

**THE TWELFTH SCHEDULE**

**EXPLANATORY NOTES IN RELATION TO THE DECISION OF AN  
BORD PLEANÁLA TO GRANT THE RAILWAY ORDER**

**Notice To Treat Provisions (Article 16 of the Draft Railway Order)**

**In relation to the period sought by the applicant within which the Compulsory Purchase may be carried out:**

The Board had regard to the observations submitted on this issue, including the legal and other submissions to the oral hearing (as recorded in the transcripts), and taking into account the position of the applicant, those opposed to the same proposal, and the views of the Railway Procurement Agency who also contributed to the oral hearing. (The issue is summarised in Section 7.4.6 of the Inspector's Report).

The Board was satisfied that the Transport and Railway Infrastructure Act 2001 (as amended) did not restrict the time period for the serving of notice on properties subject to compulsory acquisition, and that the Board was entitled to consider the draft Railway Order in its entirety including the proposed time periods set out therein in Article 4 (the period to complete the project; proposed to be ten years) and Article 16 (period within which to serve a Notice to Treat; proposed to be ten years).

The Board agreed with the Inspector that a precedent had been set since 2001 in relation to the duration of Railway Orders approved (by either the Minister for Transport, or the Board). This included Railway Orders for the following projects:

- LUAS lines A, B and C                      five year 'notice-to-treat' period
- LUAS lines A1, B1 and C1                six year 'notice-to-treat' period
- Dunboyne M3 Commuter Railway        seven year 'notice-to-treat' period
- Metro North                                ten year 'notice-to-treat' period

(It was noted that of the above projects, Metro North is on a scale generally commensurate with the DART Underground.)

The Board in its consideration of this issue took account of the following:

- The nature of the project in question, namely a major public transport project with a long term potential for public good accruing to the Dublin Region and its hinterland,
- The long lead-in period of the project to reach the Railway Order stage, noting that the proposal for a rail interconnector dates back to the 1970's, with the 'project planning' phase of DART Underground taking in the region of ten years since the publication of the DTO 'Platform for Change' policy in 2000,
- The scale and complexity of the project, the requirements for further complex procurement arrangements in appointing a contractor following the decision on the

Railway Order and the requirements for completion of financing arrangements, which would reasonably necessitate a delay prior to commencement of construction;

Having regard to the foregoing, it was considered reasonable, in the interest of proper planning and sustainable development, to provide for a longer period for completion of compulsory purchase procedures, than might normally be applied to other compulsory purchase applications.

The Board also had regard to the arguments from certain affected parties regarding the implications of the proposed 10-year ‘notice to treat’ period on their property rights, and the perceived disproportionality of such a period when compared with standard period afforded to local authorities when carrying out compulsory purchase for other purposes (that is, typically 18 months, as prescribed by the Planning & Development Act 2000, as amended).

The Board noted that the parties aggrieved by this aspect of the Draft Order included a number of street-level sites of proposed stations and/or intervention shafts, and also an operational industrial site. The potential impacts on redevelopment of these sites was highlighted.

Concerns were also expressed over potential ‘planning blight’ in such affected areas, and along the route of the scheme in general. This concern was addressed in the report of the Board’s Inspector (section 5.1.11), and the Board broadly agreed with his analysis of this topic.

Taking the foregoing into account, it was considered that Article 16 of the draft Railway Order ought to be amended to allow a period of **seven years** for the serving of Notice to Treat, which in the opinion of the Board would be reasonable and proportionate and would :

- Provide a practical time frame to complete pre-construction elements of this large and complex project,
- Provide some flexibility regarding the sequencing of construction and enable the applicant to minimise the extent, or duration, of land requirements in certain instances,
- Reduce the impact, including the duration of uncertainty, on affected property owners compared with the 10-year period sought by the applicant.

Article 16 of the Draft Railway Order was amended accordingly.

It was not considered necessary or appropriate to amend the 10-year period sought to construct the scheme, therefore Article 4 was not amended.

### *Above Ground Noise Conditions*

The Board noted that the Inspector, in drawing up recommended conditions in relation to noise, had streamlined or summarised the recommended conditions of the specialist adviser (Appendix 4 to the Inspector's Report). This was considered appropriate given the need for a practical set of noise criteria, in particular in relation to the construction phase. The Board also had regard to the noise control criteria applied as conditions under the Metro North Railway Order (ABP reference NA0003) in the interest of consistency. The Board further modified the Inspector's recommended noise conditions in a number of respects, including:

- A night-time construction noise limit of 45dB LAeq<sub>15mins</sub> was included for residential locations. This was considered to adequately protect residential amenities. The Board considered the recommended limit of 40dB to be impractical given the urban context of the construction sites and the baseline conditions at the relevant noise-sensitive locations, as presented in the EIS.
- The operational noise criterion (from plant or equipment during the operational phase of DART Underground) was set to not exceed the lower of 45 dB LAeq<sub>15mins</sub> or the lowest recurring night time noise level (measured as LA90<sub>5mins</sub>). The second clause in the condition (not to exceed LA90<sub>5mins</sub>) was considered to afford adequate protection to amenities in areas where the background night time noise levels were low; the inspector's proposed limit of 35 dB LAeq<sub>5mins</sub> was not deemed necessary or practical given the prevailing baseline conditions at the relevant noise-sensitive locations as presented in the EIS.
- The proposal to include a specific noise control condition in relation to the Maintenance Facility at North Wall Yard was not accepted by the Board. It was considered, given the location of the site in an existing rail yard, the baseline noise levels as presented in the EIS, and the noise controls imposed by virtue of condition 32 (operational noise criteria), that the night time noise environment for nearby residences would be adequately safeguarded in relation to impacts from the operation of DART Underground. It was not considered necessary or appropriate to seek to relocate the Maintenance Facility.

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**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this                      day of                      2011.**