

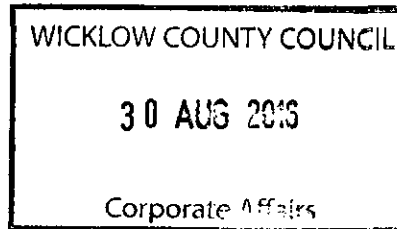


FI.

Wicklow County Council,
Planning and Development Department,
County Buildings,
Wicklow,
County Wicklow.

Córas Iompair Éireann

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Date: 26th August 2016


RE: Written Submissions/Observations of Córas Iompair Éireann and Iarnrod Éireann – Irish Rail in relation to the Proposed Material Amendments to the Draft Wicklow County Development Plan 2016 -2022.

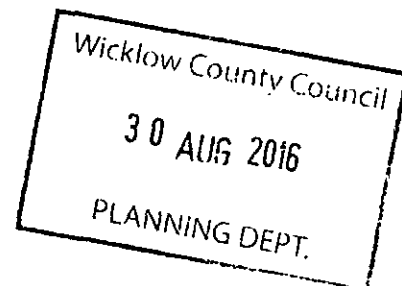
Dear Sirs,

We refer to your letter to our client of the 3rd August 2016.

Please find our clients written submissions and observations in this matter

Yours faithfully


Colm Costello
CIE Group Solicitor.



ATURNAE GHRÚPA CUIDEACHTAÍ CIE
Colm MacCoistealbha
CIE GROUP OF COMPANIES SOLICITOR
Colm Costello

Submission in respect of the proposed material amendments of the Draft Wicklow County Development Plan 2016-2022

I PRELIMINARY

1. This is a submission in respect of the proposed material amendments of the Draft Wicklow County Development Plan 2016- 22 insofar as they relate to the proposed preservation of alleged public rights of way identified as PROW 5 and PROW 6. Iarnrod Eireann had previously made a submission opposing the proposed inclusion of PROW 5 and PROW 6 in its submission dated 16th May 2016. Iarnrod Eireann remains of the view that preservation of such alleged public rights of way should not be included in the development plan and such public rights of way do not exist and this submission is without prejudice to the same. As stated in such submission there are serious and significant safety reasons why the alleged rights of way ought not to be included.
2. However, by letter dated 19th July 2016 the Council wrote to Iarnrod Eireann stating that at a meeting of the Council on the 4th July 2016, the elected members decided to amend the provisions dealing with PROW 5 and PROW 6. This included deleting particular words in the draft plan and also inserting new descriptions which comprise the following

PROW 5:

This section of amenity route constitutes the initial linear southern section of the long established Bray to Greystones Cliff Walk. From Beach road (L-12042) in the Greystones harbour area via part the new residential area of the Greystones harbour marina development,, with two separate perpendicular branches linking this route to the coastline at (a) a pathway enclosed with two bounding metal fences to the north beach and (b) a pathway to the coast in the vicinity of the site of the former Rathdown Castle. Total cumulative length of this route is circa 1.4 km.

PROW 6:

A continuation of the Murrough coastal walk referenced herein as P.R.O.W.1 from Tinakelly Murrough Wicklow to the vicinity of the former Newcastle Railway Station, Blackditch at the eastern end of the Sea Road (L5550-0), via the townlands of: Clonmannon, Ballybla, Castlegrange, Grange South and Grange North.

The letter said that it was open to Iarnrod Eireann to make submissions regarding the material amendments by 26th August 2016.

I INADEQUACY OF MAPS/REFERENCING

3. As was set out in the earlier submission, the maps and referencing carried out by the Council in respect of the proposed routes the rights of way at PROW 5 and PROW 6 have been wholly inadequate and indeed in breach of the necessary statutory requirements. It is clear that prior to any proposal to include alleged public rights of way at PROW 5 and PROW 6, the Council ought to have prepared:
 - (i) Detailed and clear mapping of the proposed routes.
 - (ii) Detailed referencing identifying landowners and clearly setting out the extent to which any landowners may be affected by the proposed routes.
4. The route of an alleged right of way is of paramount importance and the failure of the Council to clearly identify the same is serious and fundamental for two particular reasons. Firstly, it has hampered the ability of Iarnrod Eireann and indeed members of the public from making meaningful submissions – unless the matter for which submissions are invited is clearly identified, it is very difficult to make accurate submissions with respect to the same. This means that there has been a breach of fair procedures and the statutory requirements. The information presented by the Council was insufficient in this regard. Secondly, it is wholly inappropriate to be proposing to insert into a county development plan the preservation of an alleged right of way where the route of the same is not clearly identified and is vague and indefinite. As will be set out in particular below, it remains wholly unclear at which point is it proposed that the public should cross the railway line in connection with PROW 6. This raises serious safety issues.
5. The inadequacy of the maps was identified in the earlier submission of Iarnrod Eireann and notwithstanding the same, Iarnrod Eireann had no option but to make submissions based on such inadequate mapping. Iarnrod Eireann in the submission of 16th May 2016 sought maps at a scale of 1:1000. The Council in its letter of 1st July 2016 to Iarnrod Eireann said that Mr Walsh would consult with surveying staff as the feasibility of preparing a map of the coastal amenity walkway at PROW 6 and of imposing the respective remit of the existing Property Registration Authority of Ireland's land folios (file plans) on this map. A further letter by Sorcha Walsh, Senior Planner on behalf of the Council dated 19th July 2016 to Nick West of Iarnrod Eireann said that she wished to confirm in writing the undertaking Mr. Walsh gave at a meeting regarding the request for the preparation by the planning authority of more detailed maps of the two routes in question. In a subsequent letter of 3rd August 2016, the Council wrote to Iarnrod Eireann stating that with respect to PROW 5 that a more detailed survey map at an appropriate scale would shortly be produced and will be forwarded as soon as possible. However, with respect to PROW 6 the letter said that the Council has produced a total of 12 maps of scale 1: 25000 of the Murrough to Newcastle coastal walk which encompasses the routes listed for preservation. It said that it was the position of the planning authority that these maps are of a scale and clarity that provides a sufficient reference source for identification of the existing pathway of the route. It said that in the interests of cost management, it was deemed onerous to integrate into these maps land registration folio maps from the www.landdirect web site that pertain to the lands encompassed by that 9km walkway.

It then went on to refer to PROW 1 Murrrough public car park to the boundary of the former Wicklow Town Council, which is said had been in previous plans. Subsequently by letter dated 22nd August 2016 the Council wrote to Iarnrod Eireann enclosing a map to the scale of 1:2500 in respect of PROW 5 but no further map with respect to PROW 6.

6. The above responses and approach of the Council has been wholly unacceptable. With respect to PROW 6 it is not clear what the alleged 12 maps in question are and whether they all relate to PROW 6, the scale and quality are wholly inappropriate for the following reasons. The marked line of the proposed route on the maps with respect to PROW 6 does not clearly identify where it crosses the railway line. The proposed route crosses and/or runs alongside the active and live railway line and so it is of very considerable importance to Iarnrod Eireann and the public to know to know *precisely* where the route proposes to cross the railway line and/or is proximate to and/or is on Iarnrod Eireann lands. The maps adduced are simply inadequate for these purposes and in this regard the number of alleged maps is an irrelevancy if they are all vague and lack clarity. Furthermore, it is simply not appropriate that the Council would appear to prioritise costs implications of producing further maps where there are serious safety issues involved and where more generally it could impact on a public service such as the railway. Insofar as a further map was produced for PROW 5, again this was to a scale of 1: 2500 and was furnished to the Council on 22nd August 2016, less than 4 days prior to the expiry of the deadline for making submissions on the material amendments.

7. Without prejudice to the above, it is proposed to further outline specific submissions with respect to both PROW 5 and PROW 6.

III PROW 5

8. The proposed material amendment appears to involve a reduction in the length of the proposed route to 1.4km. Clearly a reduction in the length of the proposed route to 1.4km is preferable to the more lengthy route proposed in draft Wicklow Development Plan. However, there remain serious safety issues with respect to the reduced route and the proposed material amendment should be further modified to address the same. The proposed change to this PROW 5 affects the level crossing called Ennis Lane, which was previously and remains now to an even greater extent of concern to Iarnrod Eireann. It appears that the Council are proposing the purchase of lands which will open up an access to the beach, the shortest route to which from the public road is across this level crossing. No public right exists over the railway track and so it is wholly inappropriate to propose preserving a route which traverses the railway line. Iarnrod Eireann is of the view that preserving such alleged public right of way (without modification) will facilitate and encourage persons to traverse the railway track. For reasons of safety it imperative that no public right of way is created over the rail track. This is underlined by the fact that there had been several recent near misses along this section of the railway line including a recent incident involving an unaccompanied child. Records of these near misses at this location include the following:

Date	Brief description of Period Incidents	Line	TYPE	Bridge/LC No
10/03/2014	Category 1 Near miss - E813 1200 Greystones / Malahide - advises near miss with trespasser @ XR012 Ennis lane on the approach to Bray - Driver Ok to proceed - Gardai advised - 8102 leading - EN	Rosslare	CAT 1 NEAR MISS	XR012
01/05/2015	E105 08:30hrs Howth – Greystones Driver reported to Greystones signaller near miss with a trespasser at Ennis Lane between Greystones and Bray, unit 8340.	Rosslare	CAT 3 NEAR MISS	XR012
12/02/2016	Cat 3 Near Miss with pedestrian at XR012 Ennis' Lane LX. Driver E104 0802 Howth - Greystones 8321 reported a Cat III near miss at Ennis' Lane LX XR012 with a woman walking a dog.	Rosslare	CAT 3 NEAR MISS	XR012
23/04/2016	Trespass at XR012 Ennis Lane. Driver of E106 reports trespassers on the wrong side of the gate at Ennis Lane. Signaller at Greystones Cautioned the following train.	Rosslare	TRESPASS	XR012
28/07/2016	The driver on E120 reported a Cat 1 near miss with a child at XR012 (Ennis lane) Bray / Greystones section.	Rosslare	CAT 1 NEAR MISS	XR012

9. Iarnrod Eireann are concerned that the increased marketing and visibility of this walkway (Wicklow's Wild Irish Sea Way) may increase usage and consequently the incidents of near misses or worse. Insofar as the Council are to retain the existing 1.4 km as set out in the material amendment, then it is suggested that the relevant provisions be further modified by specifically providing that there shall be no crossing of the railway and providing as follows:
- pedestrian footbridge (be installed for by the Council) traversing the railway line and the exiting pedestrian wicket gates on the level crossing be removed and
 - the gates for the official agricultural use of the crossing changed to security gates so members of the public cannot traverse the level crossing at all, this work would be undertaken by Iarnrod Eireann.
10. Another issue that arises in relation to Ennis Lane crossing is the Council's use of the crossing to access their own works and lands over the tracks and it appears for construction traffic to maintain the walkway. This has happened in the past without Iarnrod Eireann's consent and without appropriate controls being put in place. The creation of a new spur at Ennis Lane opens up the prospect of increased construction activity at the crossing which would pose further obvious safety difficulties for Iarnrod Eireann.
11. Iarnrod Eireann also objects to the certain aspects of the new proposed description of PROW 5. In particular it objects to the reference to the "*long established*" Bray to Greystones Cliff Walk. Insofar as this as an attempt to suggest that there is an established public right of way, this is not accepted and the words should be deleted which in any case are unnecessary and do not add anything to the description.
12. It therefore follows from the above, that it is the submission of Iarnrod Eireann that the material amendments with respect to PROW 5 be modified so as to ensure that the exclusion of the public from accessing the track and/or any level crossing.

IV PROW 6

13. The new description of PROW 6 makes clear that the proposed route of alleged public right of way of necessity involves traversing the railway track. However the precise location at which the railway track is to be traversed is not specified. By not specifying how they expect people to access this right of way the proposal is in effect opening up a free-for-all and this is not acceptable to Iarnrod Eireann. There are a number of level crossings still open along this route as below:

Number	Name	Miles	Yards	Type
XR015	Newcastle	22	750	Pedestrian
XR016	Five Mile Point	23	435	Pedestrian
XR017	Roche's	24	1250	Pedestrian (disused)
XR019	Killoughter	25	950	Pedestrian
XR021	Clonmannon	26	100	Field
XR022	Pines	27	100	Pedestrian

However, none of the above are specified. It is further not accepted that any of the same are appropriate and similar to PROW 5 it would be appropriate that the Council construct footbridge across the railway. It is therefore submitted that the material amendment should be further modified to specify the precise point along the railway where the public right of way is to traverse the same.

14. PROW 6 is particularly problematic insofar as certain groups and individual have already breached Iarnrod Eireann fencing to access the sea across the tracks. There are also at least two locations of persistent trespass with fences being vandalised for access being at 26 Mls 1540 Yds and 27 Mls 660 Yds approx. The proposed PROW 6 will further encourage and facilitate such trespass and further embolden such persons to trespass on the railway.
15. Iarnrod Eireann further objects to the new proposed description of PROW 6 as being a "continuation" of PROW 1. There is no valid connection between PROW 1 and PROW 6 and this description appears to be an illegitimate attempt to confer validity on PROW 6 by incorporating the same with PROW 1 which is wholly inappropriate.
16. In relation to land ownership, it appears from the updated maps (Maps 1 to 6 inclusive) relating to PROW 6 that it traverses land in the ownership of Iarnrod Eireann and in private ownership. The inadequacy of the maps and referencing process makes this difficult to ascertain but it appears that the route moves in and out of land within the ownership of Iarnrod Eireann. It is important to note however that the PROW 6 appears to cross the existing fenceline in a number of places and this will only further encourage further vandalism and breaches in the fence.
17. In relation to costal erosion issue, Iarnrod Eireann carries out the works to defend against coastal erosion where coastal erosion is an issue for the track. Iarnrod Eireann are further anxious to ensure that its access should not be impeded in the carrying out of these works and again a modification should be made to the material amendment to protect the ability of Iarnrod Eireann to carry out the same.

F2

Dominican Convent,
Bay View Rd,
Wicklow.
22 August, 2016.

Mr Tim Walsh,
Planning Department,
Wicklow County Council.
Wicklow Town.

Dear Mr Walsh,

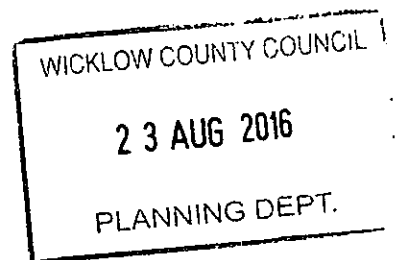
Thank you for the opportunity of meeting with you to discuss the implications of the proposed Right of Way as indicated in your letter of 13 July, 2016.

We discussed this matter with our solicitor, Desmond Rooney of Mason Hayes and Curran. In his opinion there are several issues requiring clarification. It is possible that the form of agreement you have in mind will cover these issues. Please be so kind as to furnish a draft of the proposed agreement envisaged.

Yours sincerely,

Julie Newman.

Sr Julie Newman.



F3

**Seaview House
Dunbur Upper
Wicklow**

WICKLOW COUNTY COUNCIL
22 AUG 2016
PLANNING DEPT.

Wicklow County Council

Re: Rights of Way, and "coastal path"

16th August 2016

A chara,

Previous correspondence, submissions and council decisions refer.

In light of previous submissions and the now proposed amendment to the Local Development Plan, we make the following observations:-

1. The proposed development plan is substantially different to the initial draft, in both content and substance. It is noted that hardly any other part of the proposed development plan has been amended to such a substantial degree as a result of organised and orchestrated lobbying, to the extent that a reasonable person could conclude that the council has acted disproportionately and could be seen to display bias in favour of lobbyists and interest groups who are seeking to create and expand purported entitlements contrary to the natural and constitutional rights of property owners.
2. The council has not consulted, adequately or at all, with adjacent or actual landowners, concerning PROWs. There is no provisions for any litter, toilet, or other facilities along any PROW, nor has there been any scientific economic research as would lead a reasonable person to adduce there is a need for providing such an amenity - objectively it would make more economic sense making necessary improvements, repairs and maintenance to the existing and neglected amenities, throughout the county.
3. With respect to PROW 2 to Brides Head, the Council has in its own document stated that the lands are unsuitable due to health and safety concerns (see 3.14.1, where it states.. "*part off[it] is currently closed under the direction of Wicklow County Council for health and safety reasons, due to coastal erosion though there is evidence that it continues to be used by the public for its full remit*"). Despite the former shooting range lands being closed to the public "*for ten years or so*", and having the area fenced off, the council has by this very statement admitted that it has failed continuously to maintain or supervise the alleged right of way, contrary to its obligations under section 208 of the 2000 Act, and as the alleged right of way has only been identified as a PROW in the current and previous plans the Council is constitutionally prohibited from retrospectively asserting that the 2000 Act provisions do not apply.

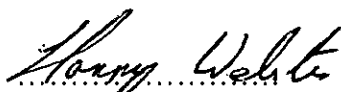
4. At 3.14.2, it is stated erroneously that the PROW 2 ends at "*respective public places*". PROW 2 actually ends at our lands. Given the ongoing history of vandalism, trespass and criminal damage to our property, and the previous admission in 3.14.1, that the public have ignored council signage and fencing "*for ten years or so*", along PROW 2, it would be naive or disingenuous to suggest that the proposed loop back, would be effective, or indeed respected.
5. The recent unilateral installation of the Brides Head/ Lime Kiln Bay finger signpost during May or June 2016 and the resulting evidence and conclusions made in the submissions, could lead a reasonable person to conclude that it has been self serving and biased. In actual fact the signpost cannot be seen from any public road, pathway or defined public walkway and can only be seen after trespassing along the mile or so of private road to the Dunbur Lighthouses. It is noted that Submission 14 therefore must have post-dated the installation of that signpost, which itself postdates by almost a year the initial draft development plan published in spring 2015 and therefore should or could not be part of the considerations within the current proposed development plan.
6. Given the recent developments in litigation in the Wicklow highlands concerning the use of pathways, it is likely that any proposed repairs to the eroded area on PROW2 together with any issues regarding the ongoing maintenance of all other PROWs will increase the costs to the council in terms of liability, and lead to several annual court actions even from as was recently reported, one taken by "an experienced hill-walker".
7. If proper consultation or engagement had been effected, we would have consented to PROW2 ending with a loop ended walkway if, and only if, in advance of opening such walkway the County Council construct a proper wall of minimum 1.7 metres high of suitable length with appropriate signage at the turning end. As it is proving impossible for us to prevent animal and other trespass from our lands due to the criminal actions and misguided or subversive agendas of unknown agitators who have failed to respect our property rights (which go unmentioned in the submissions and responses) we regard it as just and equitable that the council be obliged to prevent trespass to our lands from council property.
8. The revised plan refers to balancing the "needs" rather than the legal and constitutional rights of landowners in competition to objectives of the plan. The council's function remit and reputation is being compromised in failing to even use appropriately precise language in this regard.
9. It is regrettable that this matter which has been the result of consistent organised lobbying, and that any reasonable person would regard less important that the concerns of social housing, childcare, education, employment, road safety, illegal dumping, and other more serious local issues. Rather than solving problems, the increased PROWs are likely to create further expense not just in providing from already constrained resources but also from incidental increased litigation.

This is a perspective on how council resources are allocated. It should be noted that over the last ten years, the council has ceased to maintain dangerously overgrown road verges, when heretofore these were maintained annually with a sense of local

pride and public concern in the interests of traffic safety. It may also be noted that also due to a lack of funding in the last ten years the council has ceased to install and maintain lifebelts along the coast (which always had the co-operation and assistance of landowners): and this helped to prevent serious or fatal accidents. People with mental health and addiction problems still have to travel to Dublin and elsewhere for help and assistance rather than locally, thus making it less likely for them to get necessary help. Surely saving one human life is worth more than the bottom line.

Notwithstanding the provisions of ss 206 207 208 and 212, the submissions regarding increased PROWs and walkways may not have considered the many and varied duties and obligations owed to the public as whole by that the local/ planning authority, and in particular the concept of "the greatest need" and prioritising the limited resources available.

Is mise le meas,


Harry Webster

CC. councillors for the Wicklow municipal area.