

SUBMISSION ON BEHALF OF IRISH LIFE ASSURANCE PLC. ('ILA')

– Metrolink Hearing – 21st March 2024

INTRODUCTION

Good morning, Inspector.

My name is Conor Sheehan. I am a BL and a MRTPI. I am here, together with technical experts, on behalf of Irish Life Assurance plc (hereafter 'ILA').

You may recall Inspector, that at an earlier module (on 4th March) in response to ILA's submission, TII undertook to lower the tunnel to avoid hitting the foundation structures of ILA's building located at the junction of Earlsfort Terrace and Adelaide Road (the Cadenza building).

Today, we wish to respond to TII's revised proposals and to also make a brief submission in connection with Module 2 related matters.

LOWERING OF TUNNEL UNDER CADENZA AND AMENDMENTS TO THE EIAR

Additional information has been submitted to the Oral Hearing by TII including an Addendum to the EIAR and additional drawings showing that the metro tunnel depth is to be dropped by c. 5 metres relative to its initially proposed depth underneath the Cadenza building.

ILA welcomes the dropping of the tunnel and wishes to acknowledge TII's efforts and engagement with ILA's experts in this regard.

IMPACTS ON THE CADENZA BUILDING

Nevertheless, having reviewed the additional information submitted to the Oral Hearing, ILA has residual concerns.

- Whereas an updated EIAR/addendum to the EIAR (including the outcome of a Phase 2a Building Damage Assessment) has been produced, the evidence from ILA's expert engineers will be that there are still serious concerns about the impact of the development on the integrity of the Cadenza building and its façade.
- ILA's experts advise that the ground borne operational 40dB noise criteria that the TII have proposed could cause a noise nuisance. In order to minimise the risk of noise nuisance and provide an appropriate level of acoustic comfort to the users of the Cadenza building, a lower criteria of 35dB should be imposed by way of a condition on the operation of the metro by the Board, if the Board is minded to approve the scheme.
- There are concerns about the completeness of the EIAR. The evidence will be for example, that likely damage to building due to ground movements not identified as a Likely Significant Effect in the EIAR which is a significant error and omission in assessment procedure and that the effects of ground movements on building not properly assessed in the EIAR & Addendum. These issues will be outlined by some of ILA's experts presently. We wish it were not the case but there are real concerns remaining, particularly where part of Cadenza overhangs pedestrian paths and where damaged masonry and glazing, as detailed by ILA's experts earlier in the Oral Hearing, would pose a risk to pedestrians and users of the building.

THE EIAR

As the Inspector may recall ILA previously adopted the legal submissions that Mr Galligan SC made in respect of EIAR related matters (submission made on behalf of Hines Real Estate Ireland Limited, 4th March 2024). As regards to addendum to the EIAR ILA would respectfully remind the Board that recital 32 of the EIA Directive as amended states that:

“Data and information included by the developer in the environmental impact assessment report, in accordance with Annex IV to Directive 2011/92/EU, should be complete and of sufficiently high quality. With a view to avoiding duplication of assessments, the results of other assessments under Union legislation, such as Directive 2001/42/EC of the European Parliament and the Council (1) or Directive 2009/71/Euratom, or national legislation should, where relevant and available, be taken into account.”

The requirements regarding the content of an EIAR is set out in Annex IV of the EIA Directive as amended¹ to which the Board is referred. This includes risks to human health arising from accidents and/or disasters (see also the requirements in the Transport (Railway Infrastructure) Act, 2001 (as amended)).

ILA is concerned, in the circumstance of this case, that the EIAR is inadequate, and that regrettably, ILA is simply not in a position, and with respect, neither are you Inspector, to know what key likely significant impacts of the development are going to be on the environment as the information is not there, and what has been produced is unconvincing.

Further, it is also unclear if and is so how the Board can on the basis of the information before it can undertake a valid EIA; it is not appropriate to leave over a phase 3 assessment for the reasons outlined above and previously stated in Mr Galligan’s submissions of 4th March, and which ILA adopted.

MATTERS ARISING FOR MODULE 2: OTHER MATTERS

TII’s Response to ILA’s observation referred to the Metro having a positive effect. ILA accepts that the Metro will have a generally positive effect for Dublin.

ILA nonetheless would also like to draw the Board’s attention to the fact that the Cadenza site:

- A) Is zoned Z6 and is located within the canal ring, with Z6 zoned lands being characterised as a strategically important landbank for employment in the Dublin City Development Plan 2022-2028 (‘Development Plan’) at 14.7.6 of Chapter 14 of Volume 1. Appendix 3 of Volume 2 of the Development Plan (concerning building height) also states that it is importance to support the consideration of building heights of at least 6 storeys at street level as the default objective within the canal ring, subject to keeping open the scope to consider even greater building heights by the application of certain criteria. There is therefore not strict limit on height applying to the site under the terms of the Development Plan (subject to ordinary development management criteria). The Board should consider this and weigh this in the balance having regard to s.143 of the Planning and Development Act, 2000 (as amended);
- B) Since the Building Height Guidelines for Planning Authorities (2018) were published building heights of up to 11 storeys have been permitted in the vicinity of the site (11 storeys opposite 1 Adelaide Road - DCC Ref. 3292/21; 10 storeys at 1 Adelaide Road (DCC Ref. 3136/23 (under

¹ Substituted by art 97 SI 296 of 2018.

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appeal at present)), and 9 storeys at the junction of Hatch Street and Earlsfort Terrace (29 Earlsfort Terrace – DCC Reg Ref 4077/23).

- C) The Metrolink *Draft Guideline Note for Developers* submitted to the Oral Hearing by TII indicates that the tunnel is designed to accommodate a downward force of 75kN/m² only, whereas the evidence is that ILA's building already exerts c. 1000 kN/m².
- D) Currently, the existing building has been designed to be vertically extended through the removal of the upper step back floors and four additional floors added to the existing structure without causing any distress to the existing structure or foundations. The foundation loads would however increase to support the additional floors of the building.
- E) ILA is therefore concerned as a result of the land take to facilitate the development TII may object to ILA securing permission and/or prevent the implementation of any such permission for additional height at Cadenza. With a consequent impact on its value.

As has already been outlined to you in other submissions on Module 2 the question of proportionality of the interference with ILA's private property rights requires that these rights should be impaired as little as possible.² In light of the above ILA requests that:

- 1. Additional information be provided, sufficient to assure the Board (and ILA) that no significant structural damage will be caused by the realignment of the tunnel;
- 2. That ILA will not be precluded from securing permission for and implementing permission for additional height as a consequence of the tunnel; and
- 3. In the event the Board is minded to permit the scheme, that operational noise under Cadenza be limited to a lower criteria of 35dB should be imposed by way of a condition on the metro by the Board by way of condition to safeguard the viability of this important strategically important employment site as part of this scheme/project.

CONCLUSION

To reiterate – ILA is supportive of the Metro and appreciates TII's engagement but regrets that (as yet) it simply has insufficient information to allow it to withdraw its objection. In addition, and with respect, we submit that the Board is in the same position.

ILA is both willing and anxious to engage with the TII technical team with a view to resolving these outstanding matters and will make its technical team available to assist in this resolution.

We are mindful of the time pressure on the Board (and on TII) but submit that matters cannot be allowed to proceed on the current uncertain basis.

Conor Sheehan

21st March 2024

² See Law Reform Commission, (2017), *Issues Paper Compulsory Acquisition of Land*, Law Reform Commission, Dublin, at pg 23.

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