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Pleanála

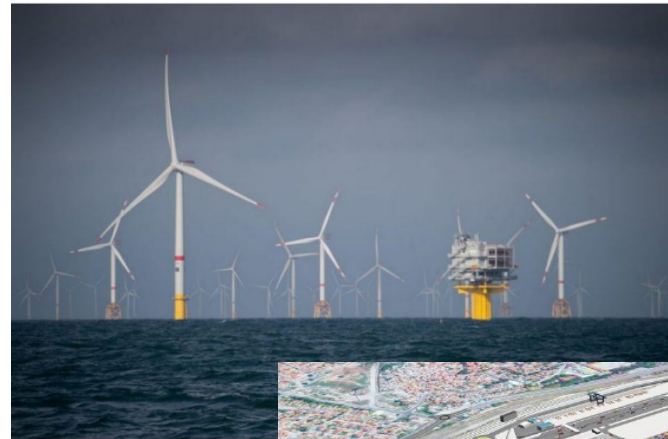
Role of An Bord Pleanála in Marine Consenting

IPI Marine Spatial Planning CPD Series

17.11.2023

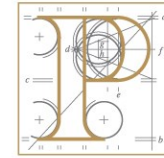
Agenda

- » Background & relevant legislation
- » Locations and project types within remit of ABP
- » Steps in application process
 - » Pre-application stage
 - » Application stage
- » Progress on first pre application consultations - Phase 1 ORE projects
- » How Board has prepared for new role in marine
- » Some issues / challenges arising



Background - Legislation

MAP Act 2021



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» Enacted December, 2021. The main provisions of the Act relate to:

1. Forward planning – Marine plans and DMAPs
2. State consent – Maritime Area Consent (MARA)
- 3. Development Management. Part 8 introduces new Part XXI (Coastal PAs and ABP) – Commenced 1st October, 2022**
4. Licencing of activities (MARA),
5. Enforcement (via MARA and Coastal PAs).



Number 50 of 2021

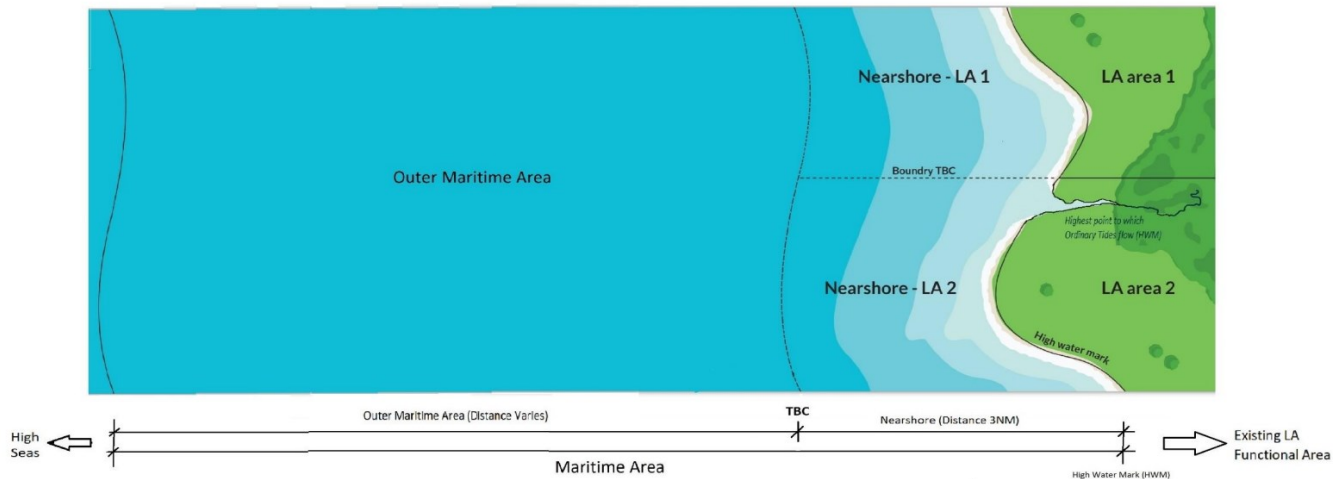
Maritime Area Planning Act 2021

Legislation

Some Definitions



- » Act identifies three zones –
 - » the **terrestrial area** above the mean HWM,
 - » a **nearshore area** beyond the mean HWM (defined in s.3 and extending to c.3NM / c.5km) (Note s.279 functional area of a coastal planning authority now includes the nearshore area) and
 - » a **Maritime Area** extending out from HWM to encompass the whole of the territorial seas, EEZ and continental shelf (defined in s.5).



Legislation

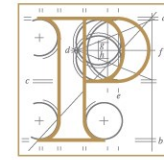
Consenting Role of ABP - Responsibilities



- » Chapter 3 of Part XXI of PDA relates to ABPs role in the assessment of development in the maritime area
- » Section 285 - ABP is responsible for:
 - » Development that is exclusively in the Maritime Area,
 - » Developments that overlap the “maritime” and “nearshore” areas of one or more than one PA,
 - » Developments that overlap the “maritime” area, “nearshore” areas of one or more than one PA, and partially on land,
 - » Development partially in the outer maritime area and partially on land,
 - » *Development wholly in the nearshore area of more than one coastal PA (including where partially on land)*
 - » *Development of a class prescribed in Eighth Schedule to the Act that is in nearshore area of one or more PAs, or partially on land and partially in nearshore area of one or more PAs.*
 - » *Local authority decisions (s.34) in nearshore area that are the subject of appeal,*

Legislation

New Eighth Schedule in P&D Act, 2000



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- » Tenth Schedule of the MAP Act introduced new Eighth Schedule to the P&D Act
- » Schedule includes (not exhaustive...)
 - » Development referred to in Seventh Schedule (SID)
 - » Trading port or pier (vessels >1,350 tonnes)
 - » Pipeline for oil, gas, chemicals or CO2 >20km
 - » Power lines of 220kv or more and >15km
 - » Land reclamation of >10 ha.
 - » Marina >300 berths
 - » Wind wave or tidal energy installations > 5 turbines or 5 MWs
- » **Note - Fisheries excluded**

Steps in Process

ABP Procedures



- » Four potential steps in process initially:
 - » 1a. Pre-application consultations (PAC) under s.287 (mandatory)
 - » 1b. Design Flexibility Opinion under s.287A/B (not mandatory)
 - » 2. EIA Screening under s.289 (as per existing 176A procedures – not mandatory)
 - » 3. EIA Scoping under s.290 (not mandatory)
 - » 4. Application stage under s.291
- » Additional steps post consent include amendments to consents (similar to s.146B requests).
- » Focus on Steps 1 and 4

PAC Step – s.287



What does ACT say about PAC

- » S.287(1) MAC (or foreshore licence or owner / owner consent) required before 'prospective applicant' can enter PAC process,
- » Note - Legislation (Part IV, Chapter 10) provides for transitional arrangements and special provisions for some projects already in the foreshore process - Phase 1 ORE projects / Relevant projects,
- » S.287(2) of the Act, the purpose of the PAC meeting is:
 - » to give the Board an opportunity to provide its opinion on issues relating to the making of an application including in relation to procedures and documents relevant to the making of an application.
- » S.287(2)(f) of the Act
 - » the Board may provide its opinion on some or all of the matters that the Board is likely to take into consideration in making a decision on an application:
 - » the NMPF,
 - » objectives of maritime spatial planning,
 - » the principles of proper planning and sustainable development and the environment and any European site.
- » Unlike the normal SID projects, the Board closes off the PAC

PAC Step – s.287A/B



What does ACT say about PAC - Flexibility

- » New section of the Act to provide for flexibility – introduced by *Planning and Development Maritime and Valuation Amendment Act, 2022*
- » **Section 287A** – A prospective applicant may request a meeting with the Board for the purposes of section 287B ie where the Board provides an opinion to the prospective applicant regarding flexibility in relation to the design to be included in the application for permission.
- » A request under section 287A shall include, as well as standard information, the following:
 - » the **details or group of details**, of the proposed development owing to circumstances are unlikely to be confirmed at the time of the proposed application, and
 - » the **circumstances** that indicate that it is appropriate that the proposed application be made and decided before the prospective applicant has confirmed the details referred to above in particular whether the applicant may be able to avail of technology that is more efficient and effective than the technology available at the time of making the application.

PAC Step – s.287A/B

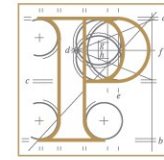


What does ACT say about PAC - Flexibility

- » **Section 287B – Opinion of Board** as to flexibility with regard to application for permission.
- » 287B(5) - A meeting held in relation to this shall be part of the consultations held under section 287.
- » 287B(1) - The Board shall consider the information included under section 287A and any other relevant information that is available at the meeting.
- » 287B(2-4) - Board makes determination if it is satisfied that it is appropriate that the proposed application be made and decided before the prospective applicant has confirmed details of the application
- » In relation to any determination above the Board shall issue an opinion to the prospective applicant in this regard.
- » An opinion issued by the Board shall only be made public when a planning application is made under section 291.

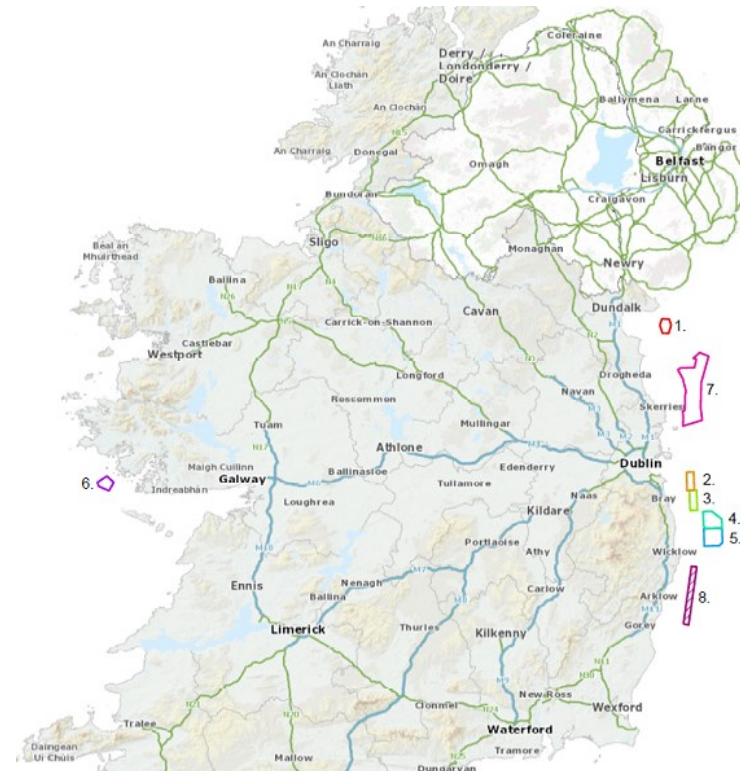
PAC Step

6 PAC Received



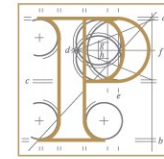
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- » Pre-Application Consultation (PAC):
 - » 5 Pre-app requests under s.287 received early 2023– Oriel, NISA, Dublin Array, Codling, Arklow.
 - » Sceirde Rocks – June 2023.
 - » s.287A design flexibility requests received over the last few months from 4 of 6 prospective applicants.



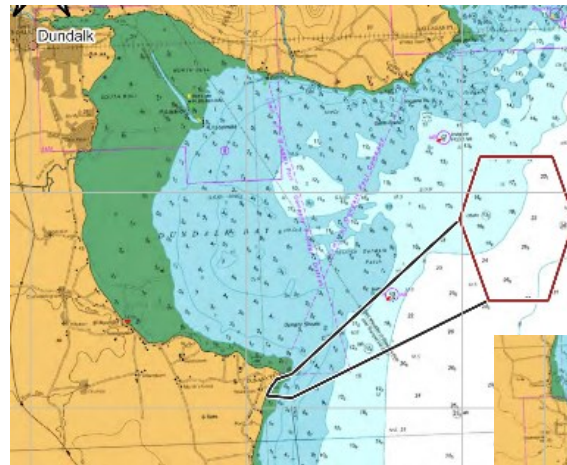
PAC Step

6 PAC requests well advanced

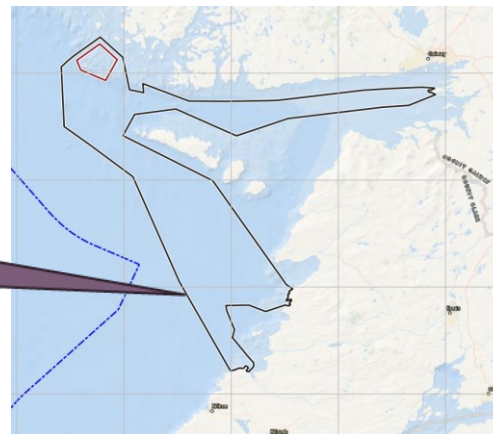


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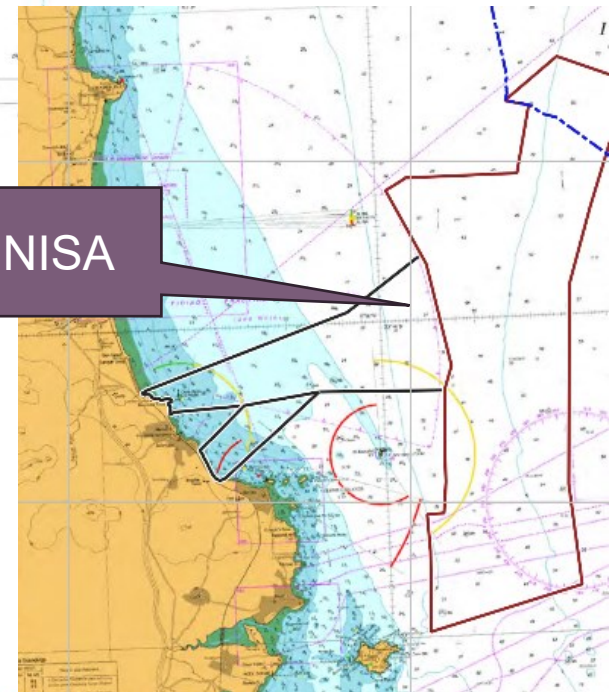
- » **Pre-Application Consultation (PAC):**
 - » PAC procedures prepared ahead of first PAC meeting.
 - » 4 of the 6 MAC holders successful at first ORESS Auction
 - » Separate files for 287 and 287A



Oriel



Sceirde

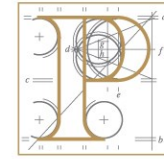


NISA



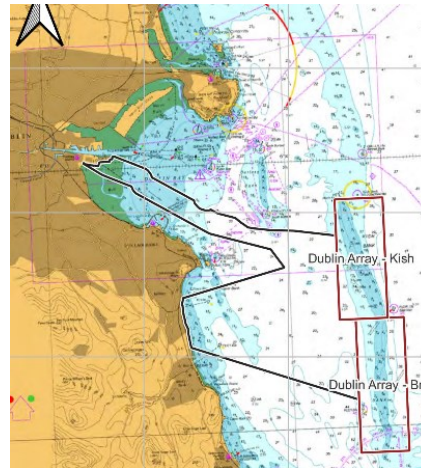
PAC Step

6 PAC requests well advanced

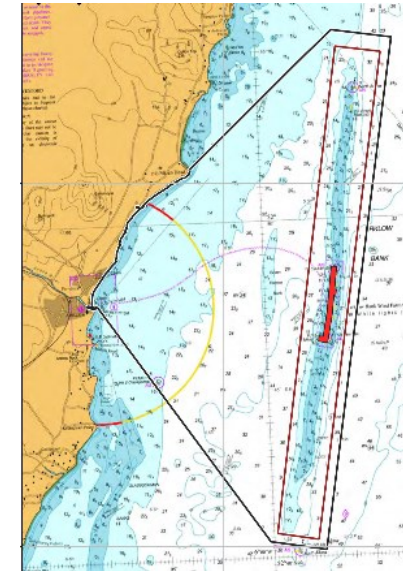


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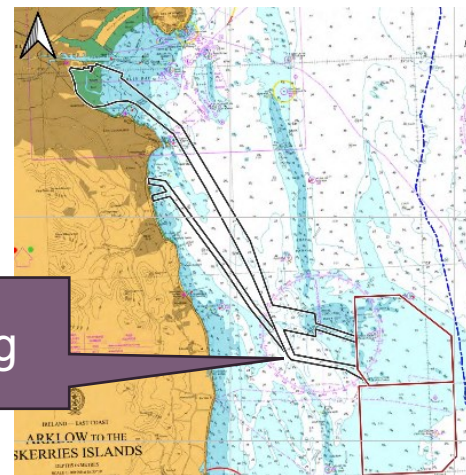
- » Pre-Application Consultation (PAC):
 - » Intent is to close off PAC step (both 287 and 287A) in Q4
 - » Board note of closure of 287 process and issue opinions on 287A/B early 2024
 - » Applications Q1/Q2 2024 in advance of the June 2024 MAC deadline



Dublin Array



Arklow



Codling



PAC Step

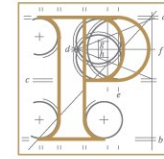
Issues Around Flexibility – 287A/B



- » DHLG&H Circular Letter on Design Flexibility for Maritime Development – Circular Letter MMP 01/2023
- » *‘details or groups of details’*
- » Reference to Technology
- » Presentation of information in applications in a manner that is legible and understandable for ABP and third parties.
- » References to ‘a meeting’....
- » Precedent for future applications under s.291.
- » Also note that similar provisions are proposed for s.34 applications and applications to the Board under s.37 and s.182. (see Planning and Development Maritime and Valuation (Amendment) Act, 2022).

Legislation

Application Process – Main Provisions



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- » Need MAC, (or foreshore licence or owner / owner's consent) to be eligible to apply for permission (s.286)
- » Mandatory pre application consultation for applications to ABP (s.287).
- » Application process very similar to existing terrestrial Strategic Infrastructure Development applications,
- » Public notification requirements – newspaper (s.291(3)(a)) and Board can direct copies of the application to be sent to other parties including Coastal Planning Authorities (s.291(3)(b and c).
- » Transboundary notification (s.291(3)(d)) – Board can direct applicant to copy other states with details of application where proposed development is likely to have significant effects on the environment of such states,
- » Provision for public consultation and submissions (s.291(3)) – minimum 8 weeks,

Legislation

Application Process – Main Provisions



- » Statutory consultees – s.291(3) Appendix I to *Planning & Development (Maritime Development) Regulations, 2023*.
- » Note new consultees including MARA, Marine Institute, Commissioner of Irish Lights, Coastguard.
- » Input of 'Coastal Planning Authority' – s.291(4, 6 & 7). Where development is in the nearshore area of CPA or nearshore area immediately adjoins the maritime area where development is proposed, the CPA may prepare and submit a report to the Board within minimum of 10 weeks from application date. Any such report shall be submitted to the members of the CPA who may attach recommendations to report.
- » Under 291(5) the Board may require a CPA referred to in 291(4) or any PA whose function area is likely to be significantly impacted to provide information on the proper planning and development, implications for maritime spatial planning and likely effects on any European site.
- » Provision for FI, revised plans, further submissions (s.292),
- » Oral hearings (s.305),
- » Provision for alterations to permission similar to s.146B/C SID process (s.297 – 299). Option of pre app consultation on proposed alterations under s.296.

Legislation

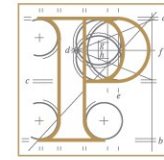
Board Decision



- » 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, objectives of maritime spatial planning, principles of proper planning and sustainable development.
 - » S.293(4) Board can grant, grant part or refuse to grant permission
 - » S.293(7) specifies conditions that may be attached

SID and MAP Applications

Procedural Differences between SID and MAP

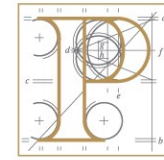


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- » The Board closes the PAC stage – in SID this is at the discretion of the applicant,
- » Additional consultees / prescribed persons,
- » Decision Timelines – while 18 weeks (plus public consultation stage) is the objective, if Further Information is requested or an Oral Hearing is to be held the clock effectively stops.
 - » The 18 week timeline runs from the end of the public consultation stage, date the Board receives FI or date of conclusion of the OH, whichever is the latest
- » Post consent (amendments) – an applicant may request consultations with the Board - this is not the case currently for S146B requests
- » Post consent conditions – Board will have a role in compliance.

Setting up new unit

So how has ABP prepared for this new function

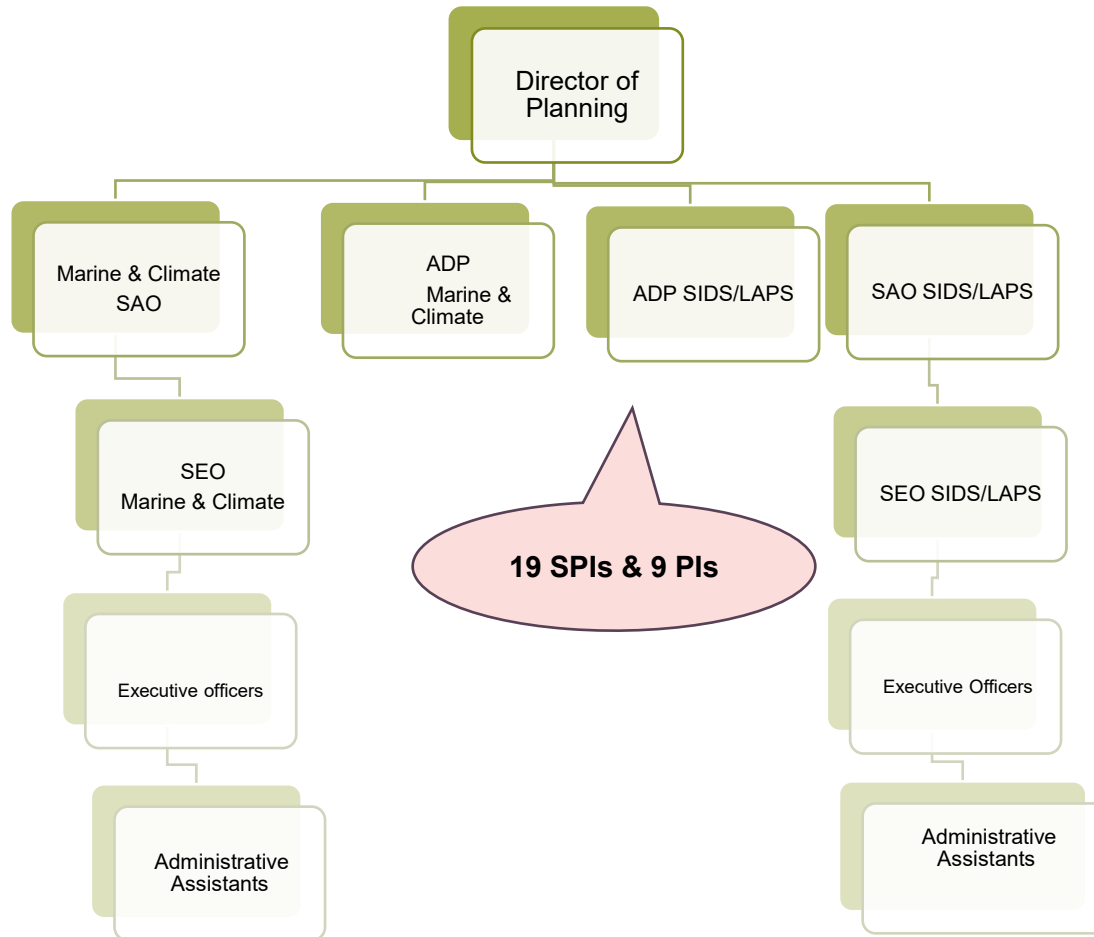


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- » Government Action Plan Oct 2022 identified need for new Director of Planning for Marine & Climate
- » Position established in late February 2023
- » A 2nd Director of Planning appointed: Initial Assignment SID, Marine and Climate (All direct applications); Appeals and other matters fall under other DoP post
 - » Existing Inspectorate SID team enlarged to cater for new functions
 - » C.28 Inspectors in team currently with additional roles to be filled
 - » Processing Team – SHD team now responsible for the marine function with additional roles to be filled
 - » 2 new non-planning specialist roles recruited - marine ecologist and an environmental/marine scientist
 - » Interviews for External Specialist Consultant support
 - » Existing SID team remains in place

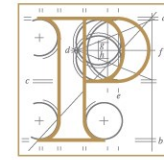
Setting up new unit

SID Marine & Climate Unit

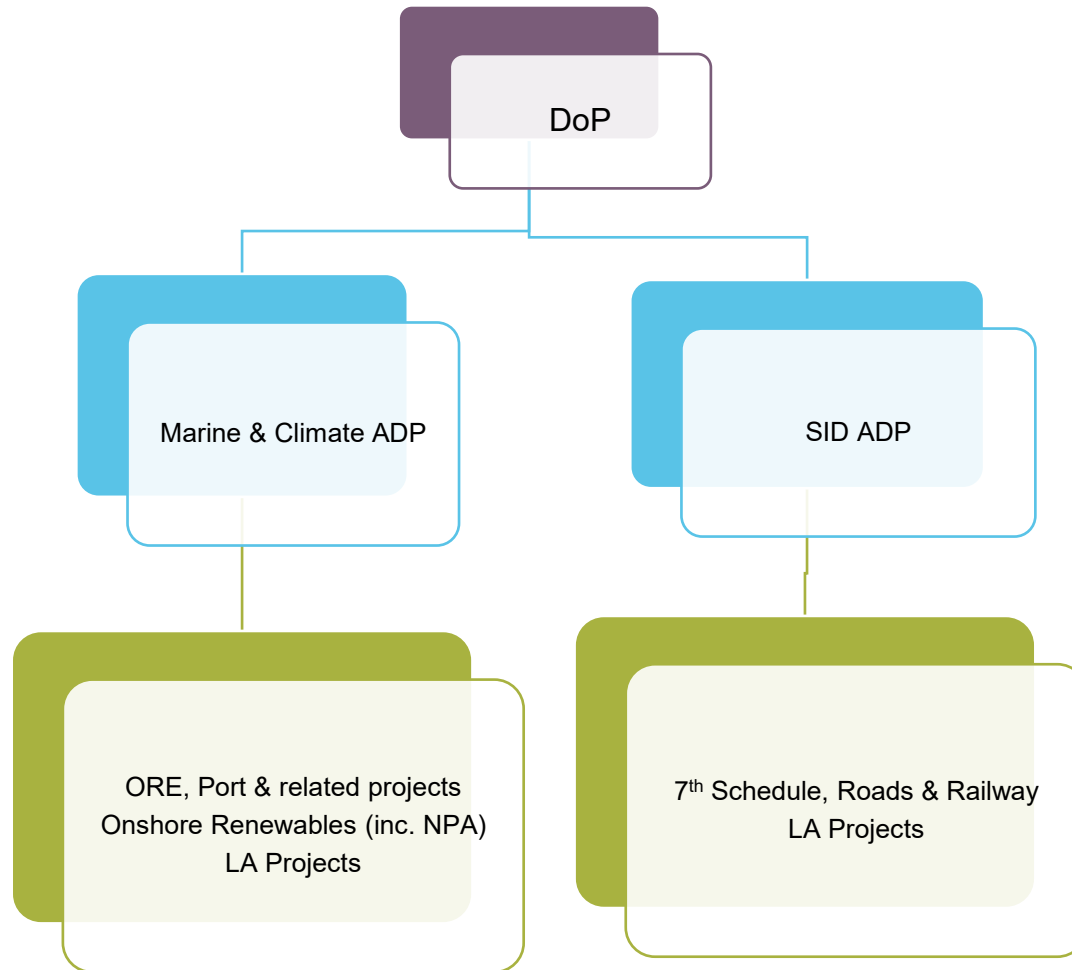


Setting up new unit

SID Marine & Climate Unit - Inspectorate



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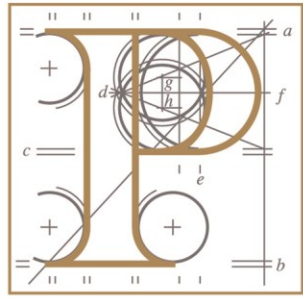


Role of ABP

Challenges to be addressed



- » ABP resourcing / skills / availability of consultants / potential conflicts of interest etc. but
 - » Department has approved sanction for all resources requested – SID / Marine team now 28 technical staff.
 - » Recruiting further in-house specialists at Inspectorate,
 - » Establishment of consultant panel to provide support at application stage,
 - » Marine consultant providing support at pre-app stage.
- » Policy context for decisions
 - » Focus on NMPF
 - » Location specific plans available OREDP2/DMAPS, ORE Guidelines
 - » MPA legislation and designation. New and expanded Natura sites
- » Interpreting new legislation (eg 287A design flexibility)



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