

NATIONAL ROADS AUTHORITY

DRAFT TOLL SCHEME FOR THE M3 CLONEE to KELLS MOTORWAY

REPORT OF

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Introduction

On 6th March 2002, the National Roads Authority, (hereinafter I shall refer to as the Authority), published a notice that, in exercise of the powers conferred under section 57 of the Roads Act, 1993, as amended by section 271 of the Planning and Development Act, 2000, (it) had made a Draft Toll Scheme in respect of the use of the proposed national road known as the M3 Clonee to North of Kells Motorway. The legislation provides that if objections are made to the Draft Scheme within the statutory period and not withdrawn, the Authority shall arrange an oral hearing to inquire into matters pertaining to those objections.

A total of 4 objections was submitted in writing to the NRA within the statutory period and were not withdrawn.

Consequently, by letter dated 8th December 2006 the National Roads Authority appointed me as the Inspector to hold the Oral Hearing to inquire into the matters raised in the objections received to the Draft Scheme. The letter required me to prepare a report on the Oral Hearing, inclusive of any recommendations I might deem appropriate, for consideration by the Board of the Authority.

The Hearing took place in the Ardboyne Hotel, Navan, Co Meath on Wednesday 17th January 2007, commencing at 10.00 am.

I carried out a site inspection of the scheme on Tuesday 9th January.

This report is in accordance with the warrant appointing me and reflects the proceedings of the Hearing.

Description of Toll Proposal

The road in respect of which a system of tolls is proposed, is the stretch of motorway which will run from a location north of Clonee in county Meath, commencing at the proposed Pace interchange, and terminating at the end of the motorway just south west of Kells. The total length of road intended to be designated as a motorway and forming part of the M3/N3 national primary route, is approximately 47 km.

There are two toll collection locations proposed, one of which would be 4km north of the southern end and the other 9km south of the northern end. Between the two toll collection points, there will be a total of four interchanges. No toll collections are proposed at these interchanges.

The draft toll scheme was prepared by the Authority in accordance with the statutory provisions of the Roads Act 1993 as amended by the Planning and Development Act 2000.

The Draft Scheme provides that the charges specified are an estimate at August 2000 prices and may be updated periodically in line with increases in the Consumer Price Index.

For convenience in reading this report, I am appending a fold out copy of the Overall Scheme Layout Fig 1 of Volume of the Environmental Impact Statement.

Summary of written objections

There were 4 statutory objectors as follows:

- Mr Ian Montgomery
- Ms Joyce Montgomery
- Mr Brendan Leonard (Mr John Bruton T D made the objection on his behalf)
- The members of Meath Co Council

Objections include that tolling of the road would militate against the function of the motorway as a carrier of through traffic by forcing traffic, including HGVs, back onto the existing inadequate roads, that average traffic time will be increased in order to accommodate toll collection, that they constitute a further tax on motorists and are discriminatory in that Meath residents are bearing a disproportionate level of road tolls.

Proceedings of Oral Hearing

In my opening statement (copy on file tabbed 1) I set out the purpose of the hearing (to inquire into objections raised and not withdrawn), described the toll scheme, summarised the objections received and set out how I intended to conduct the hearing.

Appearances

NATIONAL ROADS AUTHORITY

Mr Diarmaid McGuinness SC
Mr Gerry Murphy, Head of PPPs and Tolling
Mr Michael Kennedy PPP unit

(STATUTORY) OBJECTORS

Mr Ian Montgomery – not present or represented

Ms Joyce Montgomery – not present or represented

Mr Brendan Leonard – not present or represented

The members of Meath Co Council – Councillors Oliver Brooks, John Farrelly and Philip Cantwell present

OTHERS PRESENT WHO MADE SUBMISSIONS

Ms S Rice
Mr E Burke
Mr J P Fay
Councillor J Holloway, Member of Meath Co Council and Navan Town Council
Mr B McGee, Bellinter Residents
Councillor J O'Reilly, Cavan CC
Mr P Sweetman On own behalf and An Taisce
Mr G Casey, solicitor on behalf of Mr Ian Lumley, Heritage Officer An Taisce
Ms R Allen
Mr N McFadden
Ms M Partridge
Mr V Solafia

Submissions on behalf of NRA

Mr Diarmaid McGuinness, Senior Counsel, in his opening remarks, stated that while it was the function of the Inspector to inquire into the objections made to the scheme; what was not at issue in the Hearing was any consideration of the location of the road, of environmental factors in relation to its siting or any archaeological considerations. He also referred to the broad planning background leading to the decision to build this stretch of motorway as a toll road. The scheme is estimated to cost, at the prices ruling at the time of preparing the Draft scheme, of the order of €600 million.

Mr Gerry Murphy tendered evidence under headings as follows:

- National Context
- Public Private Partnerships (PPPs)
- Proposed Toll Strategy and Charges and
- Statutory Procedures

Copy of his submission is on file tabbed 2.

Under the heading of National context, he set out the (primary) function of the Authority to secure the provision of a safe and efficient network of national roads.

He went on to state that, in 1999, the Government published the National Development Plan 2000-2006 (NDP) which set out the largest road development programme in the history of the State at that time. PPPs were to be an important element with the overall investment planned and in June 2000, the Authority published its planned programme of PPP projects. This included the M3 Clonee-Kells scheme.

He stated that the importance of the national road network and its planned funding had been referenced in a wide range of reports from various (named) organisations and he quoted excerpts from them. The analysis of these organisations had been that a lack of substantial investment would have serious economic and social implications and would adversely affect the competitiveness of the Irish economy.

Based on the commitments in the NDP, the Government announced Transport 21 in 2005 which extended the funding commitment for national roads out to the year 2015. Transport 21 is split approximately evenly between roads and public transport with €16.5 billion planned to be invested in national roads over the period 2006 to 2015. As stated earlier, improvement of the N3 route is part of the Transport 21 planned road investment. (He also listed out the other projects).

Irish Exchequer funding was substantially increased in the NDP but even this increased level of Exchequer funding was by itself insufficient to deliver the infrastructure projects proposed. The Government identified the need for private sector funding of €1.27 billion in the NDP.

“The vehicle for this private sector funding is the tolling of certain roads generally within the framework of a PPP arrangement. This private finance is additional to

Exchequer and EU funds and thus accelerates the commencement and completion of the various projects”. Approximately €2 billion, out to 2015, will have to be generated from tolling.

The foregoing set out the National context. Under the heading of Public Private Partnerships (PPPs), Mr Murphy outlined the case for PPPs, the Authority’s programme (10 schemes), the principles underlining the approach, details of the motorway in question and its strategic importance and, finally, how it is proposed to fund the project.

The approach would:

- help deliver better value for money through the cost effective transfer of risk to the private sector
- enable the provision of much needed infrastructure
- facilitate private sector innovation
- assist with the earlier delivery of road projects
- release Exchequer funding to allow the development of other important projects and
- ensure long-term operation and maintenance of new assets.

The method was being used successfully throughout the world in the provision of vital infrastructure in a cost efficient and timely manner. In the Authority’s own programme, three projects had been completed and are operational. They have been delivered between 5 and 10 months ahead of schedule and at fixed cost.

In terms of the Authority’s programme, the 10 schemes identified to date form an integrated coherent strategy of tolling of sections of motorways, high quality dual carriageways and also major river/estuarial crossings. Key principles underpinning the programme are that:

- an alternative toll-free route shall be available for road users
- toll roads should be spread across the main national routes
- the project needs to be of sufficient size to produce value for money
- where necessary, a public subsidy will be considered for high cost schemes, which cannot be financed solely from tolls

PPP schemes are distributed on the M1 route, the N4/N6, the N8, N7 and the N3 as well as a number of large bypass projects in Dublin, Limerick and Waterford. “Toll roads are additions to the current network of national roads rather than on-line improvements of existing roads”. That is a key factor in ensuring that road users had a toll-free alternative available.

Mr Murphy stated that the scheme involved much more than the section of motorway and was in fact the largest single road scheme planned under the NDP and Transport 21 with over 110km of public road to be constructed. It included 2km of new dual carriageway at the southern end, 47km of motorway, 10km of single carriageway from Kells to Carnaross and 3.5 km for the Kells N521 bypass. The scheme was a vital road improvement on the N3 national primary route which provided a strategic link between Dublin and the Northwest, with connection to Clonee, Dunshaughlin, Navan, Kells and Cavan.

The toll revenues generated on the scheme will facilitate the defraying for the Exchequer of the capital cost of the new road, the operation and maintenance of the completed road and re-investment in the road at the appropriate life-cycle intervention stages.

In terms of funding, the project had not been included in those funded in the conventional manner, i.e. Exchequer funds and where appropriate, EU aid. In respect of the latter, the only EU funding available to the project had been a sum of €2.9 million to support its design and planning.

The Authority proposes to enter into a PPP agreement with a company who will be required to carry out the works through a Design/Build/Finance/Operate arrangement. There will be a long-term concession period during which the company will recoup some or all of the upfront construction costs and on-going operation/maintenance costs through the collection of tolls. They will also be required to carry out works at the end of that period, prior to hand-back to the public sector, in order to provide a satisfactory residual life.

Without tolling of this road it would not be possible to deliver it by conventional funding at this point. It will deliver time-savings, journey time certainty and an overall high level of service to users for the toll charge levied. The provision of the motorway is an expansion of current route choice options.

In determining the toll strategy including the charges to levy, regard had to be taken of the settlement pattern in the vicinity of the route. The scheme is broadly symmetrical on its north/south axis around the town of Navan. The town generates traffic movements to and from Dudlin and *also* (my emphasis) to and from the northwest. The traffic modelling for the scheme showed that only a “quarter” of the traffic travelling at the southern end of the scheme would pass through the northern end of the scheme.

It was considered that, due to this distribution of traffic between the northern and southern extremities of the scheme, providing two toll plazas approximately 35km apart, either side of Navan, would allow for toll charges that would be efficient in generating revenue while reducing diversion levels. In that connection a road user was not obligated to avail of both tolls. He or she could choose to avail of one only and thereafter continue the journey on the existing network.

Mr Murphy detailed, in addition, the free movements that will be possible with the tolling arrangements including bypassing Navan itself.

In relation to the tolling charges, the Authority’s national strategy is to devise tolls at a level consistent with the twin objectives of deriving revenue while encouraging usage of the tolled road and delivering a scheme's principal transportation and environmental benefits. In stating that the charges had *not* been set at levels that would maximise revenue, for example, a 20% higher car charge at the Southern plaza and tolls charged at certain interchange ramps would produce 25% higher revenues, the Authority proposed instead to apply lower toll charges in order to reduce the diversionary effect.

He stated that the charges proposed for each plaza on the scheme are less than the charges adopted by the NRA in Toll Schemes for the Waterford Bypass, the Fermoy Bypass, the Limerick Tunnel, the M1 Motorway at Drogheda and the Galway-Ballinasloe scheme. The 2007 car toll charge proposed is €1.30 inclusive of VAT compared to the current €1.70 on the M1 at Drogheda and the Fermoy Bypass. (Appendix 1 of his submission sets out the proposed total charges for the various classes of traffic, updated to 2007 levels)

The total charge incurred through the two plazas in the same direction would be equivalent to the charge on the M4 Kilcock-Kinnegad motorway i.e €2.60. The charge through each plaza would be half that charge. All VAT registered users would be entitled to reclaim the VAT payment.

In Table 1 of his submission, Mr Murphy set out the forecasted annual average daily traffic flows on the various sections of the new M3/N3 between Clonee and Kells for both the un-tolled and tolled scenarios for the years 2006 and 2024. The diversion was calculated by dividing the difference between the 'with tolls' and 'without tolls' flows by the 'without tolls' flow.

The expected reduction in the diversion from 2006 to 2024 is largely due to the anticipated real increase in people's value of time. The greatest predicted diversion in the year 2006 is 18% at the northern plaza which reduces to 13% in the year 2024. The traffic anticipated through the southern plaza is predicted to be between 60% to 80% higher than that through the northern plaza in the 2006-2024 period. Diversion at the southern plaza is predicted to be lower than that at the northern plaza and will be between 13% and 5% over the same period.

He stated that an analysis was also made of the volumes and proportion of traffic that is forecast to pass through one or both toll plazas. The results are shown in the following Table 2 below for 2024 in the 'without tolls' and 'with toll' cases.

Table 2: Summary of Forecast Traffic at M3 Toll Plazas in 2024

Passing Through	No Tolls			Toll		
	AADT 2024			AADT 2024		
	This Plaza Only	Both Plazas	Total	This Plaza Only	Both Plazas	Total
Proposed North Toll Plaza (Kells-Athboy Road)	21,000 (60%)	13,900 (40%)	34,900	17,300 (57%)	13,000 (43%)	30,300
Proposed South Toll Plaza (Dunshaughlin-Pace)	43,700 (76%)	13,900 (24%)	57,600	41,700 (76%)	13,000 (24%)	54,700

The results predict that of the 30,300 passing through the north toll plaza, approximately 40% will also pass through the south toll plaza (and pay the toll at the

two plazas). Of the 54,700 passing through the south toll plaza, approximately one quarter will also pass through the north toll plaza (and pay the toll at the two plazas).

In 2024, of the 72,000 toll users paying the proposed M3 tolls, (that is, the addition of the two plazas only, 59,000, and both plazas 13,000), 59,000 users will pay tolls at the rates set for one plaza and 13,000 users will pay the cumulative rates for two plazas, that is, 82% of users will pay the single plaza charge. Applying this broadly to car users, 82% of users will pay the €1.30 charge (indexed) rather than the €2.60 charge (indexed). As pointed out earlier the €1.30 charge is the lowest planned car toll on the national roads network.

The Draft Toll Scheme was published in 2002. Since then the Authority have monitored the traffic flows on the route and compared them to the predicted traffic. His figures for the monitoring sites north and south of Navan are produced in Table 3 of his submission.

He concluded that the results illustrated the robustness of the traffic predictions which for light vehicles, approximately 90% of the traffic, are in the range of 5% of observed traffic. The typical growth in the period 1999 to 2001 was much higher than in more recent years and the observed and forecast trends could converge even closer in the longer run.

As regards statutory procedures, Mr Murphy stated that Section 57 of the Roads Act, 1993, as amended by section 271 of the Planning and Development Act, 2000, provides the statutory basis for the making of a Draft Toll Scheme by the Authority.

He went on to say that in preparing the Draft Toll Scheme, the Authority gave special consideration to the possible exemptions referred to in Section 57(2). As well as that, the section requires the preparation of an Explanatory Statement, to accompany the Draft Toll Scheme, outlining the provisions of the Scheme and its purpose and effect. Publication and notification requirements have been complied with and copies of advertisements have been provided to the Inspector.

A total of 4 objections were received by the Authority and public notification of the consequent oral hearing was placed in two of the national newspapers.

Mr Michael Kennedy, NRA PPP Unit gave evidence in relation to the Authority's response to the objections received. (Copy of his submission is on file tabbed 3)

He stated that the NRA had examined the objections received. In some instances the objections received raise similar points of objection. In responding to the objections, where similar points of objection arise these have been grouped together and the Authority's response is provided.

The responses outlined essentially covered those points not necessarily addressed by Mr Murphy in his submission. He has already addressed the background to the announcement of the Authority's programme of PPP schemes, funding of the national roads programme and the traffic analysis work undertaken in relation to the M3 scheme which includes estimates of traffic diversion arising from the application of

tolling.

(Mr Kennedy ‘separated’ the objections into six categories and produced them in tabular form in his submission. Each of the categories contained within them what he perceived to be similar points of objection. In the interests of clarity I shall reproduce the categories in somewhat similar tabular form).

Objection
Substantial annual road taxation costs borne by Irish motorists.
Motorists already contribute through road tax premiums and should not be required to pay tolls as well.
Applying tolls on the new motorway is a further tax on motorists and ultimately will not reduce traffic congestion as traffic diversion onto other roads will arise.
The imposition of tolls will place an unacceptable additional financial burden on people living in Co. Meath and commuting to Dublin to work every day. In this context reference is made to high house prices in Co. Meath and to the high level of repayments being experienced by homeowners. Toll costs added to existing motor and living costs is regarded as unacceptable.

For the most part, car related taxation paid by the Irish motorists contributes to general Exchequer revenue. In relation to that element of general motor taxation that does not form part of the local authority fund, this money is re-distributed throughout the economy in many forms such as expenditure on capital projects, health, social welfare, education etc. Any attempt to ring-fence all motor related taxation for investment exclusively in roads or public transport would have consequences for the State’s ability to finance essential health and social services. It is normal in all developed countries that the proceeds of motor taxation, in all its forms, exceed direct expenditure on road networks.

If road users consider that the benefits are not sufficient for the toll charges involved they may choose to avail of the existing toll-free alternative routes.

Objection
Availability of EU funding to cover road improvement costs.
Scheme is already funded under the National Development Plan.

Mr Kennedy stated that the M3 scheme received €2.9m in EU funding towards the planning and design phase of the scheme over the period 2000 to 2003. No further EU funding is available for this scheme. The need for private finance to supplement exchequer funding of infrastructure investment was recognised in the NDP and also Transport 21.

Objection
Average travel time will be greatly increased in order to accommodate toll collection
The process of collecting toll charges will stop the flow of traffic.
M50 standstill traffic conditions.

The Concessionaires, like the Toll operators engaged under other PPP Contracts, have to satisfy national criteria for a high level of service at the toll plaza. Failure to achieve these performance standards will result in penalties being imposed on the operator. The toll plaza has been designed with sufficient lanes to cater for the forecast traffic growth and to meet the performance specifications. The satisfactory operation of new plazas to date and the strong powers that the Authority has within its contracts should provide assurances of a high quality toll collection service.

Toll transactions including allowances for deceleration and acceleration would be anticipated to take in the range of 15 to 30 seconds.

Objection
Tolling of M3 discriminates against Meath residents compared to those commuting to Dublin from other counties.
Other Motorways and By-Passes have been constructed in the country in recent years, which have not been the subject of tolls.
The imposition of tolls will act as a deterrent to businesses locating in the county, as they will increase the business costs and deter customers from entering the county. The Meath County Development Plan is seeking to develop areas of the county for industry and business and the imposition of tolls on the motorway will hinder the implementation of that aspect of Meath County Development Plan.
The proposed motorway will be a strategic route serving a large proportion of the towns and villages in the county and the imposition of tolls will have a negative effect on these towns and villages.

The strategy underpinning the selection of tolling locations on the national road network has already been set out by Mr Murphy in his submission. The provision of the tolled motorway will lead to a reduction in traffic on the existing toll-free route compared to the situation that would exist without the tolled motorway. This reduction in traffic will directly lead to improved environment conditions and amenity as well as improved traffic conditions.

In the absence of tolling and the corresponding shortfall in private finance, road schemes would be deferred for a longer period with the possibility that the M3 motorway would be one of those deferred schemes which would constrain economic development in County Meath.

Objection
Tolling will encourage motorists to divert onto back roads unsuitable for heavy traffic and through the very villages/towns the new road system is meant to bypass.
The toll will add unnecessary tailbacks to an already congested route.
Introduction of toll charges will encourage motorists to take back roads, which not being suitable for large numbers of vehicles will result in serious road accidents or deaths.
The proposed tolls will act as a deterrent to vehicles using the motorways who will inevitably revert to using existing regional and county roads. Of particular concern is the serious damage caused to such roads by heavy goods vehicles which will get worse due to toll avoidance.
Applying tolls on the new motorway is a further tax on motorists and ultimately will not reduce traffic congestion as traffic diversion onto other roads will arise.
Resulting traffic diversion will mean increased danger for pedestrians and residents alike.

It is acknowledged that the application of tolls gives rise to traffic diversion from a road. In this case, road users seeking to avoid the toll would be expected to remain on the existing N3 national primary route. However, traffic volumes on the existing N3 will be greatly reduced with the provision of the new motorway.

On the matter of traffic diverting from tolled motorway resulting in increased accident risks on the alternative route, the broader economic and safety benefits of the additional investment in the national road network facilitated by toll revenues must also be considered in conjunction with the individual scheme micro analysis.

Objection
Additional maintenance cost of alternative roads due to traffic diversion.
Following the opening of the motorway, responsibility for the future maintenance of the existing roads will fall on Meath County Council.

Mr Kennedy concluded by stating that it was correct that the existing N3 national road will be re-designated as a non-national road on the opening of the M3 motorway. However, this re-designation would apply irrespective of whether or not the M3 motorway is to be tolled. As a non-national route Meath County Council will assume responsibility for the maintenance of the re-designated road. The local authority will receive commercial rates from the M3 based on the annual toll revenues collected.

Objectors' Submissions/Questions together with replies of Authority (as relevant)

Members of Meath Council

Councillor Brooks read from the submission already tendered by way of objection to the draft scheme. Copy of that submission is on file and tabbed 4. (Both myself in the introduction and Mr Kennedy for the Authority in his submission have already summarised the written objections, including this one).

Councillor Brooks added that while the majority accept that the motorway is vitally important to the economic development of the county, it seems reasonably unfair that people travelling from north of Kells, or the Kells area, if working in Tallaght or travelling south, would have to pay three tolls both ways, that is, six tolls a day. All they are looking for really is that they should be treated in the same manner as existing roads going west.

Councillor Farrelly wondered whether objecting now was all too late bearing in mind that contracts for the M3 are to be signed within the next two to three weeks and prior to the proceedings of this hearing being determined?

In relation to the diversion percentages that were talked about by Mr. Murphy, how were these percentages obtained? If one takes into account what has happened with all of the other tolls that have been put in place and take into account, for example, (Drogheda) the percentage of cars diverting through Julianstown, which is actually 40% of the total traffic that is coming down that route and not using the toll.

Had the NRA not learned anything taking into account what has happened in Fermoy by having two tolls. He himself lived quite close to where the first toll is going to be on this new M3. He is not against it; it is wanted for the economic benefit of the county and indeed the adjacent counties such as Cavan and others. He was certainly always opposed to double tolling in the way that it was proposed in this instance.

For somebody who lived in or north of Kells and work south of Dublin, they would have to pay tolls of the order of €44 per week. The majority, 98% of the people who would be using these particular tolls would not be eligible to reclaim the vat at 21%.

Why on a motorway from Dublin to Newry, will there is only one toll on 60 km? Why is there a proposal to put two tolls within the space of 27 km of each other (35km is the actual figure quoted) at the reduced amount that has been mentioned in this instance? Was this proposal immutable to change? When, for example, was the decision and who made it to abolish the proposed toll on the Ashbourne Bypass? Was it the NRA or was it an instruction from Government? One would have to say that every single person who actually lived in Ashbourne would not have used that toll and only 30% of all of the traffic coming out of Finglas would actually have used the bypass.

If there was only one toll on this particular motorway there would only be a loss in real terms of about €2 million. He did think that was an enormous amount of loss over a period of 52 weeks in the year when weighed against the imposition of having a second toll at Tankardstown. The people of Kells will otherwise all travel on the old road. That is what will happen.

If there is, as the Authority say, an alternative route, Why is €80 million being spent on the motorway while at the same time suggesting that people can go the other way if they don't want to pay the toll.

Finally, he wondered whether in the event of the Inspector (me) making a recommendation that only one toll should be provided on this route, who made the decision? (I confirmed that the decision would be made by the Authority).

Mr Murphy of the Authority replying to the questions of Councillor Farrelly

The signing of the PPP contract **IS** (my emphasis) anticipated to occur sometime in the coming two months and may be sooner rather than later. The PPP contract like all PPP contracts contains complete flexibility regarding the imposition of tolls and all the contracts allow for a tolling variation, i.e. that the Authority can say to the company there is going to be no tolls applied on the scheme and that the Authority will, instead, pay to them a supplementary annual payment. So notwithstanding that the contract is signed, it does not prevent the Authority making a decision not to impose tolls now or at any subsequent period in the coming years. Furthermore, even if the decision is made to levy tolls, there is nothing to stop the Authority revoking that decision replacing the receipts from the tolls with annual payments.

In relation to the questions regarding the traffic figures, including the possible diversion rates, the traffic modelling work was carried out for Meath County Council and formed the basis for both the Environmental Impact Statement and the publication of the Draft Toll Scheme which was published at the same time.

Regarding the performance of tolling of other motorways already operational, traffic on the (M1) motorway, which bypasses Drogheda, has exceeded all predictions. In the year 2006 approximately 29,000 vehicles used it in contrast to the Authority's forecast for that year of 19,000. There was growth of 25% on that road in the year

2004, 21% in the year 2005 and 10% in the year 2006 so it had exceeded expectations.

Regarding the traffic predictions at Fermoy, that road was open now for two or three months. The traffic is approximately 80% of the predicted. They would feel that it is within the ramp-up period and very substantial growth is anticipated in the coming twelve months.

There was concern expressed in relation to inequitable distribution of tolling and, in particular, regarding the M1 motorway at Drogheda and one toll only on the M1. At the time when the Authority published its plan for road funding by means of tolling in the year 2000, the M1 had been substantially advanced with significant sections built and the strategy at the time, in 2000, by the board of the Authority was to impose tolls on new builds that hadn't previously been opened to the public.

As to why there were two tolls proposed for this road, Mr Murphy referred back to his own submission where he stated that the reason for the strategy proposed was that by keeping the toll much lower at the southern end it reduced the diversion. If one did apply the M1 toll at the southern end you would increase diversion substantially above the 13% that they had projected and, because of the distribution of traffic, where there is only a quarter of the people at the southern end also passing through the northern end and they are paying two tolls, it was considered that this was a strategy that minimised diversion along the full length of the scheme and gave road users a value for the toll that they were paying.

As regards the tolling of the Ashbourne Bypass, in the year 2002 when there were budgetary cutbacks generally the Government asked the Authority to look at additional tolling opportunities on the network. A number of possibilities were looked at including the Jack Lynch tunnel in Cork and the Ashbourne bypass. The Government didn't agree with additions to the toll scenario that had been planned in the Authority's strategy in the year 2000 and stated that it was satisfied that no additional schemes be brought forward.

(Councillor Farrelly stated that notwithstanding the submission of Mr Murphy that traffic figures on other motorways were up 21% which he felt arose from an unrealistically low figure in the first place, the fact was that there were 30,000 vehicles a day still using Julianstown village adjacent to the M1).

Mr Murphy ended by stating that in attending every Oral Hearing, the Authority put forward the traffic modelling work that was underpinning the Environmental Impact Statement and the Draft Toll Scheme and presented the outcome of that traffic modelling work. They don't massage any figures to create any artificial situation. If one takes the whole M1 corridor, a cross section right across it, traffic has grown on the Julianstown corridor, including massive local development in the area and massive growth in the Drogheda area. Traffic has exceeded all expectations on the motorway which is seen as a strategic link to Northern Ireland and beyond.

Councillor Phillip Cantwell, Independent member of Meath County Council, stated that he wished to add to the joint submission his own comments. While being opposed to the M3, that was not the purpose of his submission.

The initial design was for a dual carriageway and not a motorway. This was a financial gathering mechanism pure and simple. At a time of unprecedented financial situation in the country, to be charging tolls on this road is unfair to the users and especially the people of Co. Meath. The location of the toll plaza at the southern end is an example of non-joined up thinking. Once the motorist has passed through that second plaza he then has the choice of driving to Dublin. The city is now becoming the biggest car park possibly outside of the M25 in London and it is proposed to locate a Park & Ride site for the train (when the railroad is built) at Pace so what is being proposed is that motorist are asked to pay a second toll, then pay a charge for the Park & Ride car park, then pay for the ticket to go into his job and maybe a bus. That toll plaza is not joined-up thinking.

He stated that Mr Murphy for the Authority had outlined the benefits as he saw them. He had neglected to mention that it was money for the Public Private Partnerships, pure and simple.

The second toll should include the cost of the Park & Ride and/or the train ticket. The Authority are not doing anything to help the businesses affected by the motorway witness the effects of the M4 in his own area. Furthermore, Meath County Council is seriously financially suffering because it has become a “dormitory town” for Dublin. The Council does not have the money for the roads and this new motorway will now put the Council responsible for the cost of maintaining the existing road.

This M3 is wrong in particular as a toll road and will not be used to make it more carbon efficient. The carbon efficient railway is the only way to travel in future. If and when the railway is built it will make the motorway less viable.

The second toll (at the northern end) is in respect of traffic heading outside Navan to Kells. Why pay a second toll of €1.30 heading up into Cavan for twenty something kilometres?

(In reply to a question of mine as to whether the Park and Ride was dependent on the Navan rail) Councillor Cantwell stated that both Meath and Fingal had funded an investigation of the railway from Dublin. It did look as if the rail would be built in the first instance as far as that Park and Ride area. This motorway will make the possibility of the train less viable and this was contrary to our obligations under Kyoto to actually improve carbon efficiency

Mr Murphy of the Authority replying to Councillor Cantwell

It is understood that Iarnrod Éireann is developing the rail network and at Pace there would be a Park & Ride facility. The Authority has no problems with its location. It sees the tolled motorway as complimentary to that, in that the options to get to Pace or to get from Pace going north westwards are improved by the motorway. Firstly, the motorway is available there, which would provide a bypass to Navan and Dunshaughlin. In the opening year it is anticipated one would have approximately 20 minutes saving time for the toll charge. If one chooses not to use the motorway, the traffic will already have been reduced on the existing N3 and consequently the travel to get to Pace on the N3 would also be improved.

The key question regarding the Park & Ride and ones availing of it is based on decision making south of the whole road. It is a question of which mode of transport one thinks is more efficient to get from Pace into town or from town out to Pace.

In relation to the effect on existing businesses and lack of signage thereto, there is national strategy on signs. The PPP section has no role in deciding the erection or the non-erection of tourist signs. In fact, the Authority has actually gone out on public consultation on this matter and has got back submissions to devise an overall strategy throughout the country. The businesses referred to by the Councillor fit within that strategy.

Mr Murphy reiterated the options available with the coming into being of the tolled road. If motorists pay a toll they pay a toll because they ascertain that they have a service benefit. They have a time journey saving. Time journey saving is an economic saving so therefore they arrive at a point faster which they assess is worth paying the toll.

Councillor Jim Holloway stated that he had some questions to ask. He inquired what bye-laws it was intended to make under the provisions of the draft scheme? His second question, which he felt the Authority might think they had answered already was why was considered necessary to impose tolls in this instance, having decided not to do so in the case of the N2; what were the factors governing this decision? The third question was why two tolls? His final question was that, in the light of the experience of the effects of the tolling of the M1 and the M8 on the towns and hinterlands of Drogheda and Fermoy, what consideration had the Authority given to the impact of the proposed tolls on diverting traffic from the proposed M3 onto the existing N3 and all other roads within Co. Meath and through Navan, Kells and Dunshaughlin causing ever increasing pressure on the existing road network and a continuance of and exacerbation of traffic congestion in the said towns and villages, thereby reducing the economic and environmental gains, anticipated on the delivery of the motorway?

Mr Murphy of the Authority replying to Councillor Jim Holloway

The bye-laws were really the operational implementation of whatever toll scheme is approved. It usually again restates the charges, the indexation provisions, the means of payment, the exemptions and it just amplifies on the toll scheme. They would be published, again for consideration. Any representations or objections on the bye-laws would be brought back again to the board of the Authority for their consideration. The Authority is (additionally) obliged to consult with the local authority.

Mr Murphy felt that he had already commented fully on the questions of why tolling on this road and why two sets of tolls and had nothing further to add.

On the issue of the effects on the existing road, the provision of a completely new road could never cause increasing pressure on the existing road, it could only alleviate. The question rather is how much does it alleviate it by. When he considered the diversions, one could actually look at the flip side of diversions in the table that he presented in his evidence. If one took the other percentage, for example, between Clonee and Pace, it is estimated that 94% of traffic will go on the motorway in the year 2006, and 99% will go in the year 2024. He simply presented the

diversions to show the impact, but in fact if one looks at the table carefully it will be seen that for major sections of the route the bulk of the traffic is going to be on the new motorway, not on the existing road.

Other Submissions

Ms Siobhan Rice

The tolling scheme is not in the public interest. It diverts money from the public purse straight out to a foreign public company. The public do not benefit in any way. She thought it was wrong and unfair. The Hearing should have been held four years ago. Why was it being held two weeks before the signing of the PPP contract?

Mr Eric Burke

One of the benefits cited is that more money being freed up for the public expenditure. It is already known that through the PPP the lion's share of revenue attained from the motorway will be given to private interests. As well as that, it was claimed earlier on that the public can make a VAT reclaim on the tolls that they pay. Again that's public money that they are reclaiming so that again is even less money that is going into the public purse. The Authority go on about economic viability and how that is good.

Much is being made about environmental benefits and while they do he would like to point out that that's really like a nil point. It's still just as many cars if not more than there are at present on the road because of the motorway. It is just the same number of cars or more cars as Meath grows on a different stretch of road. He did not see any difference at all.

The suggestion of the Authority that one could use the interchanges to avoid paying tolls on certain stretches was "just silly". One should not have to use interchanges. If there was a road or whatever put in place, one should be able to just go in a more or less direct route.

He supported previously the hardship that was going to be suffered by people having to pay two tolls. "There are charges all the way along".

Finally, he stated he was concerned about the viability of the hearing. He wondered whether their participating at the Hearing and suggesting why tolls should not be levied change anything. Will there being present at the Hearing and speaking make any difference? He was present to try and achieve change. Can the tolling scheme be changed at all?

Mr J P Fay

He conceded that what he had to say might not be about tolling. In the event, the issues he raised were not relevant to the hearing.

Mr Brendan McGee

He queried what the Inspector's powers were in relation to, for example, recommending that the motorway not be tolled. I replied that my powers extended to making a report to the Authority and a recommendation. The final decision was the Authority's.

He pointed out a number of instances around Dublin where one can travel for miles on motorways without having to pay a toll. In contrast, in this instance, one had no way of escaping them if one lived further out than Dunboyne.

Mr Murphy for the Authority, had kept emphasising that one did not *have* to use the motorway. What is the point of spending €80 million on a motorway if the Authority is saying that one does not have to use it. As part of this proposal he had mentioned a public subsidy if the road scheme is expensive, meaning one assumes, that if the motorway isn't used sufficiently, does that mean that the Authority are going to pay a subsidy to the company who builds it? What proportion of the €80 million will the company actually pay?

Councillor Joe O'Reilly

One of the modern day phenomena is the huge number of people who are migrating and have migrated and continue to do so to Co. Cavan. They are driven by two considerations, but primarily they are driven by economic considerations. They return to Dublin on a daily basis to work spending five hours doing that with great personal hardship. Those people have moved but the jobs and the services have not followed them. On the figures presented at the Hearing, given the proposed tolling charges of today, they would be presented with a €20 return cost per day, which is extraordinarily prohibitive, €2000 per annum. That does not include the further possibility of paying the M50 bridge toll.

While it is fanciful to think that these people will divert to the existing N3, the question does arise as to whether that road will continue to be maintained at an acceptable standard.

Finally, the Authority should take into account the degree to which tolling will act as a disincentive to the development of the railway. The company with the tolling franchise will be a very significant lobby against rail, a very powerful lobby. As well as that, it is arguable that in a tight economic situation, a Government accruing some revenue from the tolls would not have a great incentive to develop rail either and it's arguable that there would be a disincentive there also. He saw the tolls as a further nail in the coffin of that most necessary piece of infrastructure in the future. (In reply to a question of mine) he replied that the fact that the tolls were being levied by an outside concessionaire rather than the Council themselves was a big part of his objection. This PPP should not be funded "on the backs of hard pressed consumers and people for whom it is effectively involuntary".

(I put it to Mr O'Reilly that exactly the same points were being made by the people of Drogheda and by the people of Fermoy and, in that event, I asked him what he felt made this scheme different). He replied that there was the issue first of all of the two tolls which was in itself and has been alluded to earlier as totally prohibitive. There was also the fact that there is no provision in the scheme that if the figures increase as greatly as Drogheda did that the tolls would be frozen and that there would be a tapering off of costs. There is nothing to say that in the event of the figures being much greater, that there would be a provision in the scheme to let that back to the consumer rather than to the concessionaire.

Mr Peter Sweetman

Mr Sweetman stated that the statutory basis of the scheme was *inter alia* Section 271 of the Planning and Development Act 2000. He implied that the relevant section was not in force when the scheme was proposed in that the remainder of the 2000 Act came into force 31st March 2002, some weeks after the draft scheme was published.

The Authority's claims on time saved has to be seen in the light that destination Dublin used to be seen in terms O'Connell Street. Dublin is now Blackchurch on the the Naas road and its equivalent on other approach roads.

He had spent 22 days representing An Taisce at the Oral Hearing to this scheme. This was a scheme proposed by Meath County Council under the statutory regulations of that scheme. Under the County Development Plan there was no provision for a toll road. In fact, the Councillors had passed a motion opposing it so there cannot be any plan proposed by that Council or its officials to introduce a toll road on this stretch of road. It would be a material contravention of the Plan and they are not allowed do that. Wicklow Heritage Trust -v- Wicklow County Council does refer to that and it is a case that the Authority's Counsel is well aware of.

Meath County Council is totally opposed to the tolling of this road, yet this august body called the NRA who have nothing to do with roads deign to prepare a toll scheme. The Authority "forgot" to give itself the right to compulsorily acquire land. The lands for the road have been acquired by the county council and the the consent of the An Bord Pleanala is for a road as applied for by the County Council. The Council, however, couldn't apply for a toll road so this hearing is, therefore, a waste of time. (In reply to a suggestion of mine that the possibility of the M3 being a toll road was part and parcel of the hearing before the Board), Mr Sweetman stated that it could not have been. It had a bit of a line drawn on a map relevant to a toll plaza. The EIA Regulations, however, require the design of the project and no design of any project was put in, relevant to the toll plaza. It could not have been proposed as a toll road, because if it was, it would have been "totally illegal".

Further submission by Mr Sweetman

Meath County Council refused to answer certain questions at the Board hearing which were relevant to this hearing. They have become even more relevant now because we could raise those questions at the public toll hearing. There area couple of issues. Firstly, Mr. Murphy, for the Authority doesn't seem to know his traffic. If this scheme is tolled it will be a different scheme to what he was initially proposing because the traffic take would be totally different. This road is not needed.

He stated that Mr. Murphy in his evidence had contradicted so many things that have been said and were in the transcript of the earlier Board hearing, that he suggested that I the Inspector, should, before making a recommendation on this case, read the entire transcript of the Board hearing. The evidence given at one hearing does not tally with the evidence given at another hearing so what is being proposed here it to toll a road which by the definition of the Authority does not exist.

Mr Greg Casey

Mr Casey stated that he had a "few" fundamental problems in relation to what was proposed. He had also attended at the Bord Pleanala oral hearing in relation to the

road. That oral Hearing was held in 2002, was proposed by Meath County Council on foot of variation to their County Development Plan which was proposed and carried in February of 2002.

The issue of tolling arose during the that Hearing and the Inspector "made a ruling" that in fact, what was before them was an application for a road and that the issue of tolling would come up at a later stage. There was an issue, Mr Casey said that "planning permission might be required for the facilities and structures and layout of the tolling plazas. That was ruled as being nothing to do essentially with the actual road inquiry because a toll road was not being inquired into". They were "just making simply a provision in it whether the National Roads Authority wished to proceed with it at a later stage or not. That could be clarified from the record and the transcript.

He had two or three legal difficulties. First of all, in relation to how a toll road is proposed. The toll road scheme is proposed by the National Roads Authority. An Inspector is appointed (by the Authority) to chair an inquiry into it. The Inspector makes a recommendation to the Authority which then judges on its own proposal. He submitted that, based on legal and constitutional grounds, it was in fact wrong in law and it did not come up to the constitutional test of fairness essentially.

His second difficulty was in relation to that fact that it was Meath County Council passed a variation to their Plan providing for a motorway to be constructed from Clonee past Kells. There was no mention whatsoever in the Development Plan or the subsequent (Draft) 2007 Plan which is due to come into force in March, for tolling of this scheme. That was hardly surprising given the Councillors passed a resolution some time ago saying that they were coming to this hearing to oppose the tolling of the scheme.

The Authority do have a statutory role in proposing a toll scheme. However, in this instance it is to toll a road scheme which was originally proposed by the County Council and the compulsory purchase Order was in favour of that Council. The proposal is analogous to someone applying for planning permission for a development which breached the county Development Plan.

This toll scheme was proposed by the Authority in February of 2002. He found it an extraordinary proposition that having been proposed in February 2002 the inquiry should be held in January of 2007. He was utterly amazed that such a thing could happen in our ever so efficient economy, not caused by objectors or people hanging out of trees but caused presumably by the NRA's own lassitude.

It is part of the proposal that there be two toll plazas and two tolls. If ever a scheme was over-designed to extract money this was it. If they are going to toll this road, one toll plaza perhaps just outside Navan, to the south of it, might be sufficient for their needs. The notion that every time one moves along the roadway they put their hand in their pocket was unrealistic. If one were unfortunate enough to live in Kells they would pay on the double if not on the treble to get into their job on the centre of Dublin or further on. It was a ludicrous scheme, an illegal scheme and in breach of the County Plan.

The proposal is made by the Authority, which is not a roads authority unless and until it is proposing a tolling scheme. Once it proposes a tolling scheme it becomes a roads authority and then derives from that status all of the statutory exemptions from planning permission and matters of that nature which are extended to a roads authority. In this case, however, the Authority are doing it by way of a PPP. Whereas the Authority might be a roads authority, he could not see that their contracting partner could derive the benefit of exemptions from planning permission which are extended to a roads authority and in those circumstances he would submit, and perhaps the Authority would consider this, that in fact by means of their partnership they are in essence stripping from themselves the benefit of being a roads authority from the time the toll scheme is approved.

Finally, all of the compulsory acquisition orders made in relation to this road the whole way from the borders of Co. Dublin remained in favor of Meath County Council. They own the road corridor. When did Meath County Council transfer the benefit of ownership of the lands that they purchased by means of a CPO to the Authority so that they could propose the tolling scheme? The entire procedure being followed in relation to this and other roads as well, is “Kafkaesque in the extreme”.

He would urge that the proposal be rejected, that the legality of the scheme be seriously considered and finally, if the road is to be tolled at all that one toll booth only be allowed.

Ms Rosaleen Allen

Ms Allen urged that the Authority’s figures be closely looked at. From a marketing perspective she doubted how the Authority was able to talk about the year 2024. The year was now only 2007. So much had happened in Ireland in the last ten years, how could one possibly predict what was going to happen by the year 2024. She felt that they were taking a very fragmented approach to the commercial aspect of of the county. Again and again it has been mentioned that a world heritage site would be something that would be very valuable to be able to attract people into the county. This way nobody is going to want to come to a place that has got three motorways going through it.

In her experience and in talking to the people from the area and from the people in Navan they were not going to be using this (tolled) motorway. There are hundreds of different ways to go and people were watching their pennies and will not pay what amounts to €5.20 a day just to use something that is going to shorten their journey by a couple of minutes.

Mr McFadden

The Authority should not have waited five years to hold this toll hearing. Having regard to the fact that the PPP contract is going to be signed in a matter of weeks, is holding the hearing at this stage a farce? As well as that, the 2002 toll scheme is out of date, being based on 2000 prices. The Draft Toll Scheme should have been redone like it was done for the Dublin Port Tunnel. Circumstances have changed radically since 2003 and may require a new cost benefit analysis to the M3. The Government should finance the road itself and then operate the toll. The Authority is not the appropriate body to decide on tolling schemes. Tolls will act as an unacceptable restraint on trade and tourism and the two tolls on the M3 and two more on the M50

once the improvements are made, will add up to eight tolls per day for a round trip to Dublin at a cost of approximately €16. Mr. Murphy (for the Authority) did mention about Drogheda, Slane and Mitchelstown. Slane would be a good analogy where the trucks still go through that heritage town because they cannot afford to pay the very high tolls. Mr. Murphy did say we could all access this information on the NRA website. Unfortunately not all of us have access to the internet.

Ms Marion Partridge

Mr McFadden stated that he was appearing at the hearing independently. He had his own business. Kells and Meath are very important heritage towns. These trucks and roads are going to really affect them.

She stated that she had traveled down from Co. Down. Her submission would be that of an independent observer of what was going on around this very, very special and sacred area of Ireland. Nobody had yet made the point that if there is to be a toll what effort is being made to cut down on light pollution. There were various forms of pollution/ environmental pollution. A place like Tara attracts huge tourist potential, people from all over the world coming to Ireland for its heritage. Navan is already getting brighter and brighter, but the toll plaza is actually going to cause again another huge light. She would just like to have it on record that in fact there is a request for all due restraint that if the road has to go through this very, very special valley, to ensure that all efforts be made to reduce the impacts of the toll.

Mr Vincent Salafia (I allowed this submission which was made *after* the closing statement of the Authority)

The whole process has now been turned on its head. The Hearing arises from a requirement under the Roads Act that there be public consultation for a tolling scheme. That tolling scheme was published five years ago. In essence it is asking the public to say yes or no to a tolling scheme. If the outcome of this hearing is that you should decide that, no, the public have said they don't want a tolling scheme, then that means that there cannot be a Public Private Partnership contract because the public have said no to the principle of this tolling scheme.

Basically the process had now been preempted because the money for the land had already been handed out, the land had already been bought, hundreds of millions of euros had been spent on the land. Secondly, money had already been allocated for this motorway and the Public Private Partnership contract would be signed in two weeks. Since the Inspector's report of this hearing would not be available by then, the PPP contract will have been signed and sealed before the Inspector has even been able to give his opinion.

This means that this entire hearing was completely ineffectual. Under the principles of Agenda 21 the complete hearing should have been held even before the An Bord Pleanála hearing was held because this hearing was where the public decide yes or no, hundreds of millions of euro of public money was going to be spent in conjunction with a private company and why then wait five years to hold the hearing? A legal challenge did not prevent this hearing being held.

Inspector's Question (to NRA)

I raised a question more by way of comment on the explanatory memorandum. Page 4 of the memorandum states that:

"It is proposed that the contract would include a long-term concession period during which the concessionaire would recoup in part or in full the up-front construction costs."

I felt that the document could possibly do with some redrafting in that surely a concessionaire wouldn't look at the scheme unless it could hope to recoup the construction costs and have a reasonable profit and should the explanatory memorandum not in fact state that?

Closing Statements of the Objectors

The only objecting party present was the members of Meath Co Council. I agreed that each Councillor could make a closing statement.

Councillor Brooks

Having regard to the fact that the Authority indicated that it had flexibility if it wanted to change the tolls or have one toll instead of two, he asked that the Authority would cooperate with Iarnrod Éireann in relation to people having to pay a toll and pay for a Park & Ride.

He also wondered whether the Authority had enough flexibility in their contract to ensure if the railway line is progressed via Dunshaughlin, to ensure that the proper infrastructure is left available or put in place to allow the railway to be extended.

Councillor Farrelly

The figures submitted stated that in 2006, if there was a toll (M3) between Navan and Kells, that 13,900 vehicles would use it. He himself reckoned that 70% (11,830) of the 16,900 vehicles a day using the present N3 would still use the N3. This was on the basis of what has happened in other places and that was a reasonable basis to proceed.

He stated that Mr. Murphy (for the Authority) did imply when asked, that the Government made the decision in respect of no tolling of the Ashbourne and other (named) places. (In terms of equity), he felt that it should also be taken into account by that there is a length of motorway 45km long on the Wexford road and there is no toll on it. The same length of road here will have two tolls. He felt that if the decision is made that this road was going to be tolled, there should be only be one toll.

Finally, Councillor Farrelly urged on the basis of my appointment as an independent consultant that I make the case on behalf of the 16 or 17,000 commuters north of Navan that there should be only one toll on this road keeping at least some consistency with what has happened with other roads.

Councillor Cantwell

He reiterated the call for one toll only. The Park and Ride facility at the southern end should be taken into account. The infrastructure had to have "joined up" thinking.

He felt that the only sustainable way of transport for the people of Navan and Meath is a light rail down to Dublin. He reiterated his concern that the Authority, having spent something like €600 million will have major influence in Government to say 'don't put the money into the railway'.

The Authority is suggesting that there is a bypass around Kells - one can get off at the interchange and get back onto the N3. It isn't a reality. One had only to look at transport today. It is bumper to bumper. One cannot imagine somebody getting on and going back. It would be all blocked up.

(At this stage of the Hearing a number of other persons asked to make closing statements. I refused on the basis of the procedures I had set out and because they were not parties to the hearing. I allowed, however, in answer to Mr Sweetman, that if there were questions raised which were not replied to by the Authority I would consider listening to the person aggrieved).

Closing submissions for the Authority

Mr Murphy stated that he would deal with the factual issues raised in the contributions of speakers.

The concessionaire company is called Eurolink and selected under EU procurement procedures. The report of the Inspector goes to the Board of the National Roads Authority. It is not the officials of the Authority who consider the report. The first toll plaza northward is about 10km from the M50.

Regarding the public subsidy to the company, all the tenderers bid against what they think will be the revenue that they will get from tolls in the road. Accordingly, they make their own projections on traffic. The charges are set. If the scheme is approved the charges are fixed and they can only inflate in accordance with the Consumer Price Index.

The tenderers bid against what their expectation of toll revenue is. If they think that the toll revenue will cover all their costs then they may tender on the basis of no public subsidy. Because of the size of this infrastructure, however, and the proposed level of tolls and the projected traffic, then patently there will have to be a construction payment or an operational payment from the Authority to them as has happened on other schemes.

That subsidy does not relate to the usage afterwards. Having made their tender and having signed a contract, the tenderer is taking the risk of whatever materialises on the road. If the traffic is less than what they anticipated the subsidy doesn't increase, it is fixed, based on their tender at a point in time.

The question about how much is the subsidy, that's a function of the tendering competition. The competition is not concluded; the contract has not been awarded. While there is a preferred tenderer, that firm might withdraw and the Authority would be going to the second placed tender. All bids are confidential until the contract is awarded. When the contract is awarded then the Authority announces what is the construction or operational payment that is going to go into the scheme.

Concern was expressed about the fate of the “old” N3. Under the Roads Act it becomes a local road, it would have an 80 kph speed limit unless the road authority, which would be Meath County Council, makes a decision under the road traffic Regulations to change that. They could increase that if they wished.

Regarding rail transport and Transport 21, creating the new rail line did not in any way affect the PPP contract. The Authority would support it completely. It does not affect any revenues for the State. The PPP contract is on the basis of an expectation of the traffic that will be on the road; it has no control over what happens to public transport anywhere in the metropolitan area or out to Navan so the rail line can be developed right out to Navan with no impact on the State. There is a rail provision in the decision of An Bord Pleanála in that there is a requirement that a bridge is to be built to allow for the rail to pass underneath the motorway.

The year 2024 traffic projections were queried. The projections for getting toll roads, any types of road, are done on a methodology. There is background of origin/destination information, a background of people's desire lines. A traffic model is then constructed which takes account of the population projections into the future, takes account of transport projections into the future, and then the network is then coded to take account of the travel times on it. The network is then loaded for different years with the expected traffic and the model predicts how they would split depending on journey time. The factor in a toll scheme is then for people who have to pay a toll you add an extra time penalty to their use of the motorway reflecting their value of time so that's how one goes out to 2024.

The Authority publishes projections for use in road schemes of what are national trends of traffic growth. In addition, for each micro scheme when they are looking at it they look at the development in Navan, development in the north west, development in Dublin, development in Drogheda and development down right down to the N4 in looking at that whole area and what would be the population and employment development.

(There followed an interjection by Mr Sweetman and others to the effect that the Authority and various County Councils have, at every Oral Hearing been asked to substantiate their estimates, to wit, they have replied that they were present to consider the scheme now before them and not to look at past schemes. The reason for that is that none of their figures are right; they are wrong consistently.)

Mr Michael Kennedy replied to a query/concern about the junction of the M3 with the M50. It was suggested that there would not be free flow on it and that consequently there would be a back up on the M3.

The junction would not be completely free flow. It would in all respects except for two particular movements, that is, one movement off the M50 heading north and wishing to turn right and head towards town and the other, if one is heading out of town on the N3 and wishes to turn north towards the airport. He stated that there was an amendment arising from a recommendation adopted at the M50 oral hearing.

Mr Diarmuid McGuinness, Senior Counsel wished to touch on some of the legal points raised by some of those present at the Hearing.

The case was put forward that there was no provision made for a toll road and that this would be a material contravention of the Development Plan. It is not the power or function of a County Council to propose a toll scheme in relation to a national road or a proposed national road. Accordingly, in no sense could it be said to be a material contravention of the plan should the road in fact become a tolled road.

Secondly, the analogy to the case of Wicklow County Council seeking to site a dump within their functional area is entirely inappropriate. This was in circumstances where the development plan did not provide at all for the location of any dump in any particular place within their functional area and in circumstances where it was the duty of the Council to make provision for such facilities. What they were then proposing was something manifestly not in accordance with the plan and not in the exercise of their powers which should have been properly exercised.

The definition of road includes a toll road and includes a toll plaza or a facility for the collection of tolls.

The suggestion that the National Roads Authority wasn't a roads authority for the purpose of the Act when proposing this toll scheme runs directly contrary to the definition of what a road authority is for the purpose of part V of the Act of 1993. Since the coming into operation of the Roads Act of 1993, that is, 1st January 1994, the Authority have had and still has the statutory power to propose a toll scheme in respect of a national road or a proposed national road.

The procedures are as laid down by the statute. They enable a process of consultation to take place in reference to the Local Authority by publicising the draft scheme and giving parties an opportunity to make their objection to it and to have those objections considered and reported upon before any final decision is made. Not only is that appropriate, but it's a fair way of proceeding in relation to the designation of any road as a possible toll road.

Concern was expressed in relation to the time that had elapsed since the draft toll scheme was originally proposed in March of 2002 until now. What is at issue is the principle of the tolling of the road. It is irrelevant that the toll scheme was proposed then and only being enquired into now.

Nevertheless, there was a legal challenge to the M3 scheme and it was brought to the Courts. It was appealed to the Supreme Court and that appeal was only withdrawn in October last. It was understandable and appropriate that the toll hearing should not proceed while there was any question over the legality of the project itself. In the event the appeal is now withdrawn.

Insofar as the relevancy of the toll prices quoted in 2002, it was clear from the explanatory scheme accompanying the Draft Toll Scheme that the prices would be updated and details have been submitted to the Hearing of those prices at present day levels.

In relation to the query as to the power of the Authority to prepare a toll scheme in respect of land owned by the county council, the fact that the CPOs were made in favour of the Council has got nothing to do with either the power or the right of the Authority to propose a toll scheme. If and when the Authority, on consideration of the report of the Inspector, adopt the toll scheme the fact that the land is in the ownership Council or is or was at any stage is irrelevant. The right to propose or adopt a toll scheme is not in any way dependent upon being an owner of the land or an owner of the road. That point is not well founded.

A further point was raised as to whether the Authority could transfer to the concessionaire any exemption that it might have in relation to the construction of the toll plaza. In that regard section 63 (of the 1993 Roads Act) was a complete answer to that because it gave statutory authority to a concessionaire to finance, maintain, construct and operate toll roads pursuant to any such agreement.

He suggested that the hearing was a fair procedure. It allowed everyone to have their say and everyone who had wished to speak in that regard at the appropriate stage had had that opportunity. He would ask that I, the Inspector, consider the various issues that the parties had raised. There was obviously concern expressed about the level of diversion that will or may take place. There was also concern expressed that if people were entitled to continue to use the existing N3 why the necessity would be to have a this toll road at all. The number and locations of the toll plazas were issues as well as the cumulative effect of the possible cost to people who were commuting to Dublin, even perhaps on the other side of the city who might be incurring other tolls.

The fact remained that the N3 will continue in place and nobody will as a matter of fact or of law be required to use the new tolled road unless they choose to do so.

Evidence submitted by the Authority demonstrated how the un-tolled sections of the road and the various interchanges can be used to allow a very considerable degree of toll free access to the various towns.

Finally, he considered that the scheme was an appropriate scheme whereby the choices of the people, if the scheme were approved, would have two roads open to them to travel.

Closing of Hearing

In closing the hearing, I informed those present that I would be making a report and a recommendation to the National Road Authority. I stated that the Authority would make its decision in due course.

Inspector's Assessment

The power of the Authority to make a toll scheme is clearly laid down in law. I have no reason to believe that the Authority has not fully complied with the requirements of the legislation, including publication and notification requirements.

The Draft Toll Scheme states the --- Authority, in exercise of the powers conferred under Section 57 of the Roads Act, 1993 *as amended by section 271 of the Planning*

and Development Act, 2000 (my emphasis) has prepared a scheme etc. The Draft was dated 28th February 2002.

At the Hearing it was implied that Section 271 of the Planning and Development Act 2000 had not commenced prior to that date and that, therefore, the whole toll scheme was invalid. (The party did not vouch to offer the date that he thought it commenced). Whatever about the powers already of the Authority to make a scheme under the 1993 Act, the commencement date of section 271 of the P & D Act 2000, as set down in S.I. No. 449 of 2000 (copy on file – tabbed 5), was 1st January, 2001. Clearly, that section of the Act was in force at that time and for in excess of a year before that.

The Authority has set out in clear terms the importance of the national road network and *its planned funding* (my emphasis). It has referenced a wide range of reports from various (named) organisations and Mr Murphy quoted excerpts from them. The analysis of those organisations had been that a lack of substantial investment would have serious economic and social implications and would adversely affect the competitiveness of the Irish economy. The scheme was a vital road improvement on the N3 national primary route which provided a strategic link between Dublin and the Northwest, with connection to Clonee, Dunshaughlin, Navan, Kells and Cavan.

One of the parties making a submission suggested that the toll scheme was “a financial gathering mechanism pure and simple”. While the primary purpose of the M3 would be to facilitate the passage of traffic from one destination to another, the toll scheme is being imposed to finance the scheme to a greater or lesser degree. Tolling in this instance is basically a tool for raising revenue. The provision of a toll facility will enable the road to be provided at an earlier date than being funded by conventional means. It is a question of the road now and tolled or, no road at all for the foreseeable future. I consider that the principle is reasonable and has already been established elsewhere in the country.

If financing were not an issue, in the normal course of events one would not be thinking in terms of tolling bypasses around towns, except possibly as a traffic management tool, for example, to discourage use of the bypass for local traffic. The whole purpose of a bypass is to take through traffic out of towns. The scheme is therefore a balancing act between raising revenue to contribute to the financing of the road and, at the same time, making the toll low enough to deter through traffic from diverting to the “normal” roads through the various towns along the route. The Authority ‘stated’ at the Hearing that its national strategy was to devise tolls at a level consistent with the twin objectives of deriving revenue while encouraging usage of the tolled road and delivering a scheme's principal transportation and environmental benefits.

In addition to objections raised to the principle of tolling, strong concerns were expressed at

- the amount of the tolls being levied including it being a further tax on motorists and creating excessive diversion onto the existing road
- the arrangements for tolling and, at a broader level
- the inequitable distribution of tolls on the major routes (out of Dublin).

To take the last issue first, the inequitable distribution of toll schemes, this was adverted to at the Hearing. It related back to a decision of the board of the Authority when it published its plan for road funding by means of tolling in the year 2000. That decision was to impose tolls on new builds that hadn't previously been opened to the public. Inasmuch as it related to the financing of new roads, it would not be unreasonable to impose it on new schemes only. Representatives of the Authority also stated that the Government did not agree with additions to the toll scenario that had been planned in the Authority's strategy in the year 2000 and that it (the Government) required that no additional schemes be brought forward.

There were a number of submissions related to the arrangements for tolling. The plea was that if there was to be tolling at all, there should be only one tolling location rather than users having to pay twice.

Unlike say at Drogheda or Fermoy there is no strategic river crossing or other point along this route where tolling might be expected to have fairly limited diversions. In this instance, if there were only one tolling point, wherever that might be - a location just south of Navan was suggested -, I consider that diversion rates could be very great because it could be relatively easy to divert around that point. If that were to be the arrangement, I consider that the Authority would then have to think in terms of having subsidiary toll plazas on the three interchanges at Athboy Road, Kilcarn and Blundelstown, which are at present proposed as toll free. The alternative of having additional tolling points on these interchanges along the route would then completely defeat the purpose of a single point tolling.

I consider that two tolling stations in this instance, 35km apart, is also an equitable arrangement in that it tends to charge the user per length of road travelled. The fact that the toll might be levied at the end of the section of motorway rather than at the beginning does not change the merit of tolling, one way or another. With this arrangement also, there is scope for local toll free usage via the three uncontrolled interchanges, including bypassing Navan if somewhat circuitously. I think that this benefit was, if anything, understated at the Hearing by the Authority. There is significant scope for toll free or single toll travel along the motorway.

One can understand the position of the long distance Dublin commuters (north of Kells) who might wish to use the motorway and thereby be faced with four extra tolls a day. One submission's assessment was that the people have (necessarily) moved but the jobs have not. Quite frankly I do not see any remedy for their "plight". The through traffic is the big gainer in using this road. It would be unworkable to exempt classes such as commuters from tolling and indeed it would be seeking to compensate for an unsatisfactory settlement pattern whereby the jobs are so distant from the homes. I would reiterate that commuters will still be able to use the existing roads which will now have considerably less traffic on them.

The other major issue raised was that of the level of the actual tolls and their "taxing" connotations. I think that the latter point comes back to the principle of tolling and Government policy. As was also stated at the hearing, motor tax is not ring fenced. The 'virtue' of tolling is that it is earmarked for the particular purpose and is paid for directly by the user.

As part of the concern in relation to the cost of the tolls, the degree of diversion onto the existing road was questioned including a suggestion that the figure was (deliberately) understated. Quite frankly, I find it difficult to imagine such a scenario. In that situation the actual traffic would be much lower than “estimated” and the overall toll take would thereby be correspondingly less. The traffic modelling, which was explained in detail, is similar to that carried out for all the other road schemes and in this instance as with others, formed the basis for the Environmental Impact Statement as well as the Draft Toll Scheme which was published at the same time. A submission to the effect that one could not possibly predict what traffic would be in 2024 would, while understandable, not be a justification for not making a best estimate. Planning of its nature is all about projections/predictions.

The Authority has insisted that the charges were not set at levels that would maximise revenue and have set out how they might have “maximised” them. It is difficult to be definitive about the “correctness/appropriateness” of the proposed charges. If the tolls were to be set at a level to cover the cost of the road, then in theory at least, one could divide the cost by the estimated traffic. That approach is not possible for a number of reasons, not least of which is that any toll level set will have diversion connotations as well as the statement of the Authority that its strategy is to devise tolls at a level consistent with the twin objectives of deriving revenue while encouraging usage of the tolled roads with all the advantages, environmental and otherwise. The Authority stated that it will be contributing a proportion of the cost. This is in line with their stated policy that where necessary, a public subsidy will be considered for high cost schemes, which cannot be financed solely from tolls.

To my knowledge, there is no stated policy in respect of the level of toll charges, be they maximum, minimum or otherwise. That being said, all the tolls being levied countrywide are generally of the same order of magnitude, except those in respect of the Port tunnel. (In that instance, however, the tolls are principally used as a traffic management tool). The proposed tolls are, in my opinion, broadly in line with what has been levied elsewhere in the country. While the cumulative charge of €2.60 is comparable to that charged on the M4 at Kilcock, and in excess of that levied at Drogheda, which is €1.70, only 18% of the users should be paying that cumulative toll. The remaining 82% of users will pay the lower €1.30 rate, which the Authority point out, would be the lowest toll to be charged to date nationwide on the national road network.

I consider that both the level of the tolls and the arrangements for tolling are reasonable and consistent with present practice.

Other issues raised

1 One of those is the time that had elapsed between the making of the Draft Scheme, February 2002 and the hearing of objections into it (January 2007). Mr McGuinness for the Authority argued that what was at issue was the principle of the tolling of the road. He stated that it was irrelevant that the toll scheme was proposed then and only being enquired into now.

My comment

A significant period has clearly elapsed since publication. In that time even such matters as the public's perception of the problems arising from the tolling of the road could have changed radically and they may with some justification feel that they have been deprived of making their case to the Authority. Of the four original objectors, for example, only one, the members of Meath Co Council, appeared at the Hearing.

On the other hand, there was public awareness of the Hearing taking place and everyone present who wished to make a submission did so. I consider myself that the issues were fully "ventilated" and that little would be served by re-publishing the scheme and/or holding a new hearing.

2 Another issue raised was the timing of the Hearing viz. a viz. the signing of the PPP contract in the coming weeks. There was a fear that the whole tolling issue was a "fait accompli". The Authority 'explained' that all PPP contracts contained complete flexibility regarding the imposition of tolls. All the contracts allowed for a tolling variation, in other words, that the Authority could say to the company there was going to be no tolls applied on the scheme and that the Authority would, instead, pay to them a supplementary annual payment. I consider that the two matters coincided because of the abandoning of the Court action in relation to the M3 scheme. That gave the green light as it were for the Authority to proceed with the other processes, statutory or otherwise, in relation to the Scheme.

3 The amount of the subsidy being made by the Authority was queried. This again was explained by the Authority in referring to the tendering process. Basically the contribution of the State would be determined on the outcome of that tendering process, which Mr Murphy detailed in his closing remarks. The tenderers bid against what they think will be the revenue that they will get from tolls in the road. It is to be presumed that the companies would tender on the basis of proposed toll charges. If those charges were altered as a result of the oral hearing, then the public subsidy would be altered accordingly. An allied issue was the liability of the State if the road were not used to the degree estimated/forecast. This was also adverted to by Mr Murphy who stated that the tenderer was taking the risk of whatever materialises on the road. If the traffic was less than what they anticipated, the subsidy would not increase. It would be fixed, based on their tender at a point in time.

4. The alleged "environmental benefits" were queried on the basis that there would be the same if not more traffic on the roads of Co Meath. There would be benefits to those living on and using the existing roads by virtue of the significantly reduced traffic. There would be benefits to the users of the M3 in increased driving comfort and time savings.

5 It was suggested that a number of issues relating to tolling were "deferred" to this Hearing as a result of a ruling of the Inspector at the Bord Pleanala hearing. It was alleged that the environmental aspects of the toll plazas were not dealt with at that Hearing. Another submission asked the Authority to carefully consider the lighting aspects of the plaza in view of the scenic importance of the area.

I consider that, regardless of what was expressed or implied at the Bord Pleanala oral hearing, the purpose of the toll hearing is as stated by Counsel for the Authority "to

inquire into the objections made to the scheme; what was not at issue in the Hearing was any consideration of the location of the road, of environmental factors in relation to its siting or any archaeological considerations”.

Nevertheless, I have perused both the Environmental Impact Statement (EIS) which was submitted at the Bord Pleanala hearing and the Board’s decision on that case. The locations of the toll plazas were identified in the EIS and the environmental implications of the plazas were also identified and considered (Page 16 and Tables 4.7 and 4.8 of EIS refer). In the Board’s decision, reference no. 17.MS2004, Modification No. 5 (c) refers specifically to landscape screen planting between the Grange (Northern) Toll Plaza and the Boyerstown road overbridge areas. Having regard to the foregoing the suggestion that planning approval might be required for the facilities and structures and layout of the tolling plazas seems quite unlikely but, in any event, is no part of the consideration here.

6 One person making a submission had a “difficulty” in relation to how a toll road is proposed. The toll road scheme is proposed by the Authority. An Inspector is appointed (by the Authority) to chair an inquiry into it. The Inspector makes a recommendation to the Authority which then judges on its own proposal. My only comment is that is what is provided for in the legislation.

7 Questions were asked whether the Authority had enough flexibility in its contract to ensure if the railway line is progressed via Dunshaughlin, to ensure that the proper infrastructure is left available or put in place to allow the railway to be extended. It was also suggested that the Park and Ride facility at the southern end should be taken into account.

Infrastructure is not an issue *per se* in this tolling hearing. A condition has been inserted in the Bord Pleanala decision to allow for the reopening of the Navan to Clonsilla line. The Authority has expressed itself keen to cooperate with any rail initiative at this location.

8 A question was raised in relation to the effect on existing businesses on the existing road and lack of signage thereto. I don’t consider the point relevant to this tolling hearing.

9 I stated at the oral hearing that I felt that the Explanatory document could possibly do with some redrafting in that surely a concessionaire wouldn't consider the scheme unless it could hope to recoup the construction costs and have a reasonable profit and should the explanatory memorandum not in fact state that? That is still my position. The Explanatory document, however, is not central to the scheme and any modification along those lines would not significantly impact on the scheme.

I consider that the reference to updating of prices in the Toll Scheme is also a bit loose. I feel that (while) the statement should say that the charges may be updated periodically, it should also specify that the increases will be in line with the increases in the Consumer Price Index or Gross National Disposable Income, *rather* than as presently formulated “may be updated periodically, for example, in line with increases in the CPI etc”.

Inspector's Conclusion:

I consider the case for the scheme, as evidenced at the Hearing and set out in the Draft Toll Scheme and Explanatory Memorandum, is well founded.

Recommendation

I commend the Scheme to the Board of the Authority, subject to an amendment specifying that the updates be in line with increases in the Consumer Price Index or increases in Gross National Disposable Income.

For convenience I am appending the updated proposed Tolls overleaf and, (as stated earlier), the fold out copy of the Overall Scheme Layout Fig 1 of Volume 1 of the Environmental Impact Statement.

Dom Hegarty
23rd February 2007

Appendix

- 1 Inspector's Opening Statement**
- 2 Submission Mr Gerry Murphy, Head of PPP and Tolling, NRA**
- 3 Submission of Mr Michael Kennedy, PPP Unit, NRA**
- 4 Initial Submission of Members of Meath Co Council (contained within body of file)**
- 5 S.I. No. 449 of 2000**

Proposed Toll Charges Updated to 2007

Amounts of the tolls proposed to be charged at each of the two collection locations

CLASS OF TRAFFIC	2007 Toll Charge in € inclusive of VAT@21%
Motor Cycles (exceeding 50cc)	0.70
Motor Cars	1.30
Buses or Coaches	2.00
Goods Vehicles with a design gross vehicle weight not exceeding 3,500 kilograms	2.00
Goods Vehicles with a design gross vehicle weight exceeding 3,500 kilograms and having two or three axles	2.60
Goods Vehicles with a design gross vehicle weight exceeding 3,500 kilograms and having four or more axles	3.20

Cumulative toll charges proposed where a user passes through both of the toll collection locations in the same direction of travel

CLASS OF TRAFFIC	2007 Toll Charge in € inclusive of VAT@21%
Motor Cycles (exceeding 50cc)	1.40
Motor Cars	2.60
Buses or Coaches	4.00
Goods Vehicles with a design gross vehicle weight not exceeding 3,500 kilograms	4.00
Goods Vehicles with a design gross vehicle weight exceeding 3,500 kilograms and having two or three axles	5.20
Goods Vehicles with a design gross vehicle weight exceeding 3,500 kilograms and having four or more axles	6.40