

**IN THE MATTER OF AN APPLICATION TO
AN BORD PLEANÁLA**

**FOR APPROVAL OF THE RAILWAY (METROLINK – ESTUARY TO
CHARLEMONT VIA DUBLIN AIRPORT) ORDER**

ABP-314724-22

**OUTLINE LEGAL SUBMISSIONS ON BEHALF OF TRANSPORT
INFRASTRUCTURE IRELAND**

**THE ROLES OF DUBLIN FIRE BRIGADE AND THE COMMISSION FOR
RAILWAY REGULATION IN RELATION TO FIRE SAFETY IN RAILWAY
INFRASTRUCTURE**

Introduction

1. These submissions are made in response to the request by the Inspector that TII provide information to the Board in respect of the respective statutory roles of the Dublin Fire Brigade (“*DFB*”) and the Commission for Railway Regulation (“*CRR*”) generally in the area of fire safety with regard to the proposed Metrolink project.
2. In addition, arising from submissions made in relation to tunnel length in both the cut and cover sections and the enclosed sections of the Metrolink tunnel, and queries raised by the Inspector in this regard, additional information has been requested in connection with the distances between entrances to the tunnel sections. This is addressed in the enclosed technical note.
3. Although the application of safety guidelines to the design options for Metrolink are a matter for subject matter experts and are addressed by them in technical notes, it was considered that the question posed by the Inspector in respect of the statutory roles of the CRR and Dublin Fire Brigade is a matter of law, which is more appropriately addressed by a short legal submission.
4. Design requirements in the context of fire safety are governed by three pieces of legislation in particular: the Building Control Act 1990 (as amended) (“*BCA*”), the Fire Services Act 1981 (as amended) (“*FSA*”) and the Railway Safety Act 2005 (as amended) (“*RSA*”).
5. DFB’s role arises under the BCA and the FSA, while the CRR’s role is provided for under the RSA.

The BCA

6. The BCA is concerned with the construction of buildings and empowers the making of Building Regulations (see section 3) and Building Control Regulations (see section 6).
7. The Building Regulations 1997 (as amended) prescribe standards to be met *inter alia* in the design and construction of buildings, and in turn allow for the publication of Technical Guidance Documents: these standards include standards relating to fire safety (in Part B of the Second Schedule) and Technical Guidance Document B elaborates on the required standards.
8. The Building Control Regulations 1997 (as amended) set out procedures required to be followed *inter alia* in the construction of buildings: in particular, it is a legal requirement under Part III that a fire safety certificate be obtained prior to the carrying out of works to which that Part applies. This requires the design of the building or works to be submitted to the building control authority. A fire safety certificate is granted by the building control authority where the building or works complies with the requirements of Part B of the Second Schedule to the Building Regulations or where a dispensation or relaxation applies: see Regulation 15.
9. Dublin City Council (DCC) is a building control authority, and as a division of Dublin City Council, DFB performs DCC's functions as building control authority for the purpose of issuing fire safety certificates to building owners in respect of buildings. DFB also supplies that service for the other local authorities in Dublin, Fingal County Council, South Dublin County Council and Dun Laoghaire Rathdown County Council.
10. As such, the issuance of a fire safety certificate by DFB is a legal prerequisite to the construction of all buildings forming part of Metrolink.
11. Fire safety certificates are issued after the development consent process is complete.

The FSA

12. The FSA confers extensive powers on fire authorities in the area of fire prevention and extinguishment, including e.g. the power to serve fire safety notices to prevent the use of buildings that are considered potentially dangerous (see section 20).
13. DCC is a fire brigade implemented and maintained by DCC in its capacity as a fire authority pursuant to the FSA and DFB performs DCC's functions as a fire authority.
14. However, the functions of DFB under the FSA are not concerned with the design of buildings or other infrastructure.

The RSA

15. The RSA (an administrative consolidation of which is published by the Law Reform Commission¹) established the CRR (originally entitled “*the Railway Safety Commission*” but renamed by section 4 of the Public Transport Act 2016).
16. The RSA invested the CRR with several powers and functions for the purpose of safety in relation to railways. In particular, section 42 prohibits the construction, installation or assembly of new railway works until a safety assessment (referred to as a “*new works assessment*”) has been submitted to the CRR and its acceptance communicated to the railway organisation concerned. In order for the CRR to do so, it must be satisfied on the basis of the information contained in the new works assessment that (i) the proposed method of construction, installation or assembly is adequate to ensure, in so far as reasonably practicable, the safety of persons during that construction, installation or assembly, and (ii) as to the expected operational safety of the new works. This is known as the Application for Acceptance (AFA) process. A railway organisation must obtain the consent of the CRR before bringing into operation the completed new works.
17. The CRR is empowered to publish guidelines for the purposes of its functions (including the AFA process under section 42), and a railway organisation must have regard to those guidelines.
18. The CRR has published guidelines for the purpose of the AFA process. These include:
 - (a) CRR-G-033-D Guideline for Application for Acceptance of New Light Rail Works, which requires independent professional review of the following components of new rail infrastructure:

- “• *Fixed installations Train Command / Control / Signalling Equipment*
- *Tunnels and Underground structures*
- *Fire Safety Concept and Concept of Evacuation (within various parameters)*
- *Platform screen doors*”

(Metro works are defined as light rail for these guidelines: see CRR-G-032-B Guideline for the Application for Acceptance for New Light Rail Works or New Light Rail Rolling Stock, para 2.2.1)

¹ <https://revisedacts.lawreform.ie/eli/2005/act/31/front/revised/en/html>.

- (b) CRR-G-033-D Guideline for Application for Acceptance of New Light Rail Works Annex 1, which consists of an application form setting out the information required in the AFA process. This includes information on:

“Fire safety and evacuation concept for tunnels and underground structures (fire performance test reports on combustible material (including e.g. electrical equipment), fire protection of fitted powered systems, cross-links between parallel tunnels, emergency access and egress, emergency power supply, emergency water supply, emergency communication between control and persons in tunnel/underground structure, ventilation management, smoke extraction, fire detection/suppression systems, etc.)” (Part 8.06).

Part 20 is concerned with:

“Requirements for Safety in Tunnels” and incorporates as a guide certain EU Regulations in the following terms: “The safety in railway tunnels TSI (EU) 1303/2014 is not mandated for Light Rail/Metrolink systems. However, the CRR see it as good industry practice and apply a similar approach to both Heavy Rail and Light Rail/Metrolink systems. Applicants may choose an alternative approach for requirements for safety in railway tunnels but applicants must demonstrate that this alternative approach will result in providing evidence that the topics listed in this section 20 are adequately captured and safety requirements fulfilled.”

Part 20 goes on to require details of tunnel lengths and other requirements, many relating to evacuation and rescue.

19. The reference CRR-G-033-D Guideline for Application for Acceptance of New Light Rail Works, Annex 1 to “*TSI (EU) 1303/2014*” is a reference to Commission Regulation (EU) No 1303/2014 of 18 November 2014 concerning the technical specification for interoperability relating to safety in railway tunnels of the rail system of the European Union (as amended by Commission Regulation (EU) 2016/912 of 9 June 2016, Commission Implementing Regulation (EU) 2019/776 of 16 May 2019 and Commission Implementing Regulation (EU) 2024/191 of 8 January 2024). This establishes various safety parameters for rail tunnels, including in relation to evacuation in the event of emergency.
20. Section 4(2) of the RSA provides:

“Notwithstanding section 69 of the Transport (Railway Infrastructure) Act 2001, this Act applies to any railway works authorised by a railway order under section 43 of that Act.”

21. It follows that the AFA process cannot be concluded until after the railway works in question have been authorised by a railway order.

The Transport (Railway Infrastructure) Act 2001

22. For the sake of completeness, we note that DCC is a “*designated body*” for the purpose of section 39A of the 2001 Act, conferring on it the status of statutory consultee in respect of an application for a railway order. DFB has made a submission to the Board, as part of the submission of DCC, to which the Inspector is referred.

Conclusion

23. It follows from the foregoing legislative provisions that the DFB and the CRR have clear, extensive and defined roles in the regulation of the design, construction and operation of railway infrastructure, and in particular in ensuring that tunnel infrastructure and stations achieve the requisite performance criteria to ensure safe evacuation in the event of fire. This includes distances within tunnels to evacuation shafts.
24. Importantly, however, these functions are completed after the grant of a railway order under the Transport (Railway Infrastructure) Act 2001, and are independent of that development consent process.
25. Accordingly, while we are instructed that TII has and is liaising extensively with the DFB and the CRR in the development of the design of Metrolink, the process of confirming compliance with the requirements of those bodies in the exercise of their statutory functions must occur separately and subsequently to the railway order process.
26. We note that the foregoing analysis reflects the conclusion stated by the Inspector in the course of his report on the Metro North Project in 2010 (Ref PL6F.NA0003) at pages 625-626 (set out in the Schedule below).

Aoife Carroll BL

Michael O'Donnell BL

Emily Egan McGrath SC

Micheál O'Connell SC

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28 February 2024

SCHEDULE
Metro North – Belinstown to St. Stephen’s Green
Ref PL6F.NA0003
Extract from Inspector’s Report

“Statutory Consents

I note that the applicant made a detailed submission to the Oral Hearing on Fire and Life Safety. The Board is aware that there is a range of statutory duties and responsibilities that lie outside of the realm of planning legislation, some of which can impinge on the planning and design of the proposed development. Due to this issue being raised, I considered it important to have a comprehensive schedule of the relevant legislation and standards applicable to the scheme that apply to the fire safety engineering of this project. For the Board’s information, those detailed in April, 2009 and March, 2010 include:

- Consents and the Railway Safety Certificate under the Railway Safety Act 2005;*
- Fire Safety Certificates for the stop boxes under the Building Control Act;*
- Technical Guidance on Fire Safety under the Building Regulations Technical Guidance Document B;*
- Provisions under the Fire Services Act to facilitate inspections;*
- Risk assessment under the Safety, Health and Welfare Act; and*
- Guidelines to be followed under Guidelines for the Design of Railway Infrastructure and Rolling Stock.*

I note for the Board that schedules of Irish, European and International standards, legislation and guidance have also been collated for the Board.

The requirements set out in the above legislative provisions are controlled and overseen by public bodies and agencies separate from the Board.”