



An Roinn Iompair  
Department of Transport



Cumann Lucht Bainistíochta Contae agus Cathrach  
County and City Management Association



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# ROADS Services Training Group

## LOCAL AUTHORITY ROADS CONFERENCE and EXHIBITION - 2022

Radisson Blu Hotel & Spa, Sligo May 2022



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# LOCAL AUTHORITY ROADS CONFERENCE and EXHIBITION – 2022

## **Land Acquisition Considerations**

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## Brief Overview

- General Property Considerations
- MetroLink
- Code of Practice for National & Regional Greenways



## General Property Considerations

- ❑ A CPO is a legal power afforded to certain statutory bodies to acquire the various legal interests in identified areas of land compulsorily, for the purposes of a particular development or to enable local authorities to perform their functions and duties.
  
- ❑ It allows public infrastructure projects to proceed for the greater and common good.
- ❑ It follows that the affected parties should be duly compensated for their loss / disturbance.
- ❑ To satisfy the Constitutional text the means must:
  1. Be rationally connected to the objective and not be arbitrary, unfair or based upon irrational considerations
  2. Impair the right as little as possible, and
  3. Be such that their effects on rights are proportional
- ❑ Test applied in cases such as: *Cox v Ireland* [1992] 2 IR 503; *Iarnrod Éireann v Ireland* [1996] 3 IR 321
  
- ❑ There is a view that a case will only succeed if an acquiring authority extended its power beyond the legislative provisions afforded to it.
- ❑ In order to balance the interests involved it has been held that there is an implied right to compensation under the constitution.



## General Property Considerations

The normal statutory heads of claim are:

- ❑ **Value of Legal Interest in Land Acquired.**

‘No scheme world’ Market Value / Existing Use Value / Development Value

- ❑ **Severance or other Injurious Affection**

The reduction, if any, in the Market Value of the retained lands by virtue of the taking of part and by reason of the exercise of statutory powers on the lands required (activity)

I.e. Division / splitting up of a holding into a number of parts; Creation of back lands; Loss / inferior access; Separation of facilities from balance of land; Angulation / more awkward shape; Loss of privacy; Loss / reduction of development potential

- ❑ **Disturbance and any other matters not based on Market Value.**

There are four principal tests for a valid disturbance claim:

- ❑ The loss must have been sustained or must reasonably be expected to be sustained in the future.
- ❑ The loss must flow from the compulsory acquisition
- ❑ The loss must not be too remote
- ❑ The loss must be the reasonable consequence of the dispossession of the owner.



## Property Arbitration Process

- ❑ On the application of either party to the Land Values Reference Committee of High Court to appoint a Property Arbitrator to a particular case. If an acquiring authority makes the application then must advertise.
- ❑ The arbitrators role is to determine the appropriate quantum of compensation to be paid based on the evidence presented before him. The Arbitration Act 2010 applies and an Award can be reasoned.
- ❑ Typically issues an Order for Directions requesting a statement of claim and a response is requested from the respondent.
- ❑ Expert Witness reports are requested in writing in advance of a hearing and where material issues and facts can be agreed these are encouraged
- ❑ Both sides are typically legally represented by instructing solicitors and valuers. Depending on the nature and complexity of the case sometimes Counsel may also be engaged. Also engineers; planners; accountants etc.
- ❑ Legal issues and issues with title do not fall within the jurisdiction of the property arbitrator who will proceed on the basis of the title claimed unless there is substantive evidence to the contrary e.g. right of way etc.
- ❑ The arbitrator may state a case to the High Court on any point of law arising.
- ❑ The arbitrator has the same standing as a High Court judge.
- ❑ Currently the Court service is renewing a panel of part time property arbitrators for a period of 3 years from June 2022.



## Brief Overview of Code of Best Practice for National and Regional Greenways

### Introduction

The Strategy for Future Development of National and Regional Greenways published by DTT&S in 2018 committed to developing a Code of Best Practice.

- Outline arrangements and procedures for delivering National and Regional Greenways.
- Deal with the implementation of the land acquisition process.
- Protect the interests of the landowners in a fair and equitable manner.
- Provide a guide to the process involved in planning, designing and constructing of greenways.

Our network of Greenways enhance Ireland's local communities with opportunities for new and existing businesses; strengthen regional economies; and show tourists and local people a hidden Ireland.

Public consultation will inform project development at four key stages:

1. Scheme Study Area Public Consultation
2. Route Corridor Options Public Consultation
3. Preferred Route Corridor Public Consultation
4. Preferred Route Consultations with individual landowners



## Land Acquisition Considerations

It is anticipated that the use of state-owned lands, in conjunction with the lands acquired by Voluntary Agreements, will deliver the majority of the lands necessary for a Greenway project

### General Provisions

In the first instance the project promoters will make every effort to minimise the number of private land holdings directly affected by a proposed Greenway.

The preferred method will be to use existing suitable state-owned lands such as Coillte lands, Bord na Mona lands, flood defence lands.

Depending the scale of the greenway, it is anticipated that a substantial number of private land parcels will also be required to deliver the Greenway Project and protect the States investment for future years.

Project promoters will engage with individual landowners in an effort to agree upon a route that minimises the impact on their respective farm / property holdings.

The process of agreeing Voluntary Land Acquisition Agreements will be initiated in advance of the project promoter making an application for planning consent.

Where a landowner and the project promoter reach agreement, the Voluntary Land Acquisition Agreement will be honoured in full.

The Voluntary Agreements will need to be vetted, and the landowner's title confirmed in advance of the submission of the proposed Greenway to ABP seeking development consent.

The Voluntary Land Acquisition Agreements will be completed with compensation paid when the Scheme has obtained development consent from ABP and funding to implement the Scheme is approved.





### Constraints Study

- Map State-owned lands and stopping points
- Environmental / Physical / Archaeological
- Highlight opportunities and concerns
- Public Consultation No.1
- Project Agronomist (PA) in place for project duration

### Route Corridor Options

- Scenic / Segregated / Sustainable / Strategic / See and Do (Five S)
- Environment / Economic / Engineering
- Public Consultation No 2
- Independent Agronomist in place for project duration

### Preferred Route Corridor

- Farmer Agronomists / Property Advisors available to landowners
- Consultation meetings with individual landowners
- Public Consultation No 3

### Preferred Route

- Farmer Agronomists / Property Advisors available to landowners
- Consultation meetings with individual landowners and / or representatives
- Accommodation works outlined and discussed / agreed



## Preliminary Design

- Horizontal and vertical alignment established to determine precise land acquisition requirements
- Accommodation works agreed with landowners and / or representatives
- Voluntary Land Acquisition Process commences

## Application to An Bord Pleanála

- Completion of the Environmental Impact Assessment Report/ Natura Impact Statement (NIS) where required
- Application Submitted to ABP including notice of the making of Compulsory Purchase Order (CPO)
- Voluntary Land Acquisition Process continues

## ABP Decision

- ABP either approves the scheme, rejects the scheme or approves the scheme with modifications
- Where scheme is approved by ABP Voluntary Land Acquisition Process continues where applicable

## Environmental Evaluation

- Environmental Impact Assessment (EIA)
- Appropriate Assessment (AA)
- Natura Impact Statement (NIS)

## Oral Hearing

- An oral hearing may be held by ABP to examine issues and concerns raised by persons with objections to / issues with the proposed Greenway
- Voluntary Land Acquisition Process continues

## Construction of Greenway

- If the scheme is successful at the planning stage, the project promoter will proceed to construction, subject to Government funding

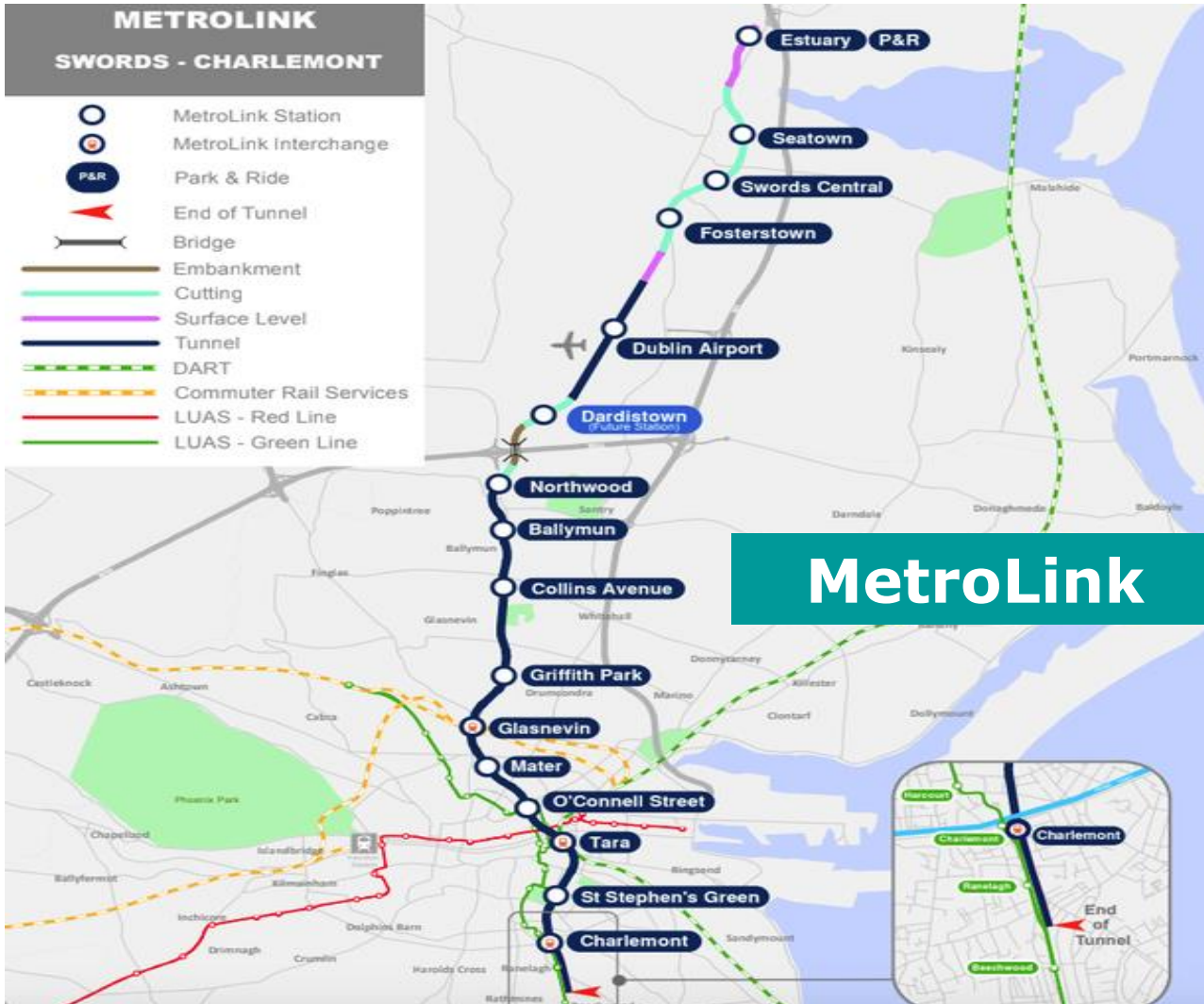


The strategy sets out the approach of Land Purchase and entering into voluntary agreements whilst recognising that the purchase of land using available legal mechanisms may need to be considered.

The Code will deal with:

- issues such as agreeing the consultation process,
- the factors to be considered when choosing a route,
- appropriate types of accommodation works,
- appropriate levels of payment for land,
- agreement on the level of ongoing maintenance and payment required,
- suitable types of access both for landowners and the public,
- ways of minimising severance,
- range of possible mitigation works and mechanisms to minimise disruption and
- to ensure the smooth and timely delivery of Greenway projects.

The Code of Best Practice for National and Regional Greenways addresses all of the above points.



Design Phase (2017 – 2022)

Approval of Preliminary Business Case Awaited

Planning Phase (2022 – 2023+)

Draft RO submitted to ABP  
Representations / Objections / Further Information  
Oral Hearing  
ABP Decision  
Judicial Review Challenge Period

Statutory Phase (2023 until last acquisition)

Acquiring / taking possession of CPO land & compensation payments made



Tara Station  
Indicative Entrance View



## LAND ASSEMBLY

- COMPLEX LAND INTERESTS
- MULTIPLE OWNERSHIP
- PUBLIC & PRIVATE LAND
- 2,500-3,000 INTERESTS (OVERALL)

## ACQUISITION METHODS AVAILABLE

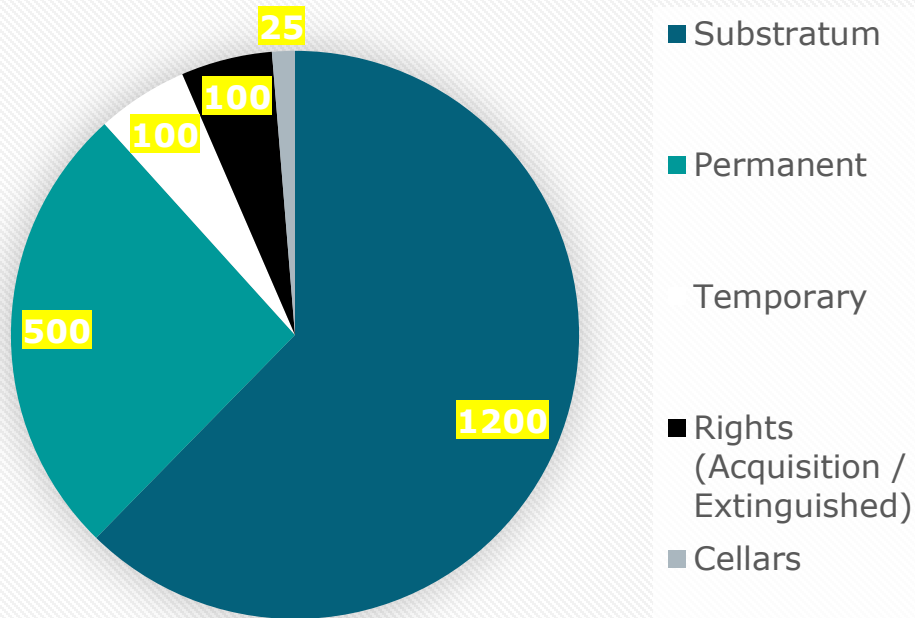
- PRIVATE TREATY (Standalone or as part of larger multi-faceted agreements)
- COMPULSORY PURCHASE - Transport (Railway Infrastructure Act) S.45 2001.
- 18 MONTHS TO SERVICE NOTICE TO TREAT AND NOTICE OF POSSESSION.

**[COMPULSORY PURCHASE POWERS ONLY USED WHERE THERE IS A COMPELLING CASE IN THE PUBLIC INTEREST]**



# MetroLink Land Requirements

## Subject to Completion of Book of Reference



### Book of Reference Preparation

- As of September 2021, **1,681** parcels of land/property have been identified.
- Anticipate **2,500 – 3,000** legal interests to be served notification packs (owners, occupiers/historical interests)

Majority of interests to be affected are classified as **Substratum** (>10m below ground level).

Project Communication has already occurred with identified substratum interests in Q2 2021.

All interests will be served with Notification Packs as part of the RO application process.

All interests will be served with Confirmation Packs once ABP decision made.



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## Stakeholder Engagement (Property)

Positive early engagement and fair and equitable treatment. Element of Certainty to property affairs. Appropriate intervention / response

Discussions /negotiations undertaken in accordance with compulsory purchase code.

Early conditional agreements (Accommodation works / commitments) will assist in managing risks associated with objections to RO application; delaying construction (vacant possession of entire station sites to handover to contractor) and managing compensation cost events.

Flexible controls in order to deliver vacant possession avoiding readily predictable claims / delays to the project