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INTRODUCTION TO THE FOURTH INTERIM REPORT
OF THE TRIBUNAL OF INQUIRY INTO CERTAIN
PLANNING MATTERS AND PAYMENTS.

Clause E (iv) of the Amended Terms of Reference of the Tribunal enables the Tribunal to report on an interim basis to the Clerk of the Dáil in relation to (inter alia) the following matters:-

1. the progress which has been made with the work of the Tribunal;
2. the likely duration (so far as that may be capable of being estimated at the time) of the Tribunal proceedings;
3. any other matters which the Tribunal believes should be drawn to the attention of the Clerk of the Dáil at that stage (including any matter relating to the Terms of Reference).

This Interim report is furnished to the Clerk of the Dáil in order:-

1. to inform the Oireachtas of the extent of the workload of the Tribunal and its likely duration;
2. to inform the Oireachtas of the Tribunal's respectful request for amendments to the current Terms of Reference;
3. to inform the Oireachtas of other matters related to the work of the Tribunal which the Tribunal deems may be relevant to the Oireachtas in its consideration of the matters referred to in this interim report.

CHAPTER 1

THE PROCEDURE WHICH IS ADOPTED BY THE TRIBUNAL IN CARRYING OUT ITS MANDATE.

- 1.01 In conducting the inquiries required of it by its wide Terms of Reference the Tribunal has been made aware of many acts associated with the planning process which may amount to corruption or attempts to compromise the disinterested performance of public duties.
- 1.02 In pursuing its inquiries into these matters, the Tribunal has been mindful of the constitutionally protected rights of those persons appearing before it and of its legal obligations, including the obligation to apply fair procedures in conducting its inquiries.
- 1.03 Prior to conducting its public hearings the Tribunal has invariably conducted preliminary inquiries and investigations in private. These inquiries include seeking statements from potential witnesses, seeking discovery of documents and other material, and requesting parties to attend for interview with the Tribunal legal team in connection with matters then under investigation.
- 1.04 In its preliminary investigations the Tribunal is dependent to a significant degree upon the co-operation of persons with whom it has dealings. The Tribunal's statutory powers are limited to making orders for discovery of documents and to summoning persons before a public sitting of the Tribunal to be questioned on the relevant matter. Where persons do not voluntarily co-operate with the Tribunal this inevitably delays the completion of the preliminary investigation.
- 1.05 Depending upon the complexity of the matters under inquiry and the degree of co-operation such preliminary investigations may take months or even years.
- 1.06 Once the Tribunal has collated, analysed and evaluated all of the material obtained in the preliminary investigation it determines whether to proceed to public hearing on the issues arising therefrom or to conclude that line of inquiry without going to public hearing.
- 1.07 In those instances where it has determined to go to public hearing a brief of relevant documents is prepared in advance of such public hearing and is circulated to all parties concerned. Persons intended to be called as witnesses at such hearing are invited to provide witness statements which are circulated by the Tribunal to any other affected party as part of the brief.
- 1.08 Parties whose good name or property interests might be adversely affected by the evidence adduced at public hearings of the Tribunal are entitled to apply for legal representation before

the Tribunal, and, in the event that it is granted, they have the right to cross-examine witnesses and to make submissions to the Tribunal either personally or through their lawyers.

- 1.09 The current work of the Tribunal includes matters in the early stage of investigation, matters in which preliminary inquiries in private are at an advanced stage, matters upon which decisions have been taken to go to public hearing in the future, and matters which are part heard and are continuing.
- 1.10 In view of the multiplicity and variety of the issues in respect of which the Tribunal has determined that public hearings are merited, the Tribunal has devised a procedure which allows for the presentation of the evidence to be adduced at public hearing in units termed "modules". In each such module the Tribunal hears the evidence relating to a particular event or matter, or series of events or matters, which are deemed to merit examination in public.
- 1.11 The Tribunal believes that this is the most efficient and economical use of its facilities and that it affords those parties appearing before it the greatest opportunity of protecting their legitimate interests.
- 1.12 It remains the particular concern of the Tribunal that the Tribunal's inquiries into possible acts of corruption or wrongdoing associated with the planning process are investigated in public as quickly as possible and that all persons against whom any allegations are made, or against whom inferences may be drawn, are afforded the fullest opportunity of dealing with these matters within the shortest possible time.

CHAPTER 2

THE WORK CARRIED OUT BY THE TRIBUNAL SINCE THE SECOND AND THIRD INTERIM REPORTS OF THE TRIBUNAL OF THE 30TH SEPTEMBER, 2002.

- 2.01 Following upon the reconstitution of the Tribunal in 2002, pursuant to the provisions of the Tribunals of Inquiry (Evidence) (Amendment) Act 2002, the Tribunal conducted public hearings in the Carrickmines I Module between the 30th October, 2002 and the 16th December, 2003.
- 2.02 The Tribunal commenced public hearings on the 8th July, 2003 in relation to Mr Liam Lawlor's non-compliance with a Tribunal Order for Discovery made in relation to the sale by him of land at Lucan, County Dublin. The public hearings concluded on 23rd September, 2003.
- 2.03 The Tribunal conducted public hearings into the Fox and Mahony module and the St. Gerard's Bray module between the 24th October, 2003 and 4th December, 2003.
- 2.04 The Tribunal conducted public hearings into the Carrickmines II and Related Issues module between the 20th January, 2004 and 13th February, 2004. These hearings currently stand adjourned pending the completion of the Arlington/Quarryvale I module.
- 2.05 The Tribunal commenced public hearings into the Arlington/Quarryvale I module on the 3rd March, 2004. The hearings will be resumed following completion of the Local and European Elections in June 2004.
- 2.06 In addition to the work of the Tribunal conducted in public it has also been engaged in the ongoing investigation of further allegations of planning corruption, and with inquiries relating to the planning process in a number of separate and distinct transactions.
- 2.07 The Tribunal is also engaged in the preparation of the documentation for circulation in forthcoming modules of evidence intended to be heard over the next two years.

CHAPTER 3

IDENTIFIED FUTURE WORK OF THE TRIBUNAL.

- 3.01 It is anticipated that the first phase of the Arlington/Quarryvale I module will conclude before the end of July 2004 and that the Tribunal will resume the Carrickmines II and related issues module thereafter.
- 3.02 The Carrickmines II and Related Issues module is divided into several phases, the first phase of which was adjourned so as to allow the Arlington/Quarryvale I module to commence. It is likely that the first phase of the Carrickmines II and Related Issues module will conclude within the current year whereupon it is intended to commence the Quarryvale II module.
- 3.03 It is expected the Quarryvale II module will commence in late 2004 or early 2005 and that it will continue for a number of months thereafter. Because of the complex issues involved, and the number of parties who are represented in this module, the Tribunal is unable to give any accurate estimate as to when in 2005 this module is likely to be completed.
- 3.04 Upon the completion of the Quarryvale II module it is currently intended (in compliance with its Terms of Reference) to resume hearings of a number of interlinked modules. These modules relate to certain alleged payments said to have been made to Dublin County councillors in connection with proposals to rezone or otherwise alter the planning status of lands in County Dublin. The Tribunal considers these modules to be interlinked because factors including, the source of the allegations, the identity of the local representatives involved, the nature and manner of the alleged payments and other relevant factors suggest that the Tribunal should hear the evidence in each of such modules that proceed to public hearing before reaching its conclusions in respect of any one allegation.

CHAPTER 4

THE LIKELY DURATION OF THE TRIBUNAL UPON THE ASSUMPTION THAT ITS TERMS OF REFERENCE REMAIN UNCHANGED.

- 4.01 By letter dated 24th June, 2003 the Minister for the Environment, Heritage and Local Government (the sponsoring Minister to the Tribunal) wrote to the Tribunal requesting information relating to the likely duration of the Tribunal's remaining inquiries at that time. The Tribunal replied on 25th June, 2003 stating *inter alia* that:-
- a. the Tribunal was in the course of hearing evidence in public in relation to a number of inter-linked modules;
 - b. the Tribunal's intention was to conclude these inter-linked modules by the end of 2006 and to then prepare, publish and furnish a report to the Clerk of the Dáil to include recommendations, where appropriate;
 - c. the duration of the work of the Tribunal beyond 2006 would depend upon the number of issues, many of which were under preliminary investigation, upon which decisions might ultimately be made to go to public hearing.
- 4.02 It was impossible then to give an estimate of the likely duration beyond 2006 of these additional modules, but it was indicated to the Minister that a clearer picture should emerge within one year (June 2004).
- 4.03 The Tribunal has now conducted a comprehensive audit of its current workload and its likely future workload having regard to its Terms of Reference as presently constituted.
- 4.04 The Tribunal is now satisfied that the estimate of time furnished to the Minister as being the time required to conclude the inter-linked modules is an underestimate and that it will not be possible to complete the hearing of these inter-linked modules by the end of 2006 as originally believed.
- 4.05 The Tribunal is now satisfied that the public hearings of these inter-linked modules are unlikely to conclude until 2007 or 2008.
- 4.06 In addition to the work required to complete the public inquiries into these interlinked modules the Tribunal will be involved with the following issues in addition to those already identified:-
1. Costs:-
 - (i) The Chairman will be involved in determining the issues relating to costs which arise from the work of the Tribunal to date. Public hearings relating to certain cost issues arising from the findings reported upon in the Second Interim Report of the Tribunal of

30th September, 2002 were scheduled for hearing in May 2003 but were adjourned due to the indisposition of the then Chairman Mr Justice Feergus Flood.

- (ii) Subsequent to his resignation the Tribunal awaited the passing into law of the Tribunal's of Inquiry (Evidence) (Amendment) Bill 2003 before re-scheduling the hearings in relation to costs. The Bill passed into law on the 5th of May, 2004.
- (iii) Under the provisions of this legislation, the current Chairman is empowered to determine cost issues arising from matters reported upon by the former chairman in the Second and Third Interim Reports. This process is expected to commence on 14th June, 2004.
- (iv) The Chairman believes this will take approximately 4 to 6 weeks of the public hearings and will be completed before the end of 2004. The Chairman will interpose the public hearings on cost issues between the sittings of the full Tribunal in the ongoing modules. While the Chairman is exclusively dealing with costs issues the other Members of the Tribunal will continue to work on other issues.

2. Public hearings on compliance issues:

The Tribunal anticipates that it may be necessary to conduct public hearings into compliance issues which may arise in the future (whether related or unrelated to the inter-linked modules) and this may require the interruption of modules then at public hearing.

3. Public hearings of submissions:

Following upon the conclusion of the public hearings into the modules currently identified as meriting public hearing, the Tribunal will invite submissions from all interested parties prior to the preparation of its report.

4. Preparation of Tribunal Report:

It is the intention of the Tribunal to provide a comprehensive report and to make such recommendations as it sees appropriate. It may, where it deems it appropriate to do so, provide further Interim Reports to the Clerk of the Dáil.

- 4.07 In light of the above considerations, the Tribunal estimates that if all the inter-linked modules currently destined for public hearings were to proceed to public hearing, the public hearings would extend until 2007-2008 and would be reported upon thereafter. If all of this workload was completed by the Tribunal as estimated it would not be in a position to embark upon any further public hearings on any other matters until 2009.

CHAPTER 5

OTHER MATTERS IDENTIFIED BY THE TRIBUNAL AS LIKELY TO MERIT INVESTIGATION IN PUBLIC PURSUANT TO THE TRIBUNAL'S CURRENT TERMS OF REFERENCE.

- 5.01 The Tribunal has identified a number of matters where preliminary investigation suggests that there may have been acts of corruption or wrongdoing in connection with the planning process both within County Dublin and in other counties.
- 5.02 These further matters are at various stages of preliminary investigation in private. Some are in the very early stages of investigation while others are at a more advanced stage.
- 5.03 These investigations involve a detailed examination and evaluation of many thousands of documents which have been furnished to the Tribunal either voluntarily or in compliance with Orders for Discovery and Production.
- 5.04 Since its inception the Tribunal has made over 9,000 Orders for Discovery directed to individuals and corporations. The Tribunal believes that the Discovery process provides an invaluable tool in its inquiry process.
- 5.05 The Tribunal estimates that the likely duration of the additional modules of evidence which will arise from within the category of inquiries referred to above which may warrant a public hearing pursuant to the current Terms of Reference of the Tribunal is approximately three to four years from commencement.
- 5.06 In addition to the time involved in public hearings, there would be a further period for consideration of submissions and the preparation of a report followed by subsequent determinations as to costs.
- 5.07 The Tribunal from time to time receives fresh allegations of wrongdoing associated with the planning process which under its current Terms of Reference it is obliged to consider. The Tribunal anticipates that further matters falling within its current Terms of Reference may be referred to it in the future.
- 5.08 The Tribunal therefore estimates that on the basis that (a) it retains its present constitution of three Members and that (b) the current Terms of Reference remain unaltered, the likely timescale for the completion of all of the Tribunal's currently identified workload is probably in the region of ten or eleven years.(2014 or 2015).
- 5.09 The Tribunal has found that the great majority of the complaints or referrals made to it are outside its Terms of Reference. In respect of those matters which are *prima-facie* within its

Terms of Reference, the Tribunal conducts its inquiries following the procedure set out earlier in this report.

- 5.10 Depending upon the issues involved, this may require large numbers of persons to be interviewed and significant volumes of documents to be obtained and scrutinised. In many instances, the documentation involved runs to tens of thousands of pages and includes technical and financial reports which require analysis.
- 5.11 In general, the workload involved in the preliminary investigative phase is significantly greater than the workload involved in the work of the Tribunal in public.
- 5.12 In exceptional circumstances public hearings of evidence which relates solely to the preliminary investigative work of the Tribunal takes place. This generally arises only where it is necessary to rely upon the Tribunal's statutory power to summon witnesses before the Tribunal in order to obtain evidence which is not otherwise forthcoming, or where the Tribunal believes that there has been non-compliance with an Order of the Tribunal.
- 5.13 The Tribunal has found that the preliminary private inquiry stage requires a significant level of staffing. The work involved is usually arduous and time consuming and involves both legal and non-legal personnel. It is, however, an essential element of the inquiry process.
- 5.14 Once the Tribunal has determined that a matter requires to be heard in public the preparation of the module of evidence intended to be adduced in public requires particularly intensive preparation, especially by members of the Tribunal's Legal Team, and often at a time when members of the Legal Team are actively engaged in public hearings in other modules.
- 5.15 The Tribunal has found it necessary to divide its private inquiry work, its preparatory work prior to public hearings, and the work associated with public hearings between members of the Tribunal's current Legal Team. The current Legal Team comprises 4 Senior Counsel, 2 Junior Counsel, 3 Solicitors and 4 Researchers, in addition to 2 paralegal staff.
- 5.16 The Tribunal believes that the capacity of the Tribunal legal team is stretched to its limits, if not beyond. The Tribunal believes that there is scarcely sufficient time or staff available to have subsequent modules of evidence ready for presentation in public upon the conclusion of modules at public hearing.
- 5.17 The Tribunal has requested leave (from the Minister for the Environment, Heritage and Local Government) to engage additional legal and paralegal personnel. If the Tribunal is to carry out its remit efficiently and in as economical a fashion as possible, the Tribunal believes it requires the additional resources already sought in order to do so. The estimates of time furnished in this report are dependent upon receiving such additional resources.

CHAPTER 6

TERMS OF REFERENCE: CONCERNS OF THE TRIBUNAL.

6.01 The current Terms of Reference of the Tribunal are contained in the Instrument of the Minister for the Environment & Local Government dated 15th July, 1998 which amended the original Terms of Reference of the Tribunal contained in the Instrument of the 4th November, 1997. The relevant extracts from the amended Terms of Reference are set out hereunder:-

A. Dáil Eireann resolved in Clause A (5) of the amended Terms of Reference that:-

“In the event that the Tribunal in the course of its inquiries is made aware of any acts associated with the planning process which may in its opinion amount to corruption, or which involve attempts to influence by threats or deception or inducement or otherwise to compromise the disinterested performance of public duties, it shall report on such acts and should in particular make recommendations as to the effectiveness and improvements of existing legislation governing corruption in the light of its inquiries”.

B. Dáil Eireann resolved in Clause B that:-

“The Tribunal be requested to conduct its inquiries in the following manner, to the extent that it may do so consistent with the provisions of the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979:-

- (i) To carry out such preliminary investigations in private as it thinks fit using all the powers conferred on it under the Acts, in order to determine whether sufficient evidence exists in relation to any of the matters referred to (in Clause A) to warrant proceeding to a full public inquiry in relation to such matters;*
- (ii) To inquire fully into all matters referred to (in Clause A) in relation to which such evidence may be found to exist.....”*

C. Dáil Eireann resolved in Clause E that:-

“The Tribunal shall, in addition to the matters referred to in paragraphs A(1) to A(5) hereof, inquire urgently into and report to the Clerk of the Dáil and make such findings and recommendations as it sees fit, in relation to the following definite matters of urgent public importance:-

- 1. Whether any substantial payments were made or benefits provided, directly or indirectly, to Mr. Raphael Burke which may, in the opinion of the Sole Member of*

the Tribunal, amount to corruption or involve attempts to influence or compromise the disinterested performance of public duties or were made or provided in circumstances which may give rise to a reasonable inference that the motive for making or receiving such payments was improperly connected with any public office or position held by Mr. Raphael Burke, whether as Minister, Minister of State, or elected representative;

2. *Whether, in return for or in connection with such payments or benefits, Mr. Raphael Burke did any act or made any decision while holding any such public office or position which was intended to confer any benefit on any person or entity making a payment or providing a benefit referred to in paragraph 1 above or any other person or entity or procured or directed any other person to do such an act or make such a decision.*

And that the Tribunal be requested to conduct its inquiries in the following manner to the extent that it may do so consistent with the provisions of the Tribunals of Inquiry (Evidence) Acts 1921 – 1998:-

- (i) To carry out such preliminary investigations in private as it thinks fit (using all the powers conferred on it under the Acts), in order to determine whether sufficient evidence exists in relation to any of the matters referred to in paragraphs E1 and E2 above to warrant proceeding to a full public inquiry in relation to such matters;*
- (ii) To inquire fully into all matters referred to in paragraphs E1 and E2 in relation to which such evidence may be found to exist;*
- (iii) In relation to any matters where the Tribunal finds that there is insufficient evidence to warrant proceeding to a full public inquiry, to report that fact to the Clerk of the Dáil and to Report in such a manner as the Tribunal thinks appropriate on the steps taken by the Tribunal to determine what evidence, if any, existed and the Clerk of the Dáil shall thereupon communicate the Tribunal's report in full to the Dáil."*

6.02 The Tribunal considers that the obligations imposed upon it by its current Terms of Reference do not afford the Tribunal a discretion as to which "acts" it is required to investigate and upon which it should report and in particular, when considering whether or not to conduct an investigation into any such "acts" as are referred to at Clause A5 or into such payments or benefits as are referred to at Clause E1 and E2.

6.03 The Tribunal believes, for example, that it cannot take into account such considerations as:

- the level or degree of corruption alleged in respect of which there is a complaint;
- the likely duration of any investigation into such complaint;
- the likely cost of any such investigation;
- the likely effect, in the context of available resources, such an investigation might have on its current ongoing or future inquiries; and
- the probative value of any such investigation or the likelihood of such an investigation providing sufficient evidence upon which the Tribunal might reasonably be expected to be in a position to reach conclusions.

- 6.04 Equally the Tribunal believes it cannot, for example, take into account the present age and state of health of persons likely to be important or essential witnesses or their likely age and state of health at such time in the future when such a matter might proceed to public hearing when deciding whether or not to embark upon (or to continue) a preliminary investigation.
- 6.05 The Tribunal is conscious that before their evidence can be heard in public individuals from whom important evidence might be expected may die, or become too ill, or too old to give evidence with a consequence that the investigation which has been pursued over a lengthy period of time, and at significant cost to the resources of the Tribunal and the Exchequer, will be unable or unlikely to proceed to public hearing, or having so proceeded, will fail to yield sufficient evidence upon which to make conclusions or to base recommendations.
- 6.06 The Tribunal believes that the obligation imposed upon it by the current Terms of Reference to investigate all such matters as fall within its Terms of Reference places a very onerous burden upon the Tribunal and stretches the resources of the Tribunal to breaking point.
- 6.07 The Tribunal believes that if it was afforded greater discretion to determine which lines of inquiry it should pursue, and which should not be proceeded with, it could optimise on the resources presently available to it and shorten the duration of its inquiry.
- 6.08 The Tribunal believes that where, for example, an identified line of inquiry would involve an unduly lengthy period of investigation, or where it would hamper or delay other and more pressing and advanced lines of inquiry, or where it would require resources which may be disproportionate to the likely benefit from such an inquiry in terms of information learned by or furnished to the Tribunal, that it should have the capacity to forego such investigation.

CHAPTER 7

TERMS OF REFERENCE: RECOMMENDATION FOR THEIR AMENDMENT OR REVISION.

7.01 The Tribunal respectfully requests the Oireachtas to amend its Terms of Reference in the manner following, or in such other manner as it deems appropriate, having regard to the information in this Interim Report and the reasons set out therein so as to provide that: -

- “1. Where the Tribunal in the course of its inquiries is made aware of any acts or payments which fall within its Terms of Reference the Tribunal may in its sole discretion decide;*
 - i. To carry out such preliminary investigations in private as it thinks fit using all the powers conferred on it under the Acts, in order to determine whether sufficient evidence exists in relation to the matter to warrant proceeding to a full public inquiry in relation thereto and thereafter to proceed to public hearing if deemed necessary or*
 - ii. Not to initiate a preliminary investigation and/or a public hearing of evidence in relation to the matter notwithstanding that the matter falls within the Tribunal’s Terms of Reference.*
 - iii. Having initiated a preliminary investigation in private (and whether or not same has been concluded), but prior to the commencement of any public hearing of evidence in the matter, to discontinue or otherwise terminate its investigation notwithstanding that the matter falls within the Tribunal’s Terms of Reference.*
- 2. In the exercise of its discretion under Clause 1 above, the Tribunal may have regard to one or more of the following matters:-*
 - i. The age and/or state of health of one or more persons who are likely to be in a position to provide useful information (including, but not confined to, oral evidence to be given privately or publicly), including the age and/or likely state of health of any such person at such date in the future when that person or persons might be expected to be called upon to give oral evidence or to otherwise cooperate with the Tribunal, and in particular the issue as to whether or not their age and/or state of health is or is likely to be an impediment to such person being in a position to cooperate with the Tribunal or to give evidence to the Tribunal in private or in public;*

- ii. *The likely duration of the preliminary investigation or public hearing into any matter;*
- iii. *The likely cost (or other use of the resources of the Tribunal) of such investigation or any stage of the investigation into any matter;*
- iv. *Whether or not the investigation into any matter is likely to provide evidence to the Tribunal which would enable it to make findings of fact and conclusions and/or to make recommendations;*
- v. *Any other factors which in the opinion of the Tribunal would, or would be likely to, render an investigation, or the continued investigation into any matter inappropriate, unnecessary, wasteful of resources, unduly costly, unduly prolonged or which would be of limited or no probative value.*

3. (i) *Where the Tribunal believes that the continued conduct of its inquiries is of limited or no further value in discharging its mandate to inquire into the specific and general matters referred to in its Terms of Reference it so may report to the Clerk of the Dáil and request him to convey to the Oireachtas the wish of the Tribunal that its investigations and inquiries should terminate on a date to be specified by the Tribunal.*

(ii) In the event that the Oireachtas accedes to a request made of it by the Tribunal to terminate its investigations and inquiries as of a specified date, the Tribunal will thereafter cease all further inquiries and will thereafter furnish to the Oireachtas its final report and recommendations after which the Tribunal's functions will be limited to the making of ancillary orders including matters relating to costs".

7.02 The Tribunal believes that an amendment of the Tribunal's Terms of Reference in the manner indicated above (or by amendment with similar effect) will enable the Tribunal to concentrate its inquiry into areas which it believes will, when fully inquired into, allow the Tribunal to comprehensively report upon payments and acts associated with the planning process.

7.03 In the event that the Oireachtas is agreeable to amend the Terms of Reference as requested, (or to amend the Terms of Reference with similar effect), the Tribunal requests that the necessary Instrument be effected as soon as practically possible so as to enable the Tribunal to organise (and where appropriate to reorganise) its future workload at the earliest opportunity, thus ensuring that its responsibilities be conducted in as efficient a manner as is possible.

CHAPTER 8

OTHER RELEVANT ISSUES.

Additional Resources.

- 8.01 As already stated, the Tribunal has requested the Minister for the Environment, Heritage and Local Government to provide the necessary resources to engage additional legal personnel to augment its current legal team.
- 8.02 This request has been made because the Tribunal requires additional legal staff to deal with the complex and protracted matters which are the subject of the current investigations and inquiries of the Tribunal.
- 8.03 The Tribunal is conscious of the significant cost to the Exchequer of its maintenance to date and into the future, and has always exercised the greatest possible restraint in seeking additional resources, but nonetheless believes that unless additional legal personnel are made available to the Tribunal its efficient progress in the current and future investigations will be adversely affected.
- 8.04 The Minister for the Environment, Heritage and Local Government has informed the Tribunal that its request for additional personnel is currently under consideration.

Current Legislative Provisions.

- 8.05 The passing of the Tribunals of Inquiry (Evidence) (Amendment) Act 2004 on the 5th May, 2004 allows, inter alia, for the division of the Tribunal, at the direction of the Chairman into two or three divisions.
- 8.06 No decision has yet been taken by the Chairman to subdivide the Tribunal as provided for in the Act of 2004. The Tribunal is presently of the view that it should continue to sit as a three person Tribunal to hear the evidence in the ongoing interlinked modules in view of their complexity, the length and content of the public hearings to date and into the foreseeable future. Close to 2 years of evidence in public in the interlinked modules has already been heard by the currently constituted three person Tribunal.

- 8.07 Opportunities may arise in the future when the Tribunal might be usefully subdivided into two or three divisions and such opportunities may well arise in the course of the current interlinked modules where short unrelated modules or unrelated compliance issues meriting a public hearing can be dealt with.
- 8.08 Any subdivision of the Tribunal into two or three separate divisions will, however, require substantial additional resources. For example, in the event that the Tribunal was divided into three separate divisions, two further hearing rooms would be required, additional legal personnel will need to be engaged and other additional staff including Registrars, IT staff and ancillary and support staff would be required to enable these divisions to operate effectively.

Legal proceedings in which the Tribunal is involved or otherwise concerned.

- 8.09 Legal proceedings have been instituted in the High Court (and remain current) in three separate instances directly involving the Tribunal as Defendant or Respondent. These are briefly summarised as follows:-
- (i) Proceedings instituted by Mr Raphael Burke as Plaintiff on the 26th of September, 2003. These proceedings were commenced by Plenary Summons and (inter alia) challenge the entitlement of any person other than the former Chairperson of the Tribunal Mr Justice Feergus Flood to adjudicate on costs issues in respect of matters heard by him alone. They also seek Orders that Mr Burke is entitled to his costs associated with the Tribunal in the event that Mr Justice Feergus Flood is unable to adjudicate thereon.
- These proceedings have not progressed since their service on the Tribunal. The Tribunal cannot say at this time if the plaintiff intends to pursue his action further.
- (ii) Judicial review proceedings were instituted by Mr. Owen O'Callaghan on 1st of April, 2004.
- These proceedings challenge the validity of a Ruling of the Tribunal made on the 24th of March, 2004 and the Tribunal's treatment of certain confidential information and documentation which came into the Tribunal's possession in the course of its private inquiries.
- The Tribunal anticipates that these proceedings will be heard by the High Court in the coming months.
- (iii) Proceedings were instituted by Mr Joseph Murphy, Mr Frank Reynolds and Joseph Murphy Structural Engineering on the 20th day of April, 2004.
- These proceedings were commenced by Plenary Summons and (inter alia) challenge certain findings and conclusions in the Tribunal's Second and Third

Interim Reports, and also seek to challenge the constitutionality of specific legislative provisions relevant to the establishment and work of the Tribunal.

The Tribunal anticipates that these proceedings will be heard by the High Court in the coming months.

- 8.10 The Tribunal has also been made aware of legal proceedings in which it is not a named defendant but which concern the operation of the costs provisions of the Tribunals of Inquiry (Evidence) Acts.

Proceedings were issued by Mr Michael Bailey and others against the Minister for Finance and the Attorney General and Others on the 22nd of March, 2004 and were notified to the Tribunal by the Plaintiff's solicitors on the 1st of June, 2004.

The Tribunal is unaware of the likely hearing date of such proceedings.

- 8.11 Decisions of the High Court in these actions may be appealed to the Supreme Court, which would further prolong their eventual conclusion.

- 8.12 It is the intention of the Tribunal to continue to carry out its functions pursuant to its Terms of Reference having regard to the provisions of the Tribunals of Inquiry (Evidence) Acts 1921-2004, unless otherwise restrained by order of the High Court.

DATED THIS 4th DAY OF JUNE, 2004

JUDGE ALAN P MAHON S.C.
CHAIRMAN
(ON BEHALF OF THE MEMBERS OF THE TRIBUNAL)