

**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**

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**NOTE ON ISSUES RAISED BY  
RESIDENTS OF HARCOURT TERRACE**

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Three legal issues were raised on behalf of certain residents of Harcourt Terrace (represented by Mr Niall Sudway) in respect of which this submission is filed. This note is filed to explain the position in relation to each and it will take the form of a short response to each query, followed by a more detailed explanation of the legal and practical position.

**ISSUES AND SUMMARY ANSWERS**

- (1) *No provision in law for limits of deviation, contrary to Schedule 3 of the Housing Act 1966.*

**Summary answer:** The land identified in the Property Drawings as incorporated in the draft Railway Order for permanent acquisition for tunnels includes the land covered by the limits of deviation. The limits of deviation do not allow the tunnel to be located outside the lands identified for permanent acquisition. Therefore the normal rules relating to acquisition of land apply and no inconsistency with the 1966 Act or any other legislation arises.

- (2) *No definition of substratum or how it is measured.*

**Summary answer:** The Property drawings clearly identify the lateral and vertical dimensions of the substratum lands to be acquired.

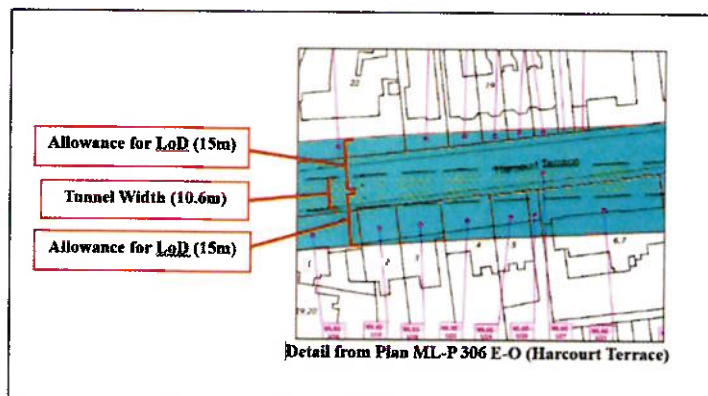
- (3) *Proposal to seek clarity from the courts as to the legality of Rule 17 (assumption that substratum has no value)*

**Summary answer:** The Board has no role in determining matters relating to compensation, so a case state to the High Court would be of no assistance to it in deciding pursuant to its statutory function under section 43(2) of the 2001 Act, i.e. deciding whether to make the Railway Order (and if so whether to attach conditions thereto) or to refuse to make the Railway Order.

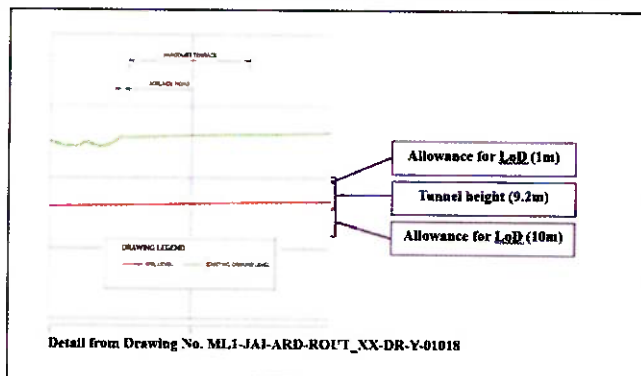
## FURTHER DETAIL

The Property Drawings show the alignment for substratum take in a turquoise colour. These drawings depict the tunnel (which is 9.2m in width including tunnel wall) in the preferred alignment (shown with black dashed lines on the drawings).

However, the lands proposed for substratum acquisition extend to a width of 15m from the centre line, so as to capture the margin provided for in the limits of deviation, making a total width of 30m along the tunnel alignment.



Maps do not depict depth. However TII has indicated the depth of the rail line of the tunnel in longitudinal sections (in the case of Harcourt Terrace in Drawing No. ML1-JAI-ARD-ROUT\_XX-DR-Y-01018 in the General Alignment Book 2) from which given the vertical limits of deviation (following refinement at the commencement of the Oral Hearing, limited to 1m upwards and 10m downwards) the vertical dimension of the authorised land take can be determined ( $9.2\text{m} + 1\text{m} + 10\text{m} = 20.2\text{m}$ ).



Therefore the land that will be **authorised** to be acquired under the Railway Order for the purpose of a tunnel is in the shape of a continuous tube with a rectangular face, 30m in width and 20.2m in height. This is the complete answer to the second issue raised.

Section 45(1) of the Transport (Railway Infrastructure) Act 2001 (*"the 2001 Act"*) provides:

*"Upon the commencement of a railway order, the Agency or CIÉ shall thereupon be authorised to acquire compulsorily any land or rights in, under or over land or any substratum of land specified in the order and, for that purpose, the railway order shall have effect as if it were a compulsory purchase order referred to in section 10(1) of the Local Government (No. 2) Act 1960 (inserted by section 86 of the Housing Act 1966), which has been duly made and confirmed...."*

This plainly contemplates substratum acquisition, and answers the first issue raised.

The authorisation given by the Railway Order will entitle TII to serve notice to treat in respect of all or parts of the lands identified in the Order (see section 79 of the Housing Act 1966). In the case of substratum lands, the lands in respect of which notice to treat is served are the lands considered at the date of the notice to treat (i.e. within 18 months after the date the Railway Order becomes enforceable) to be necessary to enable the tunnel to be completed. If and to the

extent that a more detailed design is completed within that timeframe, it may be possible to reduce the width and height of the tubular substratum required in which case the notice to treat may identify the reduced requirement. Once notice to treat is served, and absent any further agreement between TII and the affected landowner, TII is required to acquire and pay for, and the landowner is required to sell, the land identified in the notice to treat.

However, it is open to TII and the landowner to agree, after service of the notice to treat, to await the completion of the tunnel and to only convey the substratum actually taken up by the tunnel. That requires an express agreement, but TII will engage positively with landowners who wish to proceed in that way in order to minimise the quantum of substratum land acquired.

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