



**AN BILLE UM PLEANÁIL AGUS FORBAIRT (BONNEAGAR
STRAITÉISEACH) 2006**
**PLANNING AND DEVELOPMENT (STRATEGIC
INFRASTRUCTURE) BILL 2006**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction:

The purpose of this Bill is to amend the Planning and Development Act 2000 to provide for the introduction of a streamlined planning consent procedure for strategic infrastructure developments, which will be determined by a new Strategic Infrastructure Division to be established within An Bord Pleanála, and to make consequential and other changes to the 2000 Act.

The Bill also provides for a specialised planning consent procedure for major electricity transmission lines. It amends the Railways (Infrastructure) Act 2001 to provide that An Bord Pleanála will approve railway orders and amends the Acquisition of Land (Assessment of Compensation) Act 1919 to provide for the compensation that will be assessed for the sub-stratum of land.

Provisions of the Bill

PART I: PRELIMINARY AND GENERAL

Section 1: Short title and commencement

This section provides for standard provisions for the title, citation and commencement of the Bill.

Section 2: Definitions

This section provides for the definition of certain terms and words used in the Bill.

**PART II: STRATEGIC INFRASTRUCTURE DEVELOPMENTS — JURISDICTION
OF AN BORD PLEANÁLA UNDER PRINCIPAL ACT TO DEAL WITH THEM**

Section 3: Permissions for strategic infrastructure development

This section amends the Planning and Development Act 2000 (hereafter the Principal Act) by inserting new sections 37A to 37I. These new sections provide for a new strategic consent procedure for those types of infrastructure which are listed in a new Seventh Schedule to the Principal Act. Under the new strategic consent procedure, persons or bodies seeking permission for those types of strategic infrastructure, will apply directly to An Bord Pleanála. Where the Board determines that the project in question is of strategic importance, having regard to the criteria set out section 37A, an application, accompanied by an environmental impact statement, may be made directly to the Board. The sections set out the procedures for the initial consultations with the Board, for making an

application, the persons who must be notified of the application, including the planning authority or authorities for the relevant area, and the procedures and considerations to be applied by the Board when determining the application.

Section 4: Provision of electricity transmission lines

This section amends Part XI of the Principal Act by inserting new sections 182A and 182B to provide for a planning consent procedure for major electricity transmission lines, that is, those requiring environmental impact assessment or crossing into two or more planning authority functional areas. Approvals for the lines will be sought directly from An Bord Pleanála.

Section 5: Addition of Seventh Schedule to Principal Act

This section amends the Principal Act by adding a new Seventh Schedule, which sets out those classes of projects for which a strategic consent procedure is being introduced under *Section 3*.

PART III: AMENDMENTS OF PRINCIPAL ACT (INCLUDING AMENDMENTS CONSEQUENTIAL ON *PART 2*)

Section 6: Amendment of section 2 of Principal Act

This section amends the Principal Act by inserting a number of new definitions, including definitions of the National Spatial Strategy and of strategic infrastructure development.

Section 7: Amendment of section 7 of Principal Act

This section amends subsection 7(2) of the Principal Act by inserting a new paragraph (*tt*) requiring planning authorities to include in the planning register, the particulars of any proposed local authority own development under section 179.

Section 8: Amendment of section 34 of Principal Act

This section amends subsection 34(4) of the Principal Act by providing that conditions for regulating the development or use of land next to land proposed to be developed, and in the same ownership, can be imposed where expedient for the development in question or where any existing public amenity must be maintained.

Section 9: Amendment of section 35 of Principal Act

This section amends the provisions of Section 35 of the Principal Act to enable the planning authority to refuse permission to a developer on the grounds of his or her past history of non-compliance with planning. The applicant would be required to apply to the High Court if he or she wished to have the decision overturned.

Section 10: Amendment of section 37 of Principal Act

This section inserts 4 new paragraphs into subsection 37(4) of the Principal Act to provide that non-governmental organisations that meet certain specified requirements may seek leave to the Board to appeal a decision by a planning authority in respect of development for which an environmental impact statement was required to be submitted. The Minister for the Environment, Heritage and Local Government may prescribe additional requirements to be met by such bodies. The Board can dismiss an appeal if it considers the body does not satisfy the requirements.

Section 11: Amendment of section 38 of Principal Act

This section amends section 38 to provide that the Data Protection Acts 1988 to 2003 must be considered where it is proposed to release planning information for public consultation.

Section 12: Judicial Review of, and determination of questions of law arising in, certain matters.

This section replaces section 50 of the Principal Act with two new sections, 50 and 50A relating to Judicial Review of applications, appeals, referrals and other matters. The sections make certain procedural changes to applications for judicial review of decisions made by planning authorities and An Bord Pleanála under the Principal Act or in accordance with other relevant legislation. It includes provision for non-governmental organisations promoting environmental protection to be entitled to apply for leave to seek judicial review.

Section 13: Amendment of section 104 of Principal Act

This amendment to section 104 of the Principal Act provides for an increase in the permanent number of ordinary members of An Bord Pleanála from 7 to 9 ordinary members.

Section 14: Amendment of section 106 of Principal Act

This amendment to section 106 of the Principal Act provides for the increased membership of An Bord Pleanála to be appointed from a range of organisations which are newly grouped into 5 panels. The Minister is also given the power to prescribe at least 2 organisations for each panel.

Section 15: Amendment of section 108 of Principal Act

This is a consequential amendment to the amendment of section 106.

Section 16: Amendment of section 110 of Principal Act

This amendment substitutes subsection (1) of section 110 of the Principal Act which provides for the chairperson to ensure efficient discharge of business of the Board. The new subsections provide that, where the chairperson is not available, the deputy chairperson is charged with the functions of ensuring the efficient distribution and discharge of the business of the Board. It also provides that all practical steps be taken to ensure that the business of the Strategic Infrastructure Division is discharged expeditiously.

Section 17: Amendment of section 112 of Principal Act.

This is an amendment to section 112 of the Act, consequential on the insertion of a new section 112A by Section 18.

Section 18: Strategic Infrastructure Division

This section inserts a new section 112A into the Principal Act to provide for the establishment of a Strategic Infrastructure Division within An Bord Pleanála and to assign to it its duties, membership and other matters of procedure.

Section 19: Amendment of section 125 of Principal Act

This amends section 125 to provide that Chapter III of the Principal Act which deals with appeal procedures, also applies to applications made directly to the Board under the strategic consent procedure being introduced by section 3 of this Bill.

Section 20: Oral hearings

This section substitutes section 134 of the Principal Act on oral hearings, with new sections 134 and 134A. The new sections provide that the Board may hold oral hearings of appeals, referrals or applications under the new strategic consent procedure being inserted by section 3, and set out the requirements for requesting an oral hearing.

Section 21: Amendment of section 135 of the Principal Act

This section amends section 135 of the Principal Act, which deals with supplemental provisions relating to oral hearings, by substituting subsections (1) and (2). The new subsections amend the powers available to the person appointed by the Board to conduct hearings and provide that the Board can give direction to that person to require persons to make submissions of the points they wish to make at the hearing. Consequential amendments are made to subsections (3), (4), (5) and (8).

Section 22: Amendment of section 143 of the Principal Act

This section replaces section 143 of the Principal Act to provide that, among the policies and objectives the Board must have regard to in making any decision, the Board should also have regard to the national interest and any effect its decision may have on issues of strategic economic or social importance to the State, as well as to the national spatial strategy and any regional planning guidelines in force.

Section 23: Amendment of section 146 of Principal Act

This section amends section 146 of the Principal Act to provide for reports to be produced by, or on behalf of, the Board in relation to applications under the strategic consent procedure and for making those reports and documents available to the public.

Section 24: Amendment of permissions, approvals, etc.

This section provides for the insertion of three new sections which permit the Board to amend or change a previously granted permission. Section 146A provides for amendments of a technical or clerical nature to be made to all decisions made by the Board. Section 146B enables the Board to alter the terms of a strategic infrastructure development where requested by the person carrying it out, having regard to the nature of the proposed alteration. Section 146C provides that the Board, where it considers that a proposed alteration to the terms of a strategic infrastructure development is likely to have significant effects on the environment, must require an environmental impact statement to be submitted to it by the applicant and sets out the procedures and considerations to be applied by the Board in such a case.

Section 25: Amendment of section 156 of Principal Act

This section amends section 156 of the Principal Act to provide that, where a person is convicted on indictment of an offence relating to the conduct of an oral hearing and that their conduct delayed the oral hearing, penalties equivalent to the additional costs incurred by An Bord Pleanála or other persons at the oral hearing may be imposed by the court.

Section 26: Amendment of section 173 of Principal Act

This section amends section 173 of the Principal Act to provide that a planning authority, when requested to provide a written opinion on the information to be contained in an environmental impact statement, shall consult the Board and any other prescribed body. It also provides that such consultation shall not prejudice the exercise by the planning authority or Board of any of its other powers.

Section 27: Amendment of section 174 of Principal Act

The amendment to section 174 of the Principal Act, which relates to transboundary environmental impacts, is consequential to the introduction of the strategic consent procedure.

Section 28: Amendment of section 175 of Principal Act

Section 175 of the Principal Act enables the Board to approve development carried out by or on behalf of local authorities which requires environmental impact assessment. The section is being amended to permit the Board to seek alterations to the proposed development by a local authority, and where necessary to require consultation on any proposed alteration. The Board is also being permitted to attach certain types of condition to the proposed development and to require the payment of its costs.

Section 29: Board's powers to make decisions on transferred functions

This section inserts a new section 217A into the Principal Act to provide that the Board has the power to confirm a compulsory acquisition, or part of it, transferred to it in accordance with this Part of the Principal Act, with or without conditions or modifications, or to refuse to confirm a compulsory acquisition or any part of it. The amendment also empowers the Board to attach a condition to any compulsory acquisition requiring the provision or financing of a service or facility to the community.

Section 30: Amendment of section 218 of Principal Act

This amendment amends section 218 of the Principal Act to provide that the Board has an absolute discretion as to whether to hold an oral hearing relating to compulsory acquisition of land.

Section 31: Amendment of section 219 of Principal Act

This amendment substitutes section 219 of the Principal Act, to provide the Board with the power to direct payment, by local authorities, of certain additional costs in relation to oral hearings.

Section 32: Amendment of section 265 of Principal Act

This is a technical amendment to section 265 of the Principal Act, which is a saver provision, to clarify that the rules of compensation under section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919 as amended by section 69 of the Local Government (Planning and Development) Act 1963, apply to all cases of compensation, other than compensation payable under Part XII of the Principal Act to persons refused planning permission or granted conditional permission.

PART IV: MISCELLANEOUS

Section 33: Amendment of Acquisition of Land (Assessment of Compensation) Act 1919

This section amends section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919 to provide for an additional rule of compensation, namely that the value of any land lying 10 metres or more below the surface of the land shall be taken to be a nil value, unless it is shown to be of a greater value by the claimant.

Section 34: Amendment of Transport (Railway Infrastructure) Act 2001

This section amends the Transport (Railway Infrastructure) Act 2001 by substituting new sections 37 to 47A for sections 37 to 47. These new sections are primarily intended to transfer responsibility for approval of a railway order from the Minister for Transport to An Bord Pleanála and to make certain related amendments to procedures and judicial review of such decisions.

Financial Implications

The Board will require additional staff and resources to accommodate the work assigned to the Strategic Infrastructure Division in

addition to maintaining its efficient record on its existing workload. Sanction has been given for an additional 10 staff to be appointed in 2006. The Board's financial estimate for 2006 has also been increased by €251,000 to cover the estimated cost of the Strategic Infrastructure Division in 2006. It is intended that the Board's additional costs under the provisions of this Bill will be recouped from persons applying for consents or permissions to the infrastructure projects.

*An Roinn Comhshaoil, Oidhreachta agus Rialtais Aitiuil,
Feabhra, 2006.*