

Opening Statement

Peter Walsh, Chief Executive, Transport Infrastructure Ireland

Joint Committee on Transport and Communications Meeting 6th April 2022

Chairman, Members of the Committee, I thank you for your invitation to attend today. I am joined by my colleague Nigel O’Neill, Director of Capital Programme.

I understand that the Committee wishes to examine the ongoing work of Transport Infrastructure Ireland and receive an update on all projects.

Before providing an update, I would like to briefly describe the duties and functions assigned to TII through legislation. The National Roads Authority, operating as TII since 2015, was established under the 1993 Roads Act. It is the general duty of the Authority to secure the provision of a safe and efficient network of national roads having regard to the needs of all users. TII is the Approving Authority for National Road Projects.

In 2015 the NRA was merged with the Railway Procurement Agency and the Roads Act of 2015 added the function of securing the provision of, or providing, such light railway and metro railway infrastructure as may be determined by the National Transport Authority (NTA). The NTA is the Approving Authority for metro and light rail projects. For that reason, I will be deferring to the NTA in relation to light rail and metro projects.

In September 2021 TII became the Approving Authority for Greenways.

Update on Delivery of the NDP National Roads and Greenways Programmes

A briefing paper providing an update on delivery of the NDP national roads and greenways programmes has been provided to the Committee. I hope it is of assistance.

I wish to highlight some significant recent developments on national roads major projects, recommend some enabling actions, and suggest an equitable approach to inflation in the civil engineering sector.

N5 Ballaghaderreen to Scramoge

Roadbridge Limited is the Contractor for the N5 Ballaghaderreen to Scramoge major project. Roscommon County Council is the Employer for the construction contract. TII is providing the funding for the project and overseeing delivery of the project. The contract form is the Public Works Contract which is required to be used for civil engineering works in Ireland. Roadbridge went into receivership on 11th March. Construction has stopped. The Receiver is exploring the options available.

At this time, TII and Roscommon County Council are considering the commercial and legal options available to secure delivery of the project. I can’t say much more than that because the receivership process is live. However, I can say that the project will be delayed.

N6 Galway City Ring Road

There are three judicial review proceedings challenging the decision by An Bord Pleanála to approve the N6 Galway City Ring Road scheme. Galway County Council is the lead local authority for the scheme under a Section 89 Agreement with Galway City Council. Currently there is a stay on progressing the

project pending the outcome of the proceedings. In TII's experience, judicial reviews cause very lengthy delays to project delivery. Accordingly, it seems likely, at this stage, that delivery of the Ring Road will be significantly delayed.

Enablers for Delivery of the NDP

In my opinion, the setbacks to the delivery of the N5 and N6 projects point to the need for the State to consider implementing three enablers for delivery of the National Development Plan, which would be applicable to national roads, greenways and more generally to other types of infrastructure being delivered by the State.

Firstly, Alignment of Stakeholders

In TII's experience, when it comes to implementing infrastructure mandated by the NDP, there is often a lack of alignment between the interests of stakeholders, including other public bodies, and the interests of those bodies responsible for delivering such infrastructure. It is, of course, only right that the implementation of infrastructure should adequately deal with the impact on stakeholders. However, in my opinion, the balance is excessively weighted towards stakeholders' interests. To ameliorate this, I suggest that the State considers establishing suitable fora for stakeholders, including other public bodies and state-owned enterprises, chaired by senior people of recognised standing, to achieve alignment supporting delivery of necessary infrastructure.

Secondly, Resourcing the Planning and Regulatory Processes

The planning process in Ireland is highly complex and time-consuming. Gaining necessary approvals from regulatory and approval bodies is extremely challenging, often leading to delays and/or onerous conditions. The planning approval of projects is also subject to extraordinarily long delay from judicial reviews challenges. Delays are measured in years, not months. TII does not object to public scrutiny or judicial supervision. TII suggests that the State ensures that public bodies with statutory approval and regulatory approval functions are adequately resourced so they can perform their functions efficiently and within reasonable periods of time. TII also suggests that the State ensures adequate levels of judicial resourcing so that challenges to vital public infrastructure can be determined in months rather than years.

Thirdly, Reform the Public Works Contract

The Public Works Contracts are lump sum, fixed-price contracts which are to be used on all public works projects. Contractors based in Ireland have long-standing objections to the Public Works Contracts. This contract type is expensive to tender for and the risk transfer is extremely onerous for the contractor. Civil engineering contractors have withdrawn from the Irish market in recent years. I believe that the use of lowest price award criteria and the very high level of risk transfer within the public works contracts have combined to achieve very good value for the taxpayer but with a consequence of a much reduced number of contractors in the Irish market.

It is a matter of concern to TII that the number of tenderers has reduced for civil engineering construction tender competitions. Civil Engineering contractors are needed to build the infrastructure required to deliver the National Development Plan. I believe that consideration should be given to the use of internationally recognised civil engineering contract forms such as the New Engineering Contract (NEC) or the FIDIC form of contract. These forms of contract would be acceptable to domestic and international contractors and would be suitable, from the perspective of protecting the State's interests, in the delivery of civil engineering infrastructure.

Inflation in the Civil Engineering Sector

While it is not uncommon for Contractors to own inflationary risk, it is reasonable to suggest that since the second quarter of 2021, inflation has been increasing at a rate that was not expected by the market. It is widely considered that it is not sustainable for Contractor's to continue to absorb price escalation at the rate the market is currently experiencing.

Due to price escalation of fuel, materials and labour experienced in 2021 and since the beginning of the war in Ukraine there are significant financial pressures being placed on Contractors in relation to projects being funded by TII. While these are pressures that are being experienced globally, there is limited relief offered to Contractors under the Public Works Contract in Ireland, which is predominately used to deliver projects funded by the Exchequer.

While the Public Works Contract has succeeded in offering client organisations financial protection for price escalation amongst other risks, there are now clear signs that it is having a detrimental impact on the market's appetite and ability to delivery.

There is a very high level of volatility in building material prices currently. The price of oil directly influences the cost of bituminous products such as asphalt and macadam. If the tenderers are required to take the risk on inflation, they will either include for a possible increase in the oil price which will result in a self-fulfilling prophecy of inflated prices, or not include for an increase which will result in a commercially unsustainable price and a risk to the viability of the contractor. I believe that some form of indexation would allow for changes in raw material prices, either up or down, with an equitable outcome for the state and the contractor.

Closing Remarks

To conclude, the delivery of NDP projects currently faces significant and systemic threats.

What to do? TII respectfully suggests that the State implement the following:

1. Ensure alignment of stakeholders, by, for example, establishing an NDP stakeholder forum chaired by, and accountable to, an appropriately experienced person.
2. Ensure adequate resourcing of approval bodies and of the judiciary to speed up planning and regulatory approval processes.
3. Reform the Public Works Contract, preferably by permitting the use of either the NEC or FIDIC forms of contract, which are internationally recognised.
4. Implement appropriate risk-sharing mechanisms to ameliorate the current inflation volatility on public works construction contracts, with a view to securing a viable civil engineering sector in Ireland.

I believe that implementation of these measures in a timely and effective way, would do a lot to protect delivery of NDP infrastructure.

That ends my opening statement. Nigel O'Neill and I will do our best to answer any questions that the Committee members may have.

Thank you for your attention.

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