Our Case Number: ABP-314724-22

Your Reference: Charlemont and Dartmouth Community Grou (CDCG)

An Bord Pleanála

MacCabe Durney Barnes
20 Fitzwilliam Place
Dublin 2
D02 YV58

Date: 24 January 2023

Re: Railway (Metrolink - Estuary to Charlemont via Dublin Airport) Order [2022]
Metrolink. Estuary through Swords, Dublin Airport, Ballymun, Glasnevin and City Centre to Charlemont, Co. Dublin

Dear Sir / Madam,

An Bord Pleanála has received your recent submission (including your fee of €50) in relation to the above-mentioned proposed Railway Order and will take it into consideration in its determination of the matter.

The Board will revert to you in due course with regard to the matter.

Please be advised that copies of all submissions/observations received in relation to the application will be made available for public inspection at the offices of the relevant County Council(s) and at the offices of An Bord Pleanála when they have been processed by the Board.

More detailed information in relation to strategic infrastructure development can be viewed on the Board's website: www.pleanala.ie.

If you have any queries in the meantime, please contact the undersigned. Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,

pp EM

Niamh Thornton
Executive Officer
Direct Line: 01-8737247

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MACCABE DURNEY BARNES
PLANNING | ENVIRONMENT | ECONOMICS

Our Ref: 2093 General Area Submission

An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01 V902

16th January 2023

Re: Railway (Metrolink–Estuary to Charlemont via Dublin Airport) Order 2022

Dear Secretary,

On behalf of our client Charlemont & Dartmouth Community, we, MacCabe Durney Barnes of the above address, hereby submit a submission in response to the public consultation for the Railway (MetroLink-Estuary to Charlemont via Dublin Airport) Order [2022]. Please find enclosed a copy of our client's submission and the prescribed fee of €50.

We trust all is in order. Please do not hesitate to contact us should you have any queries.

Yours sincerely

Jerry Barnes
Director
MACCABE DURNEY BARNES

AN BORD PLEANÁLA
LDG- 060924-23
ABP-
16 JAN 2023
Fee: € 50 Type: cheque
Time: 16.38 By: hand

MacCabe Durney Barnes Ltd, trading as MacCabe Durney Barnes
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Charlemont & Dartmouth Community Group MetroLink Submission

General Area Submission

16 January 2023

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Document status					
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01	For Client Review	JB	RH	JB	22/11/22
02	Revised following feedback	JB	RH	JB	22/12/22
03	Final	JB	RH	JB	16/01/23

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1. INTRODUCTION

1.1 Background

This submission is made on behalf of the Charlemont and Dartmouth Community Group (CDCG) c/o 33 Dartmouth Road, Ranelagh, D06 HY79 in relation to the MetroLink Railway Order application, which was submitted to An Bord Pleanala and is available for inspection from 07/10/2022 until 25/11/2022 (with an extension for submissions until 16/01/23). The application is made by the National Roads Authority (operating as Transport Infrastructure Ireland) for the (Metrolink-Estuary to Charlemont via Dublin Airport) Order [2022]. The local residents listed in Appendix I are all supportive of this submission. A total of 102 residents' properties are listed, which CDCG estimates is 80% of the properties in the vicinity of the proposed station at Charlemont.

This is one of three submissions made by CDCG, which relate to different aspects concerning the MetroLink project. The submissions are as follows:

- Submission 1 (General) – This subject submission relates to general policy and strategic matters and area wide concerns.
- Submission 2 (Dartmouth Road) – This associated submission relates to the concerns of the residents on Dartmouth Road relating to impacts during the construction and operational phases of the project.
- Submission 3 (Dartmouth Square West) – This associated submission relates to the concerns of the residents on Dartmouth Square West relating to impacts during the construction and operational phases of the project.

1.2 Structure of Submission

The submission has been structured in the following manner:

- Section 1 Introduction: This section
- Section 2: Executive Summary
- Section 3 Key elements: An overview of the project, with a specific focus on the section between St. Stephens Green and Charlemont
- Section 4 Project History: A history of the evolution of the Metro which is relevant to why the current proposal has been put forward
- Section 5 Policy: A review of national, regional and local transport policy
- Section 6 Submission Points: Highlights the key points of this submission
- Section 7 Summary of Points and Requests: Summarises main points, details amendments sought and outlines specialist advice which it considered that the Board should request at an early stage.

2. EXECUTIVE SUMMARY

The Charlemont and Dartmouth Community Group (CDCG) is in support of the overall Metrolink project. However, we believe that the section of the project between St. Stephen's Green and Charlemont is a €650m duplication of infrastructure that is not justified on many very important grounds.

- **Compliance with Policy**

It is not transport policy to extend metro to the south at any time prior to 2042. The section of the subject Rail Order Application between St. Stephen's Green and Charlemont represents the first section of such a southern extension and effectively locks-in the replacement of the Luas Green Line. Building south of St. Stephen's Green is premature and is a leftover from a now defunct concept of Metrolink as a Swords to Sandyford megaproject. The NTA/TII has failed to adapt the Rail Order Application to the reality that such a megaproject is not a policy objective at this point in time and it is premature to expensively lock-in decisions about Metro South 2-3 decades in advance of any requirement to do so.

The NTA/TII has prioritised a Luas Green Line Tie-in over a fully functioning City Centre Terminus. This means that for the NTA/TII, it is more important to build the Charlemont Metro Station now in order to achieve this potential outcome 2-3 decades in the future, then it is to build a City Centre Terminus now that can connect to multiple modes of transport during the next 2-3 decades.

- **Strategic Need and Business Case**

The entire project business case is flawed when it is based on the proposed southern terminus that lies outside current transport policy. This fact is recognized in both the JASPERS independent review and the MPAG Review, which identifies the section of the project south of St. Stephen's Green as 'strategically weak' and that it duplicates other fixed rail services. Surprisingly, the final Business Case did not address these concerns. As this section is probably one of the most expensive parts of the project (1km of tunnel and 1 station for €650m), its removal from scheme is likely to substantially increase the probability of the project successfully getting through the next stages of the government approvals process. Furthermore, the JASPAR review concludes that the connection to Ranelagh could feasibly be deferred until there is clarity on the future of the Luas Green Line and this would bring the project back in line with current transport policy.

- **City Centre Hub Location & Prejudicing Options for Expansion of the Transport Network**

While a metro south extension is not part of current transport policy, even if it were to be considered at some stage in the future, the starting point for an extension should be St. Stephens Green and not Charlemont. The section of the Luas Green Line from St. Stephens Green to Charlemont is already one of the existing spokes radiating out from the hub of St. Stephens Green. Therefore, this duplicating section of the proposed MetroLink project represents an upfront payment of €650m towards a single future option, that is the replacement of the Luas Green Line. Once a metro section is built to Charlemont, it will deny other potential routes, such as to the south-west, the opportunity to build a successful business case as it forces increased costs of connecting from Charlemont and bypasses the opportunity of addressing unserved areas closer to the St Stephens Green Hub. This effectively "locks-in" the Green Line Replacement 2-3 decades in advance of any requirement.

In addition, any future underground tunnelled solution (i.e. an option other than the Luas Green Line replacement) would start boring from the south and therefore there is no advantage tunnelling to Charlemont now (which the NTA/TII claims is an "appropriate" location for these other options). Such a new tunnel could be aligned all the way to St Stephen's Green; however, this would create a €650m stranded asset/ white elephant at Charlemont and would be a costly negative to overcome in any business case. Moreover, any overground rail

or road solution on the south (other than the Luas Green Line replacement) could not interchange at Charlemont because its location is so constrained and incapable of further transport mode connections.

Charlemont is in a residential area not a city centre location. It can only interchange with the Luas Green Line and has no scope for adequate connectivity with other modes of transport, such as other proposed light rail, bus services and road transport. It is simply not suitable as a Key Transport Interchange to serve Dublin city centre.

- **Flawed Assessment of Alternative South Terminii**

The Rail Order Application contains a deeply flawed rationale in the consideration of alternative terminus locations to the south. The *"decision... not to upgrade the Luas Green Line to Metro"* should have resulted in NTA/TII demoting the importance of the *"Charlemont (tie in with Luas Green Line)"*. The alignment choices *"to determine the most appropriate termination location for the MetroLink project"* should have investigated three options: St Stephen's Green West, St Stephen's Green East and Charlemont. St Stephen's Green West becomes a viable option once the NTA/TII's self-imposed constraint of forcing a connection to a Luas Green Line tie-in location is removed. Indeed, a carefully designed St Stephen's Green termination point (West or a more connected version of East or a hybrid) would provide a superior interchange with the Luas Green Line and maximise the scope for future southern extension routes (including the possible replacement of the Luas Green Line option). The fact that St Stephen's Green was never properly evaluated as a terminus option shows that the EIAR is deeply flawed and inadequate.

- **No Studies to Support the Proposed Alignment to the South**

A vital component of the Rail Order Application is the consideration of alternative alignments for the south end of the Metrolink line. The Applicant did undertake a detailed consideration of potential tie-ins with the Luas Green Line and a Preferred Option (Option 4 (b) was selected in the March 2017 study.

However, as will be described below, NTA/TII has procured to complete the construction of an alternative design of the Charlemont Station Box which delivers a very significantly different alignment to that proposed in the Tie-in study and in the March 2019 "Preferred Route" consultation. Very importantly the implications of the built alignment are both to the north and south of Charlemont. Notably to the north the more easterly alignment has very strongly influenced the Applicant not to consider station options on St. Stephens Green West where the optimal interchange with the Luas Green Line would occur. The resulting alignment to the south of Charlemont shifts to the west and rules out the preferred "in-line" tie-in with the Luas Green Line and will cause significantly increased demolition of houses in the Ranelagh area.

Not only is the March 2017 Luas Tie-In Study now totally irrelevant from a tie-in perspective (none of the options were used or re-evaluated), it is also redundant from a policy perspective (no Luas Green Line replacement is part of the subject Rail Order Application). Furthermore, the alignment that has already been built is not justified or supported by any other analysis provided in the Rail Order Application.

Clearly this leaves a fatal gap in the preparation and documentation of the Rail Order Application. The fundamental and essential study that should have replaced the Luas Tie-In Study is a city-centre terminus study that uses appropriate criteria (that are significantly different from those used in the Tie-in study). Such a study, however, was never undertaken by the Applicant. In fact, the Rail Order Application provides no studies to support the proposed (already built) alignment to the south.

Obviously by building the alignment prior to making a Rail Order Application, NTA/TII has denied An Bord Pleanála the opportunity to consider alternatives through the planning process for the current Rail Order Application.

- **Charlemont Station Box work are not described in the Rail Order Application (EIA Project Splitting)**

The enabling works and construction of the station box at Charlemont, which have already been undertaken, are not described in the Application as forming part of the subject Rail Order. Under the EIA Directive, an EIA must consider the direct, indirect and cumulative effects of all aspects of the development. On this point alone, the entirety of the Rail Order Application is legally unsafe.

- **Charlemont Station Box Not Permitted/ Unauthorised Development**

The current Railway Order and associated EIAR acknowledges that the enabling works including the construction of the Station Box at Charlemont has already occurred. TII appear to suggest that these works were permitted under the planning permission for the Office building at 2 Grand Parade. That commercial office development required normal planning permission to be obtained under the Planning and Development Act 2000. However, the Metro Station Box works are "railway works" and cannot be granted permission under that Act. Instead, they require a separate application for, and grant of, a Railway Order under the Transport (Railway Infrastructure) Act 2001. No Railway Order was obtained for the Charlemont Metro Station Box and therefore these railway works were not authorised and could not be lawfully undertaken.

Moreover, the Charlemont Station Box is an unauthorised development that also required an EIA and as such, under legislation, the Board is compelled to refuse to consider any application for its retention. Clearly Charlemont Station is an integral part of the Metrolink proposal and the subject Rail Order Application. The Board, therefore, cannot grant the current Rail Order as to do so would a) facilitate the circumvention of the EIA Directive by the splitting of projects and b) amount to a retention permission which it is compelled to refuse. Effectively, Charlemont Station cannot be considered as usable for the Metrolink project because it will remain legally unsafe.Implications of the Locked-in Alignment of the Charlemont Station Box

In the March 2019 consultation on the "Preferred Route", the proposed alignment for the Luas Green Line "Tie-in" was to be an "in-line" connection. This consultation allowed the public to understand and comment on the implications of the proposal. Since that consultation, NTA/TII reached an agreement (in private) with the developer of the new office building at 2 Grand Parade for a design of the Charlemont Station Box. Construction of this Station Box commenced, without a Rail Order, in April 2021 and was completed in the first quarter of 2022. This design and alignment of this station box is very significantly different to the proposal in the Preferred Route consultation. No notice was made to the public of the proposed changes and there was no opportunity for affected parties to make comment.

In the event of a future Luas tie-in, which the NTA/TII says "will remain a likely option for the future", the implications of the now locked-in (built) station alignment are profound. It will result in the demolition of houses on Mander's Terrace, Charleston Road and will require the demolition of 11 houses and 24 apartments on Oakley Road. None of these houses and apartments would be demolished under the earlier design that was presented in the Preferred Route Consultation.

Not only was no notice given to affected parties, but the implications of the new alignment are now known to the Applicant and yet it is not presented in the EIAR of the Rail Order Application. Case law has clearly established that an EIAR must "...take account, as far as practically possible, of potential later phases...". The EIAR is again inadequate and disingenuous in not presenting the known facts.

- **Inadequacy of the Rail Order Application and Scheme Detail**

Overall, we consider the detail of the Railway Order Application to be inadequate. These inadequacies are considered throughout this submission and in the other two CDCG submissions (especially in relation to issues such as Vehicular Traffic and Parking, Proposed Traffic Measures, Pedestrian Traffic, Drop-off, Noise,

Disturbance, and Impact upon Amenities in the Vicinity of Charlemont Station). The lack of detail is in no small part due to the procurement method adopted by the Applicant, which is a 'design and build'. The first component is 'design' which should be undertaken prior to submission for a Railway Order consent. By following a 'design and build' approach NTA/TII is failing to provide the required level of detail under which a Rail Order could be granted by An Bord Pleanála (ABP).

3. KEY PROJECT ELEMENTS

3.1 Overall Project

3.1.1 Operational Phase

The following operational elements are proposed as part of the railway order

- 16 new stations including interchange opportunities with:
  - Dublin Airport at the new underground station of the same name;
  - Interchange with the Western Commuter and the South Western Commuter Lines at Glasnevin;
  - DART at Tara Station;
  - Luas Green Line at OConnell Street Station, St Stephen's Green and Charlemont Station; (however the Applicant's own analysis shows that the proposed St Stephen's Green station provides a sub-optimal interchange with Luas).
  - P&R Facility at Estuary Station; and
  - Existing Dublin Bus network and future proposed bus services (BusConnects).
- Dardistown Station will be for use by staff only arriving and leaving by train, until development in the area merits the opening of the station as a public station;
- Operating 19 hours per day, 365 days a year;
- In the opening year operations, there will be 20 trains operating per hour at a frequency of three minutes between trains;
- The proposed Project is designed for a maximum of 20,000 passengers per hour per direction (pphpd) in the peak hour;
- 64m long trains running up to every 100 seconds at peak demand;
- Approximately 25 minutes journey time between Swords and the City Centre and 20 minutes journey time from Dublin City Centre

The main tunnels will comprise a single bore, twin track tunnel containing both northbound and southbound rail lines. The tunnels will be fitted out with an overhead conductor rail to supply power to the trains, power cables, ventilation fans, drainage, and equipment for telecommunications, CCTV, lighting and Wi-Fi. The City Tunnel is approximately 9.4km long and runs south from the Northwood Portal, through nine stations.

The elements that are of particular note is that interchange with the Luas Line is indicated at three points: namely O'Connell Street, St. Stephen's Green and Charlemont Station. In particular, this submission will return to the interchange at St. Stephen's Green. Furthermore, it is noted that the service will operate for 19 hours a day, which is significant issue for the occupants of residential properties in the Dartmouth Square area.

3.1.2 Construction Phase

The predicted construction period is 9.25 years. Standard working hours will be 07.00 hours to 19.00 hours on weekdays, with 30 minute site preparation time either side of these hours (excluding Bank and Public Holidays) and 07.00 hours to 13.00 hours on Saturdays. However, section 5.2.4.2 of the EIAR indicates that: *"Excavation in rock: at some stations excavation of rock will be carried out during standard hours, but on a 7 day a week basis*

and for all intervention tunnels (drilling and moving rock underground) will be carried out on a 24 hour a day basis for seven days per week;" Charlemont Station falls clearly within these categories.

Construction will be a mix of cut and cover, bored tunnelling and surface works. A series of construction compounds are proposed. Section 7.5.9 of the Non-Technical Summary indicates the following:

> *"In order to allow for very minor changes to the alignment during the Construction Phase, Limits of Deviation (LOD) will be applied for. The LODs are limited areas beyond the MetroLink alignment that can be used to make minor changes to the alignment to avoid constraints, obstacles or difficulties encountered during construction. Typically, LODs at ground level are in the range of one to five metres. However, when the alignment is already very close to sensitive or naturally constrained locations, these LODs would not be applied."*

These limits of deviation may be very significant in on a tight site like Charlemont Station.

3.1.3 Scheme Detail

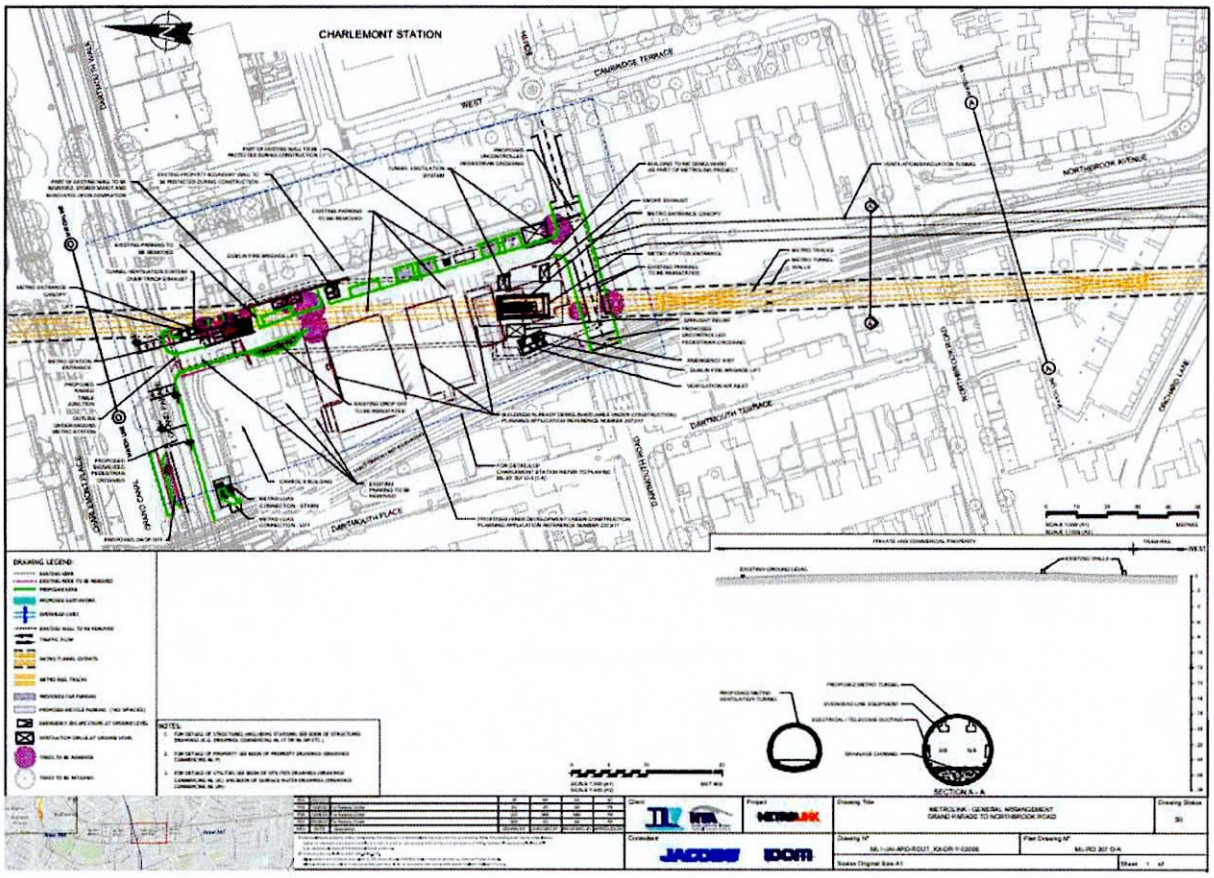
Overall, we consider the detail of the railway order application to be inadequate. These inadequacies are considered throughout this submission. The lack of detail is in no small part due to the procurement method to be adopted, which is a 'design and build'. The first component is 'design' which should be undertaken prior to submission for a railway order consent. Our clients have been advised by RINA that only about 30% of the detail will be presented in the Rail Order Application and therefore it is impossible for the residents to be able to assess the impact of the proposal. By following a 'design and build' approach NTA/TII is failing to provide the required level of detail under which a Rail Order could be granted by An Bord Pleanála (ABP).

3.2 St. Stephens Green to Charlemont Station Section

3.2.1 Operational Phase

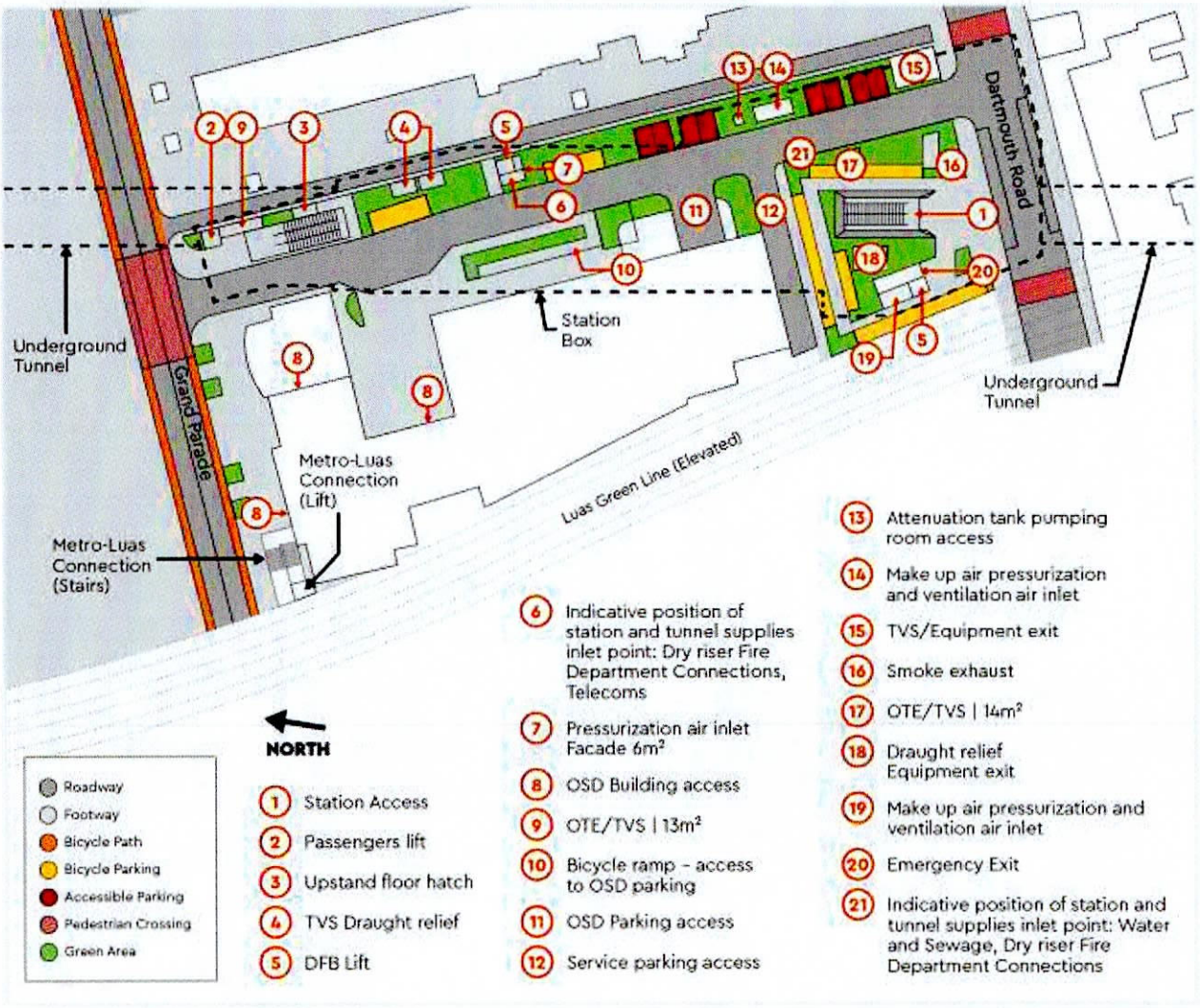
This St. Stephens Green to Charlemont Station element forms part of the AZ4 Northwood to Charlemont Section, as described in the application documentation. St Stephen's Green Station will be located partially under the R138 St Stephen's Green East Road, and partially under the existing park, with the station entrance in the north-eastern corner of St Stephen's Green. The EIA indicates that this location was chosen to maintain as much of the Green as possible. Continuing southwest, the alignment will follow St Stephen's Green East and continue along Earlsfort Terrace, passing close to the National Concert Hall. From here it will curve southwards and pass under Harcourt Terrace and the Grand Canal before reaching Charlemont Station located on a site south of the "Carroll's Building" on Grand Parade and bounded on the west side by the Luas Green Line. This site, currently under development by a third party, is where Charlemont Station will be built. Charlemont Station is proposed to provide a connection with the Luas Green Line. The roof slab of the station will project under Dartmouth Road.

Figure 1: Charlemont Station General Layout



The City Tunnel continues southwards, terminating 360m beyond Charlemont Station to provide a sufficient length of track to enable trains to be turned back in a north bound direction. A parallel evacuation and ventilation tunnel will also be constructed alongside this section of tunnel that will connect back to Charlemont Station. The Station alignment at Charlemont is illustrated in the figure above and the design is illustrated in the figure below.

Figure 2: Charlemont station Surface Layout



Two entrances are proposed, one at the northern end onto Grand Parade and the other at the southern end onto Dartmouth Road. However, the diagram above only illustrates a station access on Dartmouth Road (legend item 1), although it is clear from the layout of the station that there is also an entrance on Grand Parade. An escalator would serve each of the entrances. There would be three levels to the station, including a concourse, mezzanine and platform level. One lift accessing the surface, concourse and platform and street levels is proposed at the northern end of the site. Two Dublin Fire Brigade (DBF) lifts are proposed. The track level is at 24m below ground level and platforms will be 65m long and 6.5m wide.

It can be seen that there are pedestrian crossing zones on Grand Parade, a stairs in front of the Carrolls Building (a protected structure) which will provide stair access to Luas, and further pedestrian crossings on Dartmouth Road. This drawing, however, is inconsistent with the Charlemont Station drawing in Volume 4. Railway Order Plans\Drawings - Structures Details Book 2 of 3 MetroLink Stations Dublin City Council which shows traffic lights on Grand Parade, a drop-off zone that cuts across the existing cycle path and is accommodated by a new footpath that cantilevers over the canal. The implication of these proposed traffic measures surrounding Charlemont Station are set out in Section 6.12 below.

An intervention tunnel is proposed for emergency evacuation from the tunnel south of Charlemont Station. This will be of a mine and blast construction, utilising concrete spray construction methodology.

3.2.2 Construction Phase

The EIAR indicates that the Charlemont Station is dependent upon the structural deck which has already been constructed and purports to be pursuant to the planning permission for a commercial development at No.2 Grand Parade under P.A Reg. Ref: 2373/17 (ABP PL29S.300873) and subsequently amended under PA Reg. Ref 4755/19. (This station box work is an Unauthorised Development and is discussed in detail in Section 6.10 below). Section 5.10.13 of the EIAR states that this structure along the bored secant piles *"..will form the central section of the Charlemont station box roof slab."* The station will be a cut and cover construction along Dartmouth Road and a top down approach for the remainder of the site.

The EIAR also illustrates the extent of the construction compound in Figure 5.1 of the Appendix 5.

Figure 3: Construction Compound

Section 5.10.13 of the EIAR indicates that the proposed construction works site and compound includes the full width of Dartmouth Road from the junction with Dartmouth Place to the junction with Cambridge Terrace. All existing parking bays would be suspended along this section. Initially, during utility diversions works, vehicle access to numbers 32 to 35 Dartmouth will be restricted, but during the full road closure for station construction, vehicle access will not be possible to these properties until the station and roof slab are constructed and the road is reinstated. The principal access and egress to the construction compound will be from the south via Dartmouth Road. Dartmouth Road will be partially closed (one way traffic only) for 12 to 18 months for utility diversions and fully closed for between 24 and 30 months for the main station construction works. However, Appendix 5.2 of the EIAR outlines construction schedule and it indicates that the Charlemont Station Compound/Deep Station has a 102 month construction period from Q3 of Year 1 to Q4 of Year 9. This is a significant contradiction in the EIAR documentation, which has very significant impacts upon the residents in the area, particularly for those living on Dartmouth Road.

All of these matters are considered in detail in relation to Submission 2, relating to Dartmouth Road residents' concerns.

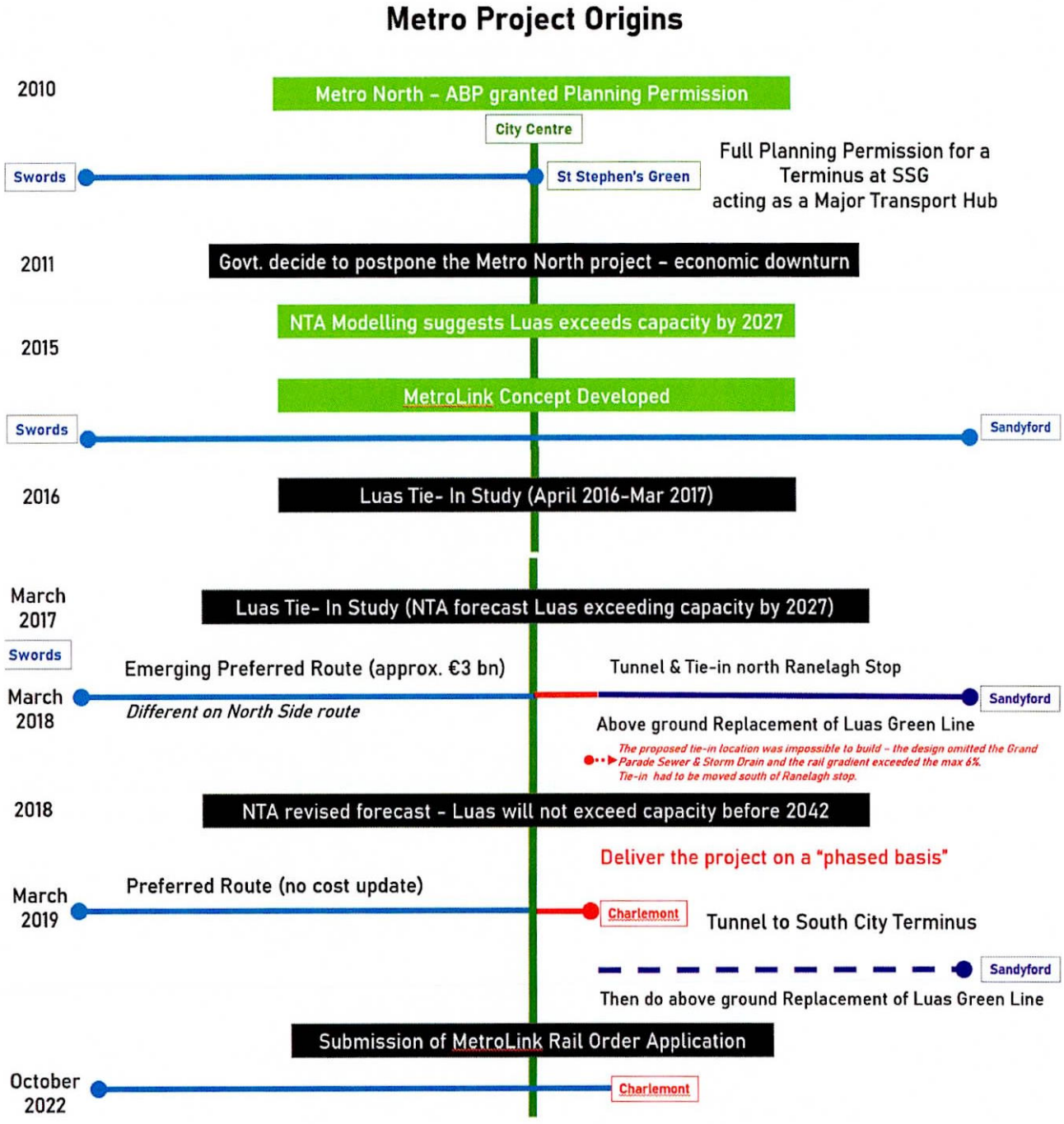
4. HISTORY OF THE PROJECT

4.1 Introduction

The history and evolution of the project is important to consider as this has informed the decisions made in relation to the alignment and station selection and design. It demonstrates that the project design has not maintained pace with the evolution of policy as considered in the following section.

4.2 Project Time-Line

The evolution of the MetroLink Project is summarised in the figure below.



4.3 Key Considerations in the Devleopment of the Project

The following are important considerations in the evolution of the project:

4.3.1 Metro North Railway Order

The scheme was submitted to An Bord Pleanala (ABP Ref: DNA0003) and the Board granted a rail order in 2011. The initial scheme involved a metro line from Belinstown to the north of Swords to the western side of St. Stephens Green, which it interconnected directly with the Luas Green line. In issuing its decision, the Board acknowledged that the construction phase would result in significant impacts, particularly in the city centre.

However, the Board decided not to approve certain elements of the Railway Order in the area north of Swords (namely the depot and ancillary facilities at Belinstown, and proposed line and stop at Lissenhall, as further detailed in condition number 1 of Schedule 14) as the proposed depot was a considerable distance from Dublin Airport and it would *"not represent the optimal location for long term **efficient economic and environmentally sustainable operation of the rail service**, in comparison with other options examined closer to Dublin Airport."*

Condition 1 of Schedule 14 required significant alterations to the scheme. It stated:

> *"1. The Railway Order is granted from the Estuary Stop in Swords to St Stephen's Green. The following components of the proposed development shall not be carried out in accordance with the submitted Railway Order application drawings and documentation:*
>
> *(a) The depot, stop and strategic park and ride facility at Belinstown;*
>
> *(b) The disposal of waste material at Belinstown;*
>
> *(c) The stop at Lissenhall; (d) The rail line or ancillary works north of chainage 2300. Consequent on this modification the following requirements are set out: An application for a Railway Order shall be made to An Bord Pleanála for the following:*
>
> > *(i) A re-located depot (and associated infrastructure) which shall be situated in the general vicinity of Dardistown, that is between the M50 motorway and Dublin Airport. The revised proposal shall consider possible synergies with the proposed Metro West light rail order, which it is proposed would tie-in with Metro North at this location.*
> >
> > *(ii) A revised scheme for the management of spoil from the construction phase, which scheme shall take into account the policies of the regional waste management plan in relation to beneficial use of spoil. Consideration may be given to a temporary storage location for spoil, or a solution in co-operation with the aggregates industry. (Alternative authorisation for this aspect could be sought by means of an application submitted to An Bord Pleanála in accordance with the provisions of section 37E of the Planning and Development Act 2000, as amended). With the exception of enabling works (such as heritage protection and utility diversions) work shall not commence on the scheme until approval of such application has been granted.*
>
> *Reason: In the interest of sustainable long term transport development and environmental protection, and as per the reasons and considerations set out in the Preamble of this Railway Order."*

4.3.2 DART Underground

A further rail order was issued by An Bord Pleanala to Irish Rail (ABP Ref: 29S.NA0005) for the DART Underground project in 2011. This was a 10 year consent. The location of the station at St. Stephens Green was on the western side of the Green, to interchange with both Metro and the Luas Green Line.

Jabobs Engineering were commissioned in 2021 to devise an options report for the alignment and station location. They are the same consultants as those commissioned in relation to the subject railway order application. It recommended an alignment which passes from Spencer Dock to Westland Row and onto a station at Stephen's Green at the eastern side. This presumably is to fit and interconnect with the proposed MetroLink Station on the eastern side of the Green. It is noted that both the subject proposed MetroLink and the revised preferred DART underground station location, would result in the interchange with Luas being dispersed. St. Stephen's Green is the city centre terminus and hub and should be the focus of integration. The western side of the Green should be the starting point, as this is where the Luas station is and where the previously permitted Metro North and Dart Underground would have interconnected.

4.3.3 Transportation Modelling for the Transport Strategy for the Greater Dublin Area 2016-2035

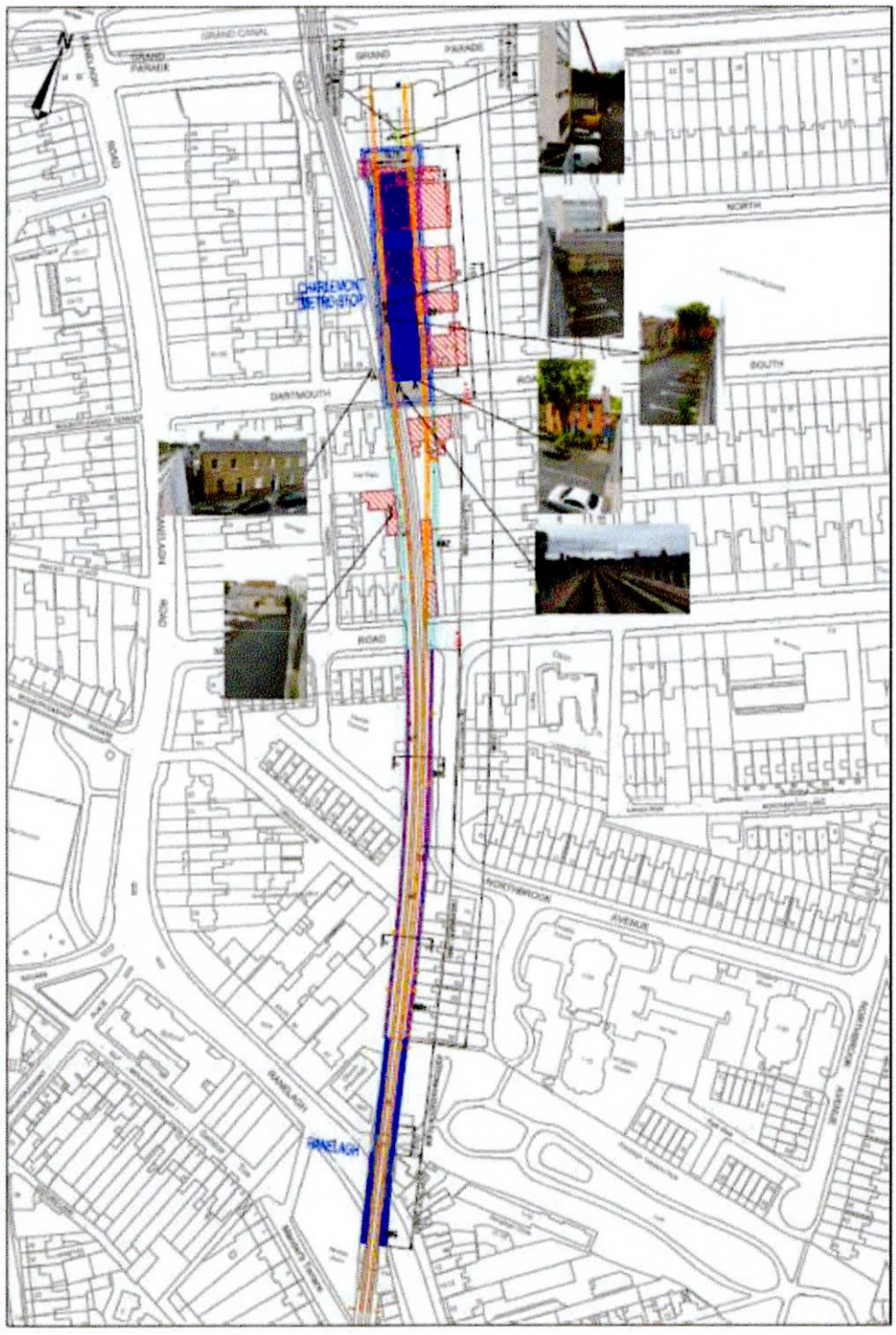
This transportation modelling report recommended a conversion of the Luas Green Line to a metro, which would link to Metro North at St. Stephens Green. The St. Stephens Green hub was to be the main point of integration between services. All of the modelling was based on the Metro project aligning on the western side of St. Stephens Green and integrating Metro, DART underground and Luas services at this point. Increasing the distance between stations (i.e. between Metro/DART and Luas) will undoubtedly result in time penalties for interchanging between services, thereby making it less attractive.

4.3.4 New Metro North - Luas Green Line Tie-In Study (March 2017)

This study was undertaken by the NTA in 2016 and 2017. The objective of the Study is to identify the preferred location for the future tie-in of Metro North to the existing Luas Green Line "that was segregated from other transport modes between Dublin Airport and the City Centre" (page 16). At this stage, the project was still being referred to as Metro North and not MetroLink which was to include both Metro North and Metro South. A series of options were considered. The study criteria meant that St. Stephens Green was eliminated at the first sifting stage, as it was too integrated with other modes of transport (viz, road traffic) to allow for a fully segregated metro line to continue south at street level along the Luas Green Line. However, it is evident that with the policy abandonment of the conversion of Luas Green Line to Metro South in the next 2 to 3 decades, the concept of a tie-in and interchange with Luas Green Line must be radically re-imagined. Policy objectives now require a city centre hub to be created that is capable of facilitating a range of potential southern extensions that may occur in a few decades time. (Section 6.5 deals with these matters in detail).

The preferred option of the Luas Green Line Tie-In Study, with the now outdated objectives, was Option 4(B) at Ranelagh. This is an in-line option with the NMN tunnels bored from the north, underneath the Carroll's Building which is a Protected Structure (RPS 3280), to what was then a vacant lot to the rear of the building, where a new Metro stop would be located. The tracks would then rise in a cut and cover section, passing under Dartmouth Road and Northbrook Road. Immediately south of Northbrook Road, the track would continue to rise in a retained cut within the existing Luas Green Line embankment and then onto a ramp structure to its eventual tie-in point, north of Ranelagh Stop.

Figure 4: Preferred Option 4(b) "Ranelagh In-Line" of the Tie-In Study



As will be discussed below, the Preferred Option selected from the March 2017 Luas Green Line Tie-In Study proved to be impossible to build from an engineering perspective as it failed to incorporate the east-west sewer along the Grand Canal and the tunnel would have to go deeper under the canal resulting in too steep a gradient to meet the preferred tie-in point north of Ranelagh Luas Stop.

4.3.5 Carrolls Building (P.A Reg. Ref: 2373/17)

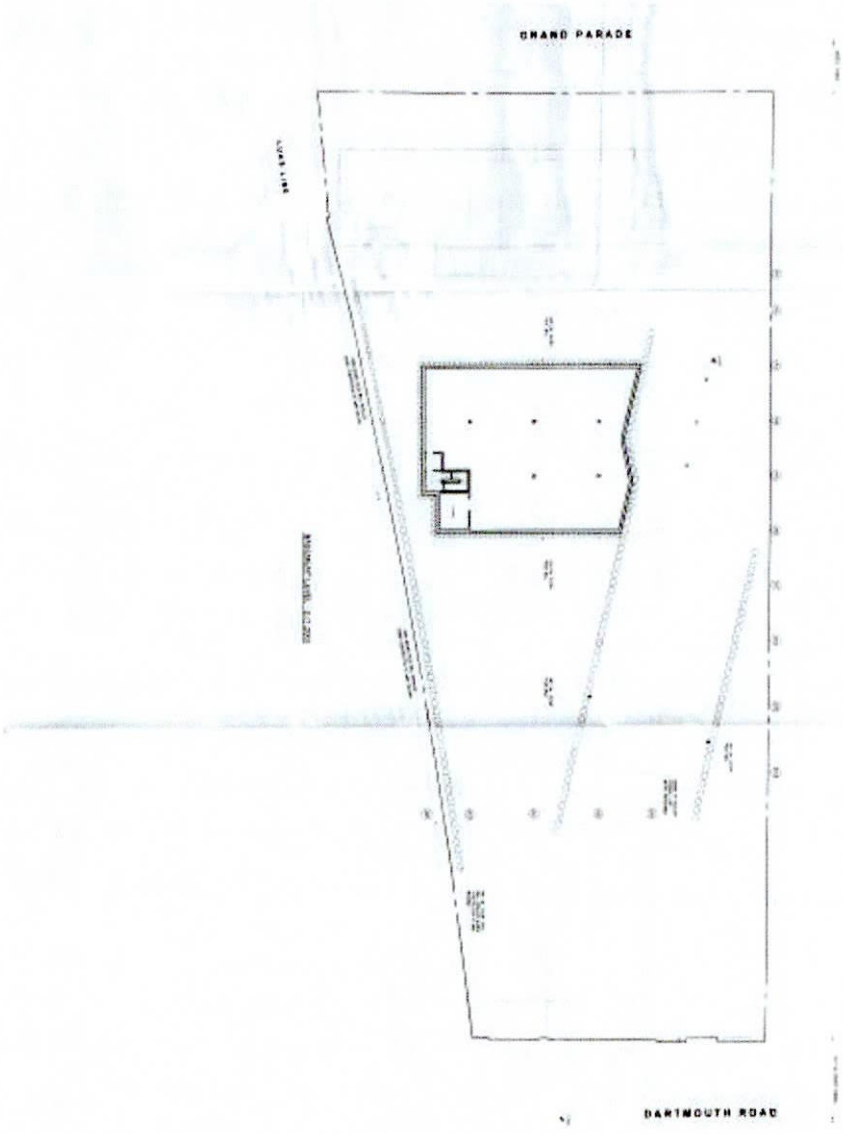
A planning application was submitted for an extension to the rear of the office building at Grand Canal Parade in early 2017 under P.A Reg. Ref: 2373/17 (ABP PL29S.300873). The applicant was unaware of the tie in study, which had identified the site as appropriate location for a station. The planning authority requested further information on the 26th April 2017 in relation to a number of issues, including 2 (ii):

> *"Consider the points raised within the observation on the application by the NTA which relate to proposals for Metro South and provide response to the issues raised."*
>
> *Further information was submitted in August 2017, but the above issue was not addressed to the satisfaction of TII as expressed in a submission on the application dated 1st September 2017. Clarification of further information was requested on the 13th September and which covered the following matter:*
>
> *"1. The applicant in the response to Further Information received has indicated that agreement in principle has been reached with the NTA and TII regarding issues of concern raised with regard to the proposed development. However, in response to the Further Information submission both the NTA and TII have indicated in writing that while engagement has taken place, issues regarding construction in close proximity to the Luas line and facilitation of Metro South have not been satisfactorily resolved. The applicant is therefore required to clarify the extent of liaison undertaken with the NTA and TII to date and is requested to address outstanding issues raised in the NTA and TII submissions on the Further Information response."*

The applicants and NTA/TII proceeded to engage in relation to the station box, which did not form part of the proposed office development. Detailed design was undertaken, and a design for the station box was devised. It also emerged during the course of considering the alignment and required depth of the track, that previous studies had failed to have due regard to the main east west sewer along the Grand Canal, which the top of the tunnel had to pass under.

In a letter to the planning authority dated 11th December 2017, TII confirmed that it was agreeable to the submission of the revised drawings. The resulting station box that was incorporated into the commercial development was also on a different alignment and angled relative to the existing Luas line, passing under houses on Dartmouth Square West. The alignment of the line also meant that any future tie-in with the elevated section of the Luas Green line to the south would have to pass through existing built areas, including a significant amount of demolition within the Ranelagh area, before tying in and replacing the elevated sections of the Luas Green line to the south. The revised station box in the planning application is detailed below.

Figure 5: Proposed Station Box (Drawing No.162123-8104)



The revised station box at an angle was to ensure that the developer would actually be able to construct the sub-surface elements of the office extension. However, it is quite clear that this pushed the railway alignment to the north of Charlemont in an eastwardly direction and the station at St. Stephens Green had to be on the eastern side of the Green some considerable distance from the Luas station on the western side. No revision to the Tie-In study was undertaken during this period and the very significant implications of reorientating the station alignment at Charlemont for the future extension/replacement of the Luas Green line to the south and the station location to the north at St.Stephens Green was not considered.

While it was quite evident that the application was premature pending the resolution and determination of the Metro Link project and the potential future alignment of the station and track alignment, the Board failed to understand the significance of their decision granting permission for the office development with the associated station box alignment, notwithstanding that it was emphasised at the oral hearing that was held on the application. The decision to grant permission effectively meant that all other decisions followed from this in relation to what is a critical piece of city transportation infrastructure.

For some unknown reason, TII/NTA engaged in this process of station design and alignment with the developer without undertaking the appropriate studies of the implications of these actions, rather than just submitting to the Board that the office scheme was premature pending the determination of the precise alignment of Metro

and the associated station design and alignment. This decision with an angled station box was contrary to the preferred option 4 (b) as detailed in the Tie-In Study of March 2017.

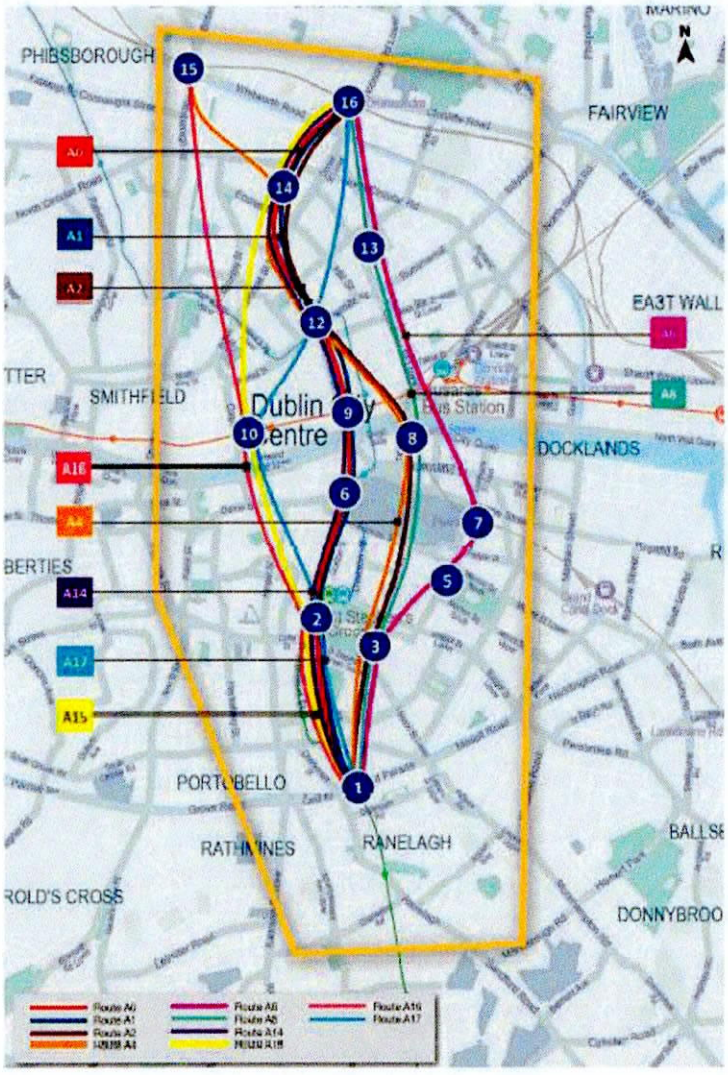
The changed alignment of the station box effectively constrained the Applicant from considering of any potential for alignment between St. Stephens Green West and Charlemont. TII were literally boxing all parties into focussing on St. Stephens Green East as the only station location and failed to consider station options on St. Stephens Green West where the optimal interchange with the Luas Green Line would occur. **A fundamental planning, investment and strategic transportation decision was made in relation to the Metro alignment and city centre station locations.** Every study and element of the project from this point on was structured to justify this decision on Metro. The Board was not aware of the implications of its decision, yet it proceed to issue a grant of permission.

The deeper station, fixed alignment, resulting potentially longer tunnel to the south, required demolition of houses in Ranelagh, duplication of rail infrastructure in the form of Metro and Luas, with two metro stations and two Luas stations was never the subject of a revised tie-in study with updated criteria. This transportation planning process gives rise to significant concerns in relation to public policy and the public good.

4.3.6 New Metro North Options Alignment Report (March 2018)

This report prepared by Arups considered a series of options, which are specified as the options considered in the EIAR. The date of this report is important, as it was undertaken and published **after** TII had agreed to the station box at Charlemont as part of the planning application P.A Reg. Ref: 2753/17.

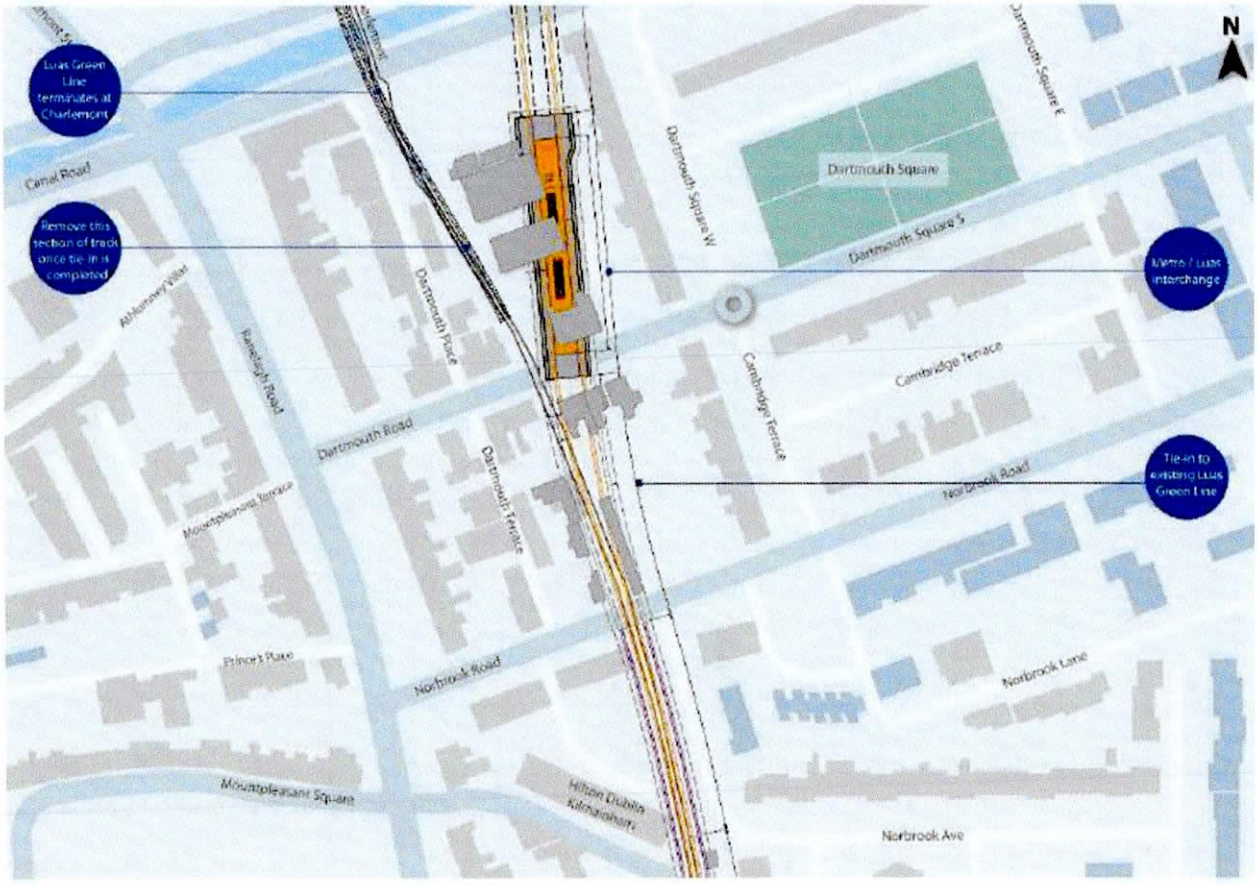
Figure 6: Study Area A Options



Section 4.2.2.1 of the Report states in relation to the tie in for Metro South, that:

> *".....TII and NTA carried out a study to identify the optimum tie-in location between NMN and the Luas Green Line. This study included an assessment of all reasonable tie-in points and undertook a multi-criteria assessment of the options available. Effects on the environment was one of the criterion within this multi-criteria assessment. The findings of this study identified Charlemont Luas stop as the optimum location for this tie-in.*
>
> ***In the context of this Options Study, this tie-in location is identified as a fixed location and as a result, all feasible and practicable route options for NMN within Study Area A are required to tie into this point and include for an interchange between NMN and the Green Line Luas at this location.***
>
> *Furthermore, the NMN track south of the proposed Charlemont station/stop is intended to follow an alignment to connect in-line directly to the existing Luas Green Line alignment when it reaches the existing Ranelagh stop to the south as shown in Figure 4.2."*

Figure 7: Luas Green Line Tie-In at Charlemont



It is of strategic significance, that the option of connecting Tara Street with a station on St. Stephens Green West was not considered. This is a wholly viable option, as illustrated in Figure 13 below.

However, as indicated in the text above, the EIAR now considers the tie-in was now fixed. Not through any consideration of alternatives as part of a rail order application, but rather as a result of a decision on a commercial office development.

On a broader point, the tie in location is identified as a fixed location in the study pre-empting the policy change in the form of a deferral of the Metro south connection. The Options study was effectively invalidated by the evolution of policy and should have been updated by a new tie-in study and a new city centre terminus study.

4.3.7 Initial MetroLink

In March 2018, the National Transport Authority announced revised plans for the former Metro North railway line, now called 'MetroLink'. The route extended further south from the original Estuary-St. Stephen's Green route down to Sandyford, subsuming the Luas Green Line tracks from Charlemont down to its final destination in Sandyford. It was planned to begin operations in 2027, and it combined the existing 'Metro North' and 'Metro South' lines together. The next section reviews the policy framework that was supposedly used to justify this mega project. However, even from a cursory review of the Transport Strategy for the GDA 2016-2035, this single project was never justified from a policy perspective. There is a clear stepped approach to delivering the required infrastructure and services, with Metro North prioritised, followed by capacity increases in Luas Green line services and only then replacement with Metro South (see Section 5.2.2 below). However, the NTA took the decision to promote MetroLink all in one project, attempting to do as much as possible of this big engineering project in one go, irrespective of the policy context and carefully established strategy. This was met with

opposition regarding the potential closure of the Green Line for an undetermined amount of time, issues regarding the segregation of communities and pedestrian, cyclist and car permeability along the line. As a result, revised plans were published in March 2019, where the Metrolink line would be delivered in two phases, meaning the Green Line would not be upgraded during the first phase.

It is no surprise that the project had to be cut back to what resembled Metro North, which was meant to be to the city centre. However, the NTA has hung onto the megaconcept that it is one MetroLink project and hence their need to provide the link between St. Stephens Green and Charlemont as an advance build towards the replacement of the Luas Green Line.

4.3.8 MetroLink Green Line Future Demand Capacity Intervention

TII published a Technical Note[3] dated March 2019 outlining the available Luas Green Line passenger demand projections in the context of the required service capacity on the existing Luas Green Line, south of Charlemont. This technical note is referred to in Appendix A7.9 of the EIAR and a hyperlink is included as a footnote. This document effectively forms part of the EIAR, yet the hyperlink has been removed and access to the original report is not available. Relying on the information provided in the aforementioned appendix indicates that the passenger numbers carried by the Luas Green Line in the busiest morning peak hour in 2017, pre-Covid, was approximately 5,000 passengers in the northbound direction. The possible introduction of new 55 metre length trams, and the extension of the existing trams, would increase the Green Line capacity up to approximately 8,000 passengers per direction per hour based on a three-minute frequency.

The modelling projections suggest that further upgrades to the Luas Green Line to achieve a 30 trams per hour Luas service between Sandyford and St. Stephen's Green, would accommodate Luas demand to approximately 2039 in the high projection or to approximately 2049 in the low projection. The report concludes "A metro upgrade of the Luas Green Line south of Charlemont would ultimately be required in the long term although the timing of this intervention is dependent on the rate of demand growth."

In relation to location of the MetroLink Station at St. Stephens Green, *"Its location on the east side of the park and not the west side as in previous alignments was dictated by restrictions on railway curvature between the two adjacent stations."* The issue of the self-imposed constraint to St Stephens's Green East is considered in further detail below in section 6.5.

We consider that the NTA/TII demand capacity forecasting is highly unreliable for the following reasons:

- In March 2017 "Luas Tie- In Study the NTA forecast Luas exceeding capacity by 2027
- One year later in March 2018 in the Emerging Preferred Route the NTA revised this forecast and said the Luas will not exceed capacity before 2042
- March 2019 in the Preferred Route the NTA said the need to replace the Luas "will not arise for some time - in the region of twenty years."
- The NTA/TII are now saying Luas Green Line capacity will not be exceeded for 2 to 3 decades.
- Furthermore, no study on the impact of the pandemic has been carried out by the NTA on the Luas Green Line capacity.

4.3.9 Jasper (Independent Review for the European Commission and Central Bank)

This review was commissioned as an independent review for the European Commission and the European Central Bank. We have highlighted some text in bold for emphasis.

"A.1.4. Have the policy and delivery assumptions been captured, challenged and agreed with all key stakeholders?

.....

There appears to be relatively strong consensus on the project concept amongst key stakeholders, ***apart from isolated issues such as those impacting on the finalization of the design for St Stephens Green. It is noted that the revised design for St Stephens Green arose following the objective to provide a connection to Charlemont/Ranelagh, which is no longer considered a priority by the independent review team."***

It is quite clear from this independent review that it is not considered that the final section of the Metro from St. Stephens Green to Charlemont is a priority. This can be interpreted as phrasing indicating that it should be dropped.

A.2.1. Have reasonable alternatives been considered? Is there a clear best option? If there are several options that would meet the need, how was the robustness tested?

Interchange between Luas/Metro services is available at St Stephens Green and O'Connell Street, and the proposal to deliver through-services between Swords and Sandyford has been postponed for the foreseeable future. ***The justification for the connection from St Stephens Green to Charlemont/Ranelagh is based on the perceived difficulty of adding this as a separate project at a later date."***

Again, the independent review returns to the issue of the justification for the last section of the line. The above quote refers to a *perceived* difficulty in extending the line later. It is apparent that the sponsoring authority is attempting to build as much of the MetroLink project as possible and attempting to build a rationale and justification for it.

"A.3.1. Are project costs including contingencies and benefits realistic?

Costs and contingencies are appropriately calculated. Regarding the project's scope and design several technical aspects appear to make the project expensive: in particular the inclusion of full segregation along the 7 km section beyond the airport, ***the inclusion of the connection to Ranelagh/Charlemont, the use of relatively short distances between city centre stations, and very high station costs."***

A.3.4 Metrolink costs €181m per km (more than double the EU average of €86m/km).

"The objective of connecting to a future upgraded Luas Green Line, providing full segregation through Swords, and the provision of large station boxes is likely to be driving this high unit cost". A.3.4

The independent review was evidently very concerned about the costs and benefits of the project, highlighting the inclusion of the 7 km of segregated line beyond the Airport and the southern connection to Ranelagh. This is effectively indicating that very costly infrastructure for the state is being proposed, but which is not justified. It is also clear that the concerns over relatively short distances between stations and very high station costs will be perpetuated if the Metro gets extended through the replacement of the Luas Green Line. This will result in the 700m distance between the Canal and Ranelagh having 2 Metro Stations (Charlemont and a new Ranelagh metro station at Oakley Road) and 2 Luas Stations (the existing Charlemont and Ranelagh stops). Clearly this will stitch in high costs for future development and an overdevelopment of rail infrastructure in a very small area.

A.4.8. Should the project be broken down into smaller steps?

> *".....**The connection to Ranelagh could feasibly be deferred until there is clarity on the future of the Luas Green Line** (subject to an improved understanding of how this could physically be delivered in a scenario with metro operational)."*

This conclusion was made as recently as May 2022. There needs to be greater clarity on what is being proposed to the Green Line.

4.3.10 MPAG Review Note (June 2022)

The purpose of the Major Projects Advisory Group is to support the application of the Public Spending Code and consider major public investment proposals (in particular in relation to costs, scheduling, delivery and risk) in advance of Government Decision. It was established by the Department of Public Expenditure. The Review of MetroLink Preliminary Business Case makes a number of damming findings and recommendations in relation to the section of line between St. Stephens Green and Charlemont.

In particular it states:

> *"6. There are concerns that the **current route duplicates other public transport services and planned transport interventions in the corridor,** potentially leading to demand abstraction. Undermining the viability of other transport services may cause difficulties in the planning process. **Up to date analysis of the cumulative impacts of major public transport services in the vicinity of Metrolink (existing and planned) is needed in order to confirm the project need and to justify the selection of the most appropriate project design both within the environmental assessment materials and the business case**. The potential for likely long-term traffic management on the road networks is not factored in."*

The cumulative assessment is required at strategy level and project level, yet this is not provided in the subject Railway Order Application.

In reflecting the conclusions of the independent review, the MPAG report states:

> *7. The rationale for extending the preferred scheme to Charlemont is noted by JASPERS **as "strategically weak" given the additional costs involved and the duplication of the LUAS Green Line which also provide a public transport service to the areas of the city centre in question**. To counter this point by JASPERS, NTA/TII make a case for the terminus at Charlemont that better provides for a future connection into a new south side transport scenario, whatever that may look like."*

Rather than addressing this issue, effectively the NTA/TII would be reinforcing the problem by duplicating more infrastructure further south to Ranelagh and creating more drivers of high unit costs.

A further report has been included in the railway order application, which compares the St. Stephens Green terminus with the Charlemont Terminus. It is apparent that the project has been effectively designed as a standalone civil engineering project, rather than as part of an integrated transportation network. There is a very unclear rationale as to why the southern section from St. Stephens Green to Charlemont has been included, as it has changed from being a necessary connection to the Green Line for upgrade to Metro; to interchanging with the Luas Green line; to perceived difficulties of adding this later.

5. POLICY

5.1 National Policy

5.1.1 National Planning Framework (NPF) (Project Ireland 2040)

The NPF provides the national strategic planning framework for the country and sets out 10 National Strategic Outcomes (NSOs). Of relevance to the subject proposal is NSO5 'Sustainable Mobility'. It includes reference to Metro Link project as envisaged in the Transport Strategy for the GDA (page 37).

5.1.2 National Development Plan (NDP)

The NDP also sets out that:

> *'MetroLink is the largest investment project in this NDP and likely the largest ever public investment project in the history of the State. Once completed MetroLink will provide a sustainable, safe, efficient, integrated and accessible public transport service between Swords, Dublin Airport and* ***Dublin City Centre.*** *This new link will form a key spine of the overall integrated public transport system for Dublin, alongside BusConnects and DART+, and facilitate compact, transport-led development at key locations. During peak periods MetroLink will operate every three minutes in its early years and is ultimately designed to operate every 90 seconds when demand levels require this frequency.' (Our highlight in bold)*

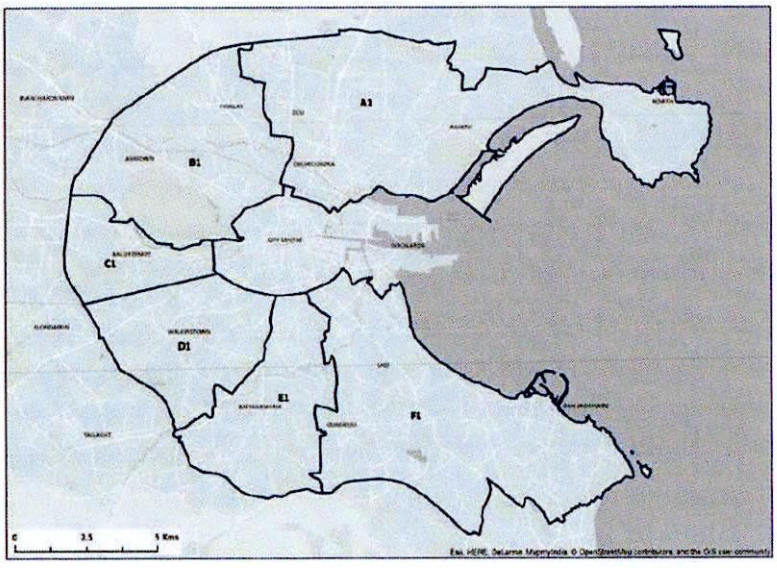
The NDP refers to Dublin City Centre, the definition of which arises from the provisions of the Transport Strategy for the Greater Dublin Area 2016-2035 and the Draft Transport Strategy for the Greater Dublin Area 2022-2042. The city centre is defined as the area bound by the Royal and Grand Canals.

5.2 Regional Transport Policy

5.2.1 Transport Strategy for the Greater Dublin Area 2016-2035

The Strategy sets out the transport strategy for the Greater Dublin Area. Transport planning is an ongoing process that takes into account changing travel patterns, the delivery of different infrastructure elements and changing technologies. The city has been divided into the segments for the purposes of transportation planning. It highlights that corridor E1 to the west of the Luas Green Line has the highest car mode share of 68%, while F1, which is served by the Green Line and DART, has the highest public transport mode share of 13%.

Figure 8: Strategic Planning Areas Purposes



Integral parts of the Strategy relating to light rail that are of relevance to the current railway order application are:

> *"New Metro North- light rail link from the south city centre to Swords and serving Dublin Airport, operating in tunnel under Dublin City Centre and providing a high frequency, high-capacity service;*
>
> *Green Line Capacity Enhancement- capacity enhancements to the Luas Green Line between St. Stephens Green and Bride's Glen (in advance of Metro South) allowing longer and higher capacity trans to be brought into the service on this line.'...*
>
> *Metro South - Luas Green Line Capacity Upgrade from the south city centre to Bride's Glen, completing a full north-south high-capacity high-frequency cross-city rail corridor through the central spine of the Metropolitan Area;"*

It is emphasised that a staged approach to the provision of north south services is an integral part of the strategy, with the Metro North being the priority, followed by capacity enhancements to the Luas line, and then only followed by the replacement of the Luas Green line with Metro South. Furthermore, it is based on a Luas light rail system rather than the NTA decision to specify a driverless and segregated high speed Metro system. The DART Expansion Programme also incorporates the DART Underground Project, which is an underground rail link through the City Centre, allowing DART services to operate on the Kildare line and travel through the tunnel, enabling passengers to connect with DART services on the other three rail lines.

5.2.2 Draft Transport Strategy for the Greater Dublin Area 2022-2042

The revised strategy maps out the proposed MetroLink and Luas networks for 2042. The upgrading of the Luas Green line to the south of Charlemont is dropped from the Strategy. This is very significant policy shift as it removes one the main points of rationale for extending the MetroLink as far as Charlemont. In relation to this stop, the Draft Strategy attempts to justify it in the following manner:

> *"The south city terminus at Charlemont offers the optimal location for interchange with the Green Line in response to growing demand in the longer term and is an appropriate location to facilitate any potential future metro extensions to serve the south west, south or south east of the city region should sufficient demand arise."*

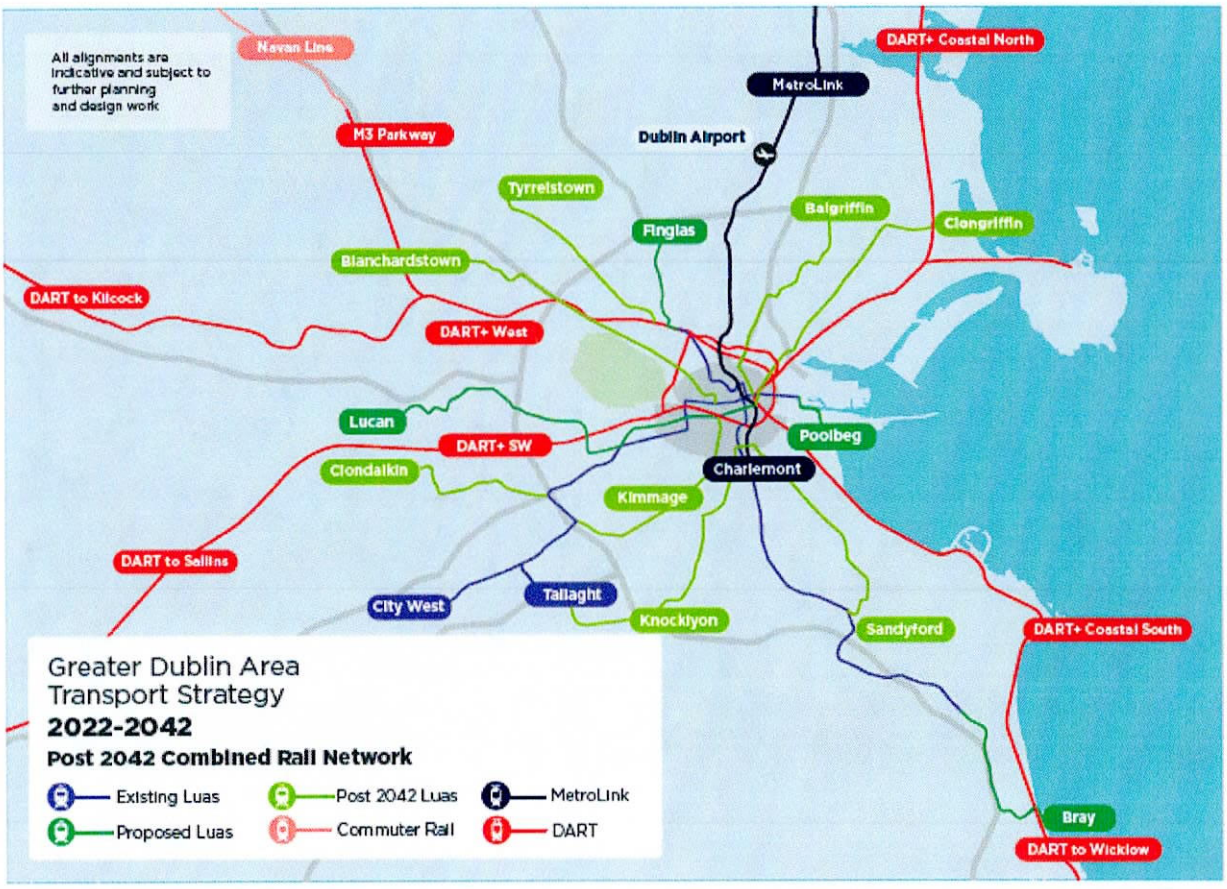
However, it is significant that the post-2042 light rail network does not include any extension of Metro to the south. Furthermore, as outlined above the real optimal interchange with the Luas Green Line is at St Stephen's Green West. However, due to the advance building of the Charlemont Station Box (with its more easterly alignment at its north end), the NTA/TII constrained itself from considering of any potential for alignment between St. Stephens Green West and Charlemont.

In relation to the upgrade of the Luas Green Line, Section 12.3.10 of the Strategy states:

> *"The challenges associated with the upgrading of the Luas Green Line to a metro standard of service have led to the emergence of an alternative proposal which seeks to meet travel demand from south of Sandyford along a new light rail corridor which serves UCD post-2042. As such, the upgrading of the Green Line to metro standard is not required as part of this strategy. Instead, for this strategy period, the capacity and frequency on the current Green Line from Sandyford northwards to the city centre will be incrementally increased through the provision of additional tram fleet and services and associated turnback arrangements to meet forecast passenger demand."*

It is not part of the Strategy, even post 2042, to upgrade the Luas Green line to metro standard. The city will be served by Luas, a single Metro line to the Airport and a much expanded DART service. This will include the DART underground between Spencer Dock and Heuston Station. The planned overall network is illustrated in the figure below.

Figure 9: Fixed Rail Network Post 2042



It must be noted that the Strategy is currently only in draft form. The Board should not be bound by its provisions, but should have regard to the light rail network that is emerging. In particular, if the Board refuses to confirm the connection between St. Stephens Green and Charlemont, undoubtedly the final adopted strategy will take this into account.

5.3 Local Policy

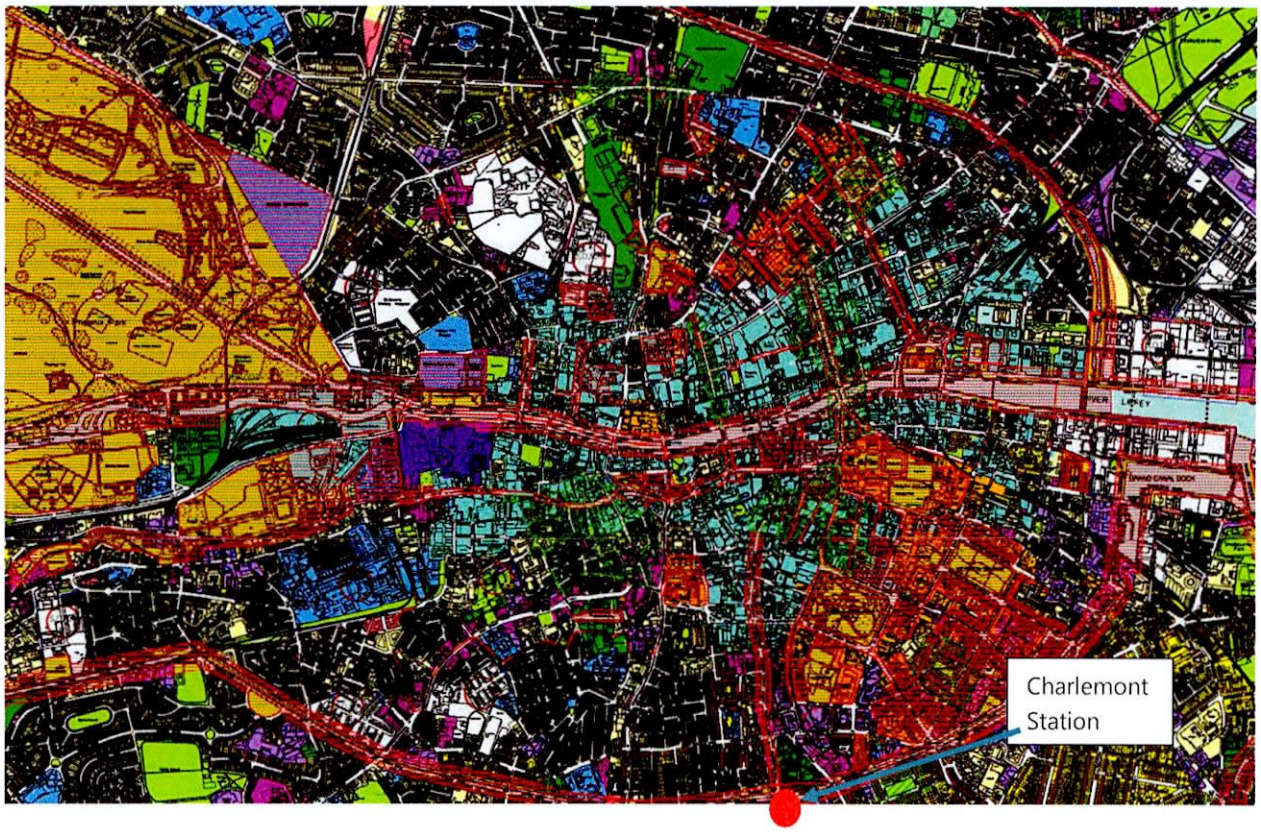
5.3.1 Dublin City Development Plan 2016-2022

This is the current statutory development plan for the City. It is currently under review and was due to be replaced by an updated plan (considered below) in December 2022. Therefore, the application will be considered against the provisions of the new Plan. Notwithstanding this, the current plan has informed the evolution of the scheme. There are a number of provisions which we would like to highlight.

The City Centre is defined as the area covered by the Z5 zoning, where the objective is *"To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity."* On the south side of the city, the zoning only extends from the Liffey to St. Stephens Green and Camden Street. From a policy perspective, the Inner City is the area that falls between the Grand and Royal Canals. In this regard, not only does the Charlemont Station not fall within the City Centre area, as defined in the Development Plan, it does not even fall within the area designated as Inner City. It may therefore be

classified as Outer City. The area around Dartmouth Square is covered by zoning objective Z2: *"to protect and/or improve the amenities of residential conservation areas."*

Figure 10: City Centre Area and Location of Charlemont Station (Blue Zoning)



The following policy also applies:

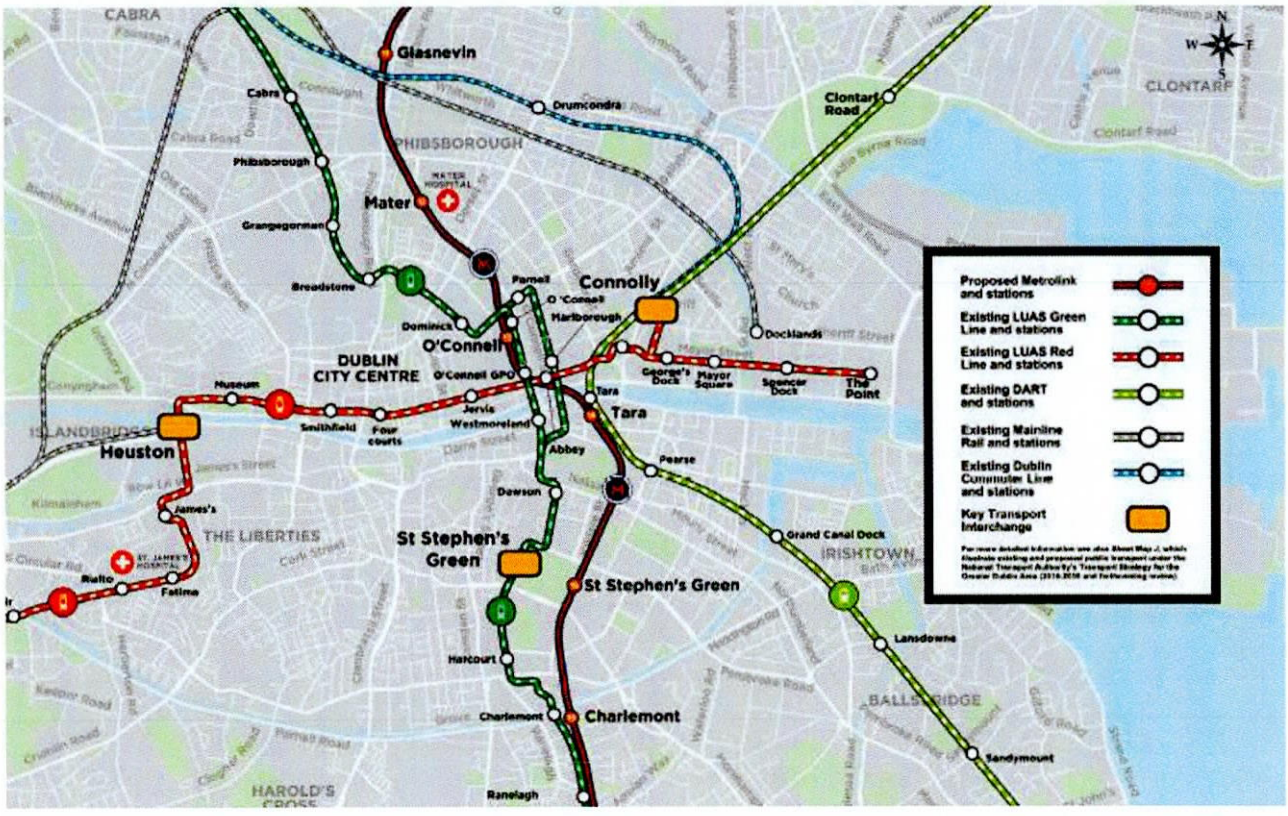
> *MT4: To promote and facilitate the provision of Metro, all heavy elements of the DART Expansion Programme including DART Underground (rail interconnector), the electrification of existing lines, the expansion of Luas, and improvements to the bus network in order to achieve strategic transport objectives.*

St. Stephen's Green, the South Georgian Core and the Grand Canal are designated as 'Conservation Areas' in the current DCDP 2016-2022

5.3.2 Draft Dublin City Development Plan 2022-2028

The zoning provisions and definition of city centre, inner city and outer city remains as per the current Plan. Figure 8.1 of the Draft Plan highlights Key Transport Interchanges in the city. It is noteworthy that the Luas station on St. Stephens Green West is identified as one of only three key interchanges, (although it is unclear what it is interchanging with, as the indicative Metro Link Station on the Green is on its eastern side). Furthermore, the Rail Order proposes that Charlemont is "the optimal location for interchange with the Green Line" rather than attempting to make the optimal interchange with one of the Plan's "key Interchanges" on St. Stephens Green West.

Figure 11: City Centre Integrated Transport



This Draft Development Plan has been informed by the proposals contained in the Draft Transportation Strategy for the GDA, as detailed above. However, it is noted that provisions of the Draft Development Plan do not accurately reflect the proposals in the Transport Strategy. For example, the Draft Development Plan illustrates the MetroLink project continuing on in a southerly direction, with a tie in at Ranelagh. However, this is quite clearly not proposed in the Draft Transportation Strategy. It is noted that the Draft Development Plan was drafted prior to the Draft GDA Transport Strategy.

6. POINTS OF SUBMISSION

6.1 Introduction

This section highlights the principal strategic points that are of concern to CDCG, which consists of residents in the wider area. The group is generally supportive of the MetroLink project, but has significant concerns regarding the principle of the section of the project between St. Stephens Green and Charlemont. The preceding sections have demonstrated how the project has evolved since the original Metro North project was granted planning permission in 2011. It is apparent that this important project has been designed in the context of a disjointed evolution of a policy framework and has been driven, and indeed prejudiced, by private development proposals on the Carrolls Building site.

6.2 Compliance with Policy

The current transport policy as detailed in the Transport Strategy for the Greater Dublin Area 2016-2035 is to provide for a metro north project from the Airport/Swords to Dublin City Centre. This would be followed by enhanced capacity of services on the Luas Green line, and only then, would consideration be given to a Metro South project. The subject scheme does not go from the Airport/Swords to just the city centre. It goes beyond this to what is defined in the current Dublin City Development Plan 2016-2022 as the Outer City, or inner suburbs. Effectively, this is the first section of Metro South, which while currently part of the current Transport Strategy for the GDA, is only to be delivered after Metro North and the enhanced services on the Luas Green line.

While it is acknowledged that the policy framework is evolving, it is clear from the Draft Transport Strategy, that Metro South is no longer proposed, even in a post 2042 scenario. The policy rationale for this section to Charlemont is now exceedingly weak, notwithstanding that it is contained in the Draft Strategy. It is evident that the section referred to is a left over element of the grander MetroLink project from the Airport/Swords to Sandyford. This is all now but dead in policy terms and thus the rationale should be reconsidered. It is evident that the final southern section of the project has only been included in the Draft Transport Strategy as it was fully designed prior to the preparation of the strategy and therefore had to be included.

We note that there are significant policy conflicts in the current Draft Transport Strategy for the GDA 2022-2042. On the one hand it indicates that Charlemont is an appropriate location as a termini and onward extension of Metro further south. However, on the other hand section 12.3.10 indicates that Metro will not form part of the strategy for serving the southern part of the metropolitan area with light rail and that Luas will fulfil that role, even in a post 2042 scenario. It is clear that Government policy on the subject scheme is to the city centre only. The NTA/TII's policy confusion stems from its lack of redefinition of the project from the original concept to the current reality. Concomitantly, the fact that the Draft Strategy includes the link between St. Stephens Green and Charlemont cannot be relied upon, as the Strategy is only in draft form.

In summary, the policy of the current Transport Strategy for the Greater Dublin Area 2016-2035 only covers the Metro North element from Swords/Airport to the City Centre. This should then be followed by capacity increases of the Luas Green Line services. This capacity increase has not yet been undertaken and the modelling projections suggest that further capacity increases to the Luas Green Line to achieve a 30 trams per hour Luas service between Sandyford and St. Stephen's Green, would accommodate Luas demand to approximately 2039 in a "high projection" scenario or to approximately 2049 in the "low projection" scenario. No part of Metro South should be considered until after the Luas services have been enhanced. Furthermore, it is evident that Metro South is being dropped, as reflected in the revised Draft Strategy. The Minister for Transport must formally approve the strategy for it to have full effect. Under section 31J of the Planning and Development Act, the Board

must, in carrying out its functions, ensure that the GDA transport strategy *"....shall be a consideration material to the proper planning and sustainable development of the area or areas in question."*

The NTA/TII has prioritised a Luas Green Line Tie-in over a fully functioning City Centre Terminus. This means that for the NTA/TII, it is more important to build the Charlemont Metro Station now in order to achieve this potential outcome 2-3 decades in the future, then it is to build a City Centre Terminus now that can connect to multiple modes of transport during the next 2-3 decades.

6.3 Material Contravention of the Dublin City Development Plan and Loss of Amenity

We strongly contend that the proposed development in the Charlemont & Dartmouth area during its long construction phase and its operational phase, will result in a serious loss of residential amenity for occupiers in the surrounding area. This is demonstrably contrary to the zoning objective for the area, which is objective Z2: "to protect and/or improve the amenities of residential conservation areas."

Section 6 of the Planning Report accompanying the Rail Order Application includes a material contravention statement. It states:

> *"In consideration of the fact that the proposed project is of strategic importance to the long-term development of the Dublin region for land-use and transport and has been specifically identified as being of national importance in the National Planning Framework, National Development Plan and other key statutory documents, it is considered that there is ample justification for An Bord Pleanála to permit a Material Contravention of the relevant Development Plans."*

This material contravention statement is wholly inadequate as it does not specify which development plan the development materially contravenes. Furthermore, this material contravention is not specified in the public notices and therefore the public are not made specifically aware that the Railway Order Application materially contravenes a development plan which has been adopted by locally elected representatives. Furthermore, that section of the project that is south of St. Stephen's Green is outside of transport policy objectives. The Application is therefore fundamentally flawed.

6.4 Strategic Need and Business Case

The MetroLink Preliminary Business Case (July 2022) outlines the confused evolution of the project. It concludes that the extension to the Charlemont tie-in location is the preferred route. After the commencement of passenger services on MetroLink, Luas trams operating on the Green Line will continue to provide sufficient capacity over the medium term. The Business Case suggests that at some unknown point in the future, demand will exceed the levels that can be catered for by the Luas light rail service and perpetuates the assumption that metro is needed to continue south to Sandyford.. It is envisioned that the tunnel that extends 350m past the Charlemont station will be connected to tie-in at-grade with the existing Luas Green Line in order to facilitate the full replacement of the Green Line to metro standard.. This tie-in connection will involve a top-down construction method which will have devastating implications for houses in Ranelagh, with the demolition of Manders Terrace and half of Oakley Road (see section 6.11).

All options considered in the multi-criteria analysis as detailed in Appendix B of the Business Case start at Charlemont. None start at St. Stephens Green (either east or west). The southern starting point for the entire project is flawed and does not reflect the current policy in relation to Metro North, as detailed in the current Transport Strategy, that it should be to the city centre only. Furthermore, the policy context for the Business Case does not refer to the Draft updated Transport Strategy for the GDA 2022-2042, which abandons the Metro South Project in its entirety.

The prudent client appraisal capital cost estimate for the project is €12.25bn ex-VAT.

The unit cost of Metro is c€322 per kilometre, which is compared to a European average of €122m per kilometre. This Metro cost is an average of over and underground. The alternative termini study furnished as part of the EIAR estimates that the southern section between St. Stephens Green and Charlemont (including a tunnel extension to facilitate a switch back) will cost €650m. This is a very significant cost to the State, particularly in a situation where the benefits are not evident, as the service duplicates the Green Line between St. Stephens Green and Charlemont. This concern was raised in the JASPERS independent review and reflected in the MPAG Review, where the link was considered to be '**strategically weak**' and duplicated other fixed rail services. It was requested that these matters be addressed prior to a Stage Gate decision by Government. The Business Case was revised to reflect increased costs and different assumptions. The inflation assumptions were rebased from Q4 2019 prices to Q4 2021 prices. However, this rebasing totally misses the current surge in inflation resulting from energy price increases and the war in Ukraine. The revised cost benefit ratios (CBR) reduced from between 1.4 to 2.5, to between 1.1 and 2.0. If current inflation is taken into account, which it should be as part of the assessment of this project, the cost-benefits of the project is likely to be below required thresholds.

Probably, the most costly section of the project is between St. Stephen's Green and Charlemont. Omission of this section would significantly improve the CBR figures, so that it will actually have a chance of passing the next stage of the Business Case process and the decision-making by the Government at the next Stage Gate 2 at the pre-tender approval stage.

Surprisingly, the final Business Case (presented to Government for Decision Gate 1 on the 4th July 2022) did not address all of the points of concern raised in the MPAG Review note of the 21st June 2022. In particular, the business case has not addressed the principal concern of the JASPAR review, that the section to the south of St. Stephens Green was 'strategically weak'. As indicated above, the original Business Case of February 2021 advocated this link on the basis that it was required to tie in and replace Luas Green Line services, although this was overtaken by the emerging Draft Transport Strategy which effectively considers dropping the south side metro element.

The critical issue is that the MetroLink section from St. Stephens Green East to Charlemont **duplicates the Luas Line Green services**. The Draft Transport Strategy indicates that an enhanced Luas Green Line will have capacity to 2039 and beyond and hence its replacement to Metro is not required. The JASPAR review concludes that the connection to Ranelagh could feasibly **be deferred until there is clarity on the future of the Luas Green Line**.

6.5 City Centre Hub Location & Prejudicing Options for Expansion of the Transport Network

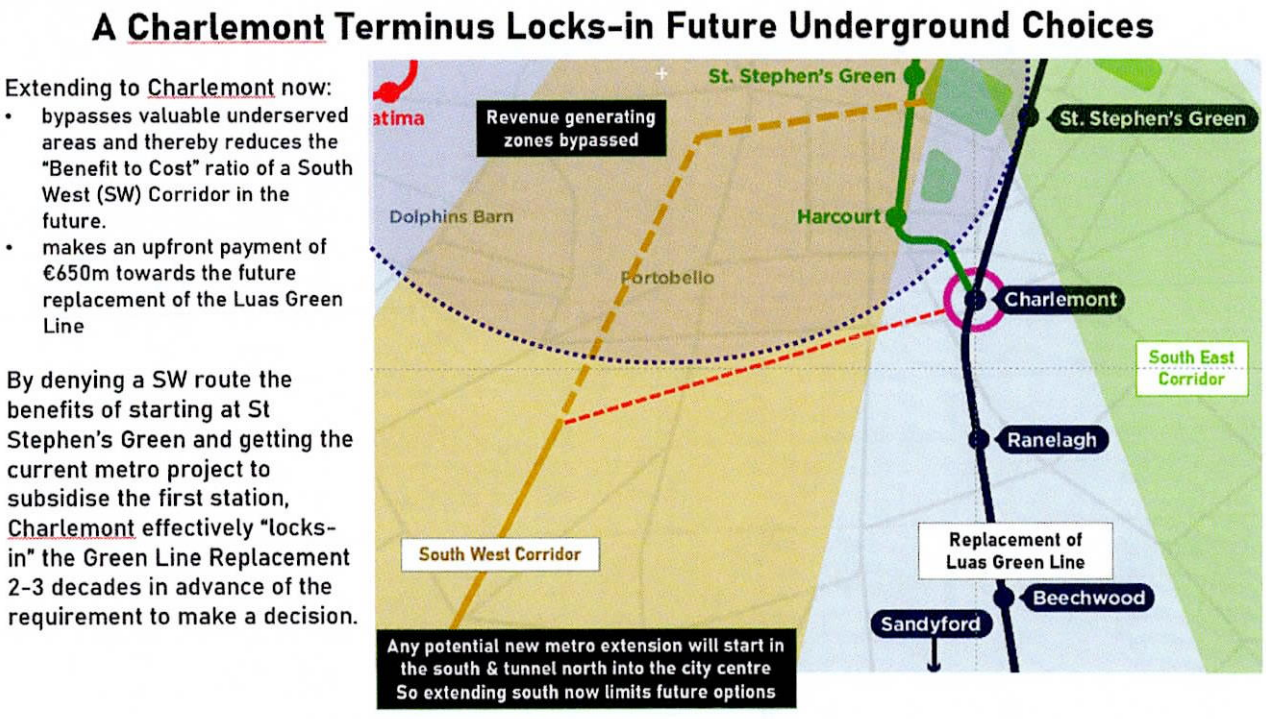
It is apparent that in policy terms, the Draft Transport Strategy for the GDA is dropping the extension of Metro to the south city in favour of a Luas based system. However, it appears to still want to retain the option of a southside underground Metro system, although as highlighted above in section 5.2.2 the policy is somewhat contradictory and confused on this issue. Without prejudice to our basic point that evolving policy is dropping a south city Metro, we contend that strategically, even if an extension to Metro were to be considered at some stage in the future, the starting point for an extension should be St. Stephens Green and not Charlemont.

Appendix A7.9 of the EIAR provides an assessment of the options for extending Metro to Clonskeagh/UCD in the south eastern quadrant (strategic planning area F1) of the city and another option of serving Knocklyon on the south western part of the metropolitan area (strategic planning area E1). Dublin's transport system is highly radial in nature with radial transportation spokes in the form of roads, DART and Luas, constitute this radial network. It is effectively a hub and spoke network. Orbital routes are in the form of the North and South Circular roads (or the canal cordon); the M50; the Phoenix Park Tunnel rail line on the north side, and which would be

complemented by DART underground on the south side. St. Stephens Green is the critical hub for the onward extension of light rail services on the south side of the city. The section of the Luas Green Line from St. Stephens Green to Charlemont is already one of the spokes (i.e. the Luas Green line to Sandyford).

To make Charlemont the starting point for future planning of the rail network is fundamentally and conceptually flawed. For example, any metro spoke to the south-west of the city which would start from Charlemont (given the fixed alignment of the metro station box) would have to cross back under the Luas Green Line, resulting in very significant costs and be of limited value over the distance where the line would duplicate the Luas services. This would significantly undermine the business case of such a project. Spokes in the wheel would be crossed and buckled. While the alignment of the station box at Charlemont does lend itself to onward extension to the south west, such an alignment would miss the opportunity to provide a station in the south inner city/Portobello/Rathmines. This is because spoke is starting too far from the real hub of St. Stephens Green.

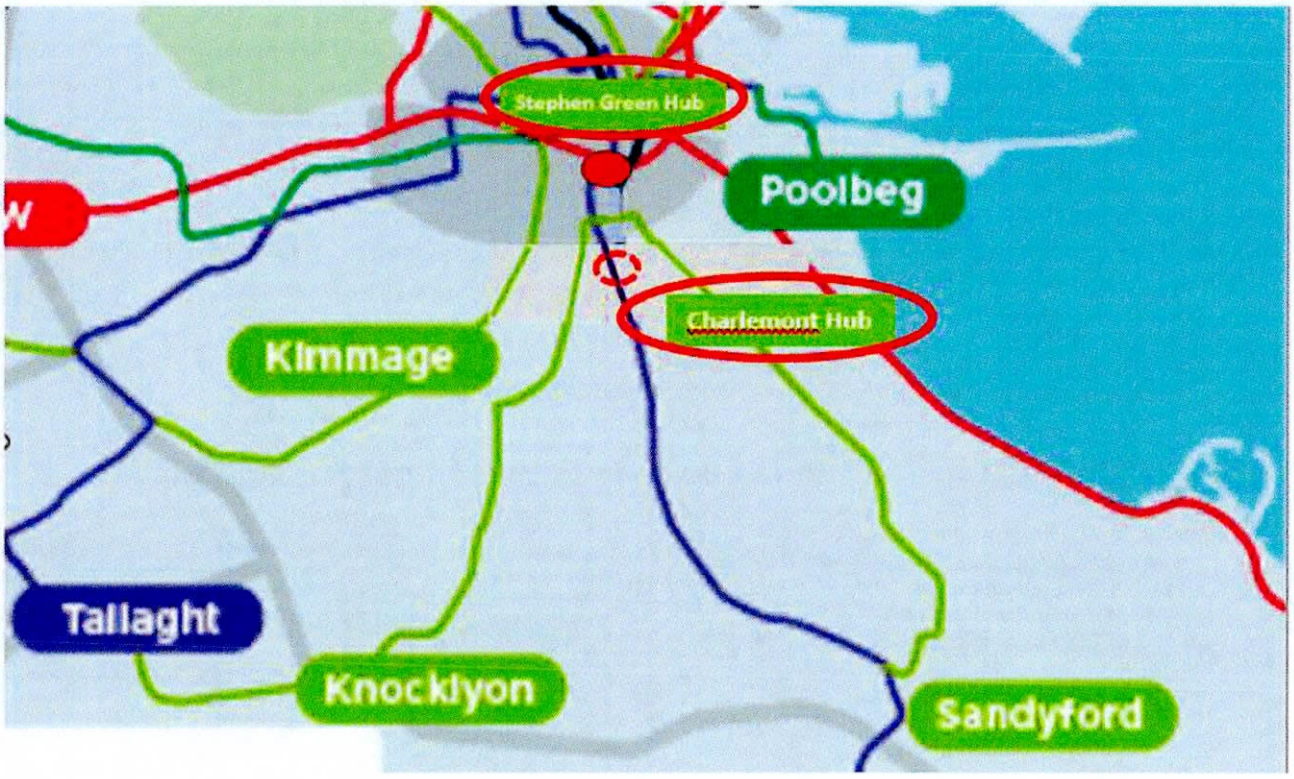
Figure 12: A Charlemont Terminus Locks-in Future Underground Choices



The 360m tunnel extension to the south on a fixed alignment prejudices future service to south Rathmines for example. It effectively locks in an alignment without proper consideration the impacts of this on properties and transport options.

Very importantly the Rail Order Application also states that any future metro underground extension would start in the south and tunnel north into the city centre. This fact would allow such an extension to create its own alignment to increase its Benefit ot Cost Ratio (and access unserved areas such as Portobello or future housing schemes such as being investigated at Cathal Brugha Barracks). Therefore, in the context of facilitating alternative southern metro routes there is no advantage in building the metro tunnel to Charlemont at this point. Clearly the only way to get a return on the additional €650m cost to Charlemont is to tie-in with the Green Line. Therefore the value of the Charlemont station is totally predicated on replacing the Luas Green Line and that locks-in future decisions several decades in advance of the requirement. The figure below illustrates these points in conceptual manner.

Figure 13: Alternative South City Centre Transport Hub Locations

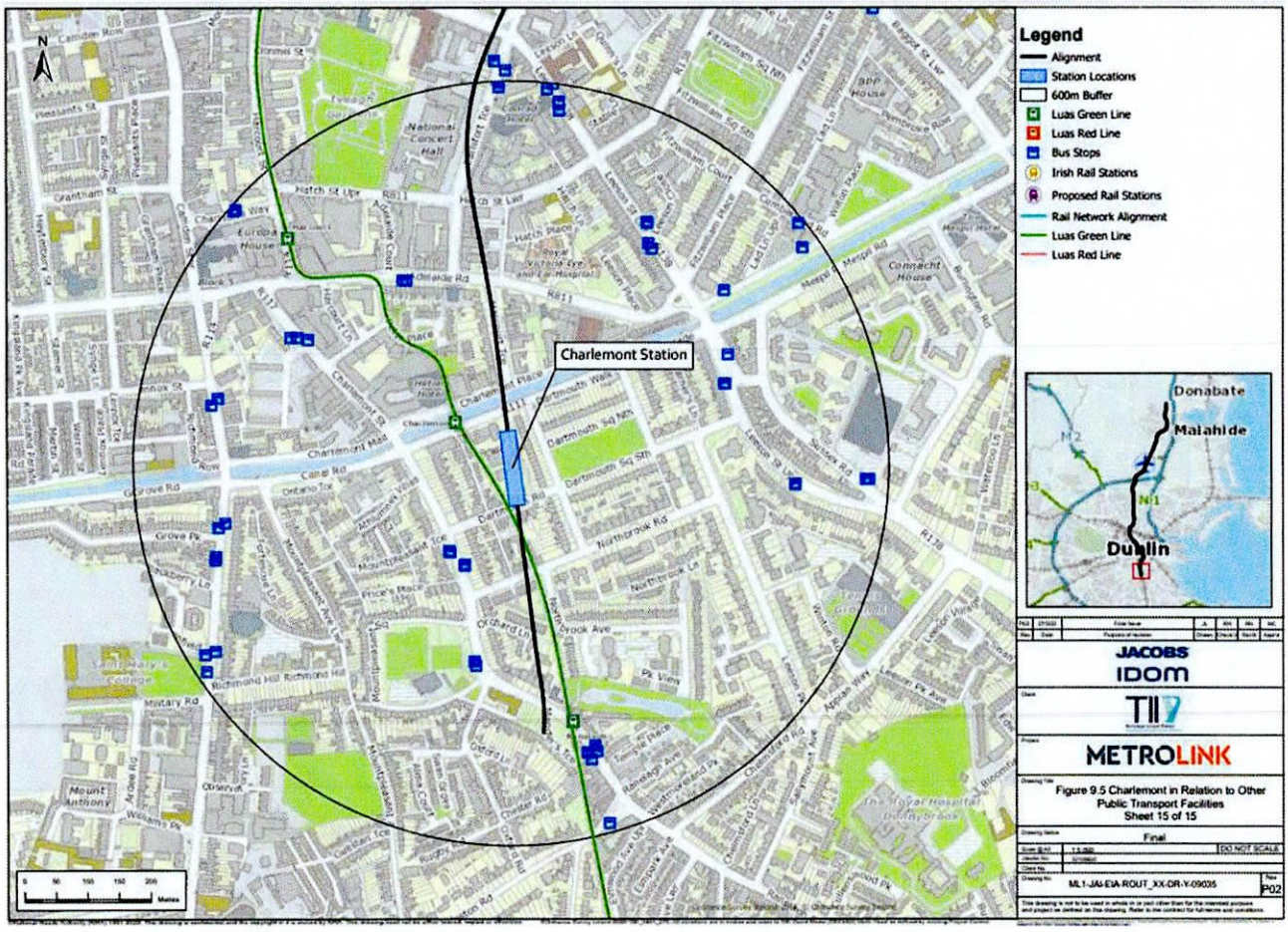


6.5.1 City Centre Interchange

At the outset, it is highlighted that Charlemont is in a residential area not a city centre location. A city centre location has a high number of trips attracted and generated. There is scope for increased densities in the city centre, but very limited scope in the area around Dartmouth Square.

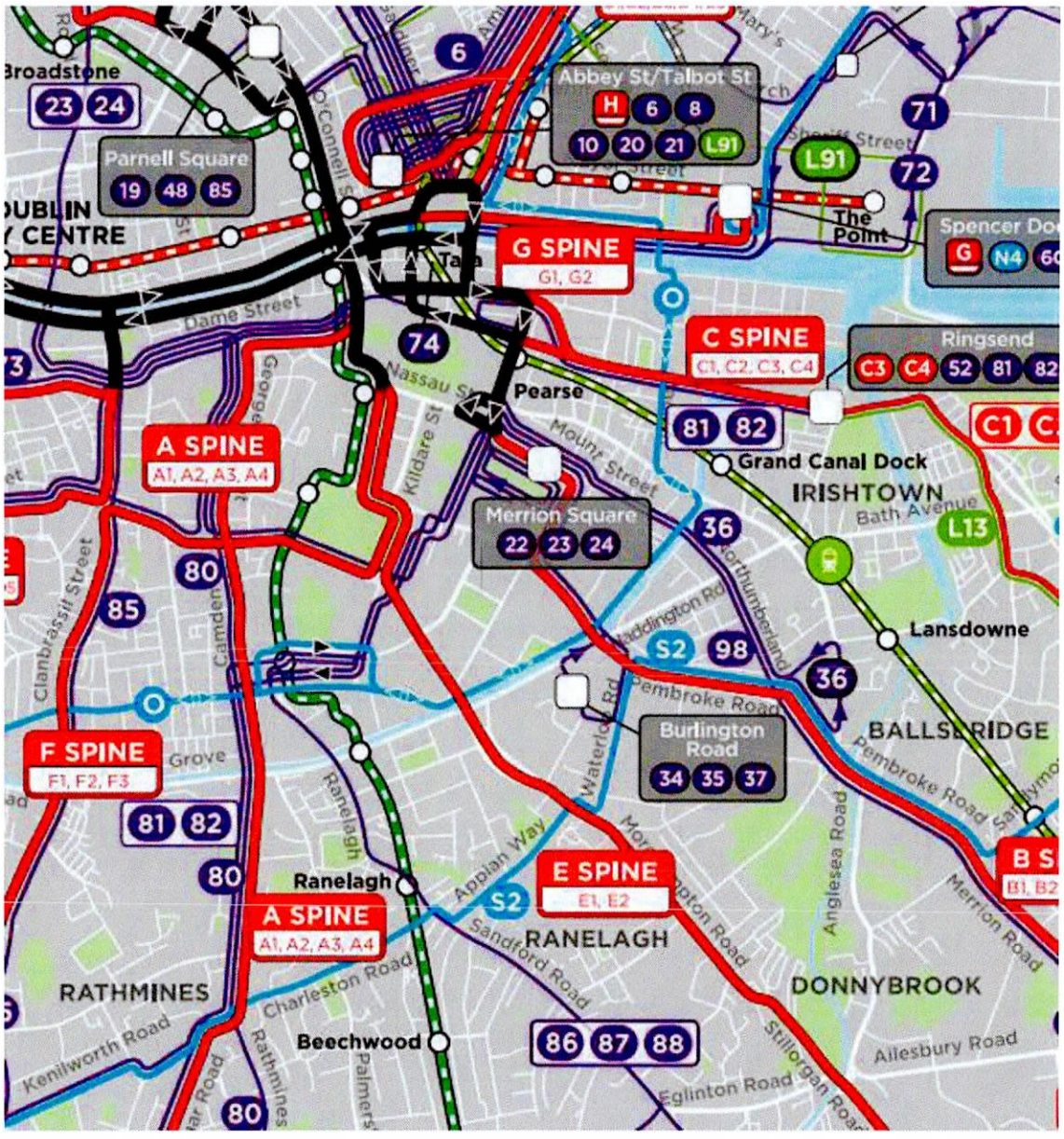
The figure below, which is extracted from the EIAR, illustrates that there is effectively no interchange with other public transport services other than Luas. There are no bus stops near the Charlemont Station.

Figure 14: Bus Stops in Vicinity of Charlemont Station



The figure below, which is taken from the NTA's website, illustrates the network of public transport networks. It can be seen clearly there is a dense network of bus connects, Luas and DART services in and around St. Stephens Green. In contrast there is no network of public transport around the Charlemont Station. This is not the correct location for a city centre terminus interchange.

Figure 15: City Centre Public Transport Network



We also note that TII has attempted to make a virtue of lack of interchange at this city centre terminus. The slide below is from a meeting held between TII and CDCG on the 3rd March 2022.

Figure 16: TII Justification on Lack of Integration

Terminus Station

- ***Charlemont;***
  - More akin to terminus of urban metro systems - not mainline train station;
    - No Drop Off location;
    - No Taxi Rank Drop Off;
    - Restricted Parking - Parking for residents only;

6.6 Flawed Assessment of Alternative South Terminii

6.6.1 Alignments & Stations

Figure 7.2 of the EIAR illustrates the alternative routes which were considered for the purposes of the project. The selection of the southern terminus has a very significant effect upon the route selected and the location of stations between the River Liffey and the Canal. Section 7.7.7 of the EIAR indicates that

> *"...the draft strategy also identifies that Charlemont is the optimal location for an interchange with the Luas Green Line and as an appropriate location to facilitate any future extensions to the MetroLink system."*

However, this cannot be substantiated as NTA/TII have not properly examined the options for interchange at St. Stephens Green. The western route options considered in the EIAR included stations at St. Stephens Green West. These options arose for the New Metro North Alignment Options Report March 2018 (see Figure 6 above). This however contradicts those detailed Appendix B of the Preliminary Business Case, which outlined 10 route options for the southern section of the project, none of which included a station at St. Stephens Green West. The penultimate station before Charlemont on the western alignment was at College Green. It therefore appears as though the Government has let the railway order proceed to the planning stage on the basis of inaccurate information.

The starting point therefore appears to be that Charlemont should be the city centre terminal station. Section 7.7.8 of the EIAR further states in relation to the southern terminus location:

> *"Once a decision was made not to upgrade the Luas Green Line to Metro standard as part of the proposed project, it was necessary to determine the most appropriate termination location for the MetroLink project.*
>
> *The location of the MetroLink SSG East Station was determined primarily as an intermediate station location between two critical interchange points at Charlemont (tie in with Luas Green Line) and Tara Street (DART interchange). Its location on the east side of the park and not the west side as in previous alignments was dictated by restrictions on railway curvature between the two adjacent stations. As a result, with the current alignment being driven by the project requirement to achieve interchange with other modes of transport, a termination location at St Stephen's Green west was not considered feasible.*
>
> *Having regard to the current MetroLink alignment and the requirement for an interchange at Tara Street with the existing DART services, two feasible termination locations were considered, and these were:*
>
> - *St Stephen's Green East; and*
> - *Charlemont."*

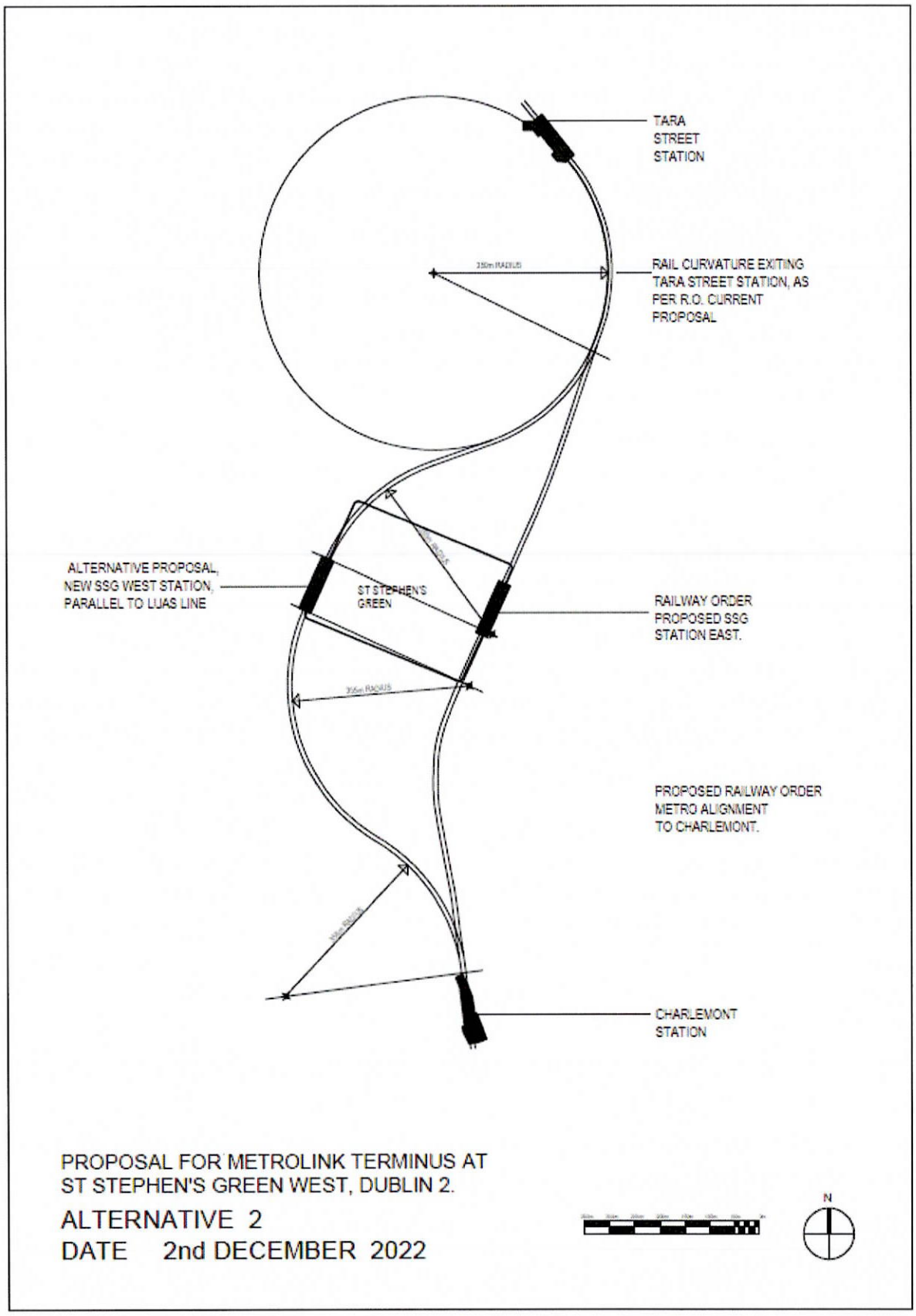
This clearly demonstrates a deeply flawed rationale. The decision not to *"upgrade the Luas Green Line to Metro"* should have resulted in demoting the importance of the *"Charlemont (tie in with Luas Green Line)"*. The alignment choices *"to determine the most appropriate termination location for the MetroLink project"* should have investigated three options: St Stephen's Green West, St Stephen's Green East and Charlemont. St Stephen's Green West becomes a viable option once the self-imposed constraint of forcing a connection to a Luas Green Line tie-in location is removed. Indeed, a carefully designed St Stephen's Green termination point (West or a more connected version of East or a hybrid) would provide a superior connection to the Luas Green Line and maximise the scope for future southern extension routes (including the replacement of the Luas Green Line option as will be discussed below). The fact that St Stephen's Green was never properly evaluated as terminus option shows that the EIAR is deeply flawed and inadequate.

There is very limited interconnection with Luas services at the St. Stephens Green East location. The western side of the Green is the real destination for the vast majority of users, as this is the retail core of the city with

high levels of footfall throughout the day. Indeed, this is a very significant inadequacy in the EIAR as it does not assess pedestrian origin/destination patterns in and around these critical city centre MetroLink stops. Both the Charlemont and St. Stephens Green East stations leave the majority of passengers where they do not want to go. This is to the top of Grafton Street, which is what was proposed in the original Metro North project.

As indicated above, the EIAR suggests that it was not possible to connect Tara Street with a station at St. Stephens Green West, owing to the curvature between two adjoining stations. It was on this basis that only St. Stephens Green East was considered. St. Stephens Green East was then ruled out as a terminus option on the basis that it provided sub-optimal interchange with Luas. In addition, it was considered that this option would not provide for an optimal passenger experience for those travelling onto the Airport with suitcases etc.

Figure 17: Potential Connection between Tara Street and St. Stephens Green West



However, upon review, and using the minimum radii and track curvature used in the actual rail order drawings, it is evident that a St. Stephens Green West station is technically feasible. We refer to the figure above. It clearly

illustrates a station location and alignment that is similar to the Metro North proposal, and which provides a seamless interchange between both DART at Tara Street and Luas Green Line services at St. Stephens Green. Furthermore, it potentially allows for onward connection to the Charlemont area, in the event that Metro South was ever constructed, and as envisaged by the current policy as outlined in the Transport Strategy for the Greater Dublin Area 2016-2035. This would however have to be the subject of confirmation by the Board. Furthermore, in the event that Metro South does not proceed, which is highly likely given the emerging policy in the updated draft transport strategy, this option would leave the city centre termini at a location where it should be, adjacent to the main retail core of the metropolitan area and interchanging with Luas.

A further important consideration in relation to track design and rail alignment is the requirement for a very lengthy 360m turnback facility to the south of Charlemont Station. No rationale for this lengthy turnback facility is provided. The length of this tunnel also determines the length of the associated intervention tunnel has been provided. Drawing no ML1-JAI-ARD-ROUT_XX-DR-Y-03096 and ML1-JAI-ARD-ROUT_XX-DR-Y-03097 illustrates that there are three switch back cross-overs. It must be the case that a switch back can only occur once. Furthermore, the length of this prejudices onward future alignments. This is exceeding costly to provide.

For these reasons, we request that the Board commissions independent consultancy advice in relation to track alignment, station design and safety considerations on the sections south of Tara Street Station, including the need for a 350m turnback facility to the south of Charlemont Station.

This alignment could have connected to Charlemont on the original preferred alignment Option 4 (B) as set out in the New Metro North Luas Green Line Tie-in Study – Options Appraisal Report. However, this terminal option may not tie in with the angled station box design which was proposed and negotiated between the developer and TII during the course of dealing with the application on P.A Reg. Ref: 2373/17. The Board's decision to grant permission for the office development, upon which the angled station box was built, may have effectively prejudiced the potential to provide an appropriate city centre station at St. Stephens Green West and all western alignment options, as it may not be possible to align a metro with this station box at Charlemont. Furthermore, it has potentially prejudiced the tie-in with the Luas line in the event that this ever occurrs. The station box alignment is not fit for purpose in relation to the alignment to the south or north of it. The issue of prematurity of the office development which would prejudice a proper consideration of Metro alternatives was strongly argued at the oral hearing into the appeal relating to the Carrolls Building office extension, but the Board merely accepted what TII had to say. The issue of that decision prejudicing the appropriate alignment of the Metro scheme is central to the project and the basis for the entire EIAR.

Appendix A7.9 of the EIAR compares the options of terminating the line at Charlemont or at St. Stephens Green East. The option of terminating at Charlemont is favoured as it provides for interchange with the Luas Green Line. If further considers that

> *"The only alternative location is at SSG East and as is demonstrated below this is not an optimal location for interchange with the Green Line."*

The evident alternative of a termination at St. Stephens Green West is not considered in the assessment, although this is the evident termination point, and is possible as illustrated in Figure 17.

6.6.2 Passenger Convenience & Accessibility

In the assessment of the two options considered, the walk time from St. Stephens Green East to Luas was 7.58 minutes and 2.9 minutes interchange at Charlemont. However, in the Charlemont case, this totally fails to take account of the passenger experience, where passengers ascending from the Metro station would have to climb stairs up to the Luas platform situated above the canal. Given that this is meant to be a major city interchange

catering for passengers with suitcases and bags going to/coming from the Airport, such an arrangement is wholly sub-optimal.

Currently, Luas passengers looking to access the north of the canal (which is the majority) alight at the stop above the canal and simply use the north stairs to exit on their desired side of the canal. For Metro passengers looking to access the north of the canal, they will have to alight deep underground (south of the canal), must use escalators to reach ground level and then must walk to either around Ranelagh Road Bridge or Leeson Street Bridge or climb the stairs to the Luas stop platform (contra flow to exiting Luas passengers) in order to reach the north side of the Canal.

The Metro station is an inferior solution than the Luas stop for walkers seeking to access the north of the canal.

We also highlight that there is an inherent contradiction in the application. On the one hand TII are maintaining in the overview of the project that there is an interchange station at St. Stephen's Green. On the other, they are indicating that the St. Stephens Green East is too distant from Luas to serve as an effective interchange.

6.6.3 No Consideration an Efficient Connection at Stephen's Green

The NTA/TII went to considerable effort to explore options to improve the connection between Metro and Luas at Charlemont. Chapter 7: Consideration of the Alternatives (Of Volume 2 – Book 1: Introduction and Project Description) sets out this analysis:

> *"7.7.10.11.3 Charlemont Connection to Charlemont Luas Stop*
>
> *In order to ensure that there is an efficient connection between the proposed Charlemont Station and the existing Charlemont Luas stop an analysis of alternatives was undertaken to identify the preferred method of connection having regard to the following constraints:*
>
> - *The different levels from the MetroLink Station (below ground) to the Luas stop (on an elevated embankment/bridge over the Grand canal);*
> - *The Carroll's Building, a protected structure (RPS Ref.:3280);*
> - *The Grand Canal;*
> - *Grand Parade as an important transport route.*
>
> *The alternatives analysis considered the following options for accessing the Luas Charlemont stop:*
>
> - *Option 1: Stairs in front of Carroll's Building at South East of Luas Station & one new lift;*
> - *Option 2: Pedestrian Crossing of Grand Parade, Deck along canal edge and stairs to Luas from platform;*
> - *Option 3: Elevated Walkway in front of Carroll's Building & one new lift;*
> - *Option 3a: Elevated Walkway in front of Carroll's Building at a lower level & one new lift;*
>
> *Option 1 was the preferred Option as it reduced the potential for a setting impact on the Carroll's Building (when compared to Option 2)."*

Unlike Charlemont, the NTA/TII have never made an attempt to try to ensure that there is an efficient connection between the proposed SSG East Station and the existing SSG West Luas stop by undertaking an analysis of alternatives to identify a preferred method of connection having regard to known constraints. (For example, a travelator connection between mezzanine level SSG East rising to streel level SSG West). While it was deemed worth building a stairs in front of a listed building and one new lift for Charlemont; no alternatives were explored to improve the connection at St Stephen's Green.

The Applicants comparison of the options of terminating the line at Charlemont or at St. Stephens Green East in Appendix A7.9 is therefore wholly inadequate in that it compares one option that attempted to improve the connection and another where no attempt was made. This is not a robust consideration of alternatives.

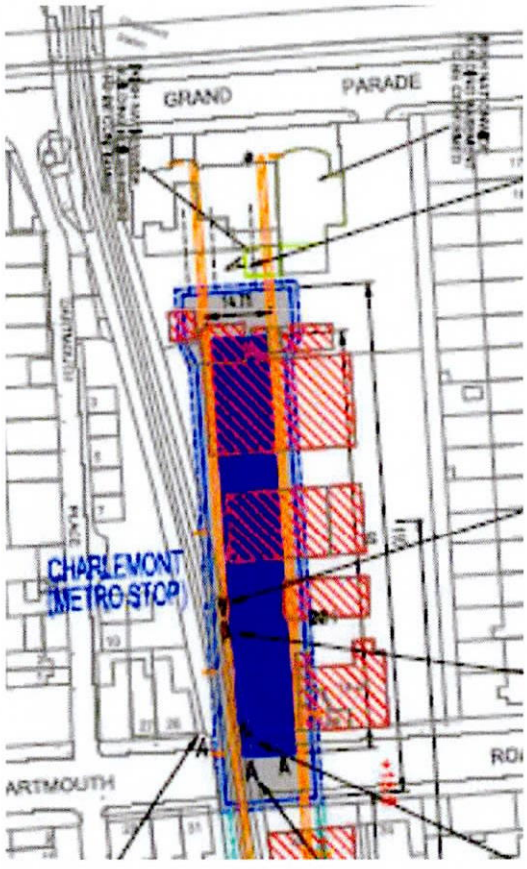
6.7 No Studies to Support the Proposed Alignment to the South

A vital component of the Rail Order Application is the consideration of alternative alignments for the south end of the Metrolink line. The Applicant did undertake a detailed consideration of potential tie-ins with the Luas Green Line to the south. Option 4 (b) was the one selected in the March 2017 study. This was the Ranelagh in-line option. No major impacts upon road and bus networks were identified. While it did impact upon properties on Dartmouth Road, it performed best in the multi-criteria analysis. Furthermore, it was the cheapest of the options considered and thee assessment suggested that there were no issues with future connectivity from a terminus at Charlemont.

The figures below show the differences between the Preferred Option supported by the Luas Green Line Tie-In Study (March 2017) and the alignment in the Rail Order Application.

Figure 18: Comparison of Tie-in study Preferred Option and Built Alignment in the Rail Order Application

Option 4B Ranelagh In-Line as per Luas Tie-in Study



As per Fig 4 above

Built Alignment as per the ROA

As per Fig 3 above (reorientated for comparison)

As can be seen, the already built Charlemont Station Box creates an alignment that is very significantly different from the Preferred Option. (Note Option 4B goes directly under the Carroll's Building, whereas the as-built is significantly to the east at its north end). The implications of the built alignment are discussed in detail in Section 5.10. Very importantly, these implications are both to the north and south of Charlemont. Notably to the north the more easterly alignment has very strongly influenced the Applicant not to consider station options on St. Stephens Green West where the optimal interchange with the Luas Green Line would occur. The resulting

alignment to the south of Charlemont shifts to the west and rules out the preferred "in-line" tie-in with the Luas Green Line and will cause significantly increased demolition of houses in the Ranelagh area (see also Appendix 3 below).

Not only is the March 2017 Luas Tie-In Study now totally irrelevant from a tie-in perspective (none of the options were used or re-evaluated), it is also redundant from a policy perspective (no Luas Green Line replacement is part of the subject Rail Order Application). Furthermore, the alignment that has already been built is not justified or supported by any other analysis provided in the Rail Order Application.

Clearly this leaves a fatal gap in the preparation and documentation of the Rail Order Application. The fundamental and essential study that should have replaced the Luas Tie-In Study is a city-centre terminus study that uses appropriate criteria (that would have been very different from those used in the Tie-in study). Such a study, however, was never undertaken by the Applicant. In fact, the Rail Order Application provides no studies to support the proposed/build alignment to the south.

An Bord Pleanála has therefore been denied the opportunity to consider alternatives through the planning process for the current Rail Order Application. Furthermore, since the Applicant still contends that "a Green Line run-through connection will remain a likely option for the future" (Vol 5. A7.9), the alignment that has already been built will severely curtail An Bord Pleanála's scope to consider alternatives for any future potential tie-in with the Green Line Luas several decades from now.For these reasons, we request that the Board commissions independent consultancy advice to undertake a city-centre terminus study that uses appropriate criteria to determine the most appropriate south termination location for the MetroLink project.

6.8 No Alternative Charlemont Station Box Design can be Considered in the EIAR

Section 7.7.10.11 of the EIAR states the following:

> *"The EPR placed the proposed Charlemont Station underground to the south of the Grand Canal in an area where a new development has received approval (DCC Planning ref: 2373/17 & An Bord Pleanála appeal ref: 300873-18) and is progressing through construction. The public consultation on the EPR in 2018 identified several concerns regarding the location and impact on adjacent properties.* ***Key among these were potential impacts on adjacent Dartmouth Terrace and Dartmouth Square West, potential impacts on the proposed office development proposals for the site and the impacts of the proposed Projects operation on the existing Luas Green Line as discussed in Section 7.7.7****.*
>
> ***Design development in advance of the publication of the preferred route identified changes to the Charlemont station design****. The tunnel section was lowered to ensure it passed safely beneath the Grand Canal and the 3.6m diameter, Grand Canal Drainage tunnel.* ***The station's overall dimensions were altered to minimise construction impacts the lane to the rear of Dartmouth Square West properties and integrate with the 2 Grand Parade development*** *(DCC Planning Ref 4755/19 and An Bord Pleanála Appeal Ref 4755/19) currently under construction. The revised station design also removed the need to acquire and demolish properties on Dartmouth Road and Northbrook Road*
>
> ***The station box layout has also been further developed to retain the ability to construct the full station box*** *and internal fit-out in close proximity to the office development (currently in construction) overhead.* ***The developer of the oversite development has carried out some advanced station box works on TII's behalf to ensure a station can be safely constructed at a later date.*** *A multi-disciplinary analysis was undertaken to identify the preferred option for a station at Charlemont."*

The simple fact is that no alternative station box/design could be considered in the EIAR as this had already been designed as part of the office development permitted under P.A. Reg Ref:2372/17 and 4755/19. TII fully acknowledge that the station has effectively already been partially designed and constructed and the further completion of the station box and internal fit out is required.

The EIA screenings by the planning authority and An Bord Pleanála in relation to these applications did not even consider screening for this element of MetroLink.

6.9 EIA Project Splitting and Cumulative Effects

6.9.1 Project Description

There is a requirement under the EIA Directive, and the relevant Planning and Development Regulations transposing this Directive, to adequately describe all aspects of the development. The enabling works and the construction of the station box at Charlemont, which have already been undertaken, are not described in the Application as forming part of the subject Rail Order.

The rail order application is therefore incomplete.

6.9.2 Charlemont Station Alignment and Design

The station box which has already been designed and constructed, and which forms an integral part of the project, was not subject to an EIA. It was neither screened for an EIA, and we would contend, given impact and implications for the wider network, and the environmental impact upon the residents of Dartmouth Square and the Charlemont area, that it should have been the subject of a full EIAR.

An EIA must consider all aspects of the project, including enabling works. The Draft EIAR Guidelines states that:

> *"Dividing the project into separate parts so that each part is below an applicable threshold needs to be avoided. This is project-splitting and is not compliant with the Directive."*

There is an abundance of Europe and Irish case law in relation to this matter. In the European Courts there is for example *Case C-142/07 Ecologistas en Acción-CODA v Ayuntamiento de Madrid (2008),* and in the Irish Courts *O'Grianna & Ors v An Bord Pleanála [2014] IEHC.* Under the EIA Directive, an EIA must consider the direct, indirect and cumulative effects of **all** aspects of the development.

On this point alone, the entirety of the rail order application is legally unsafe.

6.9.3 Cumulative Effects of Later Phases

Section 7.7.4.2 of the EIAR states:

> *"The analysis undertaken identified the following potential impacts on the Luas Green Line if the option to upgrade to Metro standard was included as part of the proposed Project:*
>
> - *The existing green line would require significant upgrade involving platform, track and electrical works, to bring it to metro standard. To construct these works the Green Line would need to be closed for substantial periods of time with passengers diverted to other forms of transport during the periods of closure.*
> - *The existing green line would need to be converted into a completely segregated running line requiring the construction of overbridges at Dunville Avenue and St Raphaela's Road. These works would also require the closure of the Luas Green Line and disruption to services.*

- *The structures and other proposed measures associated to the establishment of segregated running would lead to the perception of local community severance, even with proposed migration measures being put in place. Local resident living in close proximity to the works would also be significantly impacted during the construction of these works."*

One of the principal reasons for bringing the line as far as Charlemont is facilitate onward extension. Case law has established that an EIAR must *"...take account, as far as practically possible, of potential later phases..." (Fitzpatrick & Daly v An Bord Pleanála & Others [2019] IESC 23)*. The full impacts of the impacts upon other communities to the south has not been assessed *"as far as practically possible"*. It merely states that there would be segregation and significant impacts during construction. This, in our opinion, constitutes an inadequate level of assessment of subsequent phases of the project. It therefore renders the Railway Order application incomplete.

6.10 Charlemont Station Box Not Permitted/ Unauthorised Development

The current railway order and associated EIAR acknowledges that the enabling works including the construction of the station box at Charlemont has already occurred. TII appear to suggest that these works were permitted under P.A Reg. Ref: 2373/17 and 4755/19. The station box and enabling works were not included in the public notices in relation to this commercial project and were incorporated into the design as a result of a further information request, which was not advertised. They were two entirely different projects: one a commercial office development for which planning permission was sought; and the other for MetroLink enabling works, for which no permission was sought. The secant piling and associated slab were nothing to do with the commercial office development for which planning permission was sought. The developer applicant and TII negotiated and designed this critical part of the entire transport network and incorporated it into the planning application for an office development without referring to it in any public notices. Third parties were effectively excluded from a statutory process. A senior counsel's opinion is included in Appendix 2 in relation to this critical point.

These works are now the subject of a formal enforcement complaint to Dublin City Council submitted on 05/01/23 . This complaint states the following:

> *"The construction of an underground Metro Station Box consisting of secant piled walling and concrete slab formed part of a commercial office development constructed pursuant to P.A Reg Ref: 2373/17.*
>
> *The commercial office development required normal planning permission to be obtained under the Planning and Development Act 2000. However, under the Transport (Railway Infrastructure) Act 2001 (as amended by s.115(6) of the Dublin Transport Authority Act 2008), the excavation and construction of a Metro Station Box falls within the definition of "railway works". As such, any railway work components of the development are exempted from the Planning and Development Act 2000 (i.e. any permission obtained under that 2000 Act cannot cover railway works).*
>
> *Instead, the Metro Station Box works require a separate application for, and grant of, a Railway Order under the Transport (Railway Infrastructure) Act 2001. No Railway Order was obtained for this Metro Station Box and therefore these railway works were not authorised and could not be lawfully undertaken.*
>
> *The initial planning permission 2373/17 was granted, following an appeal, by An Bord Pleanála subject to conditions; including Condition 3 (a):*
>
> *"Prior to commencement of development, the developer shall enter into an agreement with Transport Infrastructure Ireland/ National Transport Authority in respect of those authorities' requirements to safeguard the potential infrastructure and operation of the existing Charlemont Luas Station and to accommodate the potential development, construction and operation of a metro or light railway on, at, or near the site of the approved development."*

This condition was subsequently reiterated verbatim, as Condition 10 (ii), when planning permission was sought and granted on the 21st February 2020 for a number of amendments (4755/19).

This Condition clearly stipulates that the developer shall enter into an "agreement" with TII/NTA to "accommodate" the potential development of a metro. Such an "agreement" between the TII/NTA and the developer does not, and cannot not, be treated as a grant of permission. Only a legally obtained Rail Order can grant permission for such works.

Therefore, the Metro Station Box that has been constructed on this site is an unauthorised development.

This rail infrastructure was not described in the public notices and drawings were submitted as further information, which was also not the subject of a public notice specifying that significant further information had been submitted.

Furthermore, under section 34 (12) of the Planning and Development Act

"a planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that either or both of the following was required in respect or is required in respect of the development

(a) an environmental impact assessment,

(b) an appropriate assessment."

While this applies to planning applications the same applies to unauthorised development under any consent procedure as retention applications are contrary to the provisions of the higher-level EIA Directive. The Charlemont Station Box is an unauthorised development that required an EIA and therefore the Board is compelled to refuse to consider any application for its retention. Clearly Charlemont Station is an integral part of the Metrolink proposal and the subject Rail Order Application. The Board, therefore, cannot grant the current Rail Order as to do so would a) facilitate the circumvention of the EIA Directive by the splitting of projects and b) amount to a retention permission which it is compelled to refuse. Effectively, Charlemont Station cannot be considered as usable for the Metrolink project because it will remain legally unsafe."

6.11 Implications of the Locked-in Alignment of the Charlemont Station Box

In the March 2019 consultation on the "Preferred Route", the proposed an alignment for the Luas Green Line "Tie-in" was to be an "in-line" connection. This allowed the public to understand and comment on the implications of the proposal.

Since that consultation, NTA/TII reached an agreement (in private) with the developer of the new office building at 2 Grand Parade for a design of the Charlemont Station Box. Construction of this Station Box commenced, without a Rail Order, in April 2021 and was completed in the first quarter of 2022. This design and alignment of the station box is very significantly different to the proposal in the Preferred Route consultation. No notice was made to the public of the proposed changes and there was no opportunity for affected parties to make comment.

The NTA/TII argues in justification of the station at Charlemont that "*a Green Line run-through connection will remain a likely option for the future*" and that the decision to do so has been "*deferred*" (although this is stated without any required policy decision).

In the event of such a future Luas tie-in, the implications of the now locked-in (built) station alignment are profound. It will result in the demolition of houses on Mander's Terrace, Charleston Road and (as evaluated in Option 5 of the Tie-in study) will require the demolition of 11 houses and 24 apartments on Oakley Road. None

of these houses and apartments would be demolished under the design presented in the Preferred Route Consultation.

Not only were affected parties not given notice prior to construction but the implications of the new alignment are now known to the Applicant and yet it is not covered in the EIAR of the Rail Order Application. Instead of presenting the facts about the ramifications of new station alignment, the Applicant merely proffers that a benefit of *"the preliminary design for this location allows for a future connection to the Green Line using top-down construction without the need for a TBM bored tunnel extension"* Appendix A7.9 p3.

As stated above, case law has established that an EIAR must *"...take account, as far as practically possible, of potential later phases..."*. Section 39 of the Transport (Railway Infrastructure) Act 2001 (as amended) provides that the Applicant for a Railway Order must prepare an EIAR that includes (in addition to other matters):-

> *(ii) a description of the likely significant effects of the proposed railway works on the environment,*
>
> *(iv) a description of any features of the proposed railway works, and of any measures envisaged, to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment,*
>
> *(v) a description of the reasonable alternatives studied by the applicant which are relevant to the proposed railway works and their specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the railway works on the environment.*

The Applicant considers that a future Luas Green Line tie-in is *"a likely option for the future"*, and is aware of the required demolition of houses in the Ranelagh area as a result of such a tie-in, however the Applicant did not disclose or refer to these likely significant effects in the EIAR. The EIAR is again inadequate and disingenuous in not presenting these known facts.

More detail on this issue is provided in Appendix 3 below.

6.12 Traffic in the Vicinty of Charlemont Station

6.12.1 Vehicular Traffic and Parking

The assessment in Table 9.90 of the EIAR concludes that during the construction phase the closure of Dartmouth Road will only have a short term moderate negative impact. Grand Parade is heavily over congested during the peak morning and evening period, and while acknowledging that there would be a 10% increase in flows, it still only classifies the impact as 'moderate'. (Note it is also proposed to have a signalled pedestrian crossing (traffic lights) on Grand Parade). Given the importance of Grand Parade as an orbital road providing access to the employment zones in the Dublin 2 and 4 area, this conclusion must be deemed inaccurate. The closure of Dartmouth Road will have significant local effects on access and traffic flows. The construction sequencing for Charlemont, shown at Section 8.14 of Appendix 5.3, indicates that Dartmouth Road will be closed for 102 months (8.5 years). The closure of Dartmouth Road will have very significant local effects on access and traffic flows. Again, the conclusion that the impacts would be merely moderate cannot be justified. Northbrook Road will experience an increase in traffic movements during construction.

The conclusion in Table 9.93 of the EIAR that construction impacts resulting in the loss of 30 parking spaces will only result in a slight negative effect cannot be justified. This compares with the assessment of Albert College where the loss of 42 spaces is deemed to be significant. It should be noted that where an impact is identified, mitigation measures should be proposed. The only mitigation measure is to *"Monitor if closure is required at all points, or if it can be reinstated temporarily throughout the works. This impact will be removed following completion of Construction Phase."* There is no acknowledgement of the impact upon local residents not being

able to access their houses, or avail of on-street parking. This matter is dealt with in detail in separate submissions.

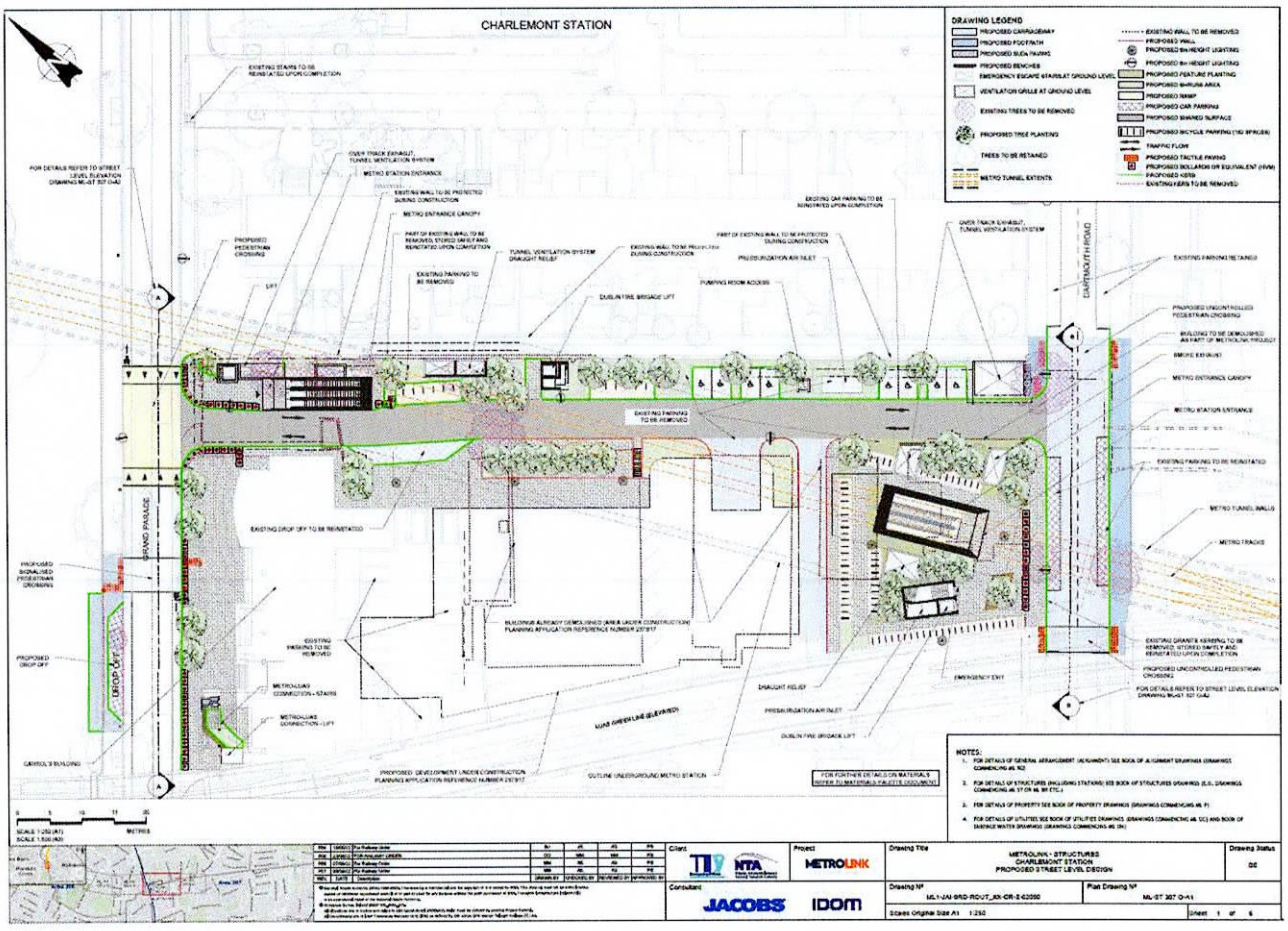
The assessment of permanent operational impacts states:

> *"As part of the proposed Project at Charlemont Station, new pedestrian crossing will be provided to the east of the station on Grand Canal; however, this will have a minimal impact on driver delay on this road."*

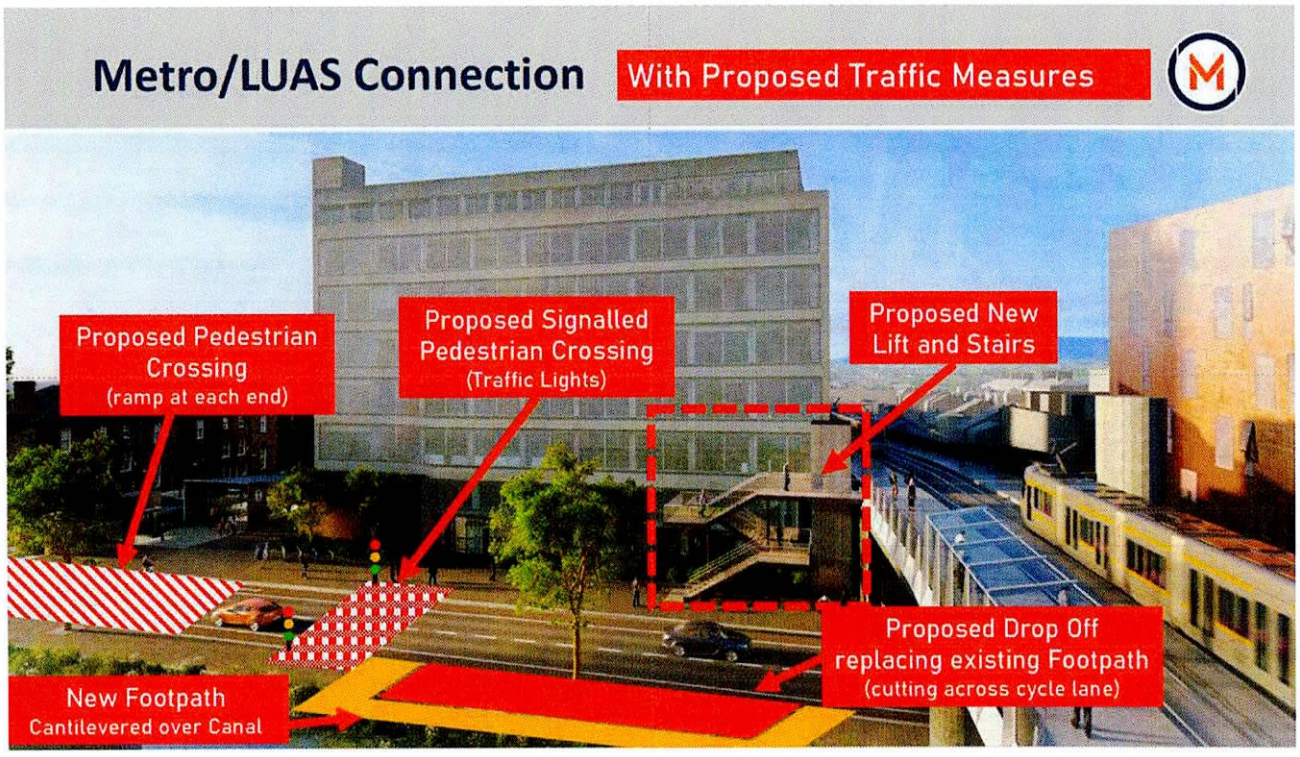
However, no detailed modelling of the impact of a pedestrian crossing at this point has been undertaken on this critical orbital route. Even from observations, it is evident that there will be an adverse impact.

The impact of the traffic measures based on the proposed road level design of Charlemont Station is shown in the Figure below.

Figure 19: Proposed Traffic Measures on Grand Parade and Dartmouth Road



Source: 4. Railway Order Plans\Drawings Structures Details Book 2 of 3 MetroLink Stations Dublin City Council

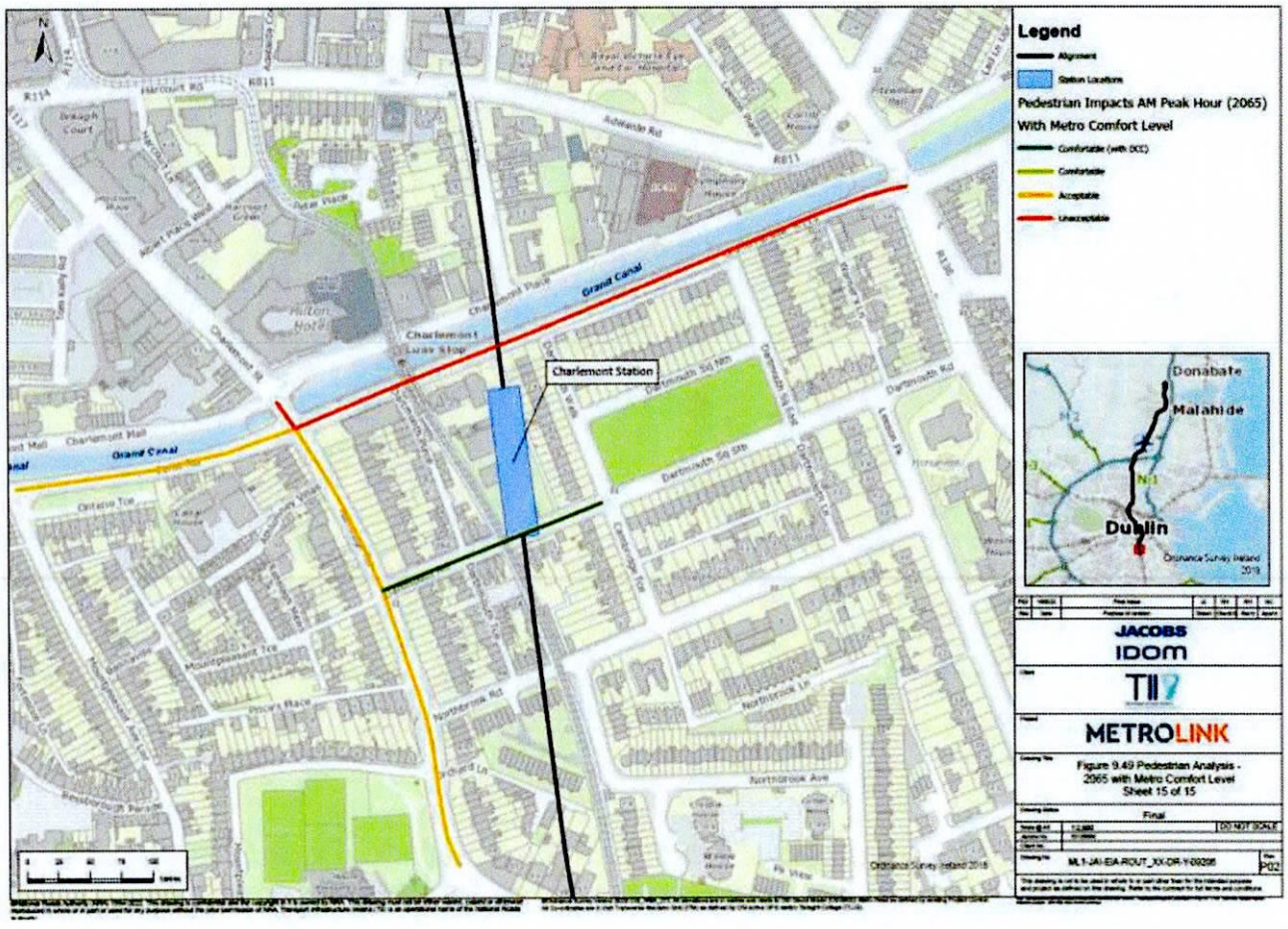


6.12.2 Pedestrian Traffic

There are very significant concerns about the pedestrian movements around the station. This is an interchange station with Luas with high levels of movement between the two. Most of this movement will be focussed on the area in front of the Carrolls Building and will be reliant on a very sub-standard stair access between road level and the elevated Luas platform above the canal. The EIAR acknowledges this issue in Appendix 9.2. The pedestrian environment along Grand Parade is deemed to be unsatisfactory. The drawings show that there are two pedestrian crossings proposed for Grand Parade; one is a Signalled Pedestrian Crossing (Traffic Lights) and the other an Uncontrolled Pedestrian Crossing. There are also two Proposed Uncontrolled Pedestrian Crossing on Dartmouth Road. A traffic light on Grand Parade must have a traffic impact (see the Figure above). The Appendix states:

> *"The results of the Charlemont assessment show that all links will fall below DCC guidance in 2050, with the exception of Dartmouth Road. Whilst they do not meet DCC guidance, they are deemed to have an 'Acceptable' level of comfort, with the exception of Grand Parade West which has an 'Uncomfortable' rating. In 2065, the results show that all links will fall below DCC guidance, with the exception of Dartmouth Road. Both Charlemont Street and Grand Parade West are deemed 'Uncomfortable', while Ranelagh Road and Canal Road maintain an 'Acceptable' level of comfort."*

Figure 20: Pedestrian Assessment



As indicated in preceding sections, no assessment is undertaken of the pedestrian movements along Dartmouth Road, which is considered to be a significant deficiency.

The Canal provides an effective barrier for pedestrians seeking to gain access to the north side and Adelaide Road. Pedestrians will be required to take a very circuitous route via Charlemont Street. Charlemont Place on the north side of the Canal is a major commuter pedestrian and cycle route to the employment areas of Dublin 2 and 4. However, the lack of access to the north side of the Canal will force pedestrians along the relatively narrow pathways on either side of Grand Parade. The provision of a staircase to the Luas station will do nothing to mitigate this.

Figure 20: Pedestrian Micro Simulation Model

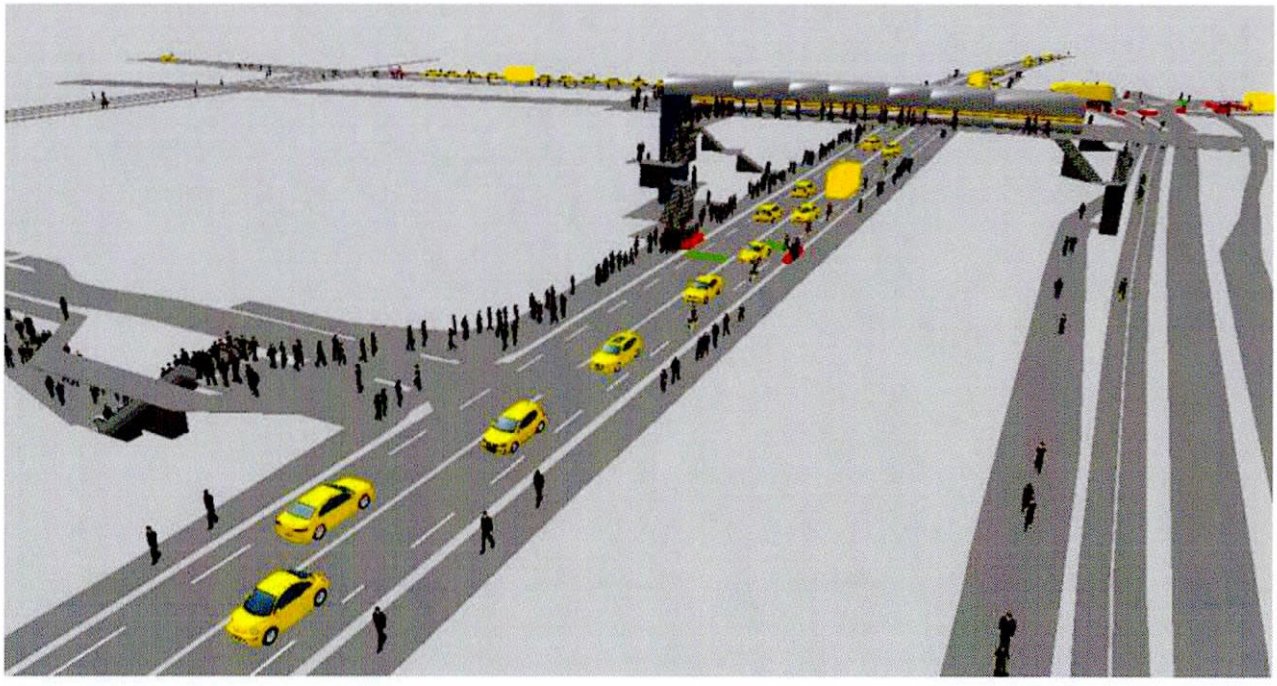


Figure 6.11: Operation of Charlemont microsimulation model

6.12.3 Drop-Off

There is no effective provision made for drop-off at this important interchange. Taxi, bus and casual private car users are not appropriately catered for. There is only a short drop on the northern side of the carriageway of Grand Parade and none on Dartmouth Road. There is no taxi rank or provision for future bus services. The interchange with other modes is therefore wholly inadequate. (We noted section 6.5.1 above that TII has attempted to make a virtue of lack of interchange at this city centre terminus in a meeting held between TII and CDCG on the 3rd March 2022). This will merely result in adhoc drop off, particularly on Dartmouth Road, blocking access for local residents. Drop-off on Grand Parade will result in traffic congestion and a traffic hazard (especially for cyclists as the proposed Drop-off replaces the existing footpath and cuts across the existing cycle lane).

6.13 Noise, Disturbance and Impact upon Amenities

The development will have a very significant impact upon the amenities of those residing in the area. This will result from the lengthy construction period of c 9 years, with noise and vibration impacts from tunnelling, the construction of the cut and fill new station, tunnelling and boring associated with the new tunnel and the intervention tunnel. Noise impacts on properties in the vicinity (Dartmouth Square West, Dartmouth Road and Cambridge Terrace) will all range from moderate to very significant. The hours of working are specified as 07:00 hrs to 19:00 hrs. The passage of the Tunnel Boring Machine (TBM) through the stations will be on a 24 hours, 7 days a week basis. HGV deliveries will be ongoing over a lengthy period of time. The impact upon this residential neighbourhood will be very significant.

The operational phase will be result in train noise, noise from public address systems, passengers accessing the station, taxis and cars dropping off and picking up.

Detailed submissions in relation to the impact upon amenities will be made in the associated submissions in relation to Dartmouth Square West and Dartmouth Road.

6.14 Public Consultations

TII's engagement with the public and local communities affected by this major infrastructure proposal has been wholly unsatisfactory. The experience of CDCG is that TII has not engaged in a meaningful manner to address their concerns and properly mitigate impacts. While there was initial engagement with affected landowners and communities, they have effectively delegated in recent times responsibility to RINA. The role of RINA is to provide independent engineering advice. However, RINA is commissioned by and reports to TII..

At a meeting between NTA/TII, members of the CDCG and Ivana Bacik TD on the 3rd of March 2022, the NTA/TII stated that they were no longer willing to listen to residents' views and were progressing to submit the Rail Order Application. Their stated reason for this was because "further design changes will delay the MetroLink by up to 2 years at a significant additional cost." Rather than the NTA/TII being satisfied that they had completed all necessary and appropriate analysis and assessments, they just didn't want to delay any further or incur any further costs in finding a better solution for Metrolink and local residents. This is illustrated in a slide of the presentation to residents which is detailed in the figure below.

Figure 22: TII Presentation to CDCG on 3rd March 2022

Next Steps.

- Data and Analysis to be Collated into a Report;
- Railway Order Application to be submitted in Q2 2022;
- Consultation with independent expert who will assist you with your submissions;
- Further design changes will delay the MetroLink by up to 2 years at a significant additional cost.

The full implications of the final and fixed alignment at Charlemont has never been the subject of public consultation and the station box at Charlemont has been taken as a predetermined factor in the preparation of the entire scheme. The residents of Mander's Terrace, Charleston Road and Oakley Road have never been advised that their houses would be demolished in the event that the tie-in should happen in the future.

The scale of the project is very significant, and the issues are complex. RINA was only able to provide answers to queries after the Rail Order was submitted, making it very difficult to evaluate and compile a reasonable submission within the time available.

7. SUMMARY AND REQUESTED AMENDMENT

7.1 Summary of Submission Points

The main points of this submission can be summarised as follows

1. Compliance with Policy - The proposed development, which extends from the city centre at St. Stephens Green to the inner suburban area does not comply with the policy of the Transport Strategy for the Greater Dublin Area 2016-2035. The extension of Metro to the south city is only to occur after the Luas Green Line services have been upgraded (capacity increases) as an interim measure.

2. The business case fails to accurately take into account inflation projections. The inclusion of an highly expensive section between St. Stephens Green and Charlemont (estimated by TII to cost €650m) is strategically weak and duplicates the existing Luas Green Line services.

3. Charlemont is the incorrect strategic location for a hub and spoke system as it is too far out along the Luas Green Line spoke and would prejudice future options for integration of networks and services. St. Stephens Green is the most appropriate location as it provides for interchange with bus, Luas, other road transport and future DART underground.

4. The project incorrectly dismisses St. Stephens Green West as an appropriate terminal station. It only considers St. Stephens Green East and Charlemont. Furthermore, no study was ever undertaken by NTA/TII to explore the options to increase the efficiency of the connection between a metro station St. Stephens Green East with the existing Luas stop at St. Stephens Green West.

5. No study has ever been carried out using specific and appropriate criterial for a city centre terminus. The closest to a terminus study, completed in March 2017, is now shown to be totally irrelevant from a tie-in perspective (none of the options were used or re-evaluated) and is also redundant from a policy perspective (no Luas Green Line replacement is part of the subject Rail Order Application). This leaves a fatal gap in the EIAR documentation and renders it inadequate and incomplete.

6. No supporting studies have been included in the Rail Order Application that justifies the alignment that has already been constructed at Charlemont.. Should this alignment be used to tie-in with the Luas Green Line in the future it will result in the demolition of houses in the Ranelagh area.

7. No alternatives to the station box at Charlemont were considered as it had been fixed through the design of the overhead commercial development.

8. The previous determination of the alignment at Charlemont involves project splitting and the potential cumulative impacts of future phases has not been taken into account, in as far as practical.

9. The EIAR is inadequate in relation to

    - Description – The EIAR fails to adequately describe all aspects of the development, particularly the enabling works already undertaken at Charlemont and future elements of the project.

    - Alternatives – This matter is addressed in 5.5 to 5.7 above. There is an inadequate assessment of alternatives alignments, station location, station design at Charlemont and future alignments

- Traffic & Transport Assessment - An assessment of pedestrian flows in and around Charlemont Station is provided in Appendix A9.2B of the traffic impact assessment. However, the assessment does not consider egress and access from the station entrance onto Dartmouth Road.
- Noise – The noise assessment in Chapters 13 and 14 only considers the impacts during the construction phase and the running of trains in the operational phase. However, no assessment is provided of the noise impacts associated with escalators running in the operational phase.

10. The station box at Charlemont, as constructed, does not have the benefit of planning permission and has not been part of the EIA undertaken for this project. It is an unauthorised development. Processing the current application, which is reliant on these preliminary works, is legally unsafe and contravenes the provisions of the EIA Directive. The public, including the owners of houses that will be demolished in the event of a future Luas tie-in, were denied the right to be notified and to make comments on the known implications of the pre-determined alignment.
11. The development would have an adverse impact upon traffic during the construction and operational phase, drop-off has not been properly designed and there is poor integration with other modes. Pedestrian movements in and around the station would be difficult.
12. The development would result in noise and disturbance during the construction and operational phases and would result in a loss of amenities for the area.
13. There has been inadequate and poor public consultation during the design stage of the project.

7.2 Specialist Advices Sought

7.2.1 Legal Advice

We are strongly of the opinion that it is legally unsafe for the Board to consider the current railway order application. To avoid further undue costs to the applicant, third parties and the Board itself, we request that the Board seeks legal advice, at an early stage and in advance of any oral hearing, in relation to whether:

i. the Board can consider the application which is reliant on an element of which falls outside the application (i.e. the Charlemont Station Box), and for which permission has not been obtained;
ii. the EIAR has properly assessed the enabling works at Charlemont Station;
iii. enabling railway works that form an integral part of the MetroLink project shall form part of the railway order application; and
iv. the Board is in a position to consider any railway order application involving retention of enabling works, given the provisions of the EIA Directive.

7.2.2 Specialist Railway Engineering Advice

- Given the very important strategic issues at stake, we request that the Board appoints its own independent specialist engineering advice:To undertake a city-centre terminus study that uses appropriate criteria to determine the most appropriate south termination location for the MetroLink project,
- To assess rail alignment, station location and design on the sections south of Tara Street Station, including the need for a 350m turnback facility to the south of Charlemont Station.

7.3 Requested Amendment

Reflecting the original Metro North precedent decision, we request the following amendments:

i. Omit from the Railway Order the section from Tara Street Station to Charlemont Station and associated onward tunnel extension and intervention tunnel

ii. Require the submission of a railway order for a section from Tara Street Station to St. Stephens Green which would effectively provide for a terminal hub station which can effectively integrate with the Luas Green Line and future DART underground.

Appendix 1 - List of Residents

102 Properties	Name	Address	Consent for to be included in Submission
DSq West	Niall Parsons	1 Dartmouth Square	Y
	Grace Maguire & John Ryan	3 Dartmouth Square	Y
	Loraine Mulligan & Conor Power	5 Dartmouth Square	Y
	Geraldine Ann Cusack	7A Dartmouth Square	Y
	Geraldine O'Connell Cusack	7 Dartmouth Square	Y
	Caroline O'Connor & Michael Lillis	8 Dartmouth Square	Y
	Terry Reid & Denis McLoughlin	9 Dartmouth Square	Y
	Helena Kelly & Muiris O'Dwyer	10 Dartmouth Square	Y
	Leo & Anne Crehan	11 Dartmouth Square	Y
	Deirdre & Herbert Mulligan	12 Dartmouth Square	Y
	Mary Keating	13 Dartmouth Square	Y
	Elizabeth Vandenberghe & Godfrey Gillett	14 Dartmouth Square	Y
	John Conway & Orlaith McCarthy	15 Dartmouth Square	Y
	Angela & Manuel Ryan	16 Dartmouth Square	Y
	Josianne & John Bullows	17 Dartmouth Square	Y
DSq Other	Caitriona Shaffrey	18 Dartmouth Square	Y
	Hilary Orpen	20 Dartmouth Square	Y
	Erica & Bryan Dalton	22 Dartmouth Square	Y
	Frank Carr	24 Dartmouth Square	Y
	Tatiana & Ben Hurley	25 Dartmouth Square	Y
	Patrick Corrigan	26 Dartmouth Square	Y
	David Gillespie	27 Dartmouth Square	Y
	Peter Dalton	28 Dartmouth Square	Y
	Mary Donuvan	30 Dartmouth Square	Y
	Diarmuid & Annette Burke	31 Dartmouth Square	Y
	Brendan Coyle	33 Dartmouth Square	Y
	Emir & Colm McDonagh	34 Dartmouth Square	Y
	Nicola O'Doherty	35 Dartmouth Square	Y
	Phil & John McGinley	36 Dartmouth Square	Y
	Barry Murphy	37 Dartmouth Square	Y
	Michael Gannon	39 Dartmouth Square	Y
	Jacqueline O'Donnell	41 Dartmouth Square	Y
	John O'Rourke	42 Dartmouth Square	Y
	Emma Nee & Joe Coyle	45 Dartmouth Square	Y
	Marie & Garry Ferguson	47 Dartmouth Square	Y
	Carmen Neary	49 Dartmouth Square	Y
	Garret Ward & Fiona Burns	51 Dartmouth Square	Y
	Donough Kilmurray	52 Dartmouth Square	Y
	Warfield	53 Dartmouth Square	Y
	Niall F MacCarvill	54 Dartmouth Square	Y

102 Properties	Name	Address	Consent for to be included in Submission
	Aoibhinn & Jon O'Connell	55 Dartmouth Square	Y
	Marianna & Ian Dooley	57 Dartmouth Square	Y
	Tom & Jacqueline Doherty	59 Dartmouth Square	Y
	Mairead & Finbar Cahill	60 Dartmouth Square	Y
	Muiris Buckley	64 Dartmouth Square	Y
	Claudia Matson	65 Dartmouth Square	Y
	Yvonne Allen	68 Dartmouth Square	Y
Dartmouth Road (luas side)	Caroline Regan & John Ryan	26 Dartmouth Road	Y
	Tom & Pauline Harrington	27 Dartmouth Road	Y
	Fiona Tonge, Kieron Tonge & Thomas Birks	28 Dartmouth Road	Y
	Suzi & GI Taylor	32 Dartmouth Road	Y
	Ciaran Black & Leon McCarthy	33 Dartmouth Road	Y
	Michael & Carmel Doyle	34 Dartmouth Road	Y
	John Neary	35 Dartmouth Road	Y
Cambridge Terrace	Paula Duffy & Vincent Smyth	3 Cambridge Terrace	Y
	Deirdre & Partick Linders	5 Cambridge Terrace	Y
	Joyce McRedmond & Ed Kelly	6 Cambridge Terrace	Y
	Rita Marie Harvey & Jason McDermott	7 Cambridge Terrace	Y
	Petria McDonnell	8 Cambridge Terrace	Y
	Emer & John Loughrey	9 Cambridge Terrace	Y
	Sr Kathleen McDonagh- Marist Sisters	10 Cambridge Terrace	Y
	Kathleen White	11 Cambridge Terrace	Y
Lanes around area	Sinead Keane	22 Dartmouth Walk	Y
	D & M Gillespie	27 Dartmouth Walk	Y
	Roisin & Sean Grimley	41 Warners Lane	Y
	Kohlin Lourenco	3 Dartmouth Terrace	Y
	Aileen & Barry Dempsey	78 Dartmouth Terrace	Y
Dartmouth Road (East)	Grattan Boylan & Noreen Gallagher	3 Dartmouth Road	Y
	Joe & Ciaran Rooney	1 Dartmouth Road	Y
	Jamie Maher	4 Dartmouth Road	Y
	Mark Colgan	2 Dartmouth Road	Y
Northbrook Road & Lanes	Fr Eamon Aylward SSCC	27 Northbrook Road	Y
	Deirdre & Partick Linders	22 Northbrook Road	Y
	Blaithin & Jack Massey	23 Northbrook Road	Y
	Niki & Jonathon McCormick	24 Northbrook Road	Y
	Jane & Andrew Court	4 Northbrook Villas	Y

102 Properties	Name	Address	Consent for to be included in Submission
	John Sweetman	5 Northbrook Villas	Y
	Matthew Black	1 Northbrook Lane	Y
	Irene Sorohan	2 St Annes Northbrook Road	Y
Leeson Park	Deidre Lynskey	34 Leeson Park	Y
	John Lynskey	32 Leeson Park	Y
	Terry Lynskey	35 Leeson Park	Y
	Ian Sutherland	36 Leeson Park	Y
	Jessica Kelly	37 Leeson Park	Y
	D Lynskey	The Cottage Dartmouth Lane	Y
	Kevin Maughan	Cherry Lodge, Leeson Park	Y
	Martina & Bryan Greene	48 Leeson Park	Y
	Colm & Dervla Flaherty	15 Leeson Park	Y
	Patricia Lord	122 Upper Leeson Street	Y
Wider Ranelagh	Emer Sheils & Carl Egan	2 Manders Terrace	Y
	Tommy & Noreen Lyons	4 Manders Terrace	Y
	Hilary Moran	6 Manders Terrace	Y
	Jane Wardrop	7 Manders Terrace	Y
	Keith Wardrop	8 Manders Terrace	Y
	Michael McDowell	40 Charleston Road	Y
	Jim & Mary Boylan	43 Oakley Road	Y
	Gemma Dwyer & Eoin Brazil	77 Ranelagh Road	Y
	Aileen Foley	Ferney, Orchard Lane	Y
	Foley	The Mews, Orchard Lane	Y
	Grainne Flynn & Lewis Cummings	9 Old Mount Pleasant	Y
	Yvonne Kennedy	3 Warick Terrace	Y
	Fergus & Eveleen Mulligan	44 Oakley Road	Y

Appendix 2 - Senior Counsel Legal Opinion

Re: Unlawful Station Box Construction at Proposed Charlemont Stop.

General

Substantial aspects of what will become the metro station box for the proposed Charlemont Metro Stop were constructed in 2021/2022 on or about or under the site located at No. 2 Grand Parade, Dublin 6 by the Developer Hines/ Grand Parade Property Trading Company DAC on behalf of the NTA and/or TII.

Those works were carried out long before the application for this Railway Order, now under consideration, was made. These works are described in the Environmental Impact Assessment Report (EIAR) at Chapter 7: *Consideration of the Alternatives*; at p.112, where is it recited:-

> "The station box layout has also been further developed to retain the ability to construct the full station box and internal fit-out in close proximity to the office development (currently in construction) overhead. The developer of the oversite development has carried out some advanced station box works on TII's behalf to ensure a station can be safely constructed at a later date. A multi-disciplinary analysis was undertaken to identify the preferred option for a station at Charlemont." [Emphasis added.]

The works are elsewhere descried as *"a structural deck founded on bored secant piles which will form the central section of the Charlemont station box roof slab."*

To build the 2.4m thick station box slab, it has been confirmed with the developer that two overnight concrete pours (continuous 16 hours - 8pm to 12 noon) were carried out on the 26th November 2021 and 21st January 2022. There was a significant increase in noise disturbance caused by the much deeper piling required for the secant walls of the metro station box. These substantial works prolonged the construction programme of the Hines development.

These metro station box works are an unlawful unauthorised development. The works carried out do not have planning permission. In addition, no environmental impact assessment was conducted prior to the so-called advance station box works being carried out.

The metro station box works as carried out were not (and could not have been) considered as part of either the planning process or the EIAR undertaken for the purposes of the commercial building under development by Hines above and about the station box.

The location and dimensions of the "proposed" metro station box is being presented as a *fait accompli* in this Railway Order process. It near impossible to appreciate how the precise location of the proposed metro station box could be in any way altered or realigned given any station there must be consistent with the substantial works in fact already carried out.

The application for the Railway Order presents the proposed station without any real acknowledgment that some of the works for which permission is now sought have been already constructed, notwithstanding that TII must know it did not have the requisite planning permission to carry out the station box works and must know they have not carried out necessary environmental impact assessment preconditional to building such a structure.

These are matters which TII ought to have made very clear and manifest in this application; but in fact that has not occurred. Similarly, the NTA must have been aware of this unauthorised works before consenting to making of this Railway Order application. No explanation has been forthcoming from either body as to why substantial unauthorised construction work proceeded in advance of the outcome of this Railway Order process.

In reality, if the station at Charlemont gets the go-ahead in principle, no fine tuning can occur because the precise location has been predetermined by the unlawful construction of the metro station box. This is a negation of the very nature of this Railway Order process and renders the consultation process near irrelevant.

Processing this Railway Order planning application, which is reliant on these preliminary and now constructed works, is legally unsafe and contravenes the provisions of the EU law, being the EIA Directive.

For TII/NTA not have conducted an effective EIAR prior to the commencement of significant works involves extremely lax levels of governance for a public body. At the very least, a full explanation and significant justification must be given for the actions of the TII to date in this respect.

The fact that the station box has already been unlawfully constructed to a substantial degree raises serious questions about the *bona fides* of TII. They are in effect – though not expressly - seeking a form of retention permission without proper application.

By proceeding to build the station box unlawfully, a whole series of valid questions and issues that ought to have been properly considered prior to construction have been ignored, including:-

- Was the terrain suitable?
- Was the position suitable?
- What would happen if significant environmental damage was caused due to these enabling works?
- When might such damage become manifest?
- Was there a prior assessment of potential damage to nearby properties caused by the position, size and nature of the station box?
- When might any such damage become manifest?
- What studies were carried out to ensure that the particularly deep piling necessary for the station box was safe?
- How can the Board know that the station box that as built is compliant with requisite building standards and best practice for a metro station?
- Was the design and construction approved by appropriate agencies?
- Was it appropriately designed and built in accordance with regulations fit for that purpose?
- Would the box assist in the minimization of vibrations and other potential adverse environmental consequences from the position and operation of the metro railway and metro station?
- What alternatives were considered that might ameliorate any environmental impact?

These important practical questions aside, other questions such as the location of the station box and the alignment of any rail line thereto seems to have been pre-empted, which makes a mockery of the consultation and decision-making process.

Significant public monies are involved. It is not acceptable to use public funds unlawfully, and pertinent questions arise. How much have the unlawful station box works costed to date? Has TII paid the bill? If not, can it lawfully pay the bill, given that it is a public agency that has acted unlawfully in building a station box? If it cannot pay, who owns the box? If a public agency such as TII has knowingly engaged in an unlawful development, it is difficult to see how they are empowered to spend public monies paying for it.

This is particularly so in circumstances where building the station box cannot have been "accidental". It was obviously a deliberately undertaken, large construction project. There will undoubtedly be plenty of documentation such as plans correspondence, specifications etc in the custody of TII and/or the building contractor and developer. All of these should be made publicly available as part of this process, together with an opportunity for further observations within this process once received.

There is also a question as to whether the Planning Authorities, Dublin City Council/An Bord Pleanála, were aware of the building of the station box. This must be clarified. If they were, should they have initiated steps to satisfy themselves that the NTA/TII was compliant with all requirements for those building works.

Applicable Planning Law

Either one of two statutory-based planning routes must have been complied with for the development. The general scheme is under the Planning and Development Act 2000, as amended. There is also a more specific scheme for "*railway works*", which is of course the process currently being undertaken. As a matter of general legal principle, where there is a specific law dealing with a particular situation, that would generally be the applicable regime.

Planning and Development Act 2000

The development by Hines at the site at 2 Grand Parade (above and about the metro station box) required planning permission under the Planning and Development Act 2000, as amended. This is because all development, other than exempted development, requires such planning permission.

It seems readily apparent that the metro station box was not part of the planning application, nor the grant of permission, for that site and therefore the metro station box cannot have a permission under the 2000 Act within the Hines/ Grand Parade Property Trading Company DAC application/permission.

The construction works actually carried out in respect of the metro station box consisted of secant piled walling and concrete slab forming of an underground Metro Station Box. This was not described in the public notices and drawings submitted as further information in the planning process, and was not the subject of a public notice specifying that significant further information had been submitted.

The actual content of the planning permission for the Hines development at Grand Parade does not cover the building of the metro station box. More pertinently, it could not cover it in law.

The Planning and Development Act 2000 is not applicable to matters covered in the railway procurement order process, being "railway works" so defined, see below. It was not legally possible to grant a permission under the 2000 Act for works that fall within such a railway procurement order, such as the station box as constructed.

Thus, the planning permission given to Hines/ Grand Parade Property Trading Company DAC did not in fact and cannot in law include works consisting of or forming part of the metro station box.

The Inspector made the point that for Hines/ Grand Parade Property Trading Company DAC to be granted planning permission for their office building that is above and about the station box:

> *"3. (a) Prior to commencement of development, the developer shall enter into an agreement with Transport Infrastructure Ireland/ National Transport Authority in respect of those authorities' requirements ... to accommodate the potential development, construction and operation of a metro or light railway on, at, or near the site of the approved development."*

This rationale is sound so long as the NTA/TII's "requirements" were developed fully in accordance with their separate legal obligations and governance procedures and have proper planning permission with a prior EIAR. It is now apparent that was not and cannot be the case.

The fact that the Inspector set out this requirement ought to have put the planning authorities on notice of the potential for unlawful works having been constructed. The planning authorities ought to clarify their position in this respect.

The Inspector's recommended requirement is not and cannot be a planning permission; it is a mere recommendation about reaching an agreement to accommodate potential future works. Whether or not the actual works to be carried out are otherwise lawful or can proceed, i.e., being within a railway procurement order, has yet to be determined. It falls for determination in this process. That the station box has been already unlawfully built is an abuse of this process now under consideration.

Railway works

Under the ***Transport (Railway Infrastructure) Act 2001*** (as amended by s.115(6) of the **Dublin Transport Authority Act 2008)** works exempted as "*railway works*" are deemed to be exempted development under the Planning and Development Act 2000 and thus exempted from requiring planning permission under that Act.

Needless to say, such railway works cannot be carried out without a requisite permission, which is under consideration in this process. The exemption is from the necessity to go through the 2000 Act process, because this separate process is created for such railway works.

> *"Exempted development.*
> *38. (1) Each of the following shall be exempted development for the purposes of the Act of 2000:*
>
> > *(a) development consisting of the carrying out of railway works, including the use of the railway works or any part thereof for the purposes of the operation of a railway, authorised by the Board and specified in a railway order or of any incidental or temporary works connected with such development;*
> > *(b) development consisting of the carrying out of railway works for the maintenance, improvement or repair of a railway that has been built pursuant to a railway order*
>
> *(2) Part IV of the Act of 2000 does not apply and is deemed never to have applied to developments specified in subsection (1)."*

In the Transport (Railway Infrastructure) Act 2001 "railway works" is defined as meaning:-

> *"any works required for the purposes of a railway or any part of a railway, including works ancillary to the purposes aforesaid such as parking by buses or by persons using vehicles who intend to complete their journey by railway, and relocation of utilities, and in this definition "works" includes any act or operation of construction, excavation, tunnelling, demolition, extension, alteration, reinstatement, reconstruction, making good, repair or renewal."*

This is a broad definition and covers excavation and construction of the metro station box underground, even if that is not apparent overground.

Railway is defined as including an underground railway.

This definition clearly covers the metro station box works as carried out. As the metro station box constitutes such "*railway works*" they cannot in law have been the subject of a permission under the 2000 Act, and so cannot be covered by the Hines/ Grand Parade Property Trading Company DAC permission.

The application process for a railway order is set out in sections 37 to 47 of the 2001 Act. Thus, under section 37 (as amended) there can be an application for a Railway Order to An Bord Pleanála. Section 37 (4) is very important and it provides:-

> *"The construction of railway works, the subject of an application for a railway order under this Part, shall not be undertaken unless the Board has granted an order under section 43."*

The metro station box as constructed required such a permission. None has been granted. TII must explain why it knowingly engaged in unauthorised works. Its actions in so doing were unlawful.

The statutory process legislated for by the Oireachtas has numerous procedural steps, which of course are necessary safeguards for the proper processing of the application for the Railway Order. These are not optional procedures or steps. They are mandatory. The fact that these steps cannot now occur in respect of the metro station box undermines this process and deprives it of legitimacy and efficacy.

Under s.40 (as amended) there must be publication of notice in relation to application for railway order. The Act provides for consultation and submissions and for oral hearings before An Bord Pleanála. Under section 43 of the Transport (Railway Infrastructure) Act 2001 (as amended by the Planning and Development (Strategic Infrastructure) Act 2006) An Bord Pleanála may grant a Railway Order, having considered the application, submissions, reports etc. Such an order authorises the railway works. It is a necessity for any such works. The Railway Order must be well publicised, and there must be an opportunity to consider taking a Judicial Review in respect of any order. This remedy cannot be effectively utilised as regards the constructed metro box.

All of the above processes have been sidestepped by TII. These important procedural safeguards have been set at naught by TII by deliberately unlawful constructing the metro station box prior to this Railway Order process commencing.

Section 47B of the Act, as inserted, allows for a "prospective applicant" to enter pre-application discussion with An Bord Pleanála. It is not known whether this occurred, and/or whether it involved the disclosure of the unlawful metro station box having been built. This ought to be disclosed.

Environmental Impact Assessment

There are detailed rules, including relevant EU rules, about a prior Environment Impact Assessment. These are summarised at Chapter 2 of the EIAR attached to the Application for the Railway Order.

176(1) of the Planning and development Act 2002 obliges the Minister to make regulations—

> (a) identifying development which may have significant effects on the environment, and
>
> (b) specifying the manner in which the likelihood that such development would have significant effects on the environment is to be determined.

The regulations are the Planning and Development Regulations 2001 – 2022 (SI 600 2001 as amended.) Regulation 93 provides:-

> "The prescribed classes of development for the purposes of section 176 of the Act are set out in Schedule 5."

The Schedule 5, Part Two, Paragraph 10(h) being: "All tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport."

The Applicant must comply with Directive 2011/92/EU (as amended by Directive 2014/52/EU) in conducting the environmental impact assessment process, to include an EIAR.

Section 39 of the Transport (Railway Infrastructure) Act 2001 (as amended by the European Union (Railway Orders) (Environmental Impact Assessment) (Amendment) Regulations 2021 (S.I. No. 743/2021) provides that the Applicant for a Railway Order must prepare an EIAR that includes (in addition to other matters):-

> (i) a description of the proposed railway works comprising information on the site, design, size and other relevant features of the proposed works,
>
> (ii) a description of the likely significant effects of the proposed railway works on the environment,
>
> (iii) the data required to identify and assess the main effects which the proposed railway works are likely to have on the environment,
>
> (iv) a description of any features of the proposed railway works, and of any measures envisaged, to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment,
>
> (v) a description of the reasonable alternatives studied by the applicant which are relevant to the proposed railway works and their specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the railway works on the environment.

No EIAR has ever been conducted in respect of the actual works already constructed for the metro station box built at Charlemont. Those works are no longer "proposed" works as they had been constructed. An EIAR cannot be retrospective.

A proper environmental assessment must address reasonable alternatives, but this has been rendered a dead letter, see below.

There is no real reference to the constructed station box in the EIAR; all the references are to stations that will be built without any real acknowledgment or concern that a significant aspect of the proposed terminus station at Charlemont has been constructed.

There is a reference to works being conducted on the relevant site at Grand Parade at page 24 of the Metrolink Non-Technical Summary. At page 28 it is noted that *drilling and blasting* will take place to build the station, without recognition that the drilling has already taken place to build the station box, and the blasting is proposed to occur on the site of a recently built large commercial building, beside the constructed metro station box and surrounded to the north, west and south of the site by well-established residential housing. At page 29, section 7.5.4.3 there is no acknowledgement that the metro station box has effectively been built (and the parameters of same literally set in stone) when discussing the necessary specifications thereof.

In the EIAR it is set out that:-

> "The site currently has existing planning permission for a commercial development (Two Grand Parade). Planning permission was granted to Hines in April 2019. The existing permission requires the developer to facilitate the proposed Project by **constructing a structural deck founded on bored secant piles which will form the central section of the Charlemont station box roof slab**. This oversite development is detailed in Chapter 4 (Description of the MetroLink Project)" [Emphasis added.]

The portion in bold is actually a description of the already-constructed metro station box works. It is effectively already built. Its parameters cannot be changed. The works actually carried out had no valid Railway Order permission, as required.

Chapter 4 of the EIA, at p. 143, notes the Inspector's recommendation (as set out above) as if it were a valid planning permission. It was not. It was a mere condition as to cooperation made in a grant of planning permission under a different statutory regime inapplicable to railway works in respect of a different construction project. This was not, and could not be, a permission for the works as carried out to be constructed in this or any process. There was no planning consideration of works actually carried out.

Separately there was no environmental assessment of the works as carried out for the purposes of this significant infrastructure project.

In EIAR Chapter 7: Consideration of the Alternatives At p.112 (*7.7.10.11 Charlemont*) is it recited:-

> "The station box layout has also been further developed to retain the ability to construct the full station box and internal fit-out in close proximity to the office development (currently in construction) overhead. The developer of the oversite development has **carried out some advanced station box works on TII's behalf to ensure a station can be safely constructed at a later date.** A multi-disciplinary analysis was undertaken to identify the preferred option for a station at Charlemont." [Emphasis added.]

The above portion came under the section "consideration of alternatives", without failing to note the irony that this requirement that alternatives be considered as part of the EIAR cannot now occur in respect of the actually built station box. While there is mention of a multidisciplinary analysis, no environmental impact assessment analysis is recorded. This is the negation of the obligation to consider alternatives, which cannot occur because the works have already been carried out.

A map of the works carried out is set out at: Metrolink Railway Order 2022 | EIAR | Vol 5 | Appendix | Chapter 5 | Appendix 5.3 Construction Sequence Report (Page 150 of 195) being:-

8.14. Charlemont Station

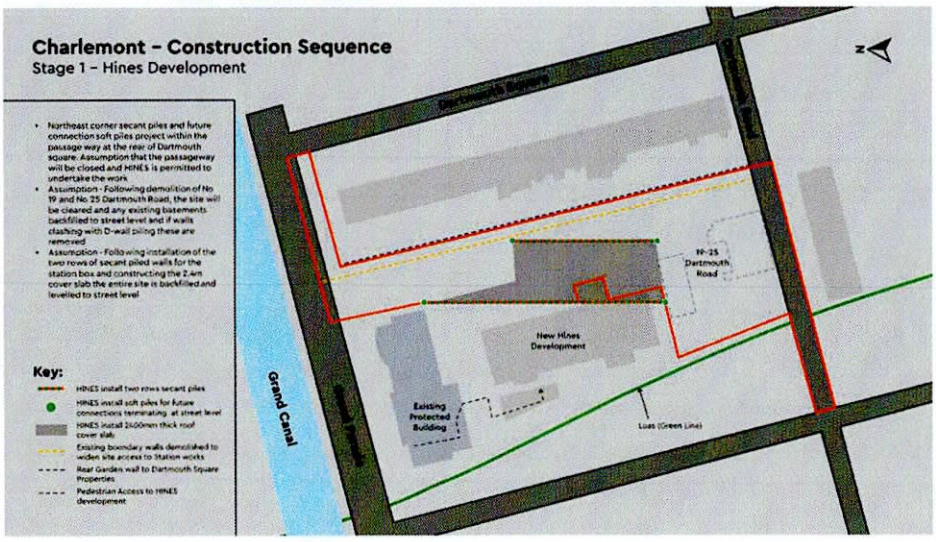


Figure 8-72 Charlemont Station - Stage 1 Hines Development

Retention of Unauthorised Works

Given that the metro station box has been substantially built, in reality the Applicant for the Railway Order appears to be applying for a kind of retention permission. There is no such provision for retention permission in the Transport (Railway Infrastructure) Act 2001 (as amended) and thus no provision for such in the railway order process.

The station box works did not have permission and cannot now obtain permission as there is no mechanism for same.

The absence of an Environmental Impact Assessment Report in an environmental assessment process conducted, as required, prior to the construction of the metro station box works cannot be rectified.

It is noteworthy that even in the planning process under the Planning and Development Act 2000, which does have a facility for retention permission, no such retention permission can be given where no EIAR was properly conducted in advance of the works. Section 34(12) (as amended) of the 2000 Act provides:-

> "(12) A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out—
>
> (a) an environmental impact assessment,
>
> (b) a determination as to whether an environmental impact assessment is required, or
>
> (c) an appropriate assessment."

While this applies to ordinary planning applications, a more lax approach cannot be applied to an unauthorised development under the Railway Order procedure.

The Charlemont station box is an unauthorised development that required a prior environmental assessment process. There is no legal basis to consider its retention.

The Board cannot grant the current Rail Order as to do so would amount to a retention permission, which does not exist, and/or facilitate the circumvention of the EIA Directive, which is not permissible.

Conclusion

The excavation and construction of the metro station box at the site at Charlemont falls within the definition of "railway works." In the absence of a Railway Order, the railway works already built were not authorised under the Transport (Railway Infrastructure) Act 2001 and ought not to have been undertaken.

In the absence of a Railway Order, such works do not fall within the exemption created in section 38 of the Transport (Railway Infrastructure) Act 2001. Being not exempted, and in the absence of permission pursuant to a Railway Order, they constitute an unauthorised development.

Insofar as NTA/TII have in any way contributed to the works, they appear to have *ultra vires* (beyond their powers) and thus unlawfully. It is hard to see how the station box works were developed and constructed in accordance with their legal obligations and/or good governance procedures. One can reasonably expect the relevant statutory agency to be well aware of the relevant and applicable legal requirements that are necessary prior to works being carried out on its behalf.

No Environmental Impact Assessment Report was carried out on those works. The obligation was to conduct such an environmental assessment process in advance of any proposed works being undertaken. This has been ignored. It cannot be rectified.

In reality, the station box at Charlemont is being presented as *fait accompli*, not as part of the valid discursive consultation process.

There is no provision for retention permission in the Railway Order process. In any case, no such retention could be permitted by law in the absence of a properly conducted environmental impact assessment process prior to construction, which cannot now occur.

The Board is not empowered or competent to make a Railway Order which gives permission for works already carried without a valid permission and without a prior and proper environmental impact assessment process.

Put simply, the unauthorised development of the Charlemont metro station box ought not to have been carried out by or on behalf of the Applicant, TII.

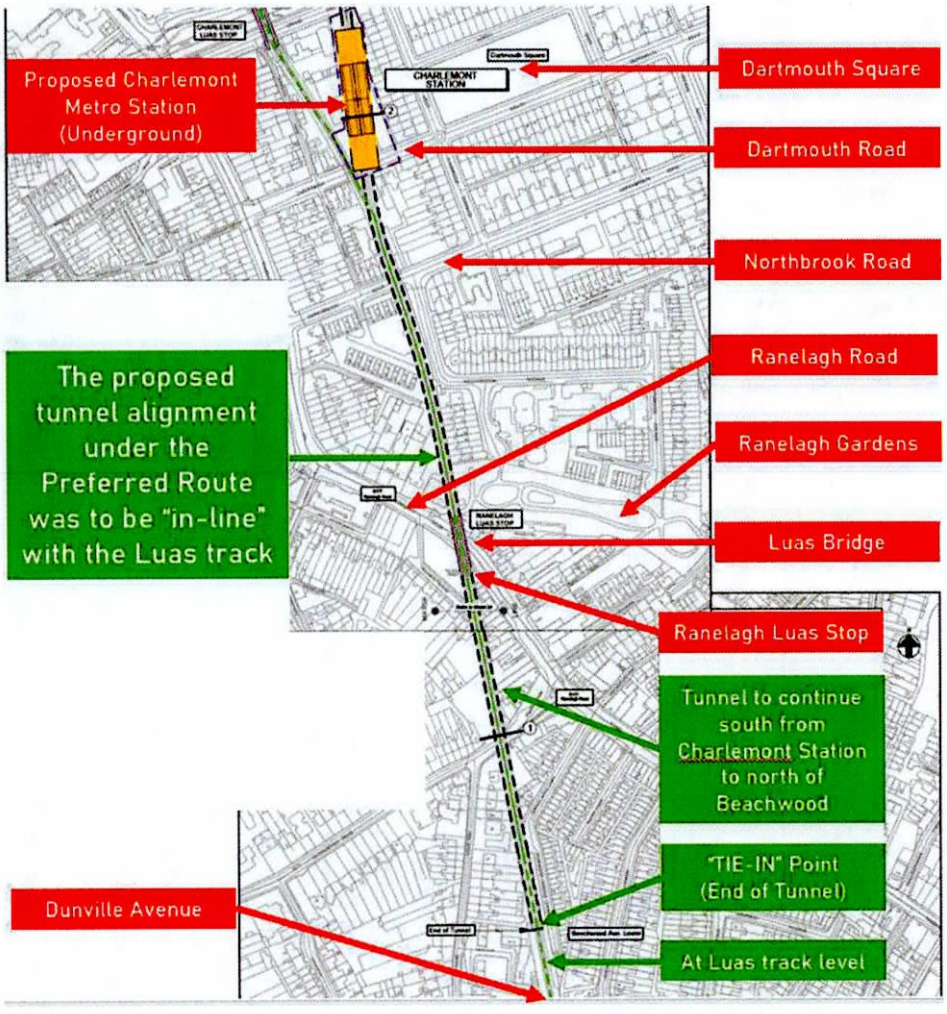
January 12th 2023

Conor Power SC.

Appendix 3 – Further Detail on the Implications of the Locked-in Alignment of the Charlemont Station Box

In the March 2019 consultation on the "Preferred Route" the proposed alignment for the Luas Green Line "Tie-in" is shown in the figure below.

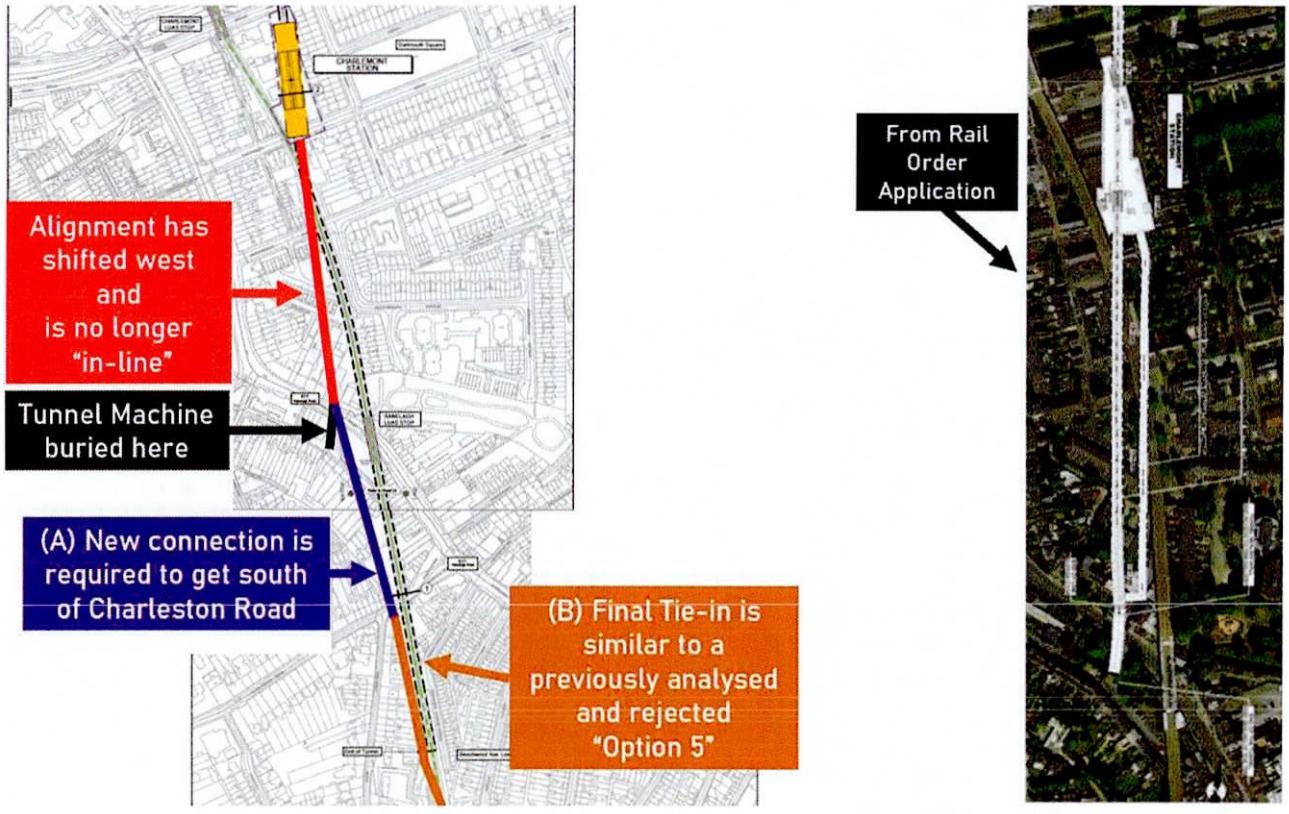
"Preferred Route" proposed alignment for Luas Green Line "Tie-in"



Since that 2019 proposal, a new design and alignment was built, without a Rail Order, between April 2021 and the first quarter of 2022. The design and alignment of the station box is very significantly different to that publicly proposed. No notice was made to the public of the proposed changes and there was no opportunity for affected parties to make comment.

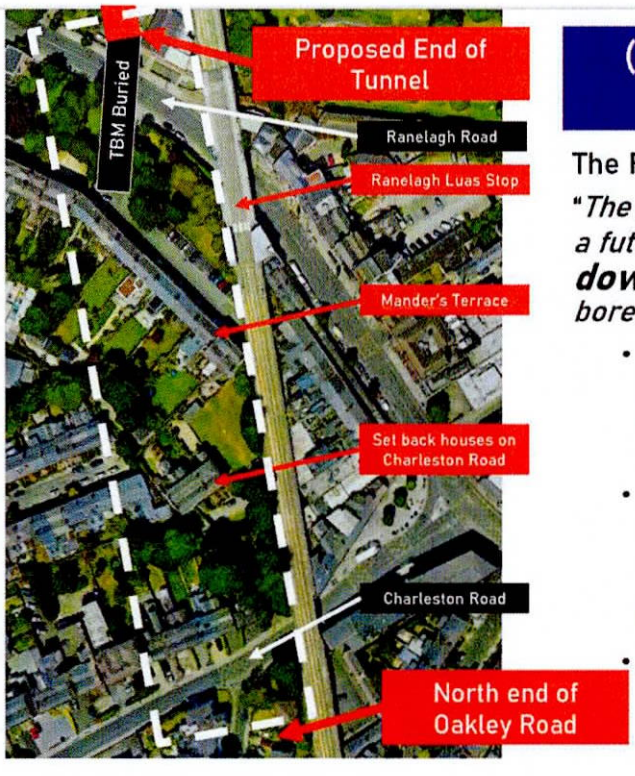
The built station box and alignment is shown in the figure below. The image on the left show how it differs from the 2019 proposal.

Final and Built "Tie-in" alignment as per the Rail Order Application (September 2022)



Two new components will be required to connect the subject Metrolink tunnel with a future tie-in with the Luas Green Line. Component A is a route that has never been investigated by the NTA/TII. This is shown in the figure below.

Component (A) New connection to get south of Charleston Road



(A) New connection to get south of Charleston Road

The Rail Order Application says:

"*The preliminary design for this location allows for a future connection to the Green Line using* ***top-down construction*** *without the need for a TBM bored tunnel extension.*" Appendix A7.9 p3

- This will require the metro track to gradually rise from the end of the tunnel underground, through Mander's Terrace and the set back houses on Charleston Road, under Charleston Road to surface at the north end of Oakley Road.
- *"If a Green Line connection was to be made then all tie-in works would be constructed from the surface using cut and cover techniques."* A7.9 p9. This would imply that a number of houses on Mander's Terrace and Charleston Road would need to be demolished.
- Closures of Ranelagh Road and Charleston Road will be required during construction.

Component B is similar to Option 5 that was studied in the "Luas Green Line Tie-in Study" March 2017 and is shown in the figure below.

Component: (B) Final Tie-in similar to previous "Option 5"

(B) Final Tie-in similar to previous "Option 5"

This is similar to Option 5 in the "Luas Green Line Tie-in Study March 2017".

From the north, the new connection (A) would reach

"a point to the west of and adjacent to the existing Luas tracks at the rear of houses on Oakley Road. The Metro stop construction would be in cut and cover and would require the demolition of 46–53 Oakley Road (10 houses) , 13–36 Oakley Court (24 apartments) and a house at 2 Brendan Vale.

The tracks will then rise in cut and cover and retained cut sections to join the existing Luas tracks at an at-grade junction, immediately north of Dunville Avenue. In this option, [MetroLink] will run at-grade across Dunville Avenue. A fully segregated Metro will however require the closure of Dunville Avenue to traffic. The final operating configuration will result in the partial severance of the existing Luas Green Line at Ranelagh with future Metro vehicles operating exclusively south of the tie-in point in order to enable through Metro services from Swords to Bride's Glen. Luas Green Line services will operate between Ranelagh Stop and Broombridge Stop. ...Ranelagh Stop will become the terminus for the Luas Green Line with the provision of a turnback facility, south of the stop."
p28

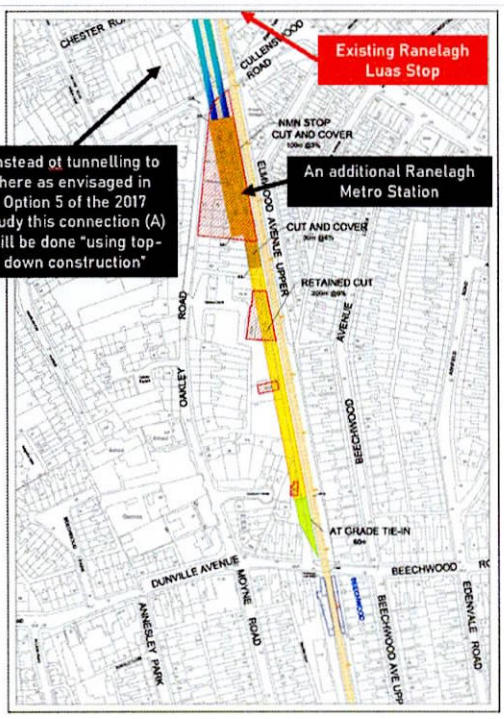


Figure 17: Option 5 – Beechwood North

In the Tie-in Study, Option 5 – Beechwood North was dismissed on the basis of a high capital costs, demolition of houses and negative impact upon the architectural heritage of the area. This, however has become just one component of consequences of the built Charlemont Station Box alignment.

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