



Agency 2014 Project Approval Application
For
DART Underground Phase 3 –
IÉ/08/0003

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Figure 1: DART Underground Alignment and Related Infrastructure

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1 Title of Project

DART Underground Phase 3 – Reference Design, Railway Order and Phase 4 Tender Process

2 Identify NTA Project Type (tick one)

- a) Cycling / Walking Programme;
- b) Bus Network Programme;
- c) Traffic Management Programme;
- d) Safety Programme; or

e) Other Projects. ✓

3 Delivery Agency:

Iarnród Éireann

4 Applicant Agency:

Iarnród Éireann

5 Full Description of Works Proposed

DART Underground involves construction of approximately 8.6km of new rail from the CIÉ Inchicore Works to tie into the Northern Mainline south of East Wall Road. The project comprises of approximately 7.6km of twin tunnel between the portals at East Wall and Inchicore, with approximately 1km of rail in cutting to tie-in with existing northern line and a turnback at Inchicore (in advance of eventual tie-in to Kildare line as part of Kildare Route Project Phase 2). The project includes the provision of six new stations at Inchicore, Heuston, Christchurch, St. Stephen's Green (associated with Metro North), Pearse and Docklands. Significant ancillary development, including ventilation/intervention shafts and control centres, are also associated with DART Underground.

DART Underground consists of the following infrastructure:

- A permanent access road from Kylemore Way to the proposed surface station within the CIÉ Works at Inchicore, with reconfiguration of bund walls for the existing CIÉ fuel tanks (CIÉ Works is a notified Seveso site, under the European Communities (Control of Major Accident Hazards involving Dangerous Substances) Regulations 2006 (SI74/2006));
- A surface station within a retained cutting within the CIÉ Works at Inchicore;
- A cut and cover portal within the CIÉ Works at Inchicore;

- An ESB substation within the CIÉ works at Inchicore;
- An intervention shaft within CIÉ sport grounds at Inchicore (adjoining CIÉ Works) with future provision for ventilation;
- An intervention and ventilation shaft within the curtilage of Memorial Park;
- An underground station beneath the existing Heuston Station, with associated intervention and ventilation shaft;
- An intervention shaft at Island Street;
- An underground station beneath the amphitheatre adjoining Dublin City Council Civic Offices to the north of Christchurch, with an associated intervention and ventilation shaft on Cook Street;
- An underground station at St. Stephen's Green (a shared station with Railway Procurement Agency Dublin Metro North) with associated intervention and ventilation shafts;
- An underground station at Sandwith Street/Boyne Street with a dedicated underground pedestrian link to the existing Pearse Station and also with an associated intervention and ventilation shaft on Fenian Street/Bass Place;
- An underground station at North Docklands (entry via LMS Building North Wall Quay and Station Square, Mayor Street), between North Wall Quay and Sheriff Street and bound by New Wapping St / Park Lane, with an associated intervention and ventilation shaft;
- Maintenance facility and intervention shaft on CIÉ lands north of Sheriff Street;
- A cut and cover portal structure, referred to as the Eastern Portal, within CIÉ Yard at North Wall, north of Sheriff Street, with associated retained cut to the tie in to the existing northern rail line south of East Wall Road;
- An ESB substation on CIÉ lands adjacent to Sheriff Street and Abercorn Road;
- An Operational Control Centre building and traction substation to be located partly on CIÉ lands adjacent to West Road (locally known as Ossory Road), East Wall;
- Realignment of West Road (locally known as Ossory Road) and the construction of a West Road railway underbridge; and
- Twin bored tunnels, to be constructed using two tunnel boring machines between Eastern Portal and the Inchicore Portal.

The location and alignment of DART Underground is shown on Figure 1.

From the outset, the over-riding objective of the design was to provide an integrated transport scheme while respecting Dublin City's historic and sensitive setting. This culminated in the finalization of the Reference Design and Railway Order application. An application for a Railway Order, in compliance with Transport (Railway Infrastructure) Act 2001 (as amended) was submitted to An Bord Pleanála on 30th June 2010.

In order to construct DART Underground lands/property, not in the ownership of CIÉ are required. The extent of the lands necessary to implement the project were detailed in the Railway Order Application, and for which rights to compulsorily acquire such lands were sought.

The Railway Order Application set out the extent of the lands necessary to construct and operate DART Underground, for which compulsory purchase orders were sought. Acquisition and possession rights for property, lands and substratum were set out in the application. An Environmental Impact Statement was also submitted, describing the proposed railway works, the potential and predicted impacts and the measures envisaged to avoid, reduce and remedy significant adverse effects.

A copy of the Non-Technical Summary of the EIS is included in Appendix 5.A herein for convenience.

Further to consideration of the Railway Order Application and submissions made by the public, and further to a lengthy oral hearing, An Bord Pleanála approved the Railway Order on 14th December 2011.

Judicial Review proceedings were taken by two private land owners along the route in February 2012. The judicial review proceedings concluded in February 2014 with the Railway Order remaining intact, with the only amendment being the requirement to serve notice to treat on all referenced land/property within 18 months of the Railway Order becoming effective (February 2014).

Since the Railway Order Application in June 2010, Iarnród Éireann has maintained a review of planning applications to Dublin City Council, along the route of DART Underground, to ensure that development proposals lodged do not affect the integrity of DART Underground or compromise the scheme when it is reinitiated as Phase 4 funding becomes available.

Further to publication of the Department of Public Expenditure and Reform Infrastructure and Capital Investment 2012-16 report (dated November 2011), which stated that the DART Underground was deferred for consideration in the next capital programme, the DART Underground has been significantly scaled down, in terms of funding and resources. However, in order to ensure that the project is protected and ready for re-commencement at a future date, a degree of project administration is necessary.

Project administration will ensure compliance with the requirements of the Railway Order, to attend to matters arising during the Judicial Review proceedings and to address issues raised by the public in relation to the project.

6 Description of Project Benefits

The objective of DART Underground is to overcome a historic transport legacy. Dublin currently suffers as a result of the heavy rail network terminating at the edge of the city centre rather than penetrating through the centre itself, of which Heuston Station is a prime example.

DART Underground is a vital component of providing a sustainable and integrated public transport service in Dublin and is the missing link in the transport network. Without DART Underground it will be impossible to alleviate the current constraints of existing InterCity, regional and commuter rail services. This is because all heavy rail services currently compete for limited city centre train path capacity and terminus platforms, particularly during the critical commuter peak periods. This limits the number of train services in and out of Dublin. DART Underground transforms the Dublin rail network from the current series of individual lines into a network.

This lack of a joined up and integrated network imposes operational capacity constraints and hampers the role of the railway, in terms of delivering quality high capacity services as a real and more sustainable alternative to the private car.

The DART Underground will significantly contribute to delivering a quantum improvement in commuter rail services for the greater Dublin area and beyond. It will:

- Facilitate a major increase in rail service frequency, in line with demand, along each of the four rail lines radiating from the city centre, those being the Cork Mainline, Northern (Belfast) line, Sligo/Maynooth line and the Rosslare line.
- Accommodate superior rail access from a very wide range of locations to the city centre and particularly to the key business districts that are currently not well served by the commuter rail network including St. Stephen's Green and Docklands.
- Deliver improved public transport connectivity between suburbs.
- Cater for easy interchange between public transport services and modes in the city centre.

An economic appraisal of DART Underground was undertaken by an independent consultancy, Colin Buchanan and Partners, during Phase 3 of DART Underground. The economic appraisal methodology conformed to the Department of Transport guidance (Guidelines on a common appraisal framework for transport projects and programmes, 2009) and was subject to an independent audit by Goodbody Economic Consultants on behalf of the National Transport Authority. The appraisal found that DART Underground offered a benefit:cost ratio of 2.39:1, increasing to 4.04:1 if wider economic benefits are included.

A full copy of this business case has been previously presented to the National Transport Authority and the Department of Transport. A copy of the redacted version of the business case provided on the National Transport Authority's website is provided in Appendix 6.A.

7 Statutory Processes

The DART Underground was subject to a Railway Order Application.

- The Railway Order was submitted to An Bord Pleanala on 30th June 2010.
- The DART Underground Railway Order was made by An Bord Pleanala on 16th December 2011.
- The Judicial Review Proceedings against the Railway Order were completed on 12th February 2014

The DART Underground Railway Order has now been secured. In order to ensure that the project can be constructed, the Notice to Treat for all referenced lands will need to be served within 18 months of the Railway Order becoming effective (i.e. Notice to Treat must issue by August 2015).

A copy of the Railway Order made by An Bord Pleanala is included in Appendix 7.A herein.

A copy of the High Court Judgement on the Judicial Review Proceedings is included in Appendix 7.B herein.

8 Consistency with Plans

DART Underground is consistent and complements national, regional and local policy and plans from a sustainable transport and land-use development viewpoint. It is also consistent with the Government's objectives to change commuter patterns from private car to public transport.

Chapter 4 of the DART Underground EIS Non-Technical summary, contained in Appendix 5.A, provides an overview of the planning and development context of DART Underground and an assessment of its compliance with the relevant national, regional and local policy, plans and guidelines.

The DART Underground Programme was originally set out in the DTO 'A Platform for Change' document, and it was subsequently incorporated into Transport 21. Funding for various aspects of the Programme was approved under Transport 21 including the first phases of the city centre resignalling project.

The NTA undertook a comprehensive review of 'A Platform for Change' in its 'Greater Dublin Area Draft Transport Strategy 2011 – 2030 (2030 Vision)'. This strategy update incorporates the full DART Underground Programme.

9 Proposed Programme for Design, Tender, Construction, Monitoring Stages

The DART Underground has been organised in 4 phases:

- Phase 1 – Feasibility and General Alignment, which was completed in 2004;
- Phase 2 – Preliminary Design, which was completed in 2008;
- **Phase 3 – Reference Design, Railway Order and Phase 4 Tender Process, currently on-going; and**
- Phase 4 – Construction and Operation Phase.

With respect to Phase 3, the scope of works has been substantially delivered. To date, the project has delivered:

1. The Reference Design;
2. The Railway Order has been approved by An Bord Pleanála,
3. The Railway Order has been secured following completion of Judicial Review proceedings;
4. The pre-qualification exercise was completed, with three international consortia short-listed;
5. Invitation to Negotiate documents were produced and ready for issue.

Further to instruction from NTA in November 2011, in line with the Government's decision to defer the project to a future date, the DART Underground was significantly scaled down in an orderly manner.

The inputs currently involved with Phase 3 are necessary for effective control and safeguarding of the DART Underground Railway Order and the route during the deferral period up to 2015. This is the timeframe indicated by Government when DART Underground will be re-considered under the next Capital Investment Programme. There are also administration issues associated with complying with statutory requirements arising from the Railway Order and associated legislation.

10 Costs

Costings for all previous phases of DART Underground, including those incurred for the existing Phase 3, are provided below. The funding requirements, sought under this application are highlighted below.

Phase 1: Feasibility and General Alignment

- Funding approval in March 2002 of €1M (Exchequer funded);
- Phase 1 complete in June 2003;

- Outturn spend of €0.937M.

Phase 2: Preliminary Design

- Funding approval in December 2005 of €0.5M (Exchequer funded), to assess mono bore versus twin bore strategy and design of Heuston tunnel portal configuration;
- Funding approval in April 2006 of €2.7M (Exchequer funded), to verify alignment, develop outline station design, carry out preliminary geotechnical investigations and verify cost estimates;
- Phase 2 complete in May 2008;
- Outturn spend of €3.36M (versus consolidated approval of €3.2M).

Phase 3: Reference Design, Railway Order and Phase 4 Tender Process

- Funding approval in November 2007 (Exchequer funded) of €5M to initiate Phase 3;
- Funding approval in July 2008 (Exchequer funded) of additional €55M to complete Phase 3;
- Funding of €10M provided by TEN-T;
- Approval to close out Phase 3 in orderly manner to final cost of €41.5M.

It is estimated that, subject to Government decision to recommence DART Underground in 2015, the cost of delivering remaining scope can be completed within a €12M budget (based on current 2010 prices).

Overall project costs incurred to date (October 2012):

Phase 1	€1M
Phase 2	€3.36M
Phase 3 (to date)	€41.5M
Total	€47M
Less TEN-T funding	-€10M
Phase 3 (funding sought 2012-2015) <small>Note 1</small>	€1.15M

Note1: NTA approved funding of €1.15M to cover ongoing administrative and management costs from 2012 to end 2015 to control and safeguarding of the DART Underground Railway Order and the route during the deferral period, up to end of 2015.

Current Phase 3 Funding Application

Over the 39 months for which funding was sought, the €1.15M was to be allocated to address the following:

1	Direct DART Underground project management and administration	€0.35M
2	Legal Representation for Judicial Review proceedings	€0.45M
3	Internal & external specialist/technical inputs (support to project management and legal team, as necessary)	€0.30M
4	Contingency	€0.05M
	Total	€1.15M

In 2012, €150k of the funding was claimed and paid.

In 2013, €415 of funding was claimed.

In 2014, funding of €200k is sought for

- Continued project administration and management;
- Actions associated with complying with requirements of the Railway Order;
- Legal costs associated with defending the Judicial Review (both CIÉ and 50% of judicial review third parties).

The cashflow projection for 2014 is split equally across the year:

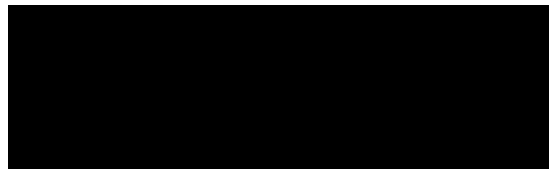
	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total by year
Year	€'000	€'000	€'000	€'000	€'000
2014	50	50	50	50	200
Project Total Cash Flow					200

11 Statutory Approvals Status

In accordance with the Transport (Railway Infrastructure) Act 2001 (as amended), a Railway Order Application was made to An Bord Pleanála on 30th June 2010. The Railway Order was approved by An Bord Pleanála on 14th December 2011.

12 Contact Person (responsible for project implementation):

Name:



Email:

Phone:

13 Contact Person (responsible for project administration):

Name:

Email:

Phone:



APPENDIX 5A

Appendix to Question 5

DART Underground

Environmental Impact Statement

Non Technical Summary

APPENDIX 6A

Appendix to Question 6

DART Underground

Economic Appraisal

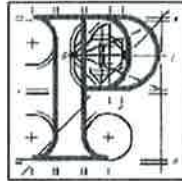
APPENDIX 7A

Appendix to Question 7

DART Underground

Railway Order, made by An Bord Pleanála on 14th December 2011

An Bord Pleanála



RAILWAY ORDER

TRANSPORT (RAILWAY INFRASTRUCTURE) ACT 2001 - 2011

**DART UNDERGROUND ELECTRIFIED HEAVY
RAILWAY ORDER 2011**

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BOOK OF REFERENCE - SCHEDULES

The First Schedule	The Railway and Railway Works authorised by this Order.
The Second Schedule	Lands which may be acquired.
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The Seventh Schedule	Private Rights which may be extinguished
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The Ninth Schedule	New roads which may be constructed
The Tenth Schedule	Public Roads which may be altered.
The Eleventh Schedule	Conditions imposed by An Bord Pleanála
The Twelfth Schedule	Explanatory Notes in relation to the decision of An Bord Pleanála
The Thirteenth Schedule	Agreement between the applicant and Dublin City Council

PREAMBLE
(Including reasons and considerations)

AN BORD PLEANÁLA (hereinafter also referred to as the “Board”) in exercise of the powers conferred on it by section 43 of the Transport (Railway Infrastructure) Act 2001 (as amended and substituted) (hereinafter also referred to as “the 2001 Act”)

HAVING HAD REGARD TO:

- (a) the application for a Railway Order made on the 30th day of June 2010 by Córas Iompair Éireann;
- (b) the Draft Railway Order and documents submitted with the application, including the content of the Environmental Impact Statement (EIS);
- (c) the submissions made to the Board in writing under section 40(3) of the 2001 Act;
- (d) the submissions made to the Board in writing by the authorities and persons referred to in section 40(1)(c) of the 2001 Act;
- (e) national policy as contained in the provisions of *Transport 21* which contains a main objective to construct the Suburban Rail Interconnector providing a tunnelled link between Heuston Station and the Docklands, via St. Stephen’s Green and linking with the Northern line, and the provisions of the *National Development Plan 2007-2013* which contains an objective to commence the Heuston Docklands Interconnector;
- (f) the provisions of “Smarter Travel: A Sustainable Transport Future - *A New Transport Policy for Ireland 2009 – 2020*” which sets out how the vision of a sustainable travel and transport system can be achieved;
- (g) regional policy contained in the provisions of ‘A Platform for Change – Dublin Transportation Office Strategy 2000-2016’ and the Regional Planning Guidelines for the Greater Dublin Area 2010-2022;
- (h) the provisions of the Dublin City Development Plan 2011-2017, the Dublin Docklands Area Master Plan 2008, the Docklands North Lotts Planning Scheme 2002 and the Liberties Local Area Plan 2009;
- (i) the written and oral submissions made by the observers and the responses by the applicant at the oral hearing held into the Railway Order application (which took place between November 2010 and April 2011);
- (j) the agreement between the applicant and Dublin City Council, which is incorporated into the schedules of this Order;

- (k) the Construction Stage Scheme Traffic Management Plan which aims to minimise traffic disruption for road users during the scheme construction, in co-operation with the road authority (Dublin City Council), An Garda Síochána and other stakeholders;
- (l) the likely consequences for proper planning and sustainable development in the area in which it is proposed to carry out the Dart Underground works and for the environment of the works; and,
- (m) the reports of the Board's Inspector and the specialist advisors (including the report of the oral hearing).

AND WHEREAS:

The Board completed an environmental impact assessment of the proposed scheme, which considered *inter alia*:

- the environmental impact statement submitted with the application,
- the further submissions made by the applicant at the oral hearing,
- the environmental aspects raised in writing and at the oral hearing by observers, and
- the reports, assessment and conclusions of the Inspector (and the reports of the Boards specialist advisors) in relation to the environmental impacts of the scheme, the conclusions of which were broadly accepted by the Board.

The Board considered that the environmental impacts of the scheme are acceptable and, subject to compliance with the mitigation measures set out in the EIS, as modified at the oral hearing and as conditioned by the Board, the scheme would not have unacceptable adverse effects on the environment.

IT IS THEREFORE CONSIDERED THAT:

Subject to compliance with the conditions set out below, the development of the Dart Underground Electrified Heavy Railway from Inchicore to East Wall via the city centre:

- (a) would provide strategic interconnection between existing and future public transportation systems thereby supporting improved integrated public transport in the wider Dublin region;
- (b) would address the disjointed nature of the national rail network converging on Dublin, enabling more efficient functioning of regional rail services;
- (c) would provide planning benefits and urban regeneration opportunities at the locations of new stations and in areas served by the alignment;
- (d) would not have unacceptable impacts on the environment from construction or operation;

- (e) would not have an unacceptable impact on traffic safety or congestion;
- (f) would not be prejudicial to human health;
- (g) would not adversely affect the character or setting of any protected structure or National Monument; and,
- (h) would be consistent with the proper planning and sustainable development of the area.

FURTHERMORE, in relation to construction impacts:

The Board acknowledged that the construction phase of the proposed development would result in localised negative impacts at the major works sites (that is at East Wall and Inchicore, and at the locations of stations and intervention shafts along the alignment) during the construction period. However it was considered that such impacts are an inevitable consequence of the scale and nature of the project, and that the applicant had demonstrated comprehensive mitigation measures would be employed to alleviate impacts. The Board accepted that the long term benefits of the scheme would outweigh the short term impacts due to construction.

AND THEREFORE:

The Board, being of the opinion that the said application should be **GRANTED** and that the acquisition of the land and any substratum of land specified in this Order and of the rights in over or under public roads specified in this Order (with, in the case of a national road, the consent of the Minister, and in the case of any other public road, the consent of the Minister for the Environment, Community and Local Government), is necessary for giving effect to this Order,

HEREBY AUTHORISES:

The applicant to construct, maintain, improve and operate the railway or the railway works specified herein or any part thereof, in such manner and subject to such conditions, modifications, restrictions and requirements (and on such other terms) as the Board thinks proper and specifies herein.

AND the Board hereby **ORDERS** as follows:

**PART I
PRELIMINARY**

**ARTICLE 1
Citation**

1. This Order may be cited as the DART Underground Electrified Heavy Railway Order 2011.

**ARTICLE 2
Definitions / Interpretations**

1. In this Order (save where the context otherwise requires): –

“Act of 1961” means the Road Traffic Act 1961;

“Act of 1993” means the Roads Act 1993;

“Act of 1994” means the Road Traffic Act 1994;

“Act of 2000” means The Planning and Development Act 2000, as amended by The Planning and Development (Strategic Infrastructure) Act 2006, and further amended by The Planning and Development (Amendment) Act 2010

“The Act”, “the Act of 2001”, “the 2001 Act” means the Transport (Railway Infrastructure) Act 2001 as amended and substituted by the Railway Safety Act 2005, the Planning and Development (Strategic Infrastructure) Act 2006, the Planning and Development (Amendment) Act 2010, the Local Government (Roads Transport Act) 2007, the Dublin Transport Authority Act, 2008 and the Public Transport Regulation Act, 2009;

“Apparatus” includes any sub-station, inspection chamber, junction box, booster station, pipe, sewer, drain, duct, tunnel, conduit, wire, cable, fibre, insulator, and such other thing as may be used by an Undertaker for or in connection with the provision of a service to the public;

“Applicant” means Córas Iompair Éireann and a railway undertaking;

“Construct” includes build, make, and put together;

“DART” means Dublin Area Rapid Transit;

“Deposited Plan” means the copy of the plan deposited together with this Order pursuant to section 46 of the Act;

“Execute” includes construct, maintain and improve and cognate words shall be construed accordingly;

“Land” has the meaning assigned to it by the Act of 2000 and includes tenements, hereditaments, houses and buildings and any other structure, land covered by water and any estate, right or interest in or over land and includes any substratum of land or substrata of land;

“Local Authority” has the meaning assigned to it by the Act of 1993;

“Maintain” includes inspect, repair, adjust, alter, remove, reconstruct, renew, replace and cognate words shall be construed accordingly;

“Mechanical Power” means electrical and any other motive power;

“Minister” means the Minister for Transport;

“Planning Authority” has the meaning assigned to it by the Act of 2000;

“Public Road” has the meaning assigned to it by the Act of 1993 but also includes any road which may become such a public road during the currency of this Order;

“Railway” means a railway (whether above, on or under the ground) whose operation is authorised by a railway order and includes a railway or part of a railway for which railway works are authorised by this Order;

“Railway Undertaking” means any person who has been granted a railway order or another person with whom that person has made arrangements under section 43(5) of the Act and includes the person who made the application for this Order, C oras Iompair  ireann;

“Railway Order” means an order made under section 43 of the Act of 2001;

“Reconstruct” means wholly or partly rebuild, repair, restore, replace, alter and cognate words shall be construed accordingly;

“Road” has the meaning assigned to it by the Act of 1993 and includes “bridge”;

“Road Authority” has the meaning assigned to it by the Act of 1993;

“Substratum of land” means any subsoil or anything beneath the surface of the land required

- (i) for the purposes of a tunnel or tunneling or anything connected therewith, or
- (ii) for any other purpose connected with a railway order;

“Undertaker” means any person or body with power and authority in relation to apparatus to relocate or cause it to be relocated as provided for in Article 17.

“Works” includes railway works as defined in the Act but also includes where the context so requires or admits other works authorised by this Order including such acts or operations as are included in the meaning assigned to “works” in the definition of “railway works” contained in the Act. The methods by which such said acts or operations are executed include, but are not limited to, boring (by Tunnel Boring Machines or otherwise) mining, blasting, drilling, breaking, cutting and covering.

ARTICLE 3 **Incorporation of Enactments**

The Regulation of Railways Acts, 1840 – 1893 and any other Act relating to railways shall apply to the railway works authorised by this Order in so far as they are applicable for the purposes of and are not inconsistent with or varied by the provisions of this Order, and the Act together with the Order shall be deemed to be the Special Act for the purposes of those enactments.

PART II
WORKS AND RELATED PROVISIONS

ARTICLE 4
**Construction, operation, improvement and maintenance of Railway and
Railway Works**

1. Subject to the provisions of this Order, the Railway Undertaking may, on the lines, in the places and according to the levels shown on the Deposited Plan, construct, operate improve and maintain the railway and railway works specified in the First Schedule and referred to in the Schedules hereto and execute the works and all other works and things necessary or ancillary thereto.
2. Construction of the works authorised by this Order shall be substantially completed at the end of the period of ten (10) years from the date this Order comes into force or within such further period as the Board may allow on the application of the Railway Undertaking.
3. The railway works authorised by this Order shall be executed, and the railway shall be operated, in accordance with the conditions, as set out in the Eleventh Schedule (Conditions), and in accordance with the understandings reached at the oral hearing, as set out in the Thirteenth Schedule (Agreement with Dublin City Council).
4. Paragraph 2 of this Article shall not apply to any works required for the operation, improvement or maintenance of the railway works authorised by this Order.
5. The railway may be operated by mechanical power.

ARTICLE 5
Discharge of Water

1. The Railway Undertaking may alter the level or the course of, or make use of for the drainage of water, any surface or underground watercourse or river, sewer or drain and may construct provide and use any underground or overground tanks or pipes to assist in such drainage in connection with the construction maintenance or operation of the railway works and for that purpose may make any convenient connections with any such surface or underground watercourse or river, sewer or drain, subject, however, to the following provisions:
 - (a) The Railway Undertaking shall not discharge any water into, or interfere with, any surface or underground watercourse or river, sewer or drain except with the consent of the sanitary authority to which it belongs which consent shall not be unreasonably withheld or delayed

and in accordance with such terms and conditions as such sanitary authority may reasonably impose;

- (b) The Railway Undertaking shall take such steps as may be reasonably practicable to ensure that any water discharged into any such public surface or underground watercourse or river, sewer or drain under the powers conferred on the Railway Undertaking by this Article is free from soil or polluting or deleterious material.

ARTICLE 6 **Maximum Working Area**

1. In constructing, maintaining and improving any of the Railway Works authorised by this Order, the Railway Undertaking may make modifications to allow for innovations in construction methods or technology but such that the extent of lands referenced to accommodate this Scheme, and any such modifications, has been limited to:
 - (i) 10 metres horizontally from the central lines of running tunnels;
 - (ii) 5 metres vertically upwards, and no limit vertically downwards, from the outside edge of running tunnels;
 - (iii) 15 metres horizontally and 15 metres vertically upwards from the central lines of cross passage tunnels;
 - (iv) 10 metres horizontally and 10 metres vertically upwards from the outside edge of platform tunnels;
 - (v) 20 metres horizontally from the outside edge of underground station boxes and shafts.

ARTICLE 7 **Closure of Roads - Permanent and Temporary**

1. The Railway Undertaking may, for the purpose of executing the railway works authorised by this Order or for any purpose incidental thereto, from time to time request a Road Authority by order to close permanently the roads specified in the Tenth Schedule to traffic and to close temporarily any one or more of the public roads specified in the Fourth Schedule to traffic and the following provisions shall apply in relation to such a request:
 - (a) The Railway Undertaking shall give to the Road Authority not less than twenty-one days prior notice in writing of its requirement to close permanently each such public road.

- (b) The Railway Undertaking shall give to the Road Authority not less than twenty-one days prior notice in writing of its requirement to close temporarily each such public road and such notice shall:
- (i) Specify the road which is required to be closed temporarily;
 - (ii) State the period for which, in the reasonable opinion of the Railway Undertaking, it is necessary to close temporarily such road;
 - (iii) Give particulars of any alternative route or routes if any which the Railway Undertaking believes will be available while such road is closed temporarily;
 - (iv) Contain a brief description of the works which the Railway Undertaking proposes to carry out while such road is closed temporarily;
 - (v) State whether the order closing the road is required to be subject to conditions as to whether any and if so what traffic or persons may be allowed use the road and at what times and on what if any conditions.

2. A request made to a Road Authority under this Article shall not be unreasonably refused or delayed.

ARTICLE 8 **Power to Alter Public Roads**

1. Subject to the provisions of paragraph (2) of this Article the Railway Undertaking may in connection with or for the purpose of railway works in or adjacent to any public road and in accordance with the deposited plans and specified in the Tenth Schedule:
- (a) Alter the width of the carriageway of the road by altering the width of any footway, cycle track, verge or other land within the boundary of said road; or
 - (b) Alter or interfere with the level of any kerb, footway, cycleway, verge or other land or structure within the boundary of the said road; or
 - (c) Realign the road where necessary.
2. Before exercising any power under paragraph (1) of this Article, the Railway Undertaking shall obtain the consent of the relevant Road Authority, which consent shall not be unreasonably withheld or delayed.

3. The works authorised by this Article may be constructed and maintained in, upon and under the public roads specified in the Ninth and Tenth Schedule.

ARTICLE 9

Construction of New Roads

1. The Railway Undertaking may, with the consent of the relevant Road Authority, (which consent shall not be unreasonably refused or delayed), construct the new roads specified in the Ninth Schedule with all necessary works connected therewith either by way of diversion from or in substitution for an existing public road or as an additional road.
2. Each new road constructed under this Article shall when completed, unless otherwise agreed between the Railway Undertaking and the Road Authority, be maintained by and at the expense of the Railway Undertaking for a period of 12 months from the date of its completion and at the expiration of that period shall be maintained by and at the expense of the Road Authority in whose functional area such new road is situated.

ARTICLE 10

Agreement between the Railway Undertaking and a Road Authority or other person

1. The Railway Undertaking may, from time to time, enter into and carry into effect and thereafter from time to time alter, renew or vary contracts, agreements or arrangements with a road authority or any other person in relation to:
 - (a) Laying down, making, paving, metalling or keeping in repair any road and the railway thereon, or
 - (b) Altering the levels of the whole or any part of any road on which the Railway Undertaking is authorised to lay down the railway and the proportion to be paid by them or either of them of the expenses of any such works.

ARTICLE 11

Tree Lopping

1. The Railway Undertaking may lop, remove or cut any tree, shrub or hedge that obstructs or interferes with any railway works authorised by this Order.
2. With regard to paragraph 1 above, where a tree, shrub or hedge lies on land not owned by the Railway Undertaking and for the purpose of works authorised by this Railway Order, needs to be lopped or cut, the Railway Undertaking shall serve on the owner or occupier of the land or, in the case of a public road, on the Road Authority charged with the maintenance of such road, on which such tree, shrub or hedge is standing, notice in writing of its intention so to lop or cut, and, after the expiration of 28 days from the date of such service the Railway

Undertaking may lop or cut any tree, shrub or hedge if the owner or occupier has not already done so.

3. Where an occupier or owner of land cuts or lops any tree, shrub or hedge under this article, the reasonable expense (if any) incurred by him or her in so doing shall be paid to him or her on demand by the Railway Undertaking, and the amount of such expenses shall be recoverable from the Railway Undertaking, in default of agreement as a simple contract debt in any court of competent jurisdiction.

PART III
ACQUISITION AND POSSESSION OF LAND AND RIGHTS

ARTICLE 12
Power to Acquire Land

1. Subject to the provisions of the Act the Railway Undertaking may acquire compulsorily all or such part of the land and any substratum of land shown on the deposited plan and described in the Second and Third Schedules and the rights in under or over land described in the Fifth Schedule as the Railway Undertaking may require for the construction, operation, improvement and maintenance of the railway works authorised by this Order and works incidental or ancillary thereto.
2. In relation to any such acquisition of land the provisions of sections 4 and 8 of the Railways Act 1851 shall not apply.

ARTICLE 13
Power to Temporarily Acquire and Occupy Land

1. Subject to the provisions of the Act the Railway Undertaking may enter upon and take up and retain temporary possession and occupation of the land, or any part of the land, shown on the deposited plan and specified in the Fourth Schedule.
2. In particular, but without prejudice to the generality of paragraph 1 hereof, the Railway Undertaking may enter upon and take up and retain temporary possession and occupation of such land or any part of such land for the provision of working sites and access for construction purposes or for or in connection with the railway works authorised by this Order and for such purposes may construct or remove any structures thereon or therefrom, cut and remove anything growing on such land or part thereof, and generally do all such things to on beneath and with such land as may be required to adapt them for or to facilitate the execution of the said works.
3. Before giving up possession of the land or any part of the land of which temporary possession and occupation may have been taken up pursuant to this Article the Railway Undertaking shall remove all temporary works and structures constructed by it on the said land and, subject to any contrary provision of this Order or any agreement to the contrary with the owners and occupiers of the said land, shall restore the said land to its former state as far as possible and as far as may be reasonably required to the reasonable satisfaction of the owners and occupiers.
4. The Railway Undertaking shall not be required to acquire any land of which temporary possession and occupation may have been taken up pursuant to this Article.

5. The Railway Undertaking shall pay to the owners and occupiers of land, of which it takes up temporary possession and occupation by virtue of this Article, such compensation for any loss thereby suffered as though it were loss suffered and the amount of the compensation determined in consequence of the exercise by the Railway Undertaking of a power conferred upon it by Section 48 of the Act:

ARTICLE 14

Acquisition of Easements and other Rights over Land

1. Subject to the provisions of the Act the Railway Undertaking may acquire compulsorily such rights over all or part of the land described in the Fifth Schedule as may be required for the purposes of the Railway or the railway works authorised by this Order

ARTICLE 15

Extinguishment of Rights, including Rights of Way and Temporary Interference with Rights

1. The Railway Undertaking may extinguish the public rights including the rights of way specified in the Sixth Schedule.
2. The Railway Undertaking may extinguish all private rights including the rights of way specified in the Seventh Schedule.
3. The Railway Undertaking may temporarily interfere with or stop up the rights of way specified in the Eighth Schedule of this Order.

ARTICLE 16

Period within which the Railway Undertaking may Compulsorily Acquire Land and Interests in Land¹

1. The powers conferred by this Order to acquire compulsorily land or rights in relation to land and to enter upon and take up temporary possession of land shall cease at the end of the period of seven (7) years beginning on the day upon which this Order comes into force
2. The power to acquire compulsorily land or rights in relation to land shall, for the purpose of this Article, be deemed to have been exercised where Notice to Treat has been served in respect of such land or rights before the end of the period mentioned in paragraph 1 of this Article.
3. Notwithstanding paragraph 1 of this Article, the Railway Undertaking shall be entitled to remain in temporary possession and occupation of land pursuant to Article 12 of this Order after the end of the period mentioned in paragraph 1 of this Article where possession of such land was taken before the end of such period.

¹ See 12th Schedule 'Explanatory Notes' in relation to the period set out.

PART IV
MISCELLANEOUS AND GENERAL

ARTICLE 17
Interference with Apparatus

1. Wherever the Railway Undertaking is authorised to execute works by virtue of this Order, and any apparatus will or may be affected in consequence thereof the following provisions shall apply:-

(a) Where land is acquired by or for the Railway Undertaking an Undertaker whose apparatus is under, in, over, along or across the said land or any part thereof may and, upon reasonable request by the Railway Undertaking, shall, without unreasonable delay, do one or more of the following:-

(i) remove the apparatus and place it or other apparatus in substitution for it in such other position or location as may be agreed with the Railway Undertaking;

(ii) take such further or other steps or make such further or other provision with the agreement of the Railway Undertaking as may secure the apparatus and the works of the Railway Undertaking and the proper functioning of each of them respectively from mutual interference or damage.

(b) Where the apparatus of an Undertaker is under, in, upon, over, along or across a public road, the Undertaker may and upon reasonable request by the Railway Undertaking shall without unreasonable delay do any one or more of the following:-

(i) remove the apparatus and place it or other apparatus in substitution for it in such other position or location as may be agreed with the Railway Undertaking;

(ii) take such further or other steps or make such further or other provision with the agreement of the Railway Undertaking as may secure the apparatus and the works of the Railway Undertaking and the proper functioning of each of them respectively from mutual interference or damage.

2.

(a) Subject to the provisions of sub-paragraph (b) hereof, the Railway Undertaking shall pay to the Undertaker an amount equal to the cost reasonably incurred by that Undertaker in the discharge of its obligations under paragraph (1) of this Article.

- (b) Where an Undertaker, in the course of the discharge of its obligations under paragraph (1) hereof, provides, in substitution for existing apparatus, improved or superior apparatus whether because of its type, construction, design, layout, placement or any other feature, the sum payable by the Railway Undertaking pursuant to sub-paragraph (a) of this paragraph shall nevertheless not exceed the cost that would have been reasonably incurred by the Undertaker if the substituted apparatus had not been such improved or superior apparatus.
- 3. An Undertaker for the discharge of its obligations under paragraph 1 hereof may permit the Railway Undertaking to carry out or cause to be carried out such portion of those obligations as the Undertaker may agree in accordance with such conditions as may be agreed between the Railway Undertaking and the Undertaker, provided, however, that an Undertaker shall not be obliged to enter into any such agreement.

ARTICLE 18

Arbitration

- 1. Should any dispute arise between the Railway Undertaking and any other party in relation to the execution of railway works authorised by or the powers or provisions granted by or contained in this Order, the following provisions shall apply:
 - (a) The Railway Undertaking and the Undertaker concerned shall use their best endeavours to resolve any such dispute on terms acceptable to both parties.
 - (b) If, after such period as the Railway Undertaking or the other party considers reasonable, such dispute has not been resolved to the satisfaction of both parties the following provisions shall apply:
 - (i) either party may, by 14 days notice in writing to the other party, require the subject matter of the dispute to be submitted to a single Arbitrator and shall, in such notice, nominate a person to arbitrate upon the subject matter of the dispute;
 - (ii) The party receiving such notice may, within the said period of 14 days, by a counter notice, either
 - (A) accept the Arbitrator nominated by the party serving the original notice or
 - (B) nominate not less than two alternative persons to act as such Arbitrator;

- (iii) If any one of the persons nominated by the parties is acceptable to both parties of the dispute then the subject matter of the arbitration shall be referred to such Arbitrator as soon as may be after such Arbitrator has indicated his willingness to act as Arbitrator;
- (iv) If, after service of such notice and such counter-notice, the parties fail to agree upon an Arbitrator or if an Arbitrator agreed upon has failed to indicate, within 14 days of being so requested, his willingness to act then either party may apply to the Chairman for the time being of the Irish Branch of the Chartered Institute of Arbitrators for the appointment of an arbitrator;
- (v) Where the Arbitrator is so appointed by the Chairman of the Irish Branch of the Chartered Institute of Arbitrators, he or she shall notify the parties in writing of his or her appointment as soon as may be thereafter and shall conduct the arbitration in accordance with the rules of the Irish Branch of the said Institute.
- (vi) The provisions of the Arbitration Act 2010 shall apply to the arbitration and the decision of the Arbitrator in relation to the dispute and all matters connected therewith shall be binding on the parties thereto.

ARTICLE 19
Designation of Railway

The railway is designated as Electrified Heavy Railway.

APPENDIX 7B

Appendix to Question 7

DART Underground

High Court Judicial Review Judgement (20th December 2014)
