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An Bord Pleanála's Role in Consenting in Maritime Area and Input of CPAs

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An Bord Pleanála

Content

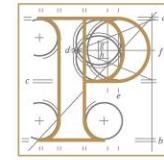
ABPs Role in Consenting



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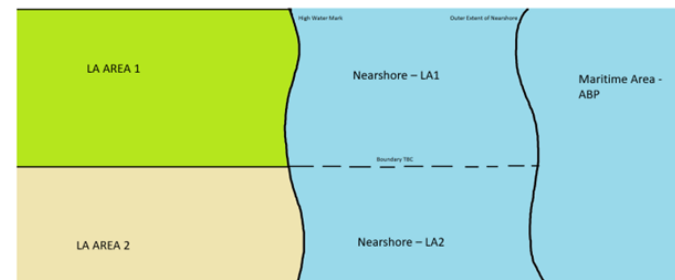
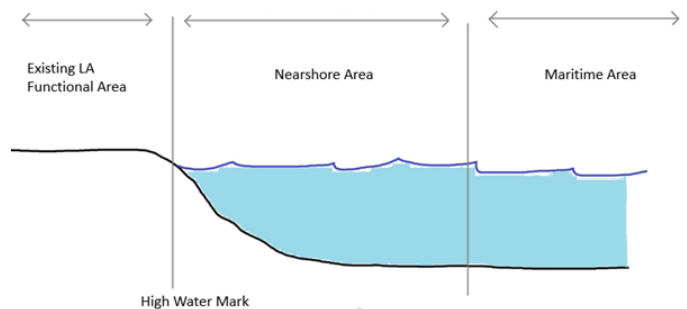
Role of ABP in Applications

Introduction & Legislative Context



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- » Chapter III of Part XIII of the *Maritime Area Planning Act, 2021* introduces a New Part XXI into the P&D Act – ‘Other Development in the Maritime Area’.
- » Act identifies three zones –
 - » the terrestrial area above the mean HWM,
 - » a nearshore area beyond the mean HWM (extending to 3NM / c.5km) and
 - » a Maritime Area extending out to encompass the whole of the EEZ and continental shelf.



Role of ABP in Applications

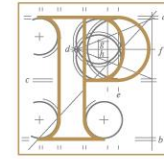
Legislative Context



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

Role of ABP in Applications

Eighth Schedule Development



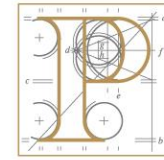
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- » **Examples** of Eighth Schedule:
 - » Development referred to in the Seventh Schedule.
 - » Note this is standard SID development that PAs are very familiar with.
 - » Development consisting of a trading port or pier for loading and unloading goods (vessels over 1350 tonnes).
 - » Laying of a telecommunications cable or pipeline of not less than 15 km in length.



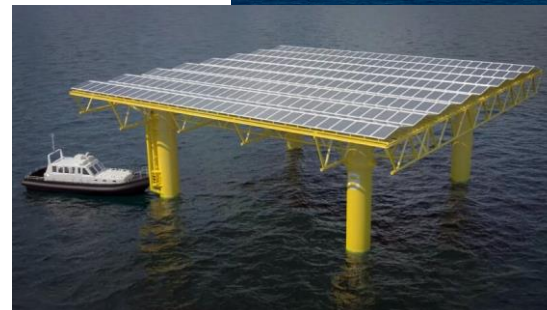
Role of ABP in Applications

Eighth Schedule Developments cont.



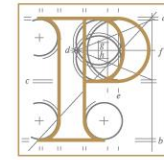
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- » Development consisting of the construction or operation of a sea water marina where the number of berths exceeds 300.
- » An **installation for the production of energy by harnessing the power of the wind** that has—
(a) more than 5 turbines, or (b) a total output of more than 5 megawatts.
- » Any floating or fixed installation (either temporary or permanent) for the production of energy by harnessing the power of the sun.



Role of ABP in Applications

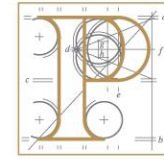
Legislative Context Cont.



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- » Mandatory Pre Application Consultation (PAC) with ABP under s.287
 - » Matters that the Board is likely to take into account in its assessment,
 - » Fees, procedures, drawings etc.
- » Provision for Design Flexibility Opinion under s.287A/B
- » Application to ABP under s.291 of the Act.
- » Schedule 1 of Planning and Development (Maritime Development) Regulations 2023 (SI100 of 2023) sets out list of prescribed persons for the purposes of Chapter III of Part XXI of the Act – includes ***a local authority, where the area of the local authority might be affected by the development***
- » Also includes new Prescribed Bodies that have had little engagement with the Planning system heretofore.

Applications and Maritime Area Consents



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Requirement for a MAC

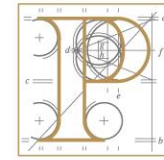
- » Under s.286(1) there is a general requirement for a Maritime Area Consent (MAC) before you can apply for permission.
- » S.287(1) states that 'prospective applicants' who are 'eligible to apply for permission..' shall consult with the Board.
- » Therefore **mandatory PAC** and need to have a MAC to commence PAC.



- » Exceptions to Requirement for a MAC if prospective applicant is the holder of a foreshore licence, is the owner or lessee of the site or makes the application with the consent of the owner.
- » Note that s.287(b)(4) introduced under the Historic and Archaeological Heritage and Misc. Provisions Act, 2023 provides for prospective applicants for port infrastructure related to ORE to undertake pre application consultations in advance of obtaining a MAC. MAC is required for application stage. Ports are preparing themselves for new opportunities.

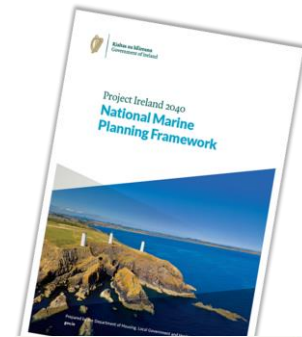
Considerations in Assessing Applications

Board Decision



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- » Board decision (s.293)
 - » S.293(2)(a) Board shall not grant permission that materially contravenes NMPF or a maritime spatial plan unless development is of strategic economic or social importance or conflicting objectives
 - » S.293(3) Board shall have regard to (inter alia) MPPS, ministerial guidelines, RSES and ***DPs of authority where development is in or adjoins its functional area***, submissions received from prescribed bodies, the public and ***CPAs***, objectives of maritime spatial planning, principles of proper planning and sustainable development.
 - » Provision for FI, revised plans, oral hearings,
 - » Provision for modifications - similar to s.146B/C,
 - » S.293(4) Board can grant, grant part or refuse to grant permission
 - » S.293(7) specifies conditions that may be attached



Marine Planning
Policy Statement
(Consultation Draft)



Considerations in Assessing Applications

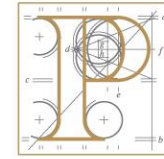
Conditions



- » S.293(7)(m) - The Board can attach a condition requiring the applicant to *submit such information*, as may be specified by the Board, to— (i) the Maritime Area Regulatory Authority, (ii) such **coastal planning authority** as may be specified by the Board, or (iii) any such other public body as may be specified by the Board, prior to commencement of the development concerned
- » And
- » S.293(7)(o) - conditions requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the functional area of any **coastal planning authority** in which the development concerned is (in whole or in part) proposed to be situated

Considerations in Assessing Applications

Conditions

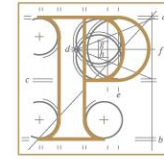


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- » S 293(9)(a) states:
- »the Board may, in addition to any condition attached to a permission for development proposed to be situated in the nearshore area of a coastal planning authority, attach to that permission a condition that the person who carries out the development ***agree matters of detail with the coastal planning authority and the Board*** relating to compliance with the permission, and if agreement cannot be reached in relation to any such matter by that person with the coastal planning authority and the Board within such period as may be specified in the condition, the Board shall determine the matter

Considerations in Assessing Applications

Board Decision – Requirements Post Decision



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- » S.294 requires the Board to send a copy of any decision under Part XXI to the applicant, MARA and the **CPA and adjoining PAs** and any person who made a submission.
- » This decision must state the main reasons and considerations for the decision, the reasons for any conditions and where applicable reasons where the decision conflicts with the recommendation of the inspector.
- » S. 294(3)(g) states the sum payable by the applicant to – MARA and the CPA and any other person

Considerations in Assessing Applications

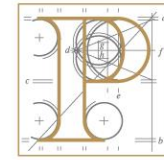
Board Decision - Timeline



- » S.295 sets out the timeline for making a decision:
 - » 18 weeks
 - » Period starts from date of application, date of submission of further information or date of conclusion of oral hearing, whichever is latest.
 - » Timeline can be extended by serving notice on all parties including the CPA.

Role of Coastal Planning Authorities

Similar to SID



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- » Under the 287 pre application consultation process ABP will identify the Coastal Planning Authorities (CPAs) relevant to the project.
- » S.291(4) identifies CPAs for the purposes of Part XXI as follows:
 - » any coastal planning authority **within**— (A) whose nearshore area, or (B) any other part of whose functional area, it is proposed that the development would (in whole or in part) be situated;
 - » any coastal planning authority— (A) whose nearshore area, or (B) any other part of whose functional area, **adjoins** that part of the maritime area in which it is proposed that the development would (in whole or in part) be situated,

Role of Coastal Planning Authorities

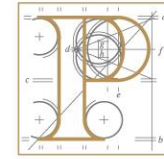
Similar to SID



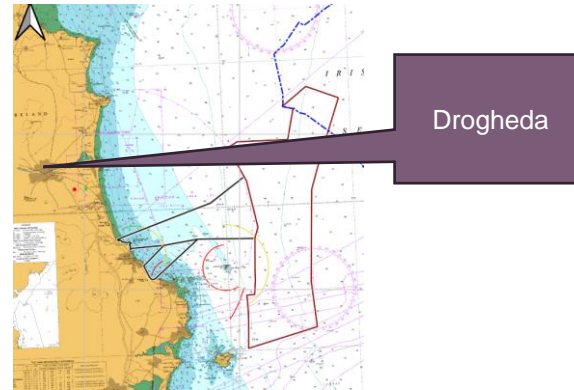
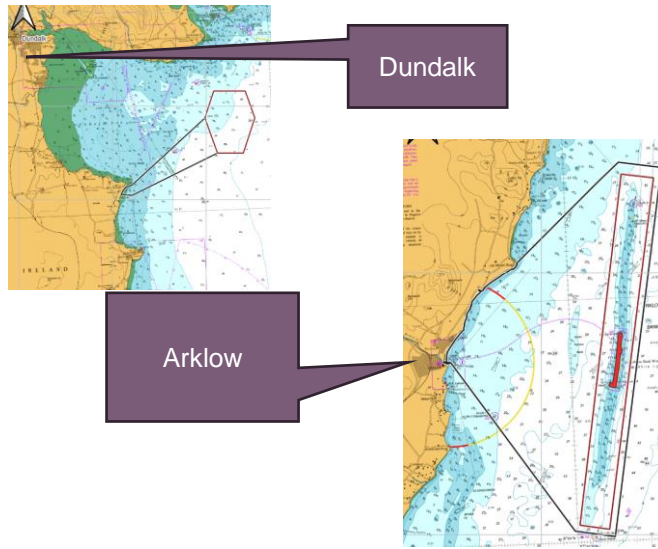
- » S.291(3) requires the applicant, where directed by the Board, to send copies of the application to, inter alia, CPAs
- » S.291(4) sets out the procedure for engagement between the Board and CPAs.
- » Notably, this process is very similar to that under the original SID provisions of the Act.
- » Such CPAs *may* prepare and submit a report to the Board setting out the views of the CPA.
- » Such a report should be submitted to the Board within 10 weeks from the date of application (can be extended with consent from the Board),
 - » Note Oriel, Arklow and NISA recently lodged

Role of Coastal Planning Authorities

CPA & MACs



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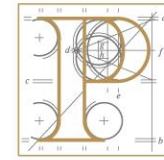


Role of Ports



Role of Coastal Planning Authorities

Similar to SID



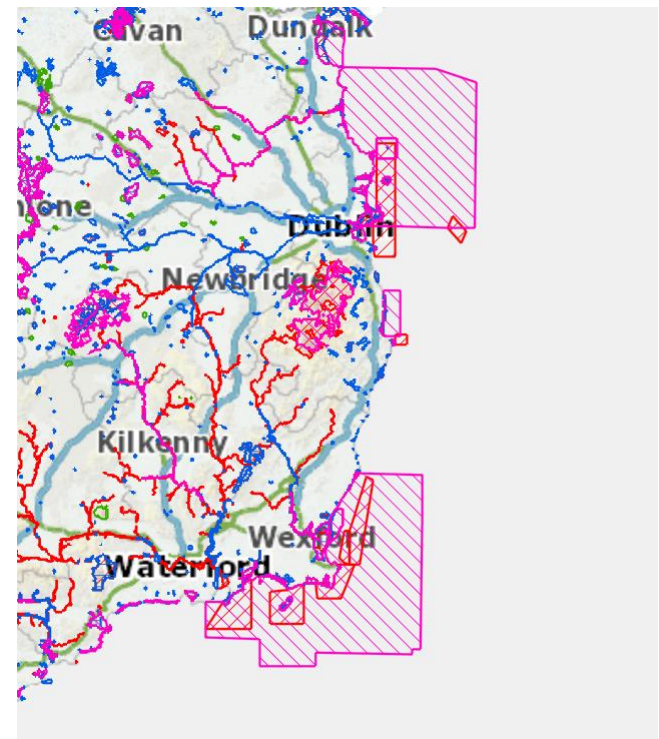
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» The CPA may* submit to the Board a report setting out the views of the coastal planning authority, having regard to the matters to which a coastal planning authority is required to have regard:

» In accordance with subsection (2) of section 34 such as

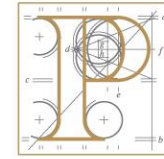
- » Provisions of the development plan
- » Guidelines
- » European Sites
- » Government policy
- » Conditions

*S.37E(4) states 'shall'



Role of Coastal Planning Authorities

Similar to SID



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- » and subsection (2) of section 282
 - » The MPPS
 - » The NMPF
 - » Guidelines made under Section 7 (of MAP Act) or section 28
 - » RSES
 - » CDP/LAP
 - » Submissions etc

Role of Coastal Planning Authorities

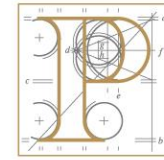
Similar to SID



-
- » The chief executive of the CPA **shall** before the submission of a report to the Board, under subsection 4 submit the report to the elected members and request their views on the proposed development.
 - » Members may by resolution decide to attach recommendations to the report of the CPA

Role of Coastal Planning Authorities

Similar to SID

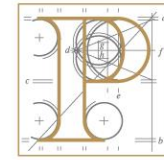


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- » Section 291(5) provides that the Board *may*, in addition to the above report, require a CPA or any PA whose functional area is, in the opinion of the Board, likely to be significantly effected to provide information relating to:
 - » The implications for maritime spatial planning,
 - » The implications for proper planning and sustainable development of the area,
 - » The likely effects of the development on the environment and any European site.

Role of Coastal Planning Authorities

New areas for the CPA to consider

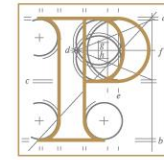


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- » The MPPS. From November 2019. Sets out overarching principles and policies that should be observed
- » The NMPF. **92 policies** comprising a mix of overarching marine planning policies (environmental, economic and social) as well as sectoral marine planning policies (including energy). Focus on an ecosystem based approach.
- » Any Guidelines made under Section 7 (of MAP Act) or section 28 – none to date.
- » Seascape visual impact.
- » Conditions as they relate to that part of the development in the maritime area as well as on land as with the existing SID process – s.293.

Sample

Typical onshore SID report (Sheskin Mayo)



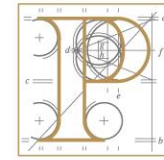
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Sample

Typical onshore SID report (Seven Hills Roscommon)



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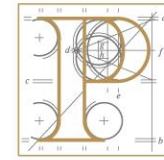
*Roscommon County Council – Chief Executive’s Report
Strategic Infrastructure Development Proposal - Seven Hills Wind Farm*

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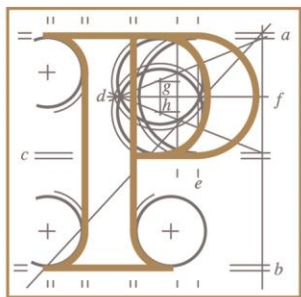
Conclusions

Role of CPA



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- » The CPA have a key role to play in assessing the applications
 - » BUT similar to role in SID 7th Schedule
- » Pre decision – schedule of conditions (inc. in respect of public infrastructure and facilities benefiting development in the functional area of any **coastal planning authority** in which the development concerned is (in whole or in part) proposed to be situated)
- » Post decision – key role in agreeing matters of detail of development in the nearshore



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