

Terms of Reference

Report into the management of conflicts of interest and relevant disclosures by the Deputy Chairperson of An Bord Pleanála in relation to certain Decisions of that Board and related matters

1. Remy Farrell SC is requested to provide a report to the Minister for Housing, Local Government and Heritage in accordance with these Terms of Reference within a period of 6 weeks from the date hereof.
2. The purpose of the report is to provide an opinion from Senior Counsel on the following matters of concern:
 - a) the decision of An Bord Pleanála made under Reference Number: ABP Case No. ABP-311874-21 in relation to a proposed strategic housing development at Distillery Quarter, North City Link Road(N20), Blackpool, Co. Cork;
 - b) the decision of An Bord Pleanála made under Reference Number: ABP Case No. ABP-309131-21 in relation to a proposed development at Gilford Park, Sandymount, Dublin;
 - c) the decision of An Bord Pleanála made under Reference Number: ABP Case No. ABP-301610-18 in relation to a proposed development at Castlelake, Terrysland, Carrigtwohill, Co. Cork; and
 - d) whether the Deputy Chairperson of An Bord Pleanála has ceased to be a member of the Board by virtue of section 106(13)(d)(ii) of the *Planning and Development Act 2000*.
3. In his report, and on the basis of the material and information available to him, Senior Counsel will provide an opinion on whether, with reference to the matters of concern, the Deputy Chairperson of An Bord Pleanála has:
 - a) ceased to be a member of the Board by virtue of section 106(13)(d)(ii) of the *Planning and Development Act 2000*,
 - b) correctly disclosed to the Board all relevant interests (including pecuniary and beneficial interests), assets, business activities and other matters set forth in sections 147 and 148 of the *Planning and Development Act 2000*,
 - c) complied with the requirements of section 148 (1) of the *Planning and Development Act, 2000* if he has had a relevant interest (including pecuniary and beneficial interests) in, or which is material to, any application, appeal, contribution, question, determination or dispute which falls to be decided or determined by the Board under any enactment,
 - d) complied with the requirements at Common Law as regards conflicts of interests,
 - e) complied with the terms of the agreement between the Deputy Chairperson and the Minister for Housing, Local Government and Heritage dated 4 March 2019, including but not limited to whether the Deputy Chairperson kept the Chairperson of the Board promptly and fully informed of his conduct of the business of the Board and of all circumstances material to or likely to be material to the business of the Board as required under the terms of that agreement,
 - f) complied with the *Ethics in Public Office Acts 1995 and 2001*, and
 - g) complied with the *Code of Practice for the Governance of State Bodies* and the Board's *Code of Business Conduct for Board Members and Employees*.

4. In considering these issues and preparing his report, Counsel will have regard to such material and information as he considers relevant to the matters of concern including but not limited to:
 - a) the agreement between Mr. Paul Hyde and the Minister for Housing, Local Government and Heritage dated 4 March 2019 setting out the terms and conditions of Mr. Hyde's appointment as Deputy Chairperson of An Bord Pleanála,
 - b) the letter from Mr. Michael Smith to the Secretary of An Bord Pleanála dated 14th April 2022 and copied to the Minister for Housing, Local Government and Heritage,
 - c) the letter from Mr. Paul Hyde to the Minister for Housing, Local Government and Heritage dated 15th April 2022,
 - d) the letter from Mr. Paul Hyde to the Secretary of An Bord Pleanála dated 19th April 2022,
 - e) the statement of Mr. Paul Hyde to the Secretary of An Bord Pleanála dated 3rd May 2022, and
 - f) any other material or information provided to Counsel by Mr. Hyde, by the Chairperson, ordinary members or staff of An Bord Pleanála or by any other person which, in the opinion of Counsel, is relevant to his consideration of the matter in accordance with these Terms of Reference.

5. In carrying out his work under these Terms of Reference, Senior Counsel:
 - a) shall exercise such discretion in relation to the scope of his examination of the matters of concern as he considers necessary and appropriate, having regard to the general purpose of the report,
 - b) shall bring any matters to the attention of the Minister for Housing, Local Government and Heritage that, having regard to the general purpose of the report, are matters of which, in Counsel's opinion, the Minister ought to be made aware,
 - c) shall have due regard to the potential impact of his examination and/or his report on any criminal prosecution that may be affected by his work,
 - d) may interview any Board member or staff member of An Bord Pleanála, or any other individual he deems appropriate having regard to the matters of concern, for the purposes of completing his report,
 - e) may receive and retain documentation requested by or provided to him for the purposes of completing his report on such terms and in such manner as he deems appropriate, and
 - f) may make such recommendations as he sees fit, if any, regarding any of the matters addressed in his report.

6. The review to be carried out by Senior Counsel under these Terms of Reference is without prejudice to any and all powers of An Bord Pleanála and/or its Chairperson under the *Planning and Development Act 2000* in relation to the matters of concern.

Clarification

If any clarification of the Terms of Reference is required by Counsel, this will be sought by him in writing as soon as possible and such clarification when provided shall be deemed to constitute part of the Terms of Reference herein and applied accordingly.

Publication

The Minister for Housing, Local Government and Heritage reserves the right to publish the report, not to publish the report or to publish the report in redacted form.

DATED this 12th day of May 2022.