 3 months or more from the date of lodgement of the application. Clearer identification of key planning considerations at Pre-Application Consultations stage could help to minimize the necessity to require FI at later stages. Every effort should be made to ensure that only information that is absolutely necessary is requested, and, where the necessity exists, the request is made as early as possible in the consideration of the application.

In all SID cases an Inspector (reporting Inspector) is appointed to report and make a recommendation to the Board. Where an ‘assistant’ Inspector or specialist consultant is appointed, they are required to report to the reporting Inspector in accordance with the brief supplied. These ‘supplementary’ reports are usually incorporated into the Reporting Inspector’s report as well as being attached to that report by way of an appendix. The responsibility for the overall recommendation to the Board lies with the Reporting Inspector.

\(^1\) Records for 2011 indicate that nationally 36% of all planning applications were subject to FI.
5. Oral Hearings

5.1 The Facts

To end 2012 Oral Hearings have been held in 41 of the 60 cases received i.e. c. 68% of all cases. Four of these were ‘joint’ Oral Hearings relating to both planning issues and compulsory acquisition so that the actual number of oral hearing events held to date was 36.

In 25 cases (69%) the OH lasted between 1 and 8 days with the average at c.3.5 days. In 5 cases the OH lasted 1 day, and in 16 cases (44%) the OH lasted 3 days or less.

In 11 cases the Oral Hearing lasted in excess of 8 working days (c. 31% of OH cases). The average length of such hearings is c. 24 working days.

![Oral Hearings by duration of days]

**Figure 5** - Chart showing the 36 Oral Hearings in SID cases by duration in days in the period up to 31st December 2012

A number of cases involving substantial Oral Hearings were discharged within the statutory objective period.

5.2 The Issues

From the outset of the SID process the Board approach has been in favour of a presumption that an Oral Hearing would be held. Only in cases where the Inspector recommends that an Oral Hearing should not be held is the matter referred to the SID Board for decision. This approach is partly to facilitate maximum 3rd party (Observer) input into this one-stop SID process, where there is no appeal against the Board’s decision, other than by way of Judicial Review. It is clear that the holding of an Oral Hearing and the duration of that hearing are key factors in dictating whether
or not the Board’s decision can be made within the statutory objective period. The Review Group acknowledges the wider benefits accruing from Oral Hearings as a valuable form of public involvement in the planning process and considers that the current approach in favour of the holding of a hearing should generally be continued for larger projects. The Board should, however, review the current presumption in favour of Oral Hearings in all cases.

It is not possible to say conclusively that the holding of an oral hearing delays excessively the time for decision. In many cases lengthy hearings have obviously been a factor but in several of the delayed cases the oral hearings have been of short duration. Conversely, several cases decided on time, or just over time, have involved substantial oral hearings. [As previously indicated seeking further information appears to be a more important factor in delay].

Many of the hearings held to date have followed a standard format – 1st party outlining the proposal followed by Planning Authority and Observer submissions, 1st party substantive submission, and a period of cross-questioning. As can be seen from the facts above this approach can lead to lengthy hearings, particularly in large complex cases. The question arises – is this approach efficient and effective as an information gathering exercise and in facilitating the Inspector coming to a recommendation and, ultimately in the Board reaching its decision? Lengthy hearings can be an obstacle to public participation and in meeting decision timelines.

There is clearly a very wide variation in the duration of oral hearings. While to some extent this is inevitable given the uniqueness of each case, considerable gains in terms of efficiency and effectiveness could be made in minimising the duration of oral hearings.

In a number of larger and complex cases the Board has deemed it necessary to seek further information from the applicants, and this has had significant implications for the statutory objective period for deciding the case. In some cases this information was requested prior to the opening of the hearing whereas in others the information was ascertained during the course of the hearing. Depending on the nature and extent of the further information it may be necessary to re-advertise and seek further written submissions if submitted before the hearing, or, if submitted at the hearing, to adjourn the proceedings to give participants and the Inspector an opportunity to digest the information and for observers to make submissions in relation to it. Generally, where significant gaps are identified in the application it is considered more efficient to seek further information and circulate it prior to the opening of the hearing.

Different approaches have been used by Inspectors in the reporting of Oral Hearings to the Board. This needs to be addressed with a view to adopting a consistent approach. The Board’s preference is to have either a stand-alone report of the
Hearing in the case of a very large application or, in the smaller cases, a separate chapter in the Inspector's report.

There is clearly a very wide variation in the duration of oral hearings. While to some extent this is inevitable, given the uniqueness of each case, considerable gains in terms of efficiency (and effectiveness) could be made in minimising the duration of oral hearings. It is recommended that greater attention be applied in the following key areas:

- Planning and setting of agenda
- Focusing on key issues and use of limited agendas as appropriate
- Focusing/limiting applicants opening presentations
- Documentation on file to be taken as read
- Time limits – particularly for closing submissions.
- Greater use of the Board's website to update the public on the progress of the hearing and give an indication when relevant submissions may be made.

Recent legislative changes, under the 2010 Act, allowing for limited agendas etc, should be considered in planning an oral hearing.

Where there is clearly a requirement in a case for further information of a substantive nature this should generally be sought prior to the opening of the oral hearing.

While recording is considerably less costly than stenography the latter facilitates substantial time saving benefits for the Inspector in preparing the report (and possibly for the Board in deciding on the case). It is recommended that this issue continues to be decided on a case by case basis.
6. Decision and Directing of Payment of Costs

All strategic infrastructure applications the subject of this review incur a fee of €100,000. This fee is required irrespective of the size and nature of the proposed development and no application is processed without the payment of the required fee. Requests made under S146 of the Act incur a fee of €30,000 which must be paid at the time of the making of the application.

Under the provisions of the Act, the Board can recover its costs incurred in the processing of an application. The system devised to implement this is based on a multiplication of the hourly rate of the Inspector reporting on the case; the current hourly rate is €234. This figure includes all establishment expenses. A timesheet is attached to the file and is filled out by the reporting Inspector. This is signed off as being reasonable by the Director of Planning or Assistant Director of Planning. In addition the Board charges the total costs of any specialist consultant advising on the case and direct Costs for Venue/Stenography/Recording/Translation are also charged (these direct costs are extracted from of the overall cost used to calculate the €234 rate in order that there is no double counting).

The Board may also direct payment of costs to the planning authority and any observers involved. The costs imposed must form part of the decision issued by the Board (permission/approval or refusal) in all but rail cases and the Board’s decision does not take effect until the costs have been paid. The Board may pursue its costs through the Courts in the event of non-payment.

In the event of the Board’s costs being less than the €100,000 fee paid a refund is made to the applicant for the difference. Where the Board’s costs exceed the €100,000 fee the additional amount is stated in the decision order.

There is no statutory time period in which the Planning Authority or Observers must submit a claim for costs in a SID Case. The Board has adopted a guideline period of 3 weeks from the close of an Oral Hearing. There is no guideline period in cases where an Oral Hearing is not held.

6.1 The Facts

The total cost of processing a SID case has tended to fall within the range of €50,000 to €150,000. There are some significant ‘outliers’. For example, the cost of two cases – a Railway Order and a gas project – was in the region of one million Euro, while one waste management application had costs approaching €500,000. On the other end of the scale the cost of some recent electricity infrastructure (such as substations, or short sections of overhead line) has been significantly less than
\( €50,000 \). Omitting these outliers, the average cost of 26 cases decided is \( €111,000 \).

(See Figure 6)

![Figure 6](image)

**Figure 6** – An Bord Pleanála costs for SID cases versus the Oral Hearing duration with three most expensive casts excluded.

There is a clear pattern that cases with long oral hearings also have high costs for the Board; this is not surprising given that the Board’s time costs (based on Inspector’s hours) and direct costs (hire of venue, recording/stenography, and in some cases external consultants) increase for each day the hearing lasts. A simple analysis of the data (see Figure 7) suggests that for a substantial SID case where the hearing exceeds 4 – 5 days, with every extra day the oral hearing proceed, the eventual cost increases by more the €10,000.

There appears to be some inconsistency in the costs arising, in particular the time cost for the reporting Inspector. This observation is based on comparing some relatively simple cases for which an oral hearing was not required. The Board’s costs have been paid in all but one SID case to date: the case in question concerned a development that was not approved.

Regarding the award of costs to participants in the process, that is Observers including Planning Authorities, the finding to date are as follows:
Typically the Board has approved the reasonable costs of the planning authorities in making written submissions and participating in the oral hearing. These typically range from €1,000 to €20,000, although in three cases the costs awarded exceeded €40,000 (it appears the costs claimed by PAs have reduced somewhat as the SID application process becomes more familiar). In some cases the Board did not accept all of the PA costs as reasonable, and reduced the amount approved, for example where large consultancy bills were submitted or the level of attendance at the oral hearing was considered excessive.

![Figure 7 - Total cost of hearing versus duration of the hearing in days for Oral Hearings up to 31st December 2012](image)

Concerning other observers (usually those objecting to the development, who sometimes engage consultants or legal counsel) the practice has been that costs are not awarded where the development is approved. There have been a small number of exceptions, for example in one case, the observers were awarded costs towards the attendance by a technical expert at an oral hearing, because his input was noted as being particularly useful to the Board in considering the case.

Where developments have been refused, the Board has tended to consider awarding costs to observers, but in a limited manner. The award will typically be
made to observers whose arguments are reflected in the refusal reason(s) and who
brought particular technical or other specific input to the case. The amount awarded
as being ‘reasonable’ has tended to be far lower than the amount sought. In seven
cases where development was refused and costs awarded, the awards ranged
between €5,000 and €50,000, with an average of €30,000.

For applicants that enter the SID process and are refused permission, there is a
potential ‘double-whammy’ of having to pay the Board’s fees, and observes costs (in
addition to the applicant’s own costs) – this introduces an element of risk that is not
present in a non-SID planning application/appeal.

Further details can be found in Appendix F.

6.2 The Issues

There is anecdotal evidence that the upfront fee of €100,000 is an impediment for
some prospective applicants in the SID process. In particular, this appears to be the
case for prospective applicants for private developments under S37. It is accepted
that this fee was set in a different economic time and should be reviewed, and the
possibility of a flexible fee structure considered. There is also evidence that the fee,
combined with the costs involved in an oral hearing which may be substantial, and
planning authority and observer costs which cannot be predicted but which may be
very significant, is a disincentive for an applicant to seek permission/approval under
the strategic infrastructure process.

Examination of the strategic infrastructure decisions to date appears to indicate
some inconsistencies in the imposition of costs. However, it should be recognised
that the original legislation did not allow for the charging of fees in excess of
€100,000 for non S37 cases but this has now been rectified. Care should be taken
in any comparison of costs between apparently similar cases as no two cases are
the same or will take the same time to process. Notwithstanding this, it is reasonable
to expect that the costs charged for similar type cases should fall within a relatively
narrow band. Staff training and internal guidelines in the area of recording costs
would be beneficial in order to improve understanding within the organisation of the
recording of time and also SID costs calculation.

While the costs are based on the hourly organisational costs, this may not
completely represent total costs in some cases. For instance, in cases where the
Board itself requires significant additional information after receiving the Inspector’s
report/recommendation. Procedures should be drawn up to capture the additional
time over and above the time put in by the Inspector. This might involve charging for
a number of hours work by the Board itself based on what might be regarded as an
equivalent number of inspector hours.
Extended oral hearings have a strong influence on the overall cost of a project for all parties and observers as well as leading to increased costs for the Board. In many cases the length of the oral hearing may be difficult to predict leading to uncertainty in relation to final costs. There is anecdotal evidence that this is proving to be a disincentive to potential applicants. While the Review Group considers that the Board’s policy in favour of holding oral hearings in SID cases should be maintained, consideration needs to be given to more streamlined hearings and the use of limited agenda hearings where possible.

For cases not involving oral hearings, or where the hearings are very short, there appear to be some inconsistencies in the costs run up by the Board. The reason for these apparent anomalies needs to be studied to see if tighter management of the cases by Inspectorate Management and the reporting Inspector could lead to greater consistency in the application of costs.

The Board’s policies on awarding costs to observers were developed prior to the SID legislation (relating to local authority and CPO cases under section 218 of the P&D Act) and do not relate well to the SID legislation. There are no guidelines for participants on how costs claims are assessed. It is desirable to update the Board’s policy in relation to cost claims to cover SID applications, which should be based on the experience of the initial five years of SID decisions, and to then provide some simple guidelines for participants, which will be beneficial in terms of transparency and consistency in decision making. Nevertheless developing a policy in this regard is difficult, because a policy that is restrictive might run contrary to the ethos of public participation whilst a policy that is liberal might quickly lead to an undesirable escalation of costs and risks to all participants.

It is noted that the Board is currently in the process of reviewing its policy on the awarding of costs.
7. Recommendations

7.1 Pre-application consultations - general

1. The scope and nature of the advice given by the Board should not include commenting upon the planning merits or giving an indication that the proposal is likely to be permitted or refused.

2. Consideration should be given to providing clearer and more direct advice on certain (show-stopper) issues, where appropriate but this should stop short of stating that a follow-up application is likely to be permitted or refused.

3. The importance of strategic issues (National, Regional, Local policies etc.) to any future decision of the Board on an application should be strongly emphasised by the Board’s team in consultations.

4. The practice of appointing different Inspectors to deal with the pre-application process and any follow-up application should be continued.

5. Consultation meetings should be chaired by either the Director of Planning or Assistant Director of Planning or Senior Planning Inspector or Senior Administrative Officer, as appropriate. The appointment of the chair should remain the responsibility of the Director of Planning. The importance of maintaining a consistency of approach should be a factor in appointing the chair.

6. Consideration should be given to seeking advice from specialist consultants at pre-application consultation stage with regard to the nature and scope of information which should be submitted with any follow-up application. This could be by way of written advice and not require attendance at consultation meetings. If the role of the specialist consultant is so confined, there appears little reason why the same consultant could not advise the Board at follow-up application stage. Costs could be recovered at application stage.

7. The general format of consultation meetings should remain unaltered. A reasonable level of formality should be retained. Consideration should be given to alternative seating arrangements/table layout which would encourage participation in discussions.

8. The Board should adopt a policy of requiring the submission of adequate, site specific information, or in the case of linear projects options being considered, such as would enable the Board to fulfil its functions under the legislation,
before the first consultation meeting is arranged. The decision on the adequacy of information submitted should be the function of the DoP/ADP/SPI, following discussions with the SAO/SEO (SIDS).

9. Discussions should be initiated with the EPA and NPWS with regard to their potential role in the pre-application consultation stage as consultees with either the Board team or with prospective applicants on recommendation by the Board. These should include an explanation of the type of advises likely to be sought by the Board and the importance of meeting timescales within the consultation process. Consideration should be given to drawing up ‘Memoranda of Understanding’ with these bodies which would include reference to the pre-application consultation process.

10. Records of meetings should be less discursive and should be set out in bullet point style fashion. However, they should be descriptive enough to cover all of the key issues discussed and advices given during consultations.

11. Procedures for making an application should not be contained within the record of the final meeting but should be attached to the Board’s Notice/letter, as an appendix, at the conclusion of the consultation process.

12. Introductory remarks by the Chair of the meeting, made at the start of consultations, and which are of a legislative and procedural nature, should continue to be included in the record of that meeting. These are considered to be a fundamental part of the process.

13. Records should no longer be marked ‘Private and Confidential’. The confidentiality of the record sent to the prospective applicant should be a matter for the prospective applicant. The Board should continue to regard all documentation submitted during the consultation phase and the records of consultation meetings as confidential until such time as the process concludes.

14. As a general practice, round table meetings with prospective applicants and other bodies, such as the planning authority, should be avoided as such meetings are likely to give rise to a public perception of preferential treatment at the expense of 3rd parties who are excluded from the consultation process.

15. Meetings between the team and the SID Board should, where practical, involve a quorum of the Board, and the outcome of the meeting should be the production of a Direction sheet. In many cases it may be sufficient for the team’s technical advisors (Chair and SPI) to meet with the SID Board.
16. The structure of the reporting Inspectors report to the SID Board following the final meeting, and which includes a recommendation on the issue of whether or not the proposal constitutes SID, should be amended and extended to include a summary of the key issues discussed and advices given during consultations, and a list of the Prescribed Bodies to which a copy of the application should be sent and observations invited. Experience indicates that this is a key reference document for the prospective applicant and the public following closure of the consultation process.

17. Critics of the pre-application consultation process point to the lack of public participation in the process. Having regard to the nature and purpose of consultations as set out in the legislation, the review team do not recommend direct public involvement in the consultation process. The Board could give consideration to giving greater direction to prospective applicants to consult with the public prior to finalisation of the project and closure of consultations. It is considered that direct public participation is likely to lead to discussion on the merits or otherwise of a proposal, and this is not the purpose of consultations.

7.2 Pre-application consultations – legislation

18. Make provision for the Board to close the process where the Board decides that further consultations are not likely to serve any useful purpose.

19. Make provision that a pre-application consultation request may not be withdrawn where the Board has decided that the proposed development constitutes strategic infrastructure development within the meaning of the Act, unless, at the absolute discretion of the Board, the Board decides that the request may be withdrawn.

20. Make provision for electricity transmission development to fulfil section 37A(2) criteria.

21. Make provision for the Board to issue a Notice at the closure of pre-application consultations for electricity and strategic gas developments and before an application for SID is made to the Board.

22. Make provision for the removal of minor electricity and airport developments from the SIDs process.

23. Under section 37C(2) of the 2000 Act, the holding of consultations with a prospective applicant under S37B shall not prejudice the performance by the
Board of any of its functions and cannot be relied on in legal proceedings. Section 37C(4) enables consultations with any person. However, the protection to the Board under S37B is not extended to consultations with other persons. Amend the legislation to provide this protection.

24. Include regional planning authorities in regulations as prescribed bodies.

25. Article 210(b) of the 2001 Regulations; amend to add “any person”.

26. Make legislative provision for pre-application consultations for section 146B requests.

27. Make legislative provision that pre-application consultations may be requested in relation to local authority SID/LAPs development i.e. Section 175 and Section 226 applications.

28. Section 34(10) Board Reasons for not agreeing with the Inspector – apply to SIDs cases.

29. Provide that a person must have sufficient legal interest in the site to carry out the proposed development before making a request for pre-application consultations.

7.3 Scoping – general

30. Keep pre-application consultations and scoping as separate processes but allow the two processes to operate in tandem.

7.4 Scoping – legislation

31. Omit the requirement in S37 cases whereby a request for EIS scoping can only be made following the issuing of a Notice at the closure of the consultation process.

32. Provide that consultations and scoping can take place simultaneously and a scoping request may be made at any stage once the Board has taken the view that the proposed development is SID.
7.5 Applications – general

33. Require that an application for SID must be made within 3 years of the date of the Notice / letter issued at the closure of the pre-application consultations relating to the case.

34. Continue to utilise the pool of Senior Planning Inspectors as lead Inspectors in SID cases.

35. Continue to up-skill the permanent in-house Inspectorate in areas which typically arise in infrastructure applications e.g. engineering type disciplines, ecology, hydrogeology.

36. Review and expand the existing panels of specialist consultants who would be available to assist the lead Inspector in SID cases.

37. The timeframe for Planning Authorities making submissions to the Board should be consistent for all SID applications – 10 weeks.

38. The timeframe for observers/Prescribed Bodies making submissions to the Board should be consistent for all SID cases – 7 weeks.

39. The statutory objective should not include the number of weeks given (including any extension sought by the applicant) for any response to Further Information.

40. The Board’s Guidelines for making a SID application for 7th Schedule type developments should be repeated for all types of SIDs development and should be accessible on the Board’s website.

41. Maintain the existing internal administrative and Inspectorate structures for strategic infrastructure development.

42. Consider extending the allocation of SID cases to all Planning Inspectors for reporting purposes, subject to availability, experience and appropriate technical expertise.

43. Seek Departmental sanction to engage specialist expertise from Local Authorities on a temporary basis to advise the Reporting Inspector and the Board on SID applications where there is no conflict of interest involved.
7.6 Applications - legislation

44. Amend the legislation to regularise the period which the planning authority has to submit a manager’s report to a similar period in all SID cases – 10 weeks.

45. Review the Statutory Objective Period of 18 weeks for deciding very large and complex cases. Provide for the exclusion of any period required to respond to a request for Further Information.

46. Require that an application for SID must be made within 3 years of the date of the Notice / letter issued at the closure of the pre-application consultations relating to the case.

7.7 Oral Hearings - general

47. Give greater consideration to the holding of limited agenda oral hearings.

48. Every effort should be made to ensure that material submitted in written form to the Board before the oral hearing is taken as read and is not repeated in submissions at the hearing. The parties/observers should be advised of this in advance in the notification of the hearing and/or in the agenda.

49. Continue the Board’s general policy in presumption of the holding of an oral hearing for SID cases, but review this policy for small proposals.

50. Limit an applicant’s opening introductory presentation to the hearing.

51. Consider options for greater use of the Board’s website to inform the public of the progress of oral hearings.

52. As appropriate, apply time limits to submissions to a hearing and apply the principle of fairness to all parties/observers.
53. In cases where an early identification of the need for additional information has been established, request, receive and circulate the submitted information before the opening of the hearing, where possible.

54. Provide regular refresher training to Inspectors and Administrative staff in the conduct of oral hearings.

7.8 Decisions & Costs – general

55. Consider the lowering of the application fee for all SID cases to €75,000.

56. Review categories of SID cases and identify those which are not likely to exceed €100,000 in ABP costs. Revise the fee schedule to include a fee of €50,000 for the selected categories of development.

57. Oral Hearing Costs: maintain a focus on effective management of oral hearings with a view to minimising costs to all participants (refer to earlier recommendations). In addition, and where possible, ABP consultant only to attend relevant modules as opposed to sitting through an entire hearing.

58. Closer control of costs by Inspectorate management: When assigning the file, give the Inspector a guideline as to the likely time required on a given case (based on likely complexity and costs of previous similar files). Review of each SID file prior to discharge to the Board to check that ABP costs are consistent and proportionate to scale of project.

59. Improve awareness of how costs are calculated: Improve or refresh the explanation on ABP cost calculations (including how the ‘hourly rate’ is calculated), and include some refresher training to staff. Place information on surfboard.

60. Staff Training about recording costs: Improve the Guidelines for Inspectors on recording SID file costs. Review the Templates for recording time? Provide a good case study/ worked example for Inspectors

61. Develop a way to record additional time where it is substantial: Revise procedures such that on cases with substantial FI or deliberation following the Inspector’s Report completion, the additional inputs are recorded and charged.
62. Draw up a clear and concise policy for the awarding of planning authority and observer costs in SID cases. Publish this policy on the Board's website.