AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015

Appeal No: VA17/5/523

TRANSPORT INFRASTRUCTURE IRELAND **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of Property No. 664438
Miscellaneous at M50 (Motorway) West Link Toll Scheme, Palmerstown County Dublin.

AND

Appeal No: VA17/5/515

TRANSPORT INFRASTRUCTURE IRELAND **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of Property No. 401376
Utility at Luas Light Railway, South County Dublin

B E F O R E

Carol O'Farrell - BL	**Chairperson**
Barry Smyth - FRICS, FSCSI, MCI Arb	**Member**
Rory Hanniffy - BL	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON 16TH DAY OF DECEMBER, 2020

WESTLINK TOLL APPEAL

1. By Notice of Appeal received on the 11th day of October 2017 the Appellant appealed against the determination pursuant to which the net annual value '(the NAV') of Property No. 664438 (hereinafter referred to as 'the Westlink Toll') was fixed in the sum of €9,918,000. Briefly summarised, the grounds of appeal are:

(i) the valuation is not to a determination of value that accords with the Valuation Acts 2001 to 2015.

(ii) the valuation is excessive, inequitable, and bad in law having regard to the provisions of the Valuation Acts 2001 to 2015.

(iii) the Westlink Toll is relevant property not rateable and ought to be excluded from the valuation list as the Appellant is an Office of State within the meaning of paragraph 12A of Schedule 4 of the Valuation Act 2001 as amended by the Valuation (Amendment) Act 2015 (hereinafter "the Act")

(iv) The Toll is property for the purposes of Schedule 3 and Schedule 4 and is clearly a building or part of a building or land for the purposes of paragraph 12A of Schedule 4 of the Act.

(v) The Westlink Toll is directly occupied by the Appellant and the Appellant has a right to collect the tolls.

(vi) The Respondent erred in law and on the facts in his decision.

In the alternative, and strictly without prejudice to all other grounds of appeal,

(vii) the Westlink Toll does not constitute '*relevant property'* as the condition specified in paragraph 2 of Schedule 3 of the Act is not satisfied.

On the consent of the parties, the following additional ground was included in the Notice of Appeal:

(viii) Strictly without prejudice to each of the preceding grounds of appeal, the toll road is 4,500m. The valuation is incorrect having been apportioned on the basis of 18.14% (South Dublin):81.16% (Fingal). The apportionment of the toll road

as between South Dublin: Fingal should be 1,210m (South Dublin):3,290m (Fingal) which is 26.89%:73.11%.

LUAS APPEAL

2. By Notice of Appeal received on the 11th day of October 2017 the Appellant appealed against the determination pursuant to which the net annual value '(the NAV') of Property No. 401376 was fixed in the sum of €1,173,000. Briefly summarised, the grounds of appeal are:

(i) The valuation is not a determination of value that accords with the Valuation Acts 2001 to 2015.
the valuation is excessive, inequitable, and bad in law having regard to the provisions of the Valuation Acts 2001 to 2015.

(ii) The Luas is relevant property not rateable and ought to be excluded from the valuation list as the Appellant is an Office of State within the meaning of paragraph 12A of Schedule 4 of the Act.

(iii) The Appellant directly occupies, controls and is responsible for Luas. Luas is clearly a building or part of a building or land for the purposes of paragraph 12A of Schedule 4 of the Act.

(iv) The Respondent has erred in law and on the facts.

In the alternative, and strictly without prejudice to all other grounds of appeal

(v) the Luas does not constitute '*relevant property'* as the condition specified in paragraph 2 of Schedule 3 of the Act requiring in order to qualify as" relevant *property*" a property be "*occupied and the nature of that occupation is such as to constitute rateable occupation of the property"* is not satisfied.

RELEVANT REVALUATION HISTORY

3. The Valuation Order made by the Respondent for the revaluation of the rating authority area of South Dublin County Council specified the 30th October 2015 as the valuation date. In June 2017 copy valuation certificates proposed to be issued under section 24(1) of the Act were sent to the Appellant indicating a valuation of €9,918,000 in relation to

the Westlink Toll and a valuation of €1,173,000 in respect of the Luas. Being dissatisfied with the valuations proposed, representations were made to the valuation manager, but the valuation manager did not consider it appropriate to lower the valuations in respect of either property and final valuation certificates were issued on the 7th day of September 2017 confirming the respective valuations.

AGREED VALUATIONS

4. Without prejudice to the Appellant's grounds of appeal claiming exemption from rating, the parties have agreed alternative valuations of the Westlink Toll depending on the Tribunal's conclusions on the question whether maintenance costs are attributable to 4.5 kilometres ('km') or 34 km of the M50. The parties agreed that if maintenance costs are attributable to 4.5 km as the Respondent contends, the NAV of the Westlink Toll should be €12,980,000 and if the maintenance costs are attributable to 34 km as the Appellant contends, the NAV should be €10,580,000.

5. Without prejudice to the grounds of appeal, the parties have agreed the NAV of the Luas in the sum of €575,000 in the event the Appellant does not succeed in the claims for exemption.

THE HEARING

6. The Appeals were heard together in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 16th, 17th, 18th, and the 19th of September 2019. At the hearing Mr. Brian Murray SC and Mr. Paul Coughlan BL instructed by McCann Fitzgerald represented the Appellant. On behalf of the Appellant, Mr. Pat Maher, Director of Network Management, Mr. Declan Wylde, Head of Finance, and Mr. Nigel O'Neill, Director of Commercial Operations were called as witnesses of fact and Mr. Stuart Hicks BSc (Hons) Land Management FRICS Dip Rating IRRV (Hons) of Dunlop Heywood Chartered Surveyors was called to give expert evidence. The Respondent was represented by Mr. Anthony McBride SC and Mr. David Dodd BL instructed by the Chief State Solicitor. Ms. Aoife McCrystal B.Sc., MSCSI MRICS MCI Arb of the Valuation Office was called to give expert evidence on behalf of the Respondent.

7. In accordance with the Rules of the Tribunal, prior to the commencement of the hearing the parties exchanged their respective précis and submitted them to the Tribunal. At the

oral hearing, the witnesses adopted their respective précis as his/her evidence-in-chief in addition to giving oral evidence.

THE APPELLANT AND THE PROPERTIES

8. The following background facts are not in dispute.

9. The National Roads Authority ('NRA') (formerly known as the Dublin Transport Authority) was established pursuant to section 16 of the Roads Act 1993 ('the 1993 Act') as a body corporate with perpetual succession with power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in or right in relation to land. It initially operated under the aegis of the then Department of the Environment. For the purposes of Part V of the 1993 Act, the NRA is a road authority.

10. The NRA has statutory responsibility to secure the provision of a safe and sufficient network of national roads. It has overall responsibility for the planning and supervision of works for the construction and maintenance of national roads and it discharges the other functions in relation to national roads assigned to it by section 19 of the 1993 Act. As regards the national road network the NRA essentially discharges functions that were previously discharged by the Department of Environment.

11. The National Transport Authority ('NTA') is the transport authority for the Greater Dublin area. Under section 48(1) of the Dublin Transport Authority Act, 2008 (as amended) ('the '2008 Act') one of the functions of the NTA is to secure the provision of, or to provide, public transport infrastructure. The NTA pursuant to its powers under section 44(2) of the 2008 Act arranged for the Railway Procurement Agency ('RPA') to perform on its behalf functions in relation to metro and light railway infrastructure. Under section 11(1) of the 2008 Act the NTA regulates public transport fares to be charged by the operator of the Luas.

12. In September 2014, a contract was entered into between the NTA, the RPA and Transdev Dublin Light Rail Limited ('Transdev') for the day-to-day operation and maintenance of the Luas. That contract was extended on the 8th February 2019 to continue until the 21st December 2019.

13. By the Roads Act, 2015 ('the 2015 Act') the Railway Procurement Agency ('RPA') was dissolved with effect from the 1st August 2015. Upon dissolution the functions, assets and liabilities of the RPA were transferred to the NRA as were the rights and liabilities of the RPA arising by virtue of the contract with Transdev. Accordingly, the NRA now performs the functions pursuant to section 11(1) of the Transport (Railway Infrastructure) Act 2001 to secure the provision of, or provide, light railway and metro railway infrastructure as may be determined from time to time by the Minister for Transport, Tourism and Sport ('the Minister') or by the NTA in the case of such railway infrastructure within the Greater Dublin Area.

14. Since the 1st August 2015, the NRA operates under the name Transport Infrastructure Ireland ('TII') by virtue of section 13 of the 2015 Act.

15. The toll road is the section of the M50 Motorway between Junction 6 (being the intersection of the M50 with the N3 national road) and Junction 7 (being the intersection of the M50 with the N4 national road). The Appellant is the occupier of the Westlink Toll.

16. The parties agree that the length of the toll road is now 4.5 km in length and that the apportionment of the toll road as between Fingal County Council and South Dublin County Council is Fingal County Council 3,290 metres (73.11%) and South Dublin County Council 1,210 metres (26.89%).

17. The current M50 motorway was built in various sections between 1983 and 2010. It enables traffic to travel from the M1 motorway (Junction 3) to the M11 motorway (Junction 17) and its entire length is approximately 38.3 kilometres.

18. The first section of tolled motorway was a 3.2 kilometres segment incorporating the Westlink Toll Bridge. It was constructed by Westlink Toll Bridge Limited ('Westlink'), a wholly owned subsidiary of National Tolls Roads Limited, under an agreement made on the 16th October 1987 with Dublin County Council pursuant to a toll scheme pursuant to which Westlink acquired the contractual right to occupy the toll road and to operate a system of tolls for traffic using the toll road for a period of 30 years. The toll road was dedicated as a public road and opened to traffic in 1990.

19. Between 1990 and 2001 the M50 grew in length from approximately 12km to 31km. Another agreement was made on the 7th June 2001 between the NRA and Westlink for the construction of a second bridge spanning the River Liffey to cater for increased traffic volumes. That work was completed in 2003. Under the 2001 agreement Westlink was permitted to collect the tolls until 2020. The functions rights and liabilities of Dublin County Council under this Agreements were transferred to the NRA on the 1st July 1994 by section 66 of the 1993 Act.

20. In 1991 approximately 5 million vehicles used the toll road. The opening of the Northern Cross (Junction 3 to Junction 6 linking the toll plaza with the M1) in 1996 saw a significant increase in the annual average daily traffic at the toll plaza from 48,500 vehicles in 1997 to 58,500 vehicles in 1998 and, by 2003/2004 the annual number of vehicles using the M50 had increased to approximately 30 million vehicles. A significant M50 Upgrade Project was commenced in 2007 due to the motorway's chronic capacity problems and the inability of the fourteen-lane toll plaza to cater for such increased traffic volumes.

21. The Upgrade Project which was progressed in three phases under various works contracts involved significant upgrade works between Junction 3 (M1) and Junction 14 (Sandyford). Phase 1 involved the widening of 8km of carriage way between Junction 7 and Junction 10 and the upgrading of several junctions and was completed in 2008. Phase 2 comprised the widening of 24km of carriageway between Junction 3 and Junction 6 and from Junction 10 to Junction 14 and included the upgrading of junctions along those sections and was competed in late 2010. Phase 3 involved the removal of the toll plaza and the widening of 1.3 km of motorway south of Junction 6 to the north of the M50 Westlink toll plaza. Phase 3 was completed in 2008. In outline, the Upgrade Project involved the widening of approximately 34 kilometres of motorway by the construction of a third lane in each direction between Junction 3 and Junction 14 with a fourth auxiliary lane between some junctions, the upgrade of 10 junctions, the removal of the Westlink toll plaza, booths and barriers and the installation of an electronic free-flow tolling system by way of replacement.

22. The NRA, with Ministerial consent, entered into a buy-out contract with National Tolls Roads Limited so as to terminate Westlink's concession and right to collect the M50 tolls. The toll plaza booths and barriers were replaced with overhead technology (cameras and lasers) suspended from a series of gantries spanning over the motorway and connected to a tolling operational centre comprising a customer service *'front office'* organisation and a technical and administrative '*back office*' organisation.

23. The M50 toll road operates under the business name '*eFlow* which has become the brand name for the tolling operation. An operating and maintenance contract is in place between the NRA and Emovis (formerly Sanef ITS Operations Ireland, formerly BetEire Flow Limited) in respect of the M50 barrier free tolling facilities. The NRA is the legal and beneficial owner of the Westlink Toll and pursuant to this contract the proceeds of all tolls were paid directly by Emovis to the NRA at the valuation date.

24. The Appellant entered into a 35-year contract in respect of *inter alia* the operation and maintenance of the M50 motorway with M50 Concession Limited on the 27 September 2007. This contract covers the entire length of the M50.

25. Part V of the 1993 Act governs national roads that are tolled. Section 57 enabled the NRA to make a toll scheme in respect of the M50 between Junctions 6 and 7. The current M50 Toll Scheme for 'free-flow' tolling was adopted on the 12th February 2008 ('the Toll Scheme') which amended the original Toll Scheme of the 10th June 1985. The Toll Scheme and its accompanying Explanatory Memorandum were prepared in accordance with section 57 of the 1993 Act.

26. The Explanatory Memorandum states that the toll revenues will accrue directly to the Authority (i.e., TII) and will be used to finance the upgrading of the M50 motorway works, the operations and maintenance of the M50, the costs relating to the termination of the NTR Westlink concession agreement and the service contracts for the design, implementation, and operation of barrier free electronic tolling. It also identifies the benefits of the M50 Upgrade Project and the implementation of barrier free tolling.

27. The free-flow tolling arrangements came into effect on 30th August 2008. Section 59 of the 1993 Act confers power on a road authority to charge and collect tolls specified in

toll byelaws made by the road authority under section 61 of that Act. The Byelaws for the M50 (Between Junctions 6 and 7) were made by the NRA with effect from the 1st August 2008.

28. By 2016 the annual traffic using the M50 and passing through the Westlink Toll had increased to 55,000,000 vehicles.

29. Currently the M50 has capacity to handle in excess of 144,000 vehicles per day.

30. The Luas network is a light rail system which operates in Dublin since 2004 and consists of the Green Line and the Red Line. The Luas Cross City extension, as of 2017, links the Red Line and Green Line resulting in an overall railway track length of 43 km. LUAS comprises 67 stops, 3 depots and 73 light rail vehicles. The Central Control System for Luas is located at the Red Cow depot. The construction and operation of the Luas is authorised by a number of Railway Orders made pursuant to the Transport (Railway Infrastructure) Act 2001 (as amended).

31. The Luas can be accessed by members of the public on payment of a fare set by the NTA. The Luas is a public transport system and serves no other function.

32. TII is the owner of the Luas infrastructure and vehicles. The Luas is operated on behalf of TII by Transdev Ireland ('Transdev') pursuant to a Contract made between the NTA, the RPA and Transdev Dublin Light Railway Limited in September 2014 which permits Transdev to access and use Luas on the terms and conditions upon certain terms and conditions set out in that Contract.

33. The appeal relates to that part of the Luas network situated within the rating authority area of South Dublin County Council which has a line length of 10.961 kilometres comprising the Red Line from Naas Road to Belgard, the Citywest Extension from Belgard to Saggart, a Park & Ride facility with 312 car parking spaces at Cheeverstown, a Maintenance Deport Building and a Park & Ride car parking facility with 727 car parking spaces at Red Cow, Clondalkin. The light rail lines are double track at standard European gauge of 1435mm with electrical power delivered through overhead line equipment.

RELEVANT STATUTORY PROVISIONS

34. The net annual value of relevant property has to be determined in accordance with the provisions of section 48(1) of the Act by estimating the net annual value of the property. The factors to be considered in calculating the net annual value are set out in section 48(3) of the Act which provides:

> "Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant."

35. Section 15, in material part, provides:

(1) Subject to the following subsections and sections 16 and 59, relevant property shall be rateable.

(2) Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable.

Section 3 of the Act provides that "relevant property" shall be construed in accordance with the Schedule.

Schedule 3 states

"Property (of whatever estate or tenure) which falls within any of the following categories and complies with the condition referred to in paragraph 2 of this Schedule shall be relevant property for the purposes of this Act."

There is contained within those categories, at (c) railways and tramways, including running line property and non-running line property and, at (h), tolls.

Paragraph 2 of Schedule 3 provides:

"The condition mentioned in paragraph 1 of this Schedule is that the property concerned—

(a) is occupied and the nature of that occupation is such as to constitute rateable

occupation of the property, that is to say, occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property, or

(b) is unoccupied but capable of being the subject of rateable occupation by the owner of the property."

Schedule 4 is a list of 'Relevant Property Not Rateable'. Paragraph 12A thereof [inserted by section 5(8) and Schedule 2, part 6 Local Government Reform Act, 2014 and hereinafter referred to as "paragraph 12A" and amended by section 39 (b) of the Valuation (Amendment) Act ,2015)], in material part, provides:

Property, being a building or part of a building, land or a waterway or a harbour directly occupied by —

(a) any Department or Office of State,

(b) the Defence Forces, or

(c) the Garda Síochána,

(d) or used as a prison or place of detention, wherever situate.

"non-running line property" means property, other than running line property, intrinsic to the operation of a railway undertaking, other than—

(a) any hotel, refreshment room, residence, town office or town receiving depot

(b) any premises used and occupied exclusively for the purposes of subsidiary

(c) services carried on by the undertaking for the purpose of road, sea or other transport

(d) any waterworks, electric light works, power works, telecommunications network or gas works not used mainly to supply the undertaking; and

(e) any store, building, or premises let by the undertaking, or, if unused, capable of being so let.

"occupier" means, in relation to property (whether corporeal or incorporeal), every person in the immediate use or enjoyment of the property

"repealed enactments" means the enactments repealed by *section 8* ;

"running line property" means a railway line used primarily for the conveyance of railway traffic from place to place, including the land beneath, between and adjoining such line.

Section 63 of the Poor Relief (Ireland) Act 1838 in material part provides:

> Provided also, that no church, chapel, or other building exclusively dedicated to religious worship, or exclusively used for the education of the poor, nor any burial ground or cemetery, nor any infirmary, hospital, charity school, or other building used exclusively for charitable purposes, nor any building, land, or hereditament dedicated to or used for public purposes shall be rateable, except where any private profit or use shall be directly derived therefrom, in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use.

THE PROCEDURAL ISSUE

36. The Tribunal has first to decide a procedural issue as to whether the Appellant should be permitted to amend its Notice of Appeal to include an '*elaboration*' of one of the grounds of appeal advanced at paragraph 7(e) of the Notice of Appeal.

37. The Appellant sought leave to make that application by letter dated the 8th May 2019 but at a subsequent Directions Hearing held on the 9th May 2019 the Tribunal directed that the procedural application be moved at the hearing of the appeal itself and the arguments made *de bene esse*.

38. The relevant ground of appeal appears in paragraph 7(e) of the Notice of Appeal concerning the Westlink Toll wherein the Appellant sets out further grounds in addition to those previously set out. At the fourth bullet point, the following ground is set out:

> "*In the alternative, and strictly without prejudice to all and any of the arguments set out above, the condition specified in paragraph 2 of Schedule 3 of the Act requiring that property in order to qualify as" relevant property" be "occupied and the nature of that occupation is such as to constitute rateable occupation of the property" is not satisfied.*

The same ground is also to be found in paragraph 7(e) of the Notice of Appeal concerning the Luas. The '*elaboration*' consists of a recital of paragraph 2 of Schedule 3 of the Act, a recital of section 63 of the Poor Relief (Ireland) Act 1838 (the '1838 Act'), a reference to Supreme Court's decision in *Dublin County Council v Westlink Toll Bridge Limited [1996] 1 IR 487* ('*Westlink*') and a brief outline of the arguments that would be made in support of this ground of appeal.

39. The Appellant submitted that the proposed amendment was nothing more than an elaboration or a fleshing out of the legal arguments that would underlie an existing ground of appeal. It was further submitted that the essential facts relevant to that ground were set out in the Notice of Appeal (at paragraph 4.3) and no prejudice would arise in permitting the proposed amendment as the Respondent had been given ample notice of the amendment in advance of the hearing. It was contended that the proposed amendment was exclusively a matter of law as TII's statutory functions were not in issue, that the issue is of importance as it concerns the operation of the Act vis-à-vis public entities, that this is an appropriate case to decide the issue, that the issue of whether the properties are covered by section 63 of the 1838 Act had to be considered in any event in the context for the Appellant's claim for exemption under paragraph 12A of Schedule 4 and the amendment did not require the Respondent to contend with any new evidence.

40. It was submitted by reference to Rule 10 of the Valuation Tribunal (Appeals) Rules 2008 that the Tribunal in its approach to amendment applications had to be guided by the jurisprudence of the Superior Courts that permits amendments where it is the interests of justice to do so and where it is clear that an amendment is necessary to allow the true issues between the parties to be determined provided no prejudice is caused to the other party which is not capable of being substantially met by appropriate orders or directions in the proceedings. The Appellant relied upon the Tribunal's decision in *VA95/5/015 John Pettitt & Son Limited v Commissioner of Valuation* where it had held that the justice of the case required that the appellant be permitted to raise an issue in the appeal notwithstanding that the issue had not been raised in the appeal to the Commissioner at First Appeal pursuant to Section 19 of the Valuation Act 1852 and Mr. Justice Butler's endorsement of that decision in *John Pettitt & Son Limited v Commissioner of Valuation [2001] IEHC 67* in the following terms:

"*I am satisfied that the Valuation Tribunal was entitled to so conclude. The Tribunal concisely reviewed the law and came to the view that it ought and must follow the principles which it referred to as enunciated by the Supreme Court and held that it would be quite wrong that the practise of exclusion which, given the importance of the case and the interests of justice, did not permit of exceptions or deviations therefrom. It accepted that whilst, as a general rule, where a ground of appeal has not been advanced before the Commissioner it will not be possible to raise it before the Tribunal nevertheless, in exceptional circumstances were the interest of justice requires, the Tribunal will permit the raising of a ground, the reception into evidence and the reliance of a point of law none of which have previously been raised so far or adduced*."

41. The Respondent opposed the amendment application on the basis that the Appellant was seeking to advance a new ground that the Property should be excluded from the valuation list on the basis that it is not relevant property, that argument not having been raised with the Respondent prior to the appeal or pleaded in the Notice of Appeal. The Respondent further relied on section 35 of the Act which requires that an appeal made under section 34 must specify the grounds on which an appellant considers that the property concerned ought to have been excluded from the relevant valuation, rule 9 of the Valuation Act 2001 (Appeals) Rules 2008 which mirrors the requirements of section 35 and rule 10 thereof which provides that grounds of appeal may not be changed or extended and amendments to grounds of appeal or the adducing of new grounds of appeal will not be entertained by the Tribunal other than in exceptional circumstances.

42. The Tribunal cannot accept the Respondent's argument that the Appellant's contention that neither the Westlink Toll nor the Luas are relevant property was not stated as a ground of appeal in the Notice of Appeal. The grounds are specifically articulated in paragraph 7(e) of the Notices of Appeal. The Tribunal is satisfied in respect of both properties that the amendment sought is in the context of an existing ground of appeal.

43. There is no rule of practice which prevents the Tribunal on an appeal made pursuant to section 34 of the Act from entertaining grounds of appeals which were not canvassed in

representations made to a valuation manager pursuant to section 26 (2) of the Act as amended. If there was such a rule it would lead to an absurd situation whereby an occupier who elects not to make any representations to the valuation manager but instead appeals to the Valuation Tribunal would be unrestricted in stating his or her grounds of appeals against the determination whereas the occupier who elects to make such representations would be restricted, by virtue of having done so and usually at a time when an occupier is not represented by a solicitor or counsel (though that is not the situation here), to appealing on grounds solely based on the representations made. The Tribunal cannot accept this argument. If an appellant is precluded from raising any matter not raised during the representation stage, then by the same token the respondent must be precluded from relying upon any matter not mentioned in Revaluation Reps Reports responding to the Appellant's representations. What is sauce for the goose is sauce for the gander.

44. Furthermore, it is abundantly clear from section 37 of the Act as amended that the Valuation Tribunal exercises a *de novo* appellate jurisdiction. Once that jurisdiction is invoked, an appellant obtains a full hearing on the facts and the law. The Tribunal is not confined to the consideration of an appeal based on the representations or materials presented to the Respondent and nor is it bound by any findings made by the Respondent. The appeal is a hearing upon such evidence as both parties might think proper to submit to the Tribunal. Everything is up for discussion on the appeal, including the possibility of an increase in the valuation of a property as the Tribunal has a duty under section 37 to achieve a determination of value that accords with the requirements of section 19(5) of the Act, namely, correctness of value and equity and uniformity of value between properties on the valuation list.

45. The Tribunal is satisfied that this appeal is distinguishable from the six Tribunal decisions relied upon by the Respondent in its written Submissions, not least of which is the fact the appellants in those cases were each seeking to rely on a ground of appeal not stated in the notice of appeal. In all of those cases there was a prior right of statutory appeal to the Respondent after the making of representations prior to the appeal to the Valuation Tribunal and section 31 required that on an appeal under section 30 the appellant had to specify the grounds on which the value of the property was considered to be incorrect. The appellants in those cases had sought to raise grounds of appeal

before the Tribunal which had not been raised as grounds on the first appeal to the Respondent. Here, the Appellant has no prior right of appeal to the Respondent.

46. An appellant must be afforded a complete opportunity to present new facts or arguments, and to plead grounds of appeal in full. The form of appeal provided for in the Act as amended is not merely a review as to whether any error had been previously made rather, it is a full and thorough enquiry into the valuation determined by the Respondent or the valuation manager or the revision manager and the hearing of oral evidence and the reception of documentary evidence and submissions in respect of every point on which an appeal has been lodged. It is also apparent from section 37(2) of the Act that the Tribunal has a duty to make such rulings or finding of fact as are appropriate having regard to the nature of the appeal made under section 34 of the Act as amended.

47. Moreover, the facts of this application are not similar to those in *A. J. A. (Nigeria) v. The International Protections Appeals Tribunal [2018] IEHC 671*. In that case Mr. Justice Humphreys deprecated the practice of making arguments on judicial review applications that had not been made in the first instance to the Tribunal.

48. It is axiomatic that an appeal to the Tribunal should not be by ambush. The Respondent is entitled to know why a determination of value is being appealed so that the appeal can be answered. The relevant ground of appeal at paragraph 7(e) of the Notices of Appeal is not of the sweeping un-particularised kind that all too often is advanced before the Tribunal. In both Notices of Appeal that Appellant claims that the Property is not relevant property on the basis that the condition in paragraph 2 of Schedule 3 is not satisfied. The proposed amendment does not involve a new, additional, or expanded ground of appeal but is no more than a particularisation of an existing ground of appeal. The Respondent had prior notice of the proposed amendment well in advance of the hearing date and did not advance any claim of prejudice by reason of the application to amend.

49. The ground of appeal at paragraph 7(e) of the Notice of Appeal raises a mixed question of law and fact and though evidence is required as to whether the nature of the occupation of the Property such is as to constitute rateable occupation, the Tribunal does not consider that the evidence intended to be given by the Appellant on this appeal had

to be supplemented to any degree by virtue of the proposed amendment. The application does not involve any enlargement or make any significant difference to the Appellant's appeal as notified by the grounds of appeals set out in the Notice of Appeal. The application was notified before the hearing date was fixed and so did not jeopardize the hearing date or place any additional burden on the Respondent in terms of preparation for the hearing. Having regard to the aforesaid matters and to the objective of dealing with the appeal fairly, the importance of the appeal to the parties and the complexity of the issues arising, the Tribunal has decided, to permit the Appellant to amend the Notices of Appeal in the terms underlined in red at paragraph 7(e) of the copy Notices of Appeal which were appended to the aforesaid letter of the 8th May 2019.

THE SUBSTANTIVE ISSUES

50. The main questions for determination are whether or not:

I. there is a public purpose doctrine following the enactment of the Valuation Act, 2001 and, if so, whether it applies to the Westlink Toll and the Luas?

II. the Appellant is an Office of State for the purposes of paragraph 12A?

III. If the Appellant is an Office of State whether it directly occupies the Westlink Toll as required by paragraph 12A?

IV. If the Appellant is an Office of State whether the Westlink Toll is land to which the exemption applies?

V. If the Appellant is an Office of State whether the Luas is land to which the exemption applies?

In the Appellant's respectful submissions, questions I to IV should be answered in the affirmative, and the appeals, therefore, ought to succeed.

51. If the foregoing questions are answered in the negative, the final issue that arises for determination is whether maintenance costs are attributable to the tolled section of the M50 i.e., 4,500 metres as contended by the Respondent or to 34 kilometres of the M50 as contended by the Appellant. It is agreed that if the Respondent's contention is upheld and the Tribunal determines that the allowable maintenance costs arise from a toll roadway of 4,500 metres, the NAV of the Westlink Toll for South Dublin County

Council is €12,980,000. If, on the other hand, the Appellant's contention is upheld and the Tribunal determines that the allowable maintenance costs arise from a roadway of 34 kilometres, the NAV of the Westlink Toll for South Dublin County Council is €10,580.000.

52. The evidence given on behalf of the Appellant (hereinafter referred to as 'TII'), was mostly uncontroversial as the Appellant's activities as a public authority are governed by legislation and are a matter of public record. The Tribunal has concentrated on the evidence that is relevant and necessary to put our findings and conclusions into context.

THE APPELLANT'S EVIDENCE

53. Mr. Maher, TII's Director of Network Management, is a Chartered Engineer and holds a master's degree in civil engineering from University College Galway and from the University of Calgary. He has been in the TII's employment since 1990 and took up his current position in 2015 following the merger of the NRA and the RPA. His particular expertise is bridge engineering. In performing his tasks as Director of Network Management, he has overall responsibility for the day-to-day operation and management of the national roads network.

54. Mr. Maher gave evidence that prior to the establishment of the NRA all policy-related and strategic oversight of the national road network was undertaken by the roads section in what was then the Department of the Environment. Following the NRA's establishment, the majority of that Department's technical staff transferred over to the NRA when the NRA was given responsibility to deliver major capital investment in the national road network. TII now operates under the aegis of the Department of Transport, Tourism and Sport ('the Department') and discharges its mandate from central government in partnership with local authorities in relation to 5,300 km of national roads and with the NTA in relation to light rail.

55. The Department has retained responsibility for 95,000 km of non-national roads.

56. The statutory role, functions, and obligations of TII, the sources of TII funding, the control of TII expenditure, TII's proximity to central government and the degree of ministerial control over TII activities were explained in great detail by Mr. Maher. He

said TII's mission is to deliver public transport infrastructure and services to support Ireland's economic growth. In broad summary he said TII's function is to provide, operate and develop a safe and efficient network of national roads and to provide light rail and metro infrastructure from time to time. Under section 17 of the 1993 Act, in the context of national roads, TII has overall responsibility for the planning and supervision of construction and maintenance works and schemes for the provision of traffic signs as well as any other functions that may be assigned to TII by or under the 1993 Act in connection with such matters. He also pointed to the specific functions set out in section 19 of the 1993 Act and to the statutory powers conferred by section 20 of the 1993 Act enabling TII to issue direction to local authorities to make motorway schemes or to enter contracts for specific construction or maintenance works or to undertake such works. He said that historically such powers would have been exercised by the Minister for Local Government. He said TII undertakes a lot of activities on behalf of the Department when technical and engineering support is required, for example, in the context of Euronorm standards and EU Directives. TII collaborates with the Department in producing manuals and guidance documents pertaining to matters such matters as traffic signs, road design and construction standards, in providing technical expertise to assist in the classification of roads, by exploring options to facilitate government proposals such as the subsidization of tolls for electrical vehicles, by implementing and administering schemes such as the Electric Vehicles (EVs) Tolling Incentive Scheme and by drafting replies to parliamentary questions. Mr. Maher stated that he typically meets with the Department on a weekly or sometimes on a more frequent basis and is in regular telephone contact to discuss operational and asset management issues as well as other matters that arise in the course of TII activities of which the Department requires to be kept informed. TII also acts as the Department's agent for issuing payments to local authorities for the construction, improvement, and management of local and regional roads. Under section 11 of the Transport (Railway Infrastructure) Act 2001 TII's other functions are to monitor and publish regular reports on the safety of light railway and metro infrastructure, to enter into concession, joint venture, or public private partnership ('PPP') agreements to secure light railway and metro infrastructure and to acquire and facilitate the development of land adjacent to railway works to enhance the economic viability of such railway works subject to provisions of that Act.

57. Mr. Maher stated that TII's functions are integral to the Government's policy to deliver a safe and sustainable public transport network and, although responsibility for policy and strategy resides with the Minister, it is TII who implements the policies and strategies, the intrinsic purpose of which is to confer public benefit through the enhancement of the national road network and the provision of more sustainable transport modes in the form of light railway and metro railway infrastructure. He said national road network improvements not only underpin a range of government policies but offer many benefits to the public in terms of improved road safety, reduced travel costs, the facilitation of regional development and business investments, tourism, and the removal of traffic congestion from towns and villages. The Luas as a sustainable public transport option protects the environment and contributes to sustainable economic and social development.

58. Mr. Maher cited the provisions of sections 17, 21 and 41 and the Third Schedule of the 1993 Act as demonstrating the high degree of central control exercised by the Minister in relation to TII. For example, TII's general duty to secure the provision of a safe and efficient network of national roads is subject to such Ministerial directions and guidelines as may be given under section 41. The Minister, by regulations, can assign to TII additional functions in relation to the construction or maintenance of national roads or require that TII perform functions relating to national roads that are conferred on the Minister or on a road authority or on the Commissioner of the Garda Síochána under the Road Traffic Acts, 1961 to 1987 (s.17). In accordance with any terms and conditions specified by the Minister, TII must prepare programmes or other documentation as may be required for the purposes of making or supporting an application to the European Communities for financial assistance in respect of national roads or assist, with the consent of the Minister and in such manner as specified by the Minister, in promoting the case for such financial assistance (s.21). He also referred to the Chapter Five of the Department's 'Corporate Governance Framework' document which identifies TII (in Table B) as a non-commercial agency for which the Department has responsibility and to the following headings identified in Table D for the Department's liaison and oversight of TII: Government/Oireachtas Reporting, Financial Reporting, Planning, Corporate Reporting, Board Appointments/CEO remuneration.

59. Mr. Maher stated that TII was not established for purpose of making private profit and that its activities are not conducted for that purpose. The surpluses from its commercial operations are used to finance TII in the discharge of its statutory functions which is underscored by the fact that TII is required to furnish annual forecast reports of its resource income to the Department so that the Department can take those forecasts into consideration as part of the government's budgetary forecasts. He also pointed out that pursuant to Regulation 15(2) of the Roads Regulations 1994 (S.I. 119/1994) moneys (other than grants made under s. 24 of the 1993 Act) accruing due to TII must be applied for the purposes of TII's functions under the 1993 Act or otherwise in relation to the construction and maintenance of national roads unless the Minister directs otherwise.

60. Mr. Maher explained that TII has different sources of income. Essentially TII requires annual funding for three distinct area of activity: administration, road network and light rail and metro. TII's national road network activities are funded from Exchequer grants (s.24 of the 1993 Act), toll income from the M50 motorway, revenue share income from other toll operations including motorway service areas across the national road network. The national road network income, he said, is ring-fenced and ploughed back into the operation and improvement of the network. In relation to its light rail activities, TII funding comes from NTA grants, monies levied and collected by planning authorities through Supplemental Development Contribution Schemes and any surpluses that arise through the payment mechanism of the Luas Operation Contract. Under section 11(3) of the Transport (Railway Infrastructure) Act, 2001 TII can exploit commercial opportunities arising from its functions under that Act. It generates own resource income from utility agreements, park & ride facilities, and other commercial activities such as advertising which he said are pursued on a non-profit motive basis. TII retains cash reserves in any year where surplus funds generated from such activities are not fully used. He said the surplus funds do not represent profit or reflect a profit motive. Pursuant to a written agreement made between the RPA and the NTA on the 10th January 2014 any cash reserves must be made available to fund specific items arising from its statutory functions under the 2001 Act. He said the Department's control on national road funding is illustrated by the fact that TII has to make drawdown requests which must confirm that the funding requested is eligible expenditure.

61. Mr. Maher pointed out that under the 1993 Act TII can borrow money only with Ministerial consent (s. 25), that the Minister for Finance can guarantee TII borrowings (s.26), that, if requested, the Chief Executive is obliged to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General (s.18 of the 2015 Act) and to attend before a Committee appointed by either House of the Oireachtas or jointly by both Houses to give account for the general administration of TII (s.19 of the 2015 Act). He stated that he personally attended in conjunction with Department Officials before the Public Accounts Committee, the Transport Committee, and the Budgetary Oversight Committee. Every year TII must submit a report to the Minister on the performance of its statutory functions during the preceding year and a copy of the Annual Report is laid by the Minister before each House of the Oireachtas (para. 4(1) Third Schedule of 1993 Act). TII must submit any information required by the Minister regarding the performance of its functions (para. 4(1) Third Schedule of 1993 Act), and in each financial year must prepare and submit to the Minister an estimate of its total expenditure and receipts accompanied by such information relating to that estimate as requested by the Minister (para. 5(1) Third Schedule of 1993 Act). TII must prepare and keep annual accounts of all monies received and expended in a manner approved by the Minister and keep any special accounts as directed by the Minister. These accounts have to be submitted to the Comptroller and Auditor General for audit and the accounts and the auditor's report on the accounts are presented to the Minister who then causes them to be laid before each House of the Oireachtas. The Comptroller and Auditor General has discretion to examine the economy and efficiency of TII's operations and the adequacy of the management systems in place in order to appraise the effectiveness of TII operations.

62. The staffing arrangements of TII were outlined by Mr. Maher by reference to the provisions of Part III of the 1993 Act. The appointment of the chairman and members, their term of appointment and their removal are set out in section 28. Each member appointed must be a person who, in the opinion of the Minister, has wide experience and competence in relation to roads, transport, industrial, commercial, financial, or environmental matters, local government, the organisation of workers or administration. The appointed members hold office on such terms and conditions as the Minister may determine. Their remuneration and allowances for expenses is determined by the Minister under section 30. The Minister may remove a member in certain circumstances

set out in section 28(5)(b). The first Chief Executive was appointed by the Minister and all subsequent appointments are made by TII subject to the Minister's consent. The Office of Chief Executive is held for such period and upon such terms and conditions relating to remuneration and allowances for expenses as the Minister may determine. The Chief Executive is the Accountable Officer and by his contract of employment is obliged to use his best endeavours to promote the interests of the public and to perform his office in accordance with the provisions of the Roads Acts. The hiring of employees by TII is subject to the consent of the Minister and the Minister for Finance as to number and grading. The duration and terms of employment of staff may be determined by TII with the Minister's consent. TII employees are public servants rather than civil servants. Staff grades are identical to civil service grades and salary structures correlate to those of the civil service. The superannuation scheme for the granting of benefits for staff is subject to the approval of the Minister and the Minister for Finance and the scheme must be laid before both Houses of the Oireachtas (s.36). The creation of any new position within TII has to be justified and sanctioned by the Department. TII is obliged to accept into its employment any person designated by a public authority whose principal duties relate to the functions assigned and transferred to TII by the 1993 Act. Under section 31 the Minister may provide services (including services of staff) to TII for the purpose of enabling TII to perform its functions and TII may provide services (including services of staff) to the Minister, a road authority or any other body or person on such terms and conditions as may be agreed.

63. In terms of organisational accountability, TII must adhere to the Code of Practice for the Governance of State Bodies (revised and updated August 2016) ('the Code') which sets the roles and responsibilities of the Chairperson and the Chief Executive Officer of TII. The Code essentially provides the framework by which financial and administrative oversight and control is exercised. Mr. Maher adduced in evidence the Code, the TII Statement of Strategy 2018-2022, the 2018 Oversight Agreement between the Department and TII, the 2018-2021 Performance Delivery Agreement between TII and the Department, which details the 2018 and 2019 levels of TII's exchequer and non-Exchequer funding, the Compliance Checklist for Non-Commercial State Bodies between the Department and TII, the Corporate Governance Framework 2018 and the Framework Oversight Plan for Non-Commercial State Bodies. He clarified that TII is not a Vote holder and that its funding is channelled through the Transport, Tourism and

Sport Vote Group and so it is the Secretary General of the Department that is required at the end of the financial year to prepare an Appropriation Account for each voted service administered by it. The man areas of activity that require Ministerial approval, consent or directions are set out in the Appendix to the Oversight Agreement. Mr. Maher gave evidence that corporate governance meetings are held every 3 months between senior officials in the Department and the TII Chief Executive and Head of Governance and Legal to review TII's administrative operations and compliance with the Code. An annual meeting is also held between the Chairperson and the Assistant Secretary General to review the year's performance and discuss any issues arising. Mr. Maher together with the Chief Executive Officer and other TII directors regularly attend quarterly general 'operational and delivery' meetings with an Assistant Secretary General of the Department to discuss TII's progress with the National Capital Programme and to provide updates on TII's annual business plan and on PPP tolling operations. In addition, TII personnel attends monthly meetings to update the Department on capital spending and the progress of national road projects.

64. Mr. Maher stated that TII is subject to significant direction and control by the State. The nature and statutory functions of TII, its proximity to central government, the control exercised by the Minister over its staffing arrangement, the performance of its functions, its finances, and its administrative accountability obligation all pointed, in his opinion, to TII being an Office of State and an entitlement to claim exemption from the payment of rates under paragraph 12A of Schedule 4 of the Act.

65. Mr. Maher also gave evidence outlining the general background to tolling in Ireland, the legislative framework for toll roads, the development of the M50, the changes that occurred in relation to the M50 toll, the benefits conferred by the 'free flow' or 'barrier-free' tolling system on the M50 and the maintenance contracts entered into by TII in respect of the M50 and the Westlink Toll. He said that the Department made it clear to him in a letter dated the 12th June 2019 that by reason of the M50 upgrade works combined with the introduction of barrier-free tolling and the buyout of NTR's entitlement to collect the toll, TII is required to meet the monthly payments due under the contract made with M50 (Concessions) Limited for the maintenance and operation of the M50 from Junction 3 to Junction 14 from the toll revenues accruing to TII.

66. Traffic through the tolled section of the M50 increased ten-fold from 5 million in 1991 to 50 million in 2016. Mr. Maher said that the capital investment in the M50 Upgrade Project was critical to the delivery of the increased traffic volumes and to the resultant increased toll receipts. He said that the buyout of NTR's rights under the 2007 agreement enabled TII to progress the M50 upgrade, to dedicate the M50 tolls to the public purpose of discharging TII's functions including the maintenance of the M50 from Junction 3 to Junction 14. The changeover to '*free flow'* tolling not only alleviated traffic congestion but led to the increased use of the M50. He said that substantial ongoing maintenance expenditure is required to meet the twin objections of ensuring that the operating capacity of the M50 is maintained and the avoidance of any negative impact on toll revenue.

67. Mr. Maher stated that the M50 toll is a product of history in terms of the arrangements originally entered into between Dublin County Council and NTR/Westlink in that the M50 toll road was quite different from other tolling roads where the toll collector's maintenance obligations are not limited to the extent of the toll road and their right to collect the toll lapses or terminates in the event of non-compliance with their maintenance obligations.

68. It was Mr. Maher's view that the Westlink Toll cannot be viewed as being dependent solely upon the maintenance and renewal of the toll road divorced from the remainder of the M50. He considered that the maintenance costs in respect of 34km of the M50 was an appropriate deduction for the purpose of calculating the NAV because the €1 billion capital investment in the M50 increased traffic passing through the toll road and toll revenue is inextricably linked with the full extent of the upgrade works that were undertaken along that stretch of the motorway.

69. Under cross-examination Mr. Maher accepted that the Appellant had by 2019 evolved from being a non-commercial semi-State agency in 1993 to a non-commercial semi-State agency with commercial functions. He confirmed that the commercial revenue arising from TII's functions under the Roads Acts comprise the eflow toll, revenue sharing arrangements under PPP contracts, and revenue sharing arrangements in respect of motorway service areas which arise when footfall thresholds are exceeded. On the light rail side, he confirmed that revenue is derived from Luas fares, park & ride

facilities, advertising, and the provision of duct access to statutory undertakers and utilities. He accepted that the M50 tolls and the Luas fares are part of TII's commercial income and that in 2015 toll receipts were approximately €111 million and Luas gross receipts were approximately €56 million. He confirmed that in the context of the Appropriation Acts TII does not have its own Vote or any non-voted direct charges on the central fund.

70. When asked to clarify whether TII was under a statutory obligation to occupy and operate the Westlink Toll, Mr. Maher replied that whether it is has an obligation or not, TII is entitled under the 1993 Act to operate and collect the tolls on the M50. He acknowledged that aside from the Westlink Toll, other national toll roads are operated pursuant to agreements made under section 63 of the 1993 Act, but he was unable to accept that TII's occupation and operation of the Westlink Toll is not integral to government policy. He considered that the Westlink Toll had to be viewed in its historical context. He said the circumstances necessitating the M50 Upgrade Project demonstrated that a policy decision had to be made to take the Westlink Toll into public ownership so that a single private operator would no longer be in possession of a section of the M50 that is extremely difficult to bypass. He accepted that hypothetically a future toll agreement in tandem with a M50 PPP maintenance contract could be made in respect of the M50 Toll but considered that scenario unlikely pointing out that the difference between TII occupying the Westlink Toll and a private operator doing so is that the income generated by TII's occupation is reinvested in the national road network. The decision to operate the toll was in his view directly aligned with government policy to deliver the best outcome in respect of the operation of the M50 and the parallel outcome of delivering significant surplus for reinvestment. When it was put to him that operating the Luas is not a core function of government, Mr. Maher said that in his view the implementation of improved public transport is key to the delivery of government policy not just in the context of sustainable transport but also in other areas such as enhanced mobility and climate change. To his mind the delivery, construction, and development of public transport infrastructure such as the Luas is core government policy. He considered the provision of light railway infrastructure and its operation to be intertwined but agreed that a third party could operate Luas by means of a concession or joint venture agreement.

71. Mr. Maher confirmed that TII is only a road authority in respect of national roads and that TII would usually arrange for the relevant road authorities to carry out on its behalf functions assigned to it under section 19 of the 1993 Act but said that TII retains discretion to perform those functions itself if it considers it more expeditious, effective, or economical to do so. In the case of the M50, which passes through three local authorities areas, he said it was difficult to deliver motorway services in a coherent, effective and efficient manner due to lack of resources and inappropriately trained staff and so TII had assumed responsibility for the M50 because the fragmented arrangements for operation maintenance prior to 2007 inhibited the delivery of appropriate motorway services which in turn negatively impacted traffic in the city when the M50 became chronically congested. When asked where under the Toll Scheme TII has an obligation to maintain the entire M50 he replied that the obligation arises under its general statutory duty to secure the provision of a safe and efficient network of national roads which is achieved by TII through a Motorway Maintenance and Renewals Contract ('MMaRC') or in the case of the M50 a concession contract. He also pointed out that if TII had not assumed responsibility for the M50 the revenue benefits would not accrue to the same extent. He considered there to be an intrinsic dependency between TII's capacity to operate the Westlink Toll to its maximum potential and the need to ensure the M50's operation and maintenance and that the public interest is served by ensuring that incidents on the M50 are dealt with by the deployment of the best resources available. He confirmed that the M50 Concession contract operates in respect of the M50 between Junction 3 and Junction 14 and the MMaRC contractor is responsible for maintenance and operation of the section of motorway between Junction 14 and Junction 17 as well as the interchange junctions between the radial routes. He said TII supervises these contracts and has a team that supervises and oversees the administration of various PPP contracts to ensure compliance with contractual obligations. TII operates a motorway operations and control centre in the control building of the Dublin Tunnel which controls and monitors the various technologies that are deployed on all motorways but especially on the M50 where the density of deployment is far greater. These technologies include electronic messaging, the CCTV camera network, data collection loops, automatic number plate recognition and an automated incident detection system, all of which has to be maintained for the proper operation and management of a motorway network.

72. Mr. Maher confirmed that the Westlink Toll technology filled gantry infrastructure was outsourced to Emovis. When it was put to him that TII is in indirect occupation of the Westlink Toll he pointed out that TII is in receipt of the tolls and the service provider merely collects it as agent on TII's behalf.

73. Under re-examination Mr. Maher said that TII assumed responsibility for the maintenance and operation of the M50 because local authorities were unable to deliver the level of service required in an efficient manner and local authority management was no longer a viable option given the traffic volumes on the M50 after the completion of the upgrade works.

74. Mr. Wylde, a chartered accountant and the Head of Finance at TII since August 2015, said that it was his responsibility to ensure a strong financial and internal control system to deliver accurate financial statements for the purpose of TII's annual report and to prepare accurate monthly management accounts as part of the regime to aid the oversight, management, and control of TII's financial activities. The purpose of his evidence was to outline the five sources of TII's funding which were categorised as (i) exchequer funding, (ii) grants from the NTA to undertake their statutory functions, (iii) toll revenue, (iv) receipts from levy schemes under section 49 of the Planning and Development Act 2000 and occasionally developer contributions on foot of bi-lateral agreements to fund light rail or metro infrastructure (v) surpluses from its own commercial operations and to the describe the financial reporting requirements and the regulatory controls imposed upon TII in respect of its income and expenditure.

75. He explained that the NTA is the sanctioning authority for all public transport projects and on an annual basis NTA agrees with TII the allocation of grants for the forthcoming year. He referred to the rules and procedure put in place by the NTA in respect of such grants and the administrative controls set out in Circular 13/2014 entitled 'Management of and Accountability for Grants from Exchequer Funds' which must be abided by TII in expending the allocated grants.

76. Mr. Wylde also explained that section 49 of the Planning and Development Act, 2000 enables a planning authority when granting planning permissions, in line with a supplementary development contribution scheme made under that provision, to attach a

condition to a permission for development that will benefit from public infrastructure requiring the payment of a financial contribution in respect of the provision of that public infrastructure. He cited the Luas Line B extension to Cherrywood and the Luas Docklands extension as examples of such public transport infrastructure. The monies collected are transferred to TII when the particular project is sufficiently advanced, and the monies are expended in the construction costs of the relevant project.

77. Mr. Wylde identified the principal sources of TII own resource income from the Luas commercial operations as system charges arising from the Luas Operating Licence with Transdev, revenue from park and ride facilities and advertising and from the roads network as toll revenues from eflow and the Dublin Port Tunnel and commercial arrangements with operators of PPP concessions on national roads (i.e., other toll schemes and motor service areas).

78. Mr. Wylde stated that the funding allocation for each of TII's three areas of activity (administration, road network and light rail/metro network) is ring-fenced. He explained, by way of example, that it would be impermissible to use capital funding for the construction of national roads for road maintenance or administration. He also clarified that no transfer is permitted between revenue and capital funding or in the administration budget between pay and non-pay. He said the DRPR Circular 13/2014 requires that grant monies only be used for the purpose for which the grant was made and that when TII draws down grant monies TII has to confirm in writing that will comply with the grantor's terms and conditions or as specified in the grant allocation letter.

79. Originally the treatment of surplus funds and reserves arising from Luas infrastructure was governed by a letter of instruction from the Department of Transport which required surpluses to be used to fund life cycle asset renewals or sub-vent any operating deficit between the RPA and the passenger service provider and the RPA to keep records and account on an annual basis to the Department on how surpluses were applied. That arrangement was superseded by the agreement made between the NTA and the RPA on the 10th January 2014 for the period to the 31st December 2018 (which was extended for one year) which set out how various Deposit Funds were to be managed and used. Essentially that agreement required Deposit Funds to be committed to fund Luas Cross City and life cycle asset renewal, any operational deficits and the other items identified

in paragraph 5, and to be utilised to the extent permitted by paragraphs 6 and 7 thereof. Mr. Wylde also clarified that cash reserves in any year due to surpluses not being fully used have to be disclosed to the NTA and used to fund Luas and metro capital investment and asset renewal programs.

80. Mr. Wylde explained how TII's annual administration costs are budgeted. A monthly profile of the administration budget is submitted to the Department and each month TII is required to apply in writing to the Department to request a drawdown of the profiled amount from the administration grant. The monies drawn down fund staff salaries, pensions, travel and subsistence expenses, legal audit, and tax services, rent and rates for premises and other operational costs.

81. Mr. Wylde state that all TII revenue is used to discharge TII's statutory functions under the 1993 Act and the 2001 Act and that no private profit or use is directly derived from the tolls or the Luas by TII. He confirmed that the estimated expenditure to be incurred in respect of the Public Transport Capital Program (Light Rail and Metro) for the following year as well as the budget for national road network activities is set out in the Annual Plan and Budget for the approval of the Board of TII. He described TII's separate banking arrangements for the three major areas of activity, and he gave a general description of TII's income and expenditure account reporting. An explanatory account was given of the items in TII's Income & Expenditure Account for 2015 which Mr. Wylde said clearly demonstrated that M50 toll revenue is used to discharge costs associated with the M50 PPP Contract and the M50 eflow Operations Contract.

82. The financial reporting system in place was also described in detail to demonstrate the level of control and oversight exercised by the Department from agreeing the format of the financial statements to the preparation and submission of draft unaudited financial statements to the Department and the Comptroller and Auditor General, the provision of any additional information for the reports, and the consideration by the Department of TII's Annual Report and financial statements prior to them being laid before the Houses of the Oireachtas and their subsequent publication. In addition, Mr. Wylde outlined the information required by the Code to be inserted in the Annual Report and Financial Statements of TII.

83. Mr. Wylde confirmed that he was actively engaged in the revaluation process but at a later stage he sought legal advice from McCann Fitzgerald in respect of the Luas appeal on the day prior to the final date for the making of representations to the Respondent and on the Westlink Toll appeal legal advice was sought 7 days prior to the final date for the making of representations.

84. Under cross-examination Mr. Wylde confirmed that TII does not and did not have a direct Vote under any of the Appropriation Acts, and that TII receives funding allocation from the Department's Vote for specific purposes. He confirmed that because TII is not in the business of making a profit, the use of the term 'operating surplus' is preferred to that of 'profit' in TII's accounts. He confirmed that the Luas pays for itself and does not presently require subvention. He confirmed that in 2015 TII's road tolls receipts were €111 million and that gross receipts from the Luas infrastructure was €55,830,000. He also confirmed that the revenue from the Westlink Toll has increased since 2015.

85. Mr. O'Neill, a Chartered Engineer and TII's Director of Commercial Operations since 2015 has wide experience in the design, supervision and delivery of road infrastructure and railway infrastructure projects and in tolling operations and light railway operations. In his role as a senior member of TII's management team he oversees the tolling and light rail operations and PPP procurement, and he reports to the Chief Executive and TII's Board several times a year in respect of TII's commercial operations. He also attends meeting with the Department and the NTA and reports to the audit and risk committee of the Board. He has four heads of department who report to him on tolling operations, the Luas operations contract, life cycle and asset renewal and the condition of the light rail system, the procurement and the finance elements of PPP and financial operations. He clarified that the term 'commercial operations' is used to signify the revenue generated from the use by members of the public of the public transport infrastructure provided by TII and he referenced the 50 million transactions a year in respect of the Westlink Toll.

86. Mr. O'Neill described the Luas infrastructure and the central control system that oversees that infrastructure and the light rail vehicles. He said that at the valuation date there were approximately 35 million passenger trips a year and since the opening of Luas Cross City that number has increased to 42 million.

87. Mr. O'Neill explained that Luas is described as a light rail system because the vehicles travel on the streets in and around the city centre unlike the heavy rail systems such as commuter trains and the Dart which are fully segregated and signal controlled. The signalling on the Luas system is controlled by Dublin City Council and integrated with the signalling system for all other road traffic vehicles.

88. Luas can be accessed by the public upon the payment of a fare set by the NTA. TII makes a submission each year to the NTA so that regard is had to TII's operating, maintenance and running costs in fixing fares. Luas is a vital component in Dublin's transport network because it has capacity to carry more passengers per direction per hour than Dublin Bus. Mr. O'Neill did not think that there would be any reality to a private operator mobilising the finances and obtaining railway orders to deliver a light rail public transport system.

89. The NTA has a duty under the Dublin Transport Authority Act, 2008 (as amended) to secure the provision of light infrastructure and public transport services in the Greater Dublin area. Pursuant to its power under section 44(2) of that Act the NTA arranged for its functions in respect of the provision of metro or light rail passenger services to be performed on its behalf by the RPA and that function is now performed by TII as the successor authority.

90. Mr. O'Neill said Luas is directly occupied by TII and that pursuant to contract Transdev has a licence to access and use the Luas only to the extent necessary to provide services in accordance with the terms and conditions set out in the contract. The rights and responsibilities of the RPA under that contract were transferred to TII. Transdev is required to comply with any reasonable direction issued by TII in relation to the operation of the Luas. TII has the right to terminate or suspend Transdev's licence. Mr. O'Neill referenced the provisions in the contract, which was adduced in evidence, dealing with revenue which he said recognise that the revenue risk is borne by TII and the means by which TII controls the day-to-day management of the Luas is evidenced by the detailed provisions in the Schedules. Transdev does not have the right to exclude TII from the Luas. TII has access to the Luas which is exercised for life cycle and asset renewal purposes.

91. Mr. O'Neill outlined, as Mr. Maher and Mr. Wylde did before him, the source of the light rail and metro capital funding, the commercial opportunities that arise in respect of Luas infrastructure and operations, and the agreement made between the RPA and the NTA in January 2014 as to the use of surplus and reserve funds. He added a little more detail in that revenue is also derived from the rental of a small number of kiosks on the network system and from telecommunication providers who avail of TII ducts for their cables and TII bridges for the installation of mobile telephony equipment. He confirmed that the revenue streams arising from Luas are kept separate and ring-fenced and used solely for the upkeep and running of the Luas and stressed that there is no private and commercial motivation behind TII's light rail operations. He pointed out that during the recession years Luas incurred deficits and the RPA used its cash reserves to cover the shortfall between the revenue and operating costs. In 2015 Luas produced a small surplus and has performed well since but further deficits could arise as there is a linkage between Luas usage and economic activity and any such eventualities are catered for in the NTA agreement.

92. Mr. O'Neill referred to an Extract of the Minutes of a meeting of the NRA Board on the 11th September 2007 which records the decision made by the NRA on the 10th February 2004 pursuant to section 19(2) of the 1993 Act to perform statutory functions in respect of the M50 motorway. He also referred to an agreement entitled 'Co-Operation Agreement' that was made in September 2007 between the NRA, Fingal County Council, South Dublin County Council, Dun Laoghaire Rathdown County Council and Dublin City Council which licenced access to the M50 to facilitate the NRA procuring a PPP for the carrying out of the M50 Upgrade Project specifically for the purpose of highlighting Recital D which records that "*The NRA considered it would be more convenient and more expeditious, more effective and more economical that the project should be undertaken by it pursuant to the provisions of the Roads Act*."

93. Under cross examination Mr. O'Neill accepted that private operators could provide public transport services. He also accepted that the RPA was a commercial semi-state body which had largely been created out of CIE which is also a commercial semi-state body. He said that because the RPA was dissolved, TII continues to be a non-commercial semi-state body notwithstanding the transfer to it of RPA's functions.

When asked if he agreed that there is no mandatory obligation on TII itself to provide light railway infrastructure he said it would be unreal to expect TII to provide light railway infrastructure or light rail services as TII is not constituted to deliver major construction projects as it does not have the necessary personnel to do so. TII secures the provision of such infrastructure and services through the public procurement process and the successful tenderer provides the infrastructure and services in accordance with TII's the specifications, standards, and requirements on behalf of TII.

94. He did not accept the proposition that TII is more a regulator than an operator of the light railway system or that TII's occupation of the Luas is not integral to government policy. He said that TII is directly accountable for the provision of light railway infrastructure and service and that when problem arise that interrupt the service it is TII who must answer to the Oireachtas. He also referred to the successive National Development Plans published by the Department of the Taoiseach and observed that the provision and delivery of public transport infrastructure underpins wider policy areas and is integral to the National Planning Framework as a key enabler to the achievement of certain objectives in that plan. He also pointed to the considerable effort expended by government in funding and delivering public transport infrastructure. When asked why TII should be treated differently from Irish Rail, a nationalised company providing Intercity and Dart rail services and paying rates, he replied that TII had been established on a different basis.

95. When asked if a light rail vehicle is, in ordinary parlance, a tram Mr. O'Neill said he had no difficulty with people referring to a light railway vehicle as a tram but that TII call them light railway vehicles and they are identified as such in the Railway Orders issued pursuant to section 43 of the Transport (Railway Infrastructure) Act 2001.

96. When asked to give a potted version of what Transdev does under its contract, Mr. O'Neill said that Transdev through its staff operate the light railway vehicles in accordance with TII's specified timetable. They return the vehicles to the Depots at periodic intervals for maintenance. Transdev is responsible for the maintenance of the vehicles and the infrastructure during the contract term and upon expiry of the contract is obliged to hand back the system in accordance with the requirements of the contract. The Luas revenue is collected through a ticket validator, ticket vending machines at the

platforms and through leap card validators. Transdev collects the revenue and reports to TII. When asked what TII is left to do after putting the operations contract into place, he said that TII monitors the performance of the contract. Asset managers oversee the maintenance and condition of the infrastructure and vehicles. The Head of Light Rail reports to him, he reports to the Chief Executive and to the Board as well as to the NTA.

97. Mr. O'Neill's disagreed with the Respondent's position that TII were in indirect occupation of the Luas. He said Transdev were procured to operate the Luas system on behalf of TII and that it is TII who is responsible for the infrastructure and the service that is provided upon it.

98. Mr. Hicks is a Chartered Surveyor who has specialised in rating valuations since 1989. He has given expert evidence to the Valuation Tribunal, the Upper Tribunal (Lands Chamber) in the UK, the Lands Tribunal in Northern Ireland, and the Chancery Division of the High Court (England and Wales). His specialist areas of expertise include the rating valuation of airports, docks, and harbours which properties are valued using the Contractor's or the Receipts and Expenditure ('R & E') methods of valuation. Prior to adopting his Report as his evidence in chief, Mr. Hicks corrected typographical errors at paragraph 55 and at paragraph 102 of his Report. Mr. Hicks confirmed his agreement with Ms. McCrystal that it is appropriate to value the Westlink Toll by the R & E method of valuation and that the receipts element of the valuation is agreed. The only disputed figure in the R & E valuation of the Westlink Toll was that attributable to the maintenance expenses and he said that turned on the question whether the maintenance expenses were referable to a road length of 34 km or a road length of 4,500 metres.

99. Mr. Hicks said the appropriate expenses are those related to the revenue stream secured through eFlow (Westlink Toll). TII has a *de facto* obligation to maintain the entirety of the M50 as well as national roads and its feeder roads under section 19(1)(b) of the 1993 Act but that duty is a characteristic of TII rather than the hypothetical tenant.

100. As a starting point in his valuation Mr. Hicks stated that he looked at the level of tolls at the valuation date because a hypothetical tenant would assess his profits looking forward from that date in terms of the revenue that he believes he could generate and the anticipated costs that he would expect to arise and, in doing so, would have the

benefit of knowing the level of trade undertaken previously. The value of the property is estimated by the hypothetical tenant in terms of what is to come and not necessarily by what has gone before. He considered that the primary factor that would affect the tenant's outlook is demand and demand would be driven by the economic environment at the valuation date and the physical circumstances of the roadway.

101. Mr. Hicks looked at the traffic flows over the years preceding the valuation date to see if they were at a steady rate and noted that traffic flows were markedly higher at the valuation date than they were going back to 1988 due to the fact that the M50 Upgrade Project had increased the capacity of the motorway. He considered that TII's draft 2016 Annual Plan and Budget which forecasted gross receipts of approximately €116,250,000 based on traffic of 47.5 million would inform the hypothetical tenant's expectations. Mr. Hicks noted that in the period prior to the valuation date there had been a growth in expenses but that the draft Plan did not break down the expenses specific to the Westlink Toll. He said that the maintenance costs had risen year on year but that they were moderated by the operation and maintenance contracts put in place by TII.

102. Mr. Hicks contended that the cost of maintaining the M50 must be considered in the valuation because there is a clear relationship between the changes effected to the M50 and the Westlink Toll revenue. He observed that the 2008 toll scheme amended the toll scheme of the 10th June 1985 and that the reason given for the amendment was the proposed replacement of the barrier operated toll plaza facility with a barrier free electronic tolling system. He pointed out that the Explanatory Statement accompanying the amended toll scheme refers to the upgrade works and the planned installation of barrier free electronic tolling and records that the toll revenues collected would accrue directly to TII and be used to finance the upgrade works and the operation and maintenance of the M50.

103. The move to barrier free tolling was identified by Mr. Hicks as the first measure that increased the capacity of the M50, and the second measure was the upgrade works carried out over the 34 km stretch of the M50 between Junctions 3 and 14. There was a significant increase in the toll's receipts following completion of the M50 upgrade. He said the level of traffic passing through the Westlink Toll is causally related to the capacity of the motorway. If the motorway had not been expanded the level of tolls

would be different at the valuation date so the upgrade works directly facilitate and allow the level of traffic in the tolls at the valuation date. At the valuation date different physical circumstances existed giving rise to a significantly different quantum of tolls to be valued and in his opinion, it is correct to reflect the relationship between the maintenance costs and related infrastructure and the tolls in the valuation because one does not exist without the other.

104. The historic agreement with NTR/Westlink related to 3.2 km of roadway from Galway Road to the Navan Road including the two bridges across the Liffey. The construction costs of those development led to the level of tolls at that time and the '*state and circumstances'* of the tolls to be valued were dependent in part on maintaining those development works in good repair. He said that in the case of the M1 motorway, the concession agreement made with the Celtic Road Group imposed an obligation to maintain the entire motorway and those costs were included in the valuation of the tolls.

105. Noting that section 48 of the Act intends property to be valued in its actual state at the valuation date, Mr. Hicks stated that the physical characteristics and every intrinsic quality and every intrinsic circumstance that exists at the valuation date which tends to push the rateable value of the Westlink Toll up or down has to be considered. In his view the physical changes carried out to the M50 are causally linked to the tolls and so need to be maintained. While TII has maintenance obligations in respect of the entire M50, the capacity changes are attributable to 34 km of upgrade works. It is those physical improvements that need to be maintained to maintain the level of the tolls in their actual state. For the purpose of his valuation, he adopted 88.7% (34km as a percentage of 38.3km) of the total M50 maintenance costs for the purpose of his valuation. He considered this approach to be reasonable as the maintenance contracts applying to the full length of the M50 from the M1/M50 interchange to the M11/M50 interchange are funded by the tolls.

106. Under cross-examination Mr. Hicks accepted that Westlink originally had a maintenance obligation under the 1987 agreement that was limited to the length of the toll road (then 3.2km) but, for two reasons, he did not agree that if the hypothetical tenant were to make a similar agreement in respect of the amended M50 toll scheme his maintenance obligation would only be in respect of 4.5 km. The first was that the

maintenance obligation would depend upon the terms of the agreement struck between the hypothetical landlord and tenant and the second was that the works which extend over 34 km are causally linked to the amended toll scheme.

107. When asked why a hypothetical tenant taking a letting of the toll would assume a repairing obligation greater than the toll road itself, Mr. Hicks pointed to the guidance in the Supreme Court's decision in *Westlink Toll Bridge Limited v Commissioner of Valuation [2013] IESC 42* that the corporeal and incorporeal relationship cannot be ignored and what has to be valued is the state of the tolls at the valuation date. In his view to ignore the M50 upgrade works would be to ignore reality because you are ignoring the physical circumstances, the opportunities, the disabilities, the intrinsic qualities that lead to the value of the toll itself. He said the reason why the hypothetical tenant would keep the upgrade works in repair is because they link directly to the level of traffic and the level of the tolls. He pointed out that Celtic Road Group (Dundalk) Limited assumed the contractual obligation of maintaining the entire M1 motorway in return for receiving the tolls even though the tolled section of the MI was considerably shorter.

THE RESPONDENT'S EVIDENCE

108. Ms. McCrystal is a Chartered Surveyor with the Valuation Office. Though only employed in the Valuation Officer for less than a year, Ms. McCrystal has 20 years' professional valuation experience from working in private practice. Given that the length of the toll road had been agreed between the parties at 4.5 km Ms McCrystal was given leave to amend any references in her Précis to 3.2 km to 4.5 km and to amend the figures in the table on page 7 of her Précis relating to the apportionment of the toll road as between Fingal County Council and South Dublin County Council prior to adopting the Précis as her evidence in chief. In the case of Fingal, the toll road length was amended from 2.62km to 3.29km and in the case of South Dublin from 0.58km to 1.21km and the respective percentages were amended from 81.86% to 73.1% (Fingal) and from 18.14% to 26.89% (South Dublin).

109. Ms. McCrystal stated that the property is a toll that relates to a portion of the M50 orbital route in the rating authority area of South Dublin County Council, that portion being a section of the toll road between Junction 6 and Junction 7. In her Précis, Ms. McCrystal

said that the removal of the Westlink Toll Plaza and its replacement with a fully electronic barrier free tolling system was a crucial element of the strategy for easing congestion and that since the commencement of free flow tolling traffic volumes are in the range of 100,000 vehicles per day. She indicated that 75% of the trips on the toll road are by motorists who have either opened an electronic tag account (60%) or avail of the video account option (15%).

110. Ms. McCrystal said she could find no evidence of any toll road being created, operated, or occupied by the Department or by any statutory body and that since 2000, the State under its National Development Plan has relied on public private partnership agreements which require construction and infrastructure provision in return for the right to collect the tolls for the provision of motorways. With the exception of the Westlink Toll and the East Link Bridge, which is occupied by Dublin City Council, she stated that all other tolls in the State are occupied and operated by private operators.

111. Ms. McCrystal confirmed that the only difference between her valuation and that of Mr. Hicks is the figure to be allowed for maintenance costs. In her view TII is not entitled to deduct the cost of maintaining the whole of the M50 because the toll is collected in respect of the toll road as defined in the amended toll scheme. She considered that the hypothetical tenant would have regard to the original 1987 agreement in formulating his rental bid and whilst acknowledging that a toll requires a road, she did not accept that the tolls had increased as a result of the M50 upgrade works as she believed that traffic volumes were increasing in any event as the economy was doing well.

112. Under cross examination Ms. McCrystal confirmed that the valuers were agreed upon the use of the R & E method of valuation and that some allowance had to be made for the maintenance and operation of the roadway to maintain the income for the tolls. When asked whether an obstruction outside the 4.5 km toll road or improper maintenance of the road would impact toll revenue, Ms. McCrystal replied that it would in the case of an obstruction or if a motorist were to leave the motorway. However, when pressed further she considered that motorists would continue to use the M50 no matter what its condition. Whilst agreeing that maintenance costs in respect of 4.5 km is allowable, she did not consider the maintenance of the M50 motorway outside of 4.5 km necessary because not everybody who uses the motorway needs to cross the toll road. She re-

iterated that for the purpose of her valuation she had calculated the maintenance costs based on 4.5 km because that is the length of the toll road as stated in the amended toll scheme.

113. Ms. McCrystal confirmed that she did not disagree with Mr. Maher's evidence that revenue generation between Junction 6 and Junction 7 is inextricably linked with the full extent of the M50 upgrade works, that TII would not be generating revenue at current levels without the full scope of those works, that to ensure that the toll road continues to function in the manner intended it is essential to maintain a comprehensive regime of maintenance and operations along the 34 km stretch of motorway.

114. Ms. McCrystal also stated under cross examination that the Luas comprised the rails on the road, the 60 odd trams, three depots, the park and ride facilities at the Red Cow, Citywest, Balally, Carrickmines and Cherrywood. She referred to Luas as a light rail system in her Précis and confirmed that she had done so as it had been so described in the valuation certificate stating though that she would have preferred to have referred to it as a tramway.

THE APPELLANT'S SUBMISSIONS

115. In the first instance Senior Counsel for the Appellant submitted that the Westlink Toll and the Luas are not relevant properties and are not liable to be rated as they are used for public purposes and the revenue derived from both properties is employed for the purpose of performing TII's statutory functions and not for private profit. His second argument was that even if the Westlink Toll and the Luas are relevant properties, they fall within the category of 'relevant property not rateable' under the provisions of paragraph 12A. His third argument, made entirely without prejudice to the first two arguments, was that the valuation of the Westlink Toll is excessive as the Respondent limited the allowance for maintenance costs to the length of the toll road rather than the 34km section of the motorway between Junction 3 and Junction 14.

116. The first argument was based on the following four propositions:

    (i) what is rateable is relevant property and relevant property is defined by reference to Schedule 3

    (ii) to be relevant property for the purpose of rateability the property must comply

with the condition in paragraph 2 of Schedule 3

(iii) condition (a) of paragraph 2 requires the property to be occupied and the occupation must be of a nature that under pre-2001 Act enactments was a pre-requisite for the making of a rate

(iv) under pre-2001 Act enactments it was a pre-requisite of making a rate that a hereditament is not dedicated or used for public purposes.

117. The 1838 Act was an enactment in force immediately before the commencement of the 2001 Act. It is a repealed enactment. Section 63 thereof identified what were rateable hereditaments and what were exempted hereditaments and by the last proviso of section 63 *"any building, land, or hereditament dedicated to or used for public purposes"* was exempted from the poor rate. The Westlink Toll and the Luas fall within this exemption as they are occupied and used for the benefit of the public and not for private gain.

118. Senior Counsel submitted that the use of a property and the purpose for which the property is used is plainly an aspect of occupation. If the question of whether occupation is of value or benefit is determinative of the nature of the occupation, then for precisely the same reason, the purpose of the user is an aspect of the nature of the occupation. Occupation of property involving use for a public purpose is of a different nature to occupation involving use for a private purpose.

119. The *Guardians of Londonderry v Londonderry Bridge Commissioners (1868) IR 2 CL* 577 ('the Londonderry Bridge Case') was cited in support of the argument that TII is entitled to the benefit of the proviso in section 63 as the majority of the Exchequer Chamber determined that the tolls and toll houses of a bridge were hereditaments dedicated to or used for public purposes within the meaning of section 63 and the Guardians were not liable to be rated in respect of the tolls. The Londonderry Bridge Case was distinguished in *Westlink*. The material points of distinction between the defendant in that case and TII is that TII is not a commercial entity and is not deriving a private profit from the tolls as the proceeds of the toll are applied for the purpose of performing its statutory functions, which include the operation and maintenance of the M50. On this basis it is submitted that the Westlink Toll is not relevant property as condition (a) in paragraph 2 of Schedule 3 is not satisfied.

120. Even though there is no specific mention of railways in section 63 of the 1838 Act the Supreme Court in *Roadstone Ltd v Commissioner of Valuation [1961] IR 239* considered that railways are treated in the 1838 Act as covered by section 63 by reason of the wording of section 67 of 1838 Act. TII's occupation of the Luas would not have constituted rateable occupation under section 63. The Luas is used by members of the public on payment of the requisite fare. The revenue streams derived from the Luas operations are ring-fenced from TII's toll income and used solely for the upkeep and running of the Luas and to fund any operational deficits. Accordingly, the Luas is not relevant property as condition (a) in paragraph 2 of Schedule 3 is not satisfied.

121. If the proviso to section 63 does not continue to operate, Senior Counsel's alternative argument was that TII is an Office of State for the purpose of paragraph 12A of Schedule 4 as amended (hereafter "paragraph 12A") as it provides a service to the public in a manner consistent with the type of functions discharged by a government department. The phrase "any Department or Office of State" suggests that an Office of State is similar or cognate to a Department of State. TII discharges two functions, namely the provision of roads and the provision of light railway infrastructure and metro for the benefit of the public pursuant to a national infrastructure strategy. Its functions and finances are subject to stringent executive control. It has a close working relationship with the Department, acts under direction of the Minister, lends its expertise to a range of governmental functions, and is funded from central government. TII's Chief Executive is accountable to the Public Accounts Committee and other Oireachtas committees and its staff are employed on terms similar to those of civil servants. It is a non-profiting making enterprise. It was submitted that all these features or attributes concerning the function, role, and structure of TII render TII an Office of State.

122. In support of this alternative argument Mr. Murray said that assistance as to the proper approach to the matter could be found in a variety of cases and he carried out a helpful examination of the essential features of *HSE v Commissioner of Valuation (2010) 4 IR 23 ('HSE'), Personal Injuries Assessment Board v Commissioner of Valuation (2008)* 7 JIC 1501 ('*PIAB*') and *Fingal County Council v. Commissioner of Valuation [2011] IEHC* 506 ('*Fingal*'). In the *HSE* the High Court concluded that the HSE is the State and not an 'office of State'. It was submitted that if same test as applied by the Court in determining that the HSE is the State, was applied to TII, TII would have been similarly

categorised as the State under section 15(3) but for its repeal. It was submitted that the following four criteria identified in ***HSE*** are relevant not just as indicia of the State but also necessarily important for determining whether a statutory authority is an Office of State:

(1) its nature and function
(2) its proximity to central Government and Ministerial control
(3) its finance, control of expenditure, funding, financial and administrative accountability
(4) its staffing arrangements and function.

The fact that TII does not have its own 'Vote' and is not listed as one of the forty State bodies and authorities identified in the Appropriation Act 2014 is not dispositive of the question whether TII is an Office of State as the critical question is whether the functions of the statutory body lie at the core of government activity.

123. It was submitted that the Tribunal should follow the line of reasoning in ***PIAB***, because in ***HSE*** Mr. Justice MacMenamin having found that the HSE is the State did not grapple with the meaning of "*office of State*" and appeared to adopt the view that once a body is the State, it cannot be an office of State even though section 15(3) of the Act (now repealed) referred to the State as including a department or office of State. McCarthy J. in ***PIAB*** was of the view that as a matter of statutory interpretation the phrase "*office of State*" had to be treated as referring to an entity "cognate" of the entities referred to in section 15(3). In ***Fingal*** Peart J. regarded the four criteria identified in ***HSE*** as being '*useful in deciding*' whether a property was occupied by either "*the State*" or an "*office of State*". The use of the upper case for the letter "O" in "*Office of State*" in paragraph 12A does not make any difference as the wording of the paragraph is virtually identical to that used in section 15(3) and the Oireachtas could not have intended a different meaning or the application of different criteria by the use of a capital "O" rather than a lowercase "o".

124. The next issue addressed by Senior Counsel concerning paragraph 12A, which depended upon a finding by the Tribunal that TII is an Office of State, is whether the Westlink Toll is "*directly occupied"* by TII. The occupation of tolls is determined not

by the physical act of collection but by the entitlement to the tolls themselves. No one other that TII is entitled to receive income from the Westlink Toll and in ***Westlink*** Mr. Justice O'Flaherty confirmed that a toll is occupied by the person entitled to the receipt of the income.

125. It was submitted that TII also directly owns, occupies, and controls the Luas. Transdev is an agent providing contractual services and has no rights to, or interest in, the Luas. TII are occupiers as defined in section 3(1) of the Act and as the Respondent had determined that TII are in rateable occupation of the Westlink Toll and the Luas, it followed *a fortiori*, that TII is in the immediate use and enjoyment of the properties and so TII's occupation cannot be indirect occupation.

126. The Respondent appears to be advancing a seemingly inconsistent argument that TII indirectly occupies the properties to resist TII's claim for exemption under paragraph 12A. Senior Counsel submitted that there is no concept in rating law of indirect rateable occupation and surmised that the simple explanation for the use of the word **"**directly" in paragraph 12A was because it had been utilised in section 15(3). He pointed out the word "directly" in section 15(3) was explicable because the draftsman was aware that by reason of the nature of the State as a juristic person, the property would have to be directly occupied by a State agency, body, or authority.

127. Senior Council went on to submit that the Westlink Toll is land for the purposes of paragraph 12A pointing out that the word '*land*' as defined for the purposes of section 21 of the Interpretation Act, 2005 in Part 1 of the Schedule to that Act includes a hereditament and the Westlink Toll is a hereditament. He further relied upon the definitions of "*land*" and "*building*" in section 3 of the 2001 Act. In section 3 "*land*" is defined to include any structure erected on land and "*building*" is defined to include a structure, whatever the method by which it has been erected or constructed. He said Luas as is a structure as it is a light railway constructed under a Railway Order. A railway is a structure comprising tracks and ancillary works such as depots and park and ride facilities alongside the track which constitute an imposition upon land, which accordingly brings it within the definition of land. In that regard he relied upon ***Black v Shaw*** *[1913] 26 Gazette Law Reports 303*, a decision of the Supreme Court in New

Zealand which considered the question whether a road can be called a "structure" upon land.

128. Without prejudice to the foregoing and, in the event that the Tribunal did not accept the Appellant's alternative claims for exemption, on the quantum side Senior Counsel argued that the length of the M50 motorway between Junction 3 and Junction 14 (i.e., 34 km) should be taken into account for the purpose of estimating maintenance costs on the basis that the M50 as upgraded would be less efficient and less attractive to users if it is not properly operated and maintained. He stressed in reliance upon the judgment of MacMenamin J. in *Westlink Toll Bridge Limited v Commissioner of Valuation and Celtic Road Group (Dundalk) Limited v Commissioner of Valuation [2013] IESC 42* ('*Westlink/Celtic Roads'*) that the relevant property is the Westlink Toll and in the context of section 48(3) the issue concerns the annual cost of repairs necessary to maintain the Westlink Toll in its actual state which "*means in real terms that which is necessary to maintain the status quo*". He said TII is required not just to maintain the toll road but to maintain that part of the M50 so that the tolls can be earned.

THE RESPONDENT'S SUBMISSIONS

129. Senior Counsel for the Respondent submitted that there is no basis to infer that the Oireachtas intended to retain the old public purpose exemption contained in section 63 of the 1838 Act which section has been repealed since 2001.

130. He also submitted that the Westlink Toll and the Luas are relevant rateable properties and do not fall within the category of 'relevant property not rateable' under the provisions of paragraph 12A because TII is not an Office of State and, even if the Tribunal were to determine that the TII is an Office of State, neither the Westlink Toll nor the Luas is land and neither property is '*directly*' occupied by TII.

131. The onus of proof is on TII to establish that the conditions for exemption are met and that the valuations as determined by the Respondent are incorrect. The Valuation Act 2001 repealed and replaced more than a dozen statutes relating to the valuation of property for rating purposes. It is clear from the long title of the Act that one of its objects is "*to make new provision in relation to the categories of property in respect of which rates may not be made".* By section 3 relevant property is construed in

accordance with Schedule 3 and section 15(1) provides that relevant property is rateable. Section 15(2) provides that relevant property referred to in Schedule 4 is not rateable. Schedule 3 separately enumerates the different categories of relevant property that are rateable where the condition in paragraph 2 thereof is satisfied. Under Schedule 3 railways and tramways, including running line property and non-running line are listed at subparagraph (c) and tolls are listed at subparagraph (h).

132. Mr. Murray's misreading of paragraph 2 of Schedule 3 and his argument that the public purpose exemption has survived the repeal of section 63 renders paragraphs 7, 8 and 14 of Schedule 4 completely redundant. Paragraphs 10, 11, 16 and 18 of Schedule 4 leave no interpretative room to the Respondent or the Tribunal to infer that the Oireachtas intended to retain the old public purpose exemption. In ***PIAB*** Mr. Justice McCarthy agreed that the legislative intention was to remove the wider category of public purpose exemption provided for in section 63 and to make a more explicit and limited exemption for the bodies specified in section 15(3) of the Act. It cannot be plausibly contended by TII in reliance upon a repealed provision that a fresh imposition of liability would arise. To endorse TII's interpretation of the condition in paragraph 2 would lead to extraordinary and anomalous consequences.

133. Furthermore, paragraph 2 of Schedule 3 is concerned with the nature of occupation and the prerequisites for rateable occupation rather than with what constitutes a rateable hereditament under the enactments in force immediately before the commencement of the Act. The prerequisites for rateable occupation are established. Senior Counsel referred to an extracts from Chapter 2 of *Ryde on Rating and the Council Tax* concerning the law on rateable occupation and the four ingredients that were adopted by the Court of Appeal in *John Laing & Son Ltd v Kingswood [1949] 1 KB 344*. They are as follows:

(i) There must be actual occupation
(ii) The occupation must be exclusive
(iii) The occupation must be of value or benefit to the occupier.
(iv) The occupation must not be for too transient a period.

In the Respondent's written submissions, a passage from page 283 of Keane's *The Law of Local Government in the Republic of Ireland [1982]* is cited as an authoritative

summary of the established caselaw on the prerequisite conditions for rateable occupation as are some relevant cases and Tribunal decisions which adopted and applied those ingredients in determining whether occupiers were in rateable occupation or whether properties were capable of being the subject of rateable occupation.

134. In the alternative and without prejudice to the foregoing arguments, it was submitted that even though specifically mentioned in section 63, tolls were not referred to in the final proviso and nor was there any reference to railways. Furthermore, it was submitted that members of the public permitted to travel on the M50 toll road or in a Luas tram have to pay for that privilege and both properties are operated by TII as a commercial entity. Accordingly, any claim that the Westlink Toll and the Luas are exempt from rates by virtue of section 63 must fail.

135. The test of State exemption by reference to the four indicia identified in ***HSE*** was so broad that in *Fingal County Council v. Commissioner of Valuation [2011] IEHC 506 ('Fingal')* the National Sports Campus Development Authority was successful in availing of the section 15(3) exemption. Following the repeal of section 15(3), the language of the replacement provision (paragraph 12A) provides an exemption in narrower terms by omitting any reference to the State and limiting the exemption to properties directly occupied by any Department or Office of State, the Defence Forces or An Garda Siochána. The Oireachtas is presumed to be fully aware of the law and how it is being applied (*Director of Public Prosecutions v Brown [2018] IESC 67*]. Specifically recognising that the repeal of section 15(3) would result in the Health Service Executive losing an exemption previously enjoyed, the Oireachtas amended Schedule 4 by section 16 of the Health Service Executive (Financial Matters) Act 2014 to insert paragraph 20 exempting any land, building or part of a building occupied by the Health Service Executive other than any land, building or part of a building referred to in paragraph 8 or 14. It was submitted that these amendments underscore the Oireachtas's intention that the words "*Office of State*" in paragraph 12A are to have a narrower meaning than the words "*office of State* " in section 15(3).

136. The principles applicable to the interpretation of the provisions of the Act are set out in *Nangle Nurseries v. Commissioners of Valuation [2008] IEHC 73* ('*Nangle Nurseries"*') The Act is to be strictly interpreted; exemptions or relieving provisions are

to be interpreted strictly against the rate payer; ambiguities, if they are to be found in an exemption, are to be interpreted against the rate payer and in the case of ambiguity, resort must be had to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statute or other statutes expressed to be considered with it. Any ambiguity in paragraph 12A, therefore, is to be interpreted against TII. The rationale for construing exemptions strictly is that the consequence of exemption is to narrow the rating base and thereby increase the burden on other ratepayers.

137. ***HSE*** and ***PIAB*** must be approached with a degree of circumspection given the repeal of section 15(3). In ***PIAB*** Mr. Justice McCarthy considered whether PIAB was an office of State by looking at the various factors identified by the Tribunal. In ***HSE*** Mr. Justice MacMenamin did not grapple in any meaningful way with the meaning of "*office of state*" as he looked at the legal status of the HSE and determined that it is the State. Mr. Justice McCarthy considered that "*office of State*" is not just a place of business but involves all the paraphernalia of an entity carrying on government or other business with a budget, administrative structure, and a clear identity. It was further submitted that an office implies an office holder and that a common definition of "office" adopted in revenue law is an office or employment which was a subsisting, permanent, substantive position, which had an existence independent of the person who filled it, which went on and was filled in succession by successive holders having regard to the dicta of Lord Atkinson in *Great Western Railway v. Bater [1922] AC 1.*

138. The term "*Office of State"* is not defined. An Office of State cannot be an entity that prior to 2014 would have been the State but not an office of State. An Office of State cannot be a Department of State. An Office of State cannot be the Defence Forces or An Garda Síochána or any of the other specified occupiers listed in Schedule 4 nor can it be a semi-state body. In paragraph 12A "Department" and "Office of State" are bound together by the use of the word "or" indicating that they are different but cognate entities. The Constitutional offices of State such as the offices of the President, the Taoiseach, the Tánaiste and the office of the Attorney General are indisputably offices of State as are many of the 41 offices listed in the Appropriations Act 2014 such as the Office of the Comptroller and Auditor General, the Paymaster General's Office, the Office of Public Works all of which are candidates for "*Office of State*" none of which,

it should be noted, derive a commercial income from the performance of their functions. TII is not listed in the Appropriations Act 2014. The commercial income of TII in 2015 was €111 million from road tolls and €56 million from the Luas. The occupation of a toll or a tramline is not a core function of government.

139. Paragraph 12A is limited to certain types of relevant property, namely, a building or part of a building, land, waterway, or a harbour directly occupied by a Department or Office of State, the Defence Forces, or the Garda Síochána. Had the Oireachtas intended to exempt all relevant properly directly occupied by these entities, it would simply have done so. Paragraph 12A does not extend to railways or tramways or tolls. In ***HSE***, MacMenamin J. stated that by virtue of its context and phraseology section 15(3) expressed the true intention of the Oireachtas by recognizing "*an exemption in relation to the categories of land therein described, particularly land or buildings occupied by a Department or office of State. To conclude otherwise would be absurd."* That observation is equally applicable to paragraph 12A which provides an exemption for the same categories of relevant property.

140. The Luas is a tram not a railway and, trams run on tramways. References to railways orders and light railways in other Acts is of no relevance as those Acts are not in *pari materia* with the Valuation Acts which creates a self-contained scheme. If the Luas is a tramway, the definitions of running-line property and non-running line property are irrelevant as they apply only to railways. In any event, whether a railway or a tramway, the Luas is not 'land' as defined in section 3 of the 2001 Act nor a structure in the natural and ordinary meaning of that word. The reason why land is defined to include a "structure" is to capture properties or parts of property that do not fall within any of the enumerated categories of property in paragraph 1 of Schedule 3 as relevant rateable property. Railways and tramways are separately categorised in Schedule 3 from land. Furthermore, Senior Counsel submitted that even assuming the Luas is a railway with running line property or a tramway with running-line property, the definition of running-line property takes the Luas out of the definition of 'land' in subparagraph (b) and places it into subparagraph (c) of Schedule 3.

141. A toll is an incorporeal right. It is not land and nor is it a structure erected on land. The Appellant's reliance on the definition of 'land' in Part 1 of the Interpretation Act 2005

is misplaced and not a permissible method of interpretation in view of the general interpretative rules contained in section 20(1) of the Interpretation Act 2005 which provides that where an enactment contains a definition or interpretative provision the provision must be read as being applicable unless a contrary intention is indicated in the legislation. If the Oireachtas had wanted to use the definition of "land" in the Interpretation Act 2005 or the earlier Interpretation Act of 1937 which also included hereditaments it could have done so. If TII were correct it would mean that the word "land" which is defined in an exclusive fashion in section 3 of the Act would have to be interpreted by reference to a different broader definition of "land" in the Interpretation Act 2005 which quite understandably, having regard to the context of Irish law, incorporates tenements and hereditaments.

142. It is common case that TII is the rateable occupier of the Westlink Toll and the Luas. However, the properties are not directly occupied by TII. At the valuation date Emovis was the toll operator as agent of TII and the Luas, since it commenced operations in 2004, continues to be managed by Transdev. Emovis and Transdev may not be the rateable occupiers but their occupation and use of the respective properties is sufficient to prevent TII from being in direct occupation. The words "*directly occupied"* in paragraph 12A must be given their ordinary plain meaning. If there is a concept of direct occupation, by implication there must be one of indirect occupation. The only applicable Oxford English dictionary definition that can be applied to the words "*directly occupied"* is "*with nothing or no-one in- between*". Paragraph 12A envisages a public body being in rateable occupation but not directly occupying the relevant property.

143. Finally, Senior Counsel submitted that it is legal coincidence that TII on the one hand assumed the maintenance obligation in respect of the entire M50 after the completion of the M50 upgrade works and on the other hand became the toll operator. If TII had not assumed that maintenance responsibility, the responsibility would have stayed with the three local authorities. There is nothing in the toll scheme that obliges TII to maintain the entire M50 motorway. There is no evidence to support TII's argument that a landlord would not be willing to let the tolls unless the tenant assumed responsibility for the maintenance of the M50 between Junction 3 and Junction 14. In the absence of a toll agreement, the paying public is obliged to pay a toll only in respect of that section of

the toll road between Junction 6 and Junction 7. The remainder of the M50 is used by the non-paying public. There is no evidence to assume that the hypothetical tenant would assume a larger maintenance obligation than necessary in order to secure a letting of the Westgate Toll. The crucial difference between the Celtic Roads Group case and this case is that the Celtic Roads Group assumed responsibility for the operation and maintenance of the entire M1 motorway even though the toll road was much shorter under a contract made pursuant to section 63 of the 1993 Act.

FINDINGS

144. The Tribunal has carefully considered all of the evidence, submissions and authorities put before us. There was no real dispute between the parties as to the facts on these appeals; the differences arise in the parties' application of the law to those facts. In those circumstances there was no robust challenge to the evidence given by Mr. Maher, Mr. Wylde and Mr. O'Neill on behalf of TII. Senior Counsel for the Respondent fairly and properly questioned these witnesses in order to clarify matters relevant to the issues and to provide the Tribunal with a full picture of the situation. The Tribunal accepts the evidence of those witnesses as fact. The Tribunal, however, has disregarded the witnesses' opinions on the issues that fall to be determined.

145. The questions that arise for decision all depend on the interpretation of the Act. The questions and the order in which they will be addressed are as follows:

(1) Is the condition in paragraph 2 of Schedule 3 satisfied in respect of the Westlink Toll and the Luas so as to constitute them relevant property within the meaning of section 15(1) and the Third Schedule of the Act?

(2) Is TII an Office of State for the purpose of paragraph 12A of Schedule 4?

(3) If TII is an Office of State

(i) does the Westlink Toll fall within the category of property deemed exempt by paragraph 12A?

(ii) does the Luas fall within the category of property deemed exempt by paragraph 12A?

(iii) is the Westlink Toll "*directly occupied*" by TII

(iv) is the Luas "*directly occupied*" by TII?

(4) In the valuation of the Westlink Toll, should maintenance costs be estimated in respect of the length of the toll road between Junction 6 and Junction 7 (i.e., 4.5km) or the length of the M50 between Junction 3 and Junction 14 (i.e., 34 km)?

Paragraph 2 Schedule 3

146. In *Inspector of Taxes v. Kiernan [1981] I.R. 117* Henchy J., stated at p. 121:

"A word or expression in a given statute must be given meaning and scope according to its immediate context, in line with the scheme and purpose of the particular statutory pattern as a whole, and to an extent that will truly effectuate the particular legislation or a particular definition therein."

147. Applying the above principles to section 15(1) and Schedule 3 the expression "rateable occupation" should be given a meaning and scope in accordance with the statutory context. The long title of the Act makes clear that it was passed for the purpose of revising the law relating to the valuation of properties for the purpose of the making of rates in relation to them, to make new provision in relation to the categories of properties in respect of which rates may not be made and to provide for related matters.

148. When the Act was passed it did not provide for the making of a rate or impose liability for the rate or provide for the recovery of the rate. The source of a local authority's power to "*make and levy such rates as may be necessary on every occupier of rateable hereditaments*" is still to be found in Section 61 of the 1838 Act. The word "occupier" is defined in section 124 of the 1838 Act to include "*every person in the immediate use or enjoyment of any hereditaments rateable under this Act, whether corporeal or incorporeal".* A similar definition is found in section 3 of the Act as follows " "occupier" means, in relation to property (whether corporeal or incorporeal), every person in the immediate use or enjoyment of the property. The references to "hereditaments" in sections 61 and 124 of the 1838 Act now fall to be construed as meaning relevant property by virtue of section 14 of the Act. The rateability of an occupier arises from section 71 of the 1838 Act as amended by section 5(8) of the Local

Government Reform Act 2014 which provides "*Every rate made under the authority of this Act shall be paid to the person authorized to collect the same by the person in the actual occupation of the rateable property at the time of the rate made"*.

149. Section 63 of the 1838 Act, which identified the rateable and non-rateable hereditaments, was repealed by section 8 and Schedule 1 of the Act. The statutory basis for rateability and non-rateability are now governed by section 15 of the Act and the Third and Fourth Schedules.

150. Under section 15(1), subject to subsections (2) and (4) of section 15 (which identify specific properties not rateable) and sections 16 and 59, relevant property is rateable. Section 3 of the 2001 Act requires the phrase "*relevant property*" to be construed in accordance with Schedule 3. Schedule 3 provides that property falling within the categories of property listed in paragraph 1 and complying with the condition in paragraph 2 is relevant property for the purposes of the Act. As pointed out by MacMenamin J. in ***HSE*** the Third Schedule is "*clearly intended to identify categories which are rateable*".

151. Under section 15(2), relevant property falling with Schedule 4 is not rateable. The term "relevant" is used in identification of both rateable and non-rateable property. Schedule 4 sets out a list of 'Relevant Property Not Rateable'.

152. The Luas and the Westlink Toll fall respectively within category (c) (railways and tramways, including running line property and non-running line property) and category (h) (tolls) of paragraph 1 of Schedule 3. Paragraph 2 of Schedule 3 requires a property to be occupied and the nature of that occupation must be rateable occupation or, if unoccupied, a property must be capable of being the subject of rateable occupation by the owner of the property. Paragraph 2 clarifies that rateable occupation is occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property.

153. In the Tribunal's view, the Oireachtas intended rateable occupation to continue to be a prerequisite for the making of a rate and that the making and levying of rates would

continue in respect of relevant property construed in accordance with Schedule 3 of the Act in the same manner as it did in respect of hereditaments under previous enactments.

154. For an occupier to be liable to pay rates in respect of a property which he occupies, that property must fall within one of the categories identified in paragraph 1 of Schedule 3 and the nature of his occupation must be "*rateable occupation"* to satisfy paragraph 2 of Schedule 3. For an owner of unoccupied property to be liable to pay rates, his property must also fall within one of the categories identified in paragraph 1 of Schedule 3 and the property must be capable of being the subject of rateable occupation by its owner to satisfy the condition in paragraph 2 of Schedule 3.

155. What constitutes rateable occupation is not defined in legislation but has been the subject matter of judicial interpretation by the Superior Courts. In *Carroll v Mayo County Council & Or [1967] IR 364* the Supreme Court was concerned with whether or not the plaintiff was in rateable occupation of a quarry. Henchy J. observed:

> *Sect 61 of the Poof Relief (Ireland) Act, 1838, provided that the rates are to be made and levied "on every occupier of rateable hereditaments" and s 124 of that Act defines "occupier" as including "every person in the immediate use or enjoyment of any hereditaments rateable." It has long been established that the immediate use or enjoyment which is rateable in Ireland must be similar, so far as its legal character is concerned, to the occupation which would be rateable in England. One may, therefore, look at the English authorities, as well as the Irish, to see what principles should be applied in determining who is the person liable for the rates. The Irish authorities, at least those of the Superior Courts, are not many as far as this branch of the law of rating is concerned … … For example, in the* (*Westminster Council v Southern Railway and Others [1936] AC 511) Case Lord Russell of Killowen said at p 533 of the report: - "In my opinion the crucial question must always be what in fact is the occupation in respect of which someone is alleged to be rateable, and it is immaterial whether the title to occupy is attributable to a lease, a licence, or an easement".*

156. The meaning of rateable occupation was also considered in *Iarnrod Eireann v Commissioner of Valuation (Unreported High Court Barron J. 27th November 1992* and

in *Telecom Éireann v Commissioner of Valuation [1994] 1 IR 66* and more recently, in *Fibonacci ICAV v. Commissioner of Valuation [2020] IEHC 31 wherein Ms. Justice Hyland stated:*

> *"24. It is common case that the owner was not in occupation on the relevant date and therefore, the test is that set out in s.2 of the Third Schedule i.e., whether the property was capable of being the subject of rateable occupation by the owner of the property.*
>
> *25. There is no definition of rateable occupation in the Act although there is a definition of occupier as being "in relation to property (whether corporeal or incorporeal), every person in the immediate use or enjoyment of the property.*
>
> *26. However, there is a significant volume of case law in relation to what constitutes rateable occupation. In Telecom Éireann v. Commissioner of Valuation [1994] IR 66, O'Hanlon J., referring back to Keane J.'s work on "The Law of Local Government in the Republic of Ireland", identified the essential ingredients of rateable occupation i.e. that it must be, (1) exclusive in the sense that the person using the hereditament can prevent any other person from using it in the same way; (2) of value or benefit to the occupier but not necessarily of financial benefit; and (3) not for too transient a period".*

157. Under section 63 of the 1838 Act any hereditament dedicated to or used for public purpose where no private profit or use was directly derived from that hereditament was exempt from rates. The Tribunal seriously doubts that the condition in paragraph 2 of Schedule 3 was intended to exclude any property that would have been entitled to claim exemption from rates under enactments, whether repealed or not, from being a relevant property as the Appellant contends.

158. The legislative purpose of the Act as stated in its long title is in summary is to *"revise the law relating to the valuation of properties for the purpose of the making of rates in relation to them and to make new provision in relation to the categories of properties in respect of which rates may not be made*". These purposes are largely achieved by section 8 which repeals section 63 and by section 15(1) which identifies relevant property that

is rateable and by section 15(2) which identifies relevant property that is not rateable. The acceptance of the Appellant's argument would be to render nugatory or senseless, the repeal of section 63 and, in effect, perpetuate a repealed enactment and render redundant Schedule 4 in significant part.

159. In the Tribunal's view the condition in paragraph 2 of Schedule 3 as to rateable occupation must be understood to mean the type of occupation necessary to create a liability to pay rates and, the expression "*rateable occupation*" which is known and understood to have a particular meaning in rating law must be construed as occupation that satisfies the aforementioned three essential ingredients of rateable occupation. Furthermore, it would appear right to assume that when paragraph 2 of Schedule 3 was drafted the Oireachtas would have been well aware of the meaning put on that expression by the courts.

160. Accordingly, the Tribunal is satisfied that the condition in paragraph 2 of Schedule 3 does not exempt the Westlink Toll and the Luas from a liability to rates.

Paragraph 12A Schedule 4

161. Turning next to the question whether TII is an Office of State for the purpose of paragraph 12A of Schedule 4.

162. In *HSE* MacMenamin J. accepted the four criteria identified by the HSE as being relevant to determining whether a public authority is the State for the purpose of Section 15(3) of the Act, namely, (*1) its nature and function; (2) its proximity to central government; (3) its finance, control of expenditure, funding, financial and administrative accountability; (4) its staffing arrangements and functions.* The same four criteria were applied by Peart J. in *Fingal* to support a finding that the National Sports Campus Development Authority was the State for the purpose of section 15(3).

163. Subsection (3) of section 15 of the Act was deleted by section 5(8) of the Local Government Reform Act, 2014 on the 24 March 2014 and by that same provision paragraph 12A was inserted into Schedule 4 of the Act. The amendment of paragraph

12A by section 39 of the Valuation (Amendment) Act 2015 is of no relevance to these appeals.

164. TII was established pursuant to section 16 of the 1993 Act for public purposes. It is a statutory authority that is a body corporate with perpetual succession and accordingly has separate legal personality. It has power to sue and be sued in its corporate name. It has power to acquire and dispose of land or an interest or right in relation to land. The right to acquire land does not extend to the acquisition of land for a national road.

165. Though legally separate from the State and the Department, it operates under the aegis of the Department. The Tribunal is satisfied having regard to the provisions of sections 17, 21 and 41 the 1993 Act and the evidence of Mr. Maher, who outlined TII's governance structure, that TII is responsible for the delivery and implementation of government policies and strategies in relation to the development and management of the national road infrastructure and the delivery of public transport services under the strategic direction of the Minister. The provision of a safe and efficient national road network and the provision and operation of light rail and metro infrastructure are acts done in pursuit of government policy and such provision is undoubtedly of benefit to the State's economy.

166. Though no funds are voted to TII by the annual Appropriation Acts, TII receives significant government funding through the Transport, Tourism and Sport Vote Group. TII has power to engage in commercial or self-financing activities. Nonetheless the Tribunal accepts the evidence adduced on behalf of TII that all of TII's revenue is used to discharge their statutory functions for the benefit of the public and that no private profit or use is directly derived by TII from the Westlink Toll or the Luas.

167. The provisions of Part III of the 1993 Act which vest a large measure of control over TII through the Minister, the corporate governance arrangements in place between TII and the Department pursuant to the Code, the requirement to attend and give evidence before a Dáil Committee whenever requested to do so, the laying of TII's Annual Report and financial statements before the Houses of the Oireachtas and the obligation to rigorously account to the Minister and to the Government for the appropriate discharge

of their statutory functions when called upon to do so all point the importance of TII's activities to central government.

168. On the facts, the Tribunal is satisfied having regard to the four assessment criteria identified and applied in ***HSE*** and ***Fingal*** that in providing strategic national road infrastructure and light rail and metro infrastructure TII exercises specific public functions of a national character which were formerly exercised by the Department of the Environment, that those functions are closely connected to the core functions of government, that significant financial support is provided by the State to TII for the performance of those functions and that the activities of TII are subject to significant direction and control by the Minister. Therefore, the Tribunal concludes that TII is the State. The legislature repealed section 15 (3) of the 2001 Act and replaced it with paragraph 12A, so it is no longer the case that a building or part of a building, land or a waterway or a harbour directly occupied by the State is exempt from rates.

169. Even if the Tribunal is wrong in concluding that TII is the State, the Tribunal is of the view that TII is not an Office of State.

170. ***PIAB*** is the only case where the High Court sought to interpret the meaning of the term "office of State" in section 15(3). McCarthy J. said that the term "office of State" was to be given its ordinary and natural meaning and having consulted the Shorter Oxford English dictionary (3rd Edition) (1973), he concluded the word "office" encompasses both "*place and persons"* with *"all the paraphernalia of an entity carrying on government or other business (i.e., not merely a place of business but also a budget, defined area of responsibility, an administrative structure and a clear identity or name).* Having regard to the use of the lower case 'o' in section 15(3) he did not consider it relevant that the Dictionary pointed out that a capital 'O' is used in the term *'Home Office'* because the Home Department in England is commonly referred to as the Home Office and "*we have here no practice of using the word office as a synonym for Department".*

171. In ***HSE*** MacMenamin J. pointed out that twelve government departments, the Defence Forces, the Prison Service and twenty-three other bodies were identified in the Schedule to the Appropriation Act 2006. Each of the twelve government departments were

referred to as an "Office" of the relevant Minister. Of the twenty-three other bodies, MacMenamin J. stated that they are "*immediately identifiable"* as bodies of the State or offices of State and cited, by way of example, the Attorney General, the Director of Public Prosecutions, the Comptroller and Auditor General, the Valuation Office, and the President. Most, if not all, of the Offices listed in that Schedule are listed in the Schedule to the Appropriations Act, 2014 which includes some additional Offices such the Standards in Public Office Commission, the Office of the Information Commissioner, and the Office of the Commissioner for Environmental Information. Every Office listed in these Schedules including those of Ministers is spelt with a capital 'O'.

172. Senior Counsel for both parties expressed doubt whether the use of the capital letter added anything to its interpretation and considered that the expressions "office of State" and "Office of State" should be regarded as having an identical meaning. The courts, however, do not readily accept that a linguistic mistake has been made in the drafting of a statutory provision. On the presumption that the Oireachtas does nothing in vain, the Tribunal considers that the use of a capital letter in the word Office is intended to convey a particular meaning and should not be disregarded in the interpretation of paragraph 12A.

173. As a matter of statutory interpretation words must be read in context. It is therefore important to have regard to the other bodies identified as being exempt in paragraph 12A, namely, any Department of State, the Defence Forces, the Garda Síochána, and the Prison Service. This is the application of the interpretative principle *noscitur a sociis*. These are distinct but cognate entities all integral to the functions of the State and all coincidentally are listed in the Schedules to the Appropriations Acts.

174. There is unfortunately no authoritative or exhaustive definition of "Office of State", and it is difficult to frame an exact definition given the myriad public authorities that have been established to perform public functions. The phrase, however, does describe the various organs of State created by the Constitution including the President, the Taoiseach, and other Ministers who are in charge of Departments of State, the Attorney General, and the Comptroller and Auditor General. The Tribunal considers that "Office of State" must be construed as those Offices "*immediately identifiable*" as branches of

administration all discharging public services and functions essential to the functioning of the State such as those mentioned above as well as other major non-constitutional organs of State such as the Office of the Ombudsman, the Office of the Director of Public Prosecutions, the Office of the Commissioner of Public Works, the Office of the Revenue Commissioners as well as those other Offices listed in the Schedules to the Appropriations Acts. It may be that draftsman used the uppercase 'O' in order to avoid a generic interpretation being applied to the word office or to introduce a measure of consistency as it is notable that these Offices are listed in various enactments, for example, the Appropriations Acts, the Public Service Management Act, 1997 and the Official Languages Act, 2003 with an uppercase 'O'.

175. Furthermore, the Tribunal considers that the term "Office of State" ought to be given a narrow interpretation as a broader interpretation could potentially include the vast array of public bodies which are established and governed by statute for the purpose of performing public services or functions, publicly funded and subject to oversight by a Minister and accountable, through that Minister, to the Oireachtas for the manner in which they carry out their functions. The Tribunal considers that the Oireachtas intended to confine paragraph 12A to those Offices identified in the Constitution and in the aforementioned enactments Accordingly, the Tribunal finds that TII is not an Office of State for the purpose of paragraph 12A.

176. In case the Tribunal is wrong in its conclusion that TII is not an Office of State, the Tribunal will set out its findings on the Respondent's other arguments that TII cannot claim exemption under paragraph 12A of Schedule 4, the first of which is that paragraph 12A in applying only to properties that are "a *building or part of a building, land or a waterway or a harbour"* excludes tolls and tramways/railways.

177. The Tribunal cannot accept the Appellant's argument that the word "land" in the Act should be interpreted by reference to the definition of land in section 18 of the Interpretation Act, 2005. Section 20 of the Interpretation Act, 2005 provides that where an enactment contains a definition or other interpretation provision, the provision shall be read as being applicable except in so far as the contrary intention appears in the enactment itself, or the Act under which the enactment is made. In section 3(1) of the Act provides that in the Act, unless the context otherwise requires, the word "land" is

defined to "include any structure erected on land and any land covered with water". That definition applies to paragraph 12A unless the context otherwise requires. There is does not appear to be anything in section 15 or Schedule 4 or in paragraph 12A thereof to require the word "land" to have a meaning different to that prescribed by section 3(1).

178. A toll is a known species of "relevant property" for the purposes of valuation law. Tolls constitute incorporeal property. There is a clear distinction between incorporeal and corporeal property. The word "land" must be given its natural and ordinary meaning and it does not capture tolls. The Tribunal accepts the Respondent's argument that the Oireachtas did not intend to exempt all relevant property directly occupied by the bodies identified in paragraph 12A otherwise it would done in clear terms by simply using the all-encompassing phrase "relevant property" and further that had the Oireachtas intended to exempt tolls, it would have expressly said so in paragraph 12A. Therefore, the Tribunal concludes that the Westlink Toll is not property to which paragraph 12A applies.

179. Despite the fact that Luas is described as a light rail system in the valuation certificate, the valuation reports and Ms. McCrystal's precis of evidence, the Respondent questioned whether Luas is a light railway or a tramway. One may simply be splitting hairs by asking the question whether the Luas is a light railway or a tramway. A light railway or tramway though different from a traditional railway in that it runs along public roads nonetheless shares similar characteristics to a railway and it is possible that the Luas rail tracks come within the definition of "*running line property*" given that the Luas is designated as a light railway in a railway order issued under section 43 of the Transport (Railway Infrastructure) Act 2001. In any event, on this appeal, the Tribunal sees no reason for, or purpose in, inquiring into whether as a matter of labelling the Luas is a tramway or a light railway or in considering whether the Luas tracks are "running line property" as defined in the Act in order to determine the issue whether the Luas constitutes land within the meaning of the Act. TII contended that the Luas is land within the meaning of section 3 the Act on the basis that the Luas is a structure, and the definition of land includes a structure. The word "*structure*" is not separately defined in the Act. The Tribunal considers that a structure includes something constructed or placed on or affixed to land. Clearly, a building is a structure. On the facts the Tribunal finds that the Luas is a structure. The Luas could not operate without the rail tracks being

bolted or affixed or anchored in some way into the land over which it traverses and without being connected to the overhead power supply which is supported by a system poles which have foundations and other fixtures and fittings. Furthermore, Ms. McCrystal confirmed that the appeal property comprising the Luas in the rating authority area of South Dublin County Council includes not just the tracks set into the road but also the Red Cow Depot, and the park and ride facilities at Red Cow, City West, Balally, Carrickmines and Cheeverstown. In these circumstances the Tribunal finds that the Luas comes within the definition of land and that paragraph 12A by referring to *"a building or part of a building, land or a waterway or a harbour"* does not exclude the Luas.

180. While it is at least possible that the word "*directly*" in paragraph 12A is a surplus word for the reason stated by Mr. Murray, the principles of statutory interpretation presume that words used in statutory provisions are not used in vain. (*Cork County Council v. Whillock* [1993] 1 I.R. 231). This presumption means that the words "*directly occupied by*" are intended to have, and should be given, some effective meaning unless, notwithstanding a word or phrase which is unnecessary, the overall meaning is relatively clear-cut (Bookfinders Ltd v Revenue Commissioners [2020] IESC 60).

181. It is common case that if the Westlink Toll and the Luas are relevant rateable properties, TII is the rateable occupier. It is also accepted that in the context of rating law only one person can be in rateable occupation of a relevant property.

182. The meaning of the words used in paragraph 12A must be seen in context. It must also be borne in mind that an exemption from rates has to be stated expressly and in clear and unambiguous terms. *Nangle Nurseries* makes clear that exemptions or relieving provisions are to be interpreted strictly against the rate payer. In construing paragraph 12A, the Tribunal considers that the words "*directly occupied*" should be interpreted in their plain and ordinary meaning and in a manner that is sensitive to their statutory context.

183. The word "occupy" can have different meanings depending on the statutory context. The ordinary meaning of the word "occupy" is "to be present in" and occupation is a

less formal concept than possession. The dictionary definitions of the adverb "*directly*" are

> *"with nothing or no-one in between"*
> *"without intermediary"*
> *"immediately"*

184. In the Tribunal's opinion the word "*directly"* emphasises that which is required for the purpose of paragraph 12A namely, occupation the essential feature of which is the physical presence in the property by the entity itself. The Tribunal considers that by using the words "*directly occupied*" the Oireachtas intended to restrict this exemption so as to preclude occupation through the medium of another person such as a caretaker or occupation through a person required to occupy the property such as an independent contractor, agent, or employee.

185. The question whether a property is directly occupied is a question of fact. Even though Transdev has no estate or interest in the Luas and is not in rateable occupation, by the leave and licence of TII they are required to be physically present on the Luas to control its operations on a day-to-day basis. The Tribunal is of the view that the contract made between the NTA the RPA and Transdev in September 2014 confers on Transdev not just a right to use the Luas but also a right of control and manage access to and use of the Luas by members of the public. While Transdev does not have exclusive possession of the Luas, they occupy the Luas through their physical and continuous presence and the day-to-day operation, management, and control of the Luas through its employees. No evidence was adduced before the Tribunal that any of TII's employees are physically present to assist in the day-to-day administration and operation of the Luas or to supervise the staff employed by Transdev. Accordingly, the Tribunal finds that the Luas is not directly occupied by TII.

186. Given the Tribunal's conclusion that the Westlink Toll does not fall within the categories of property to which paragraph 12A applies, the question whether the Westlink Toll is directly occupied by TII is moot.

Maintenance Costs

187. The extent of the costs of maintaining the Westlink Toll turns on the interpretation of section 48(1) and (3) of the Act. The Respondent points to the fact that the toll road lies between Junction 6 and Junction 7 and is 4.5 km long and contends on that basis that maintenance costs should be limited to the toll road. TII contends that the obligation under section 48(3) to maintain the Westlink Toll in its actual state requires the M50 between Junction 3 and Junction 14 to be maintained.

188. Under section 57(4) of the 1993 Act a toll scheme must be accompanied by an explanatory statement outlining the provisions of the scheme and its purpose and effect and that statement must include information in relation to the general arrangements for the construction, maintenance, and operation of the toll road to which the scheme relates and for the payment of the cost of such construction, maintenance, and operation. The 2007 Explanatory Statement accompanying the Toll Scheme prepared under section 57 of the 1993 Act clarifies that toll revenues will be used to finance the upgrading of the M50 motorway works, the operations and maintenance of the M50, the costs relating to the termination of the NTR's West-Link Concession Agreement and the services contract for the design, implementation, and operation of barrier free electronic tolling. Two key benefits mentioned in the Explanatory Statement as arising from the M50 Upgrade Project and barrier free electronic tolling are the increase in traffic volume capacity on the M50 by more than 50% and the removal of all toll facility capacity constraints.

189. The Westlink Toll is a flow of income that derives its value from being appurtenant to the M50 motorway. There is no warrant for the Respondent's contention that expenditure on maintenance costs is only allowable in respect of the toll road in the language of section 48(3). That provision provides that *net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state…".* The property to be valued is the Westlink Toll, not the toll road. It was clarified by MacMenamin J. in *Westlink/Celtic Roads* that the terms "*in that state*", and "*actual state*" refer to both

corporeal and incorporeal property and that in real terms this means "*that which is necessary to maintain the status quo"*. The Tribunal considers this to mean that a continuance of the existing state of things is *prima facie* to be presumed.

190. In *Poplar Assessment Committee v Roberts [1922] 2 AC 93* Lord Buckmaster stated:

> *"[A]though the tenant is imaginary, the conditions in which his rent is to be determined cannot be imaginary. They are the actual conditions affecting the hereditament at the time when the valuation is made*."

191. In *Dawkins (VO) v Ash Brothers and Heaton Ltd* [1969] 2 AC 366, the House of Lords held that the Lands Tribunal had been correct to take account of an existing demolition order in assessing the hypothetical rent, Lord Pearce stated (382):

> *"one must assume a hypothetical letting (which in many cases would never in fact occur) in order to do the best one can to form some estimate of what value should be attributed to a hereditament on the universal standard, namely a letting 'from year to year'. But one only excludes the human realities to a limited and necessary extent, since it is only the human realities that give any value at all to hereditaments. They are excluded in so far as they are accidental to the letting of a hereditament. They are acknowledged in so far as they are essential to the hereditament itself."*

192. It was submitted on behalf of the Respondent that the hypothetical tenant in considering the maintenance obligation would have regard to the agreement made by NTA/Westlink in 2001. The Appellant submitted that this earlier agreement was of historical significance only and that at the valuation date from the joint perspective of the hypothetical landlord and the tenant the state of the M50 motorway would be key to the highly significant level of income to be derived from the tolls. Mr. Maher described this earlier agreement as "*an unusual arrangement*" which was "*of its time*" in the context of how things are done today. [Transcript Day 1, page 63]. It was suggested by the Appellant's Senior Counsel that in the hypothetical negotiation for the Westlink Toll the landlord would want a return from the tenant in the form of the acceptance of liability for maintaining the 34 km stretch of the M50 between Junction 3 and Junction 14.

193. The Tribunal is satisfied by the evidence of Mr. Maher and Mr. Hicks that the significant income derived from the Westlink Toll at the valuation date is inextricably linked to the M50 upgrade works including the free barrier free electronic tolling. Though of the view that maintenance costs were only allowable in respect of the toll road, Ms. McCrystal accepted that the maintenance of remainder of the M50 (i.e., beyond 4.5 km) does contribute to the income of the toll when it was put to her by Mr. Murray S.C. [Transcript Day 4, page 108]. Ms. McCrystal also confirmed that she did not disagree with Mr. Maher's evidence that "*Revenue generation between Junction 6 and 7 is absolutely inextricably linked with the full extent of the upgrade works that were undertaken*. *It would not be generating the revenue at that point without the full scope of improvement works that had been undertaken*" [Transcript Day 4, page 112] and "*In order to ensure that the section of motorway in question continues to function in the manner intended it is essential that a comprehensive regime of maintenance and operations is undertaken along that full length"* [Transcript Day 4, page 113].

194. The Tribunal finds as a fact that the M50 now caters for in excess of 50% more traffic than that which could be accommodated prior to the carrying out of the upgrade works between Junction 3 and Junction 14. The Tribunal finds as a fact that the Westlink Toll would not have generated the income being earned at the valuation date if those upgrade works had not been undertaken. The growth in the M50's traffic capacity after the completion of the upgrade works is evident in the data presented in paragraph 107 of Mr. Hicks Report and it is axiomatic that an increase in the number of vehicles using the M50 results in an increase in toll income.

195. The hypothetical negotiation takes place between a landlord who has a property he wishes to let and a tenant who wishes to occupy it. The payments to be borne by the tenant pursuant to section 48(3) are payments in exchange for the benefit of occupation but in the case of most properties those payments provide little guidance to the rent the tenant would agree to pay for the benefit of occupation. Real life transactions are good indicators as to how hypothetical negotiations would be approached by the landlord and tenant for the simple reason that there is no established market for the letting of a toll.

196. The Tribunal has the benefit of the evidence of Mr. Maher regarding section 63 agreements made with toll operators in respect of the national road network (other than

the M50 and Dublin Tunnel) under which the toll operators are entitled to collect the tolls in return for the design, construction, and maintenance of motorways subject to a revenue sharing arrangement. Mr. Maher confirmed that in some toll agreements there is a correlation between the toll road and the right to collect the toll. He confirmed that Celtic Road Group (Dundalk) Limited has a maintenance obligation under a toll agreement which is not limited to the extent of the toll road but covers the whole of the M1 motorway and their right to collect the toll lapses or terminates in the event of non-compliance with that maintenance obligations.

197. It is a well-known principle of valuation that you value the property as it stands on the valuation date. The Tribunal is satisfied that what is necessary to maintain the Westlink Toll income in its actual state at the valuation date in order to command the hypothetical rent are maintenance works and operation procedures over the M50 between Junction 3 and Junction 14 to sustain the volume and kind of traffic that uses the M50 to pass through the toll road from both directions. In the Tribunal's opinion the actual state of the Westlink Toll at the valuation date cannot be preserved without operating and maintaining the M50 roadway between Junction 3 and Junction 14 in good repair.

198. Accordingly, the Tribunal determines that the costs of maintaining the M50 between Junction 3 and Junction 14 are deductible for the purpose of calculating the NAV of the Westlink Toll.

DETERMINATION

199. The Tribunal allows the Luas appeal in part amends the value of the Luas as stated in the valuation certificate to €575,000.

200. The Tribunal refuses the Westlink Toll appeal and amends the value of Westlink Toll as stated in the valuation certificate to €10,580,000.

And the Tribunal so determines.