

AN BORD PLEANÁLA ORAL HEARING

**IN THE MATTER OF AN APPLICATION FOR A RAILWAY ORDER PURSUANT TO THE
TRANSPORT (RAILWAY INFRASTRUCTURE) ACT 2001 (AS AMENDED AND SUBSTITUTED)
BY**

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DART+ WEST ELECTRIFIED HEAVY RAILWAY ORDER [2023]

AN BORD PLEANÁLA CASE REF: NA29S.314232

**OPENING STATEMENT ON BEHALF OF
CIÉ/IARNRÓD ÉIREANN-IRISH RAIL**

28 SEPTEMBER 2023

1. INTRODUCTION

Having regard to the direction of An Bord Pleanála that CIÉ's opening statement should not exceed 20 minutes, the following statement will be summarised in that allotted time frame.

2. WHAT IS DART+ WEST?

DART+ West is a Railway Order application.

Put briefly, CIÉ/Iarnród Éireann-Irish Rail¹ are seeking to improve the operation of about 40km of the *existing railway line* between Dublin City Centre and M3 Parkway Station in County Meath (with a section of new alignment west of Maynooth station) by electrifying the line and by providing for a new maintenance depot to the west of Maynooth in County Kildare which will facilitate a transformative investment in green electric and battery-electric trains.

The DART+ West route begins at Spencer Dock station and travels west stopping at Connolly, Drumcondra, Glasnevin, Broombridge, Pelletstown, Ashtown, Navan Road Parkway, Castleknock, Coolmine, Clonsilla. The M3 Parkway line will continue from Clonsilla stopping at Hansfield, Dunboyne and M3 Parkway. The Maynooth line will continue from Clonsilla stopping at Leixlip Confey, Leixlip Louisa Bridge and Maynooth.

From east to west, level crossing closures are necessary at Ashtown, Coolmine, Porterstown, Clonsilla, Barberstown and Blakestown and their replacement by road bridges or pedestrian and cycle bridges to maintain connectivity at the level crossing where required. A depot will be provided between Maynooth and Kilcock.

The DART+ Programme

The DART+ Programme comprises four infrastructure projects and the procurement and delivery of DART fleet:

- DART+ West
- DART+ South West
- DART+ Coastal North
- DART+ Coastal South
- A Fleet Project

It represents the largest rail investment scheme in the history of the State and is of paramount importance for rail and public transport in the country.

It provides a transformational increase in capacity and frequency of the existing railway lines between Dublin City Centre and the areas of Drogheda, Maynooth, Dunboyne, Celbridge and Greystones, namely, covering all core spinal rail corridors into Dublin City. Therefore, the operational capacity of the DART+ Programme on intercity routes will be enhanced.

¹ Hereafter referred to as CIÉ for ease of reference.

3. WHAT ARE THE OBJECTIVES OF DART+ WEST?

DART+ West, if approved, will:

- **reduce** carbon emissions through the deployment of new electric trains which will serve all existing stations along the railway corridor between Maynooth Station and M3 Parkway Station to the west and Connolly Station and the proposed Spencer Dock Station to the east, using electrical power, which has a lower carbon footprint than the current diesel trains. After some extensions to the electrified DART network to Malahide and Greystones in 2000, the network has seen no further expansion since. This is being addressed now by the DART+ Programme of which DART+ West is the first project (with the DART+ South West application also having been submitted to the Board). Given Ireland's ambition of halving Ireland's greenhouse gas emissions by the end of the decade, and becoming carbon neutral by 2050, under the current CAP 2023, the advancement of the DART+ Programme is central to the Major Public Transport Infrastructure Programme deliverables towards 2030 with its advancement a key action;
- **increase** the frequency and quality of service providing a viable transport alternative for surrounding communities to private car travel (thereby facilitating sustainable choices by encouraging a move away from private cars to a reliable, efficient and safe public transport network) which will assist in Ireland reducing road congestion (particularly at the existing level crossings) and reduce greenhouse gas emissions from transport, thereby helping to combat climate change and building a sustainable and connected city region, supporting transition to a low carbon and climate resilient society;
- **support** growing communities, businesses, and future sustainable development by providing a high-quality integrated public transport service in line with Government policy including the National Planning Framework and the Climate Action Plan 2023, while simultaneously facilitating the development and future growth of existing and new communities that will greatly benefit from the connectivity that DART+ West will deliver including an increase in service capacity from the current 6 trains per hour per direction to 12 trains per hour per direction subject to demand. The DART+ Programme is a cornerstone project of the Tier 1 planning hierarchy in Ireland and is one of the three major transport projects identified in Project Ireland 2040 under the spatial strategy known as the NPF and its capital investment plan, the NDP, along with the MetroLink and BusConnects Dublin schemes. The support for the scheme, continues throughout the other planning Tiers at Regional and local levels, with the Tier 2 statutory NTA Transport Strategy for the Greater Dublin Area 2022-2042 supporting the implementation of DART+ West and the entire DART+ Programme. The NPF identifies ten National Strategic Objectives (NSOs) as guiding principles which are critical to achieve the vision of Project Ireland 2040. The DART+ Programme is central to a number of NSOs, including Compact Growth, Sustainable Mobility, and a Transition to a Low Carbon and Climate Resilient Society and in addition plays a supporting role to many other NSOs which ensure our economic objectives are met;
- **increase** peak passenger capacity from 5,000 to 13,200 passengers per hour per direction and increase train frequency between Maynooth and M3 Parkway and Dublin City- facilitating fast, frequent and reliable transport to the surrounding communities;
- **improve** journey time reliability and enhance public transport opportunities for work, education or leisure purposes and improve multimodal transport connectivity through interchange with the Luas at Broombridge and the proposed Spencer Dock station.

4. HOW WILL THESE OBJECTIVES BE ACHIEVED?

The above objectives will be achieved by the main elements of DART+ West which, again in summary, are as follows:

- electrification and re-signalling of the Maynooth and M3 Parkway lines (approximately 40km in length & accordingly the electrification of the rail line will predominantly follow the existing railway corridor);
- capacity enhancements at Connolly Station (to include modifications to junctions and the station) to facilitate increased train and passenger numbers;
- provision of a new Spencer Dock Station, which will better serve the north Docklands area and improve interchange with Luas;
- closure of 6 level crossings and provision of replacement bridges where required;
- construction of a new DART depot facility west of Maynooth for the maintenance and parking (stabling) of trains;
- interventions at existing bridges over the rail line where there are insufficient clearances for the overhead electrification equipment;
- 12 new substations along the corridor to support the 40km of new OHLE which will operate as a 1500vDC system, electrical buildings and all other civil and ancillary works as necessary to accommodate the project.

Works will be required at a number of locations which entails either the agreed or compulsory acquisition of additional lands for some of the scheme elements such as:

- level crossing replacements;
- the proposed depot, including rail and road realignment;
- compensatory storage areas;
- the proposed new Spencer Dock Station;
- the bridge reconstruction and/or improvements;
- the construction of substations (to facilitate the provision of power to the line);
- the use of land for permanent railway maintenance compounds;
- the use of land for temporary construction/storage compounds and all ancillary works required for the project.

5. WHAT IS A RAILWAY ORDER?

A Railway Order is a bespoke statutory process under the Transport (Railway Infrastructure) Act 2001 as amended and substituted (“the 2001 Act”) which exempts planning law and includes environmental law and the law of compulsory acquisition (by also being a “Clauses Act”). The Railway Order is the consent.

In summary, section 37 of the 2001 Act requires, *inter alia*, that the application for a Railway Order be made in writing to the Board and be accompanied by:

- A ***draft*** of the proposed Railway Order;
- A plan of the proposed railway works;
- A book of reference to a plan describing the works which indicates the identity of the owners and of the occupiers of the lands described in the Plan; and
- A report on the likely effects on the environment of the proposed railway works (i.e., an EIAR).

In this case a Natura Impact Statement (“NIS”) was also submitted.

The 2001 Act has been amended, revised and substituted in a number of instances including by *inter alia* the Railway Safety Act 2005, the Planning and Development (Strategic Infrastructure) Act 2006, the Local Government (Roads Functions) Act 2007, the Dublin Transport Authority Act 2008, the Public Transport Regulation Act 2009 and most recently by the European Union (Railway Orders) (Environmental Impact Assessment) (Amendment) Regulations 2021 (Statutory Instrument No. 743/2021).

Prior to 2006, Railway Orders were granted by way of Statutory Instrument. The Statutory Instruments Act, 1947 (section 1(1)) states that the expression “statutory instrument” means an order, regulation, rule, scheme or bye-law made in exercise of a power conferred by statute. In 2006 An Bord Pleanála (“the Board”) assumed the role of the Minister for Transport where the granting of Railway Orders was concerned. Subsequently, section 49 of the Planning and Development (Strategic Infrastructure) Act 2006 amended the 2001 Act *inter alia* by substituting new sections 37 to 47A for sections 37 to 47. As mentioned, these new sections were primarily intended to transfer responsibility for the approval of a Railway Order from the Minister for Transport to the Board and to make certain related amendments.

On 20 December 2021 the European Union (Railway Orders) (Environmental Impact Assessment) (Amendment) Regulations 2021 (Statutory Instrument No. 743/2021) gave further effect to the transposition of the EIA Directive (EU Directive 2011/92/EU as amended by Directive 2014/52/EU) on the assessment of the effects of certain public private projects on the environment by amending the 2001 Act. The initial Directive of 1985 (Council Directive 85/337/EEC) and its three amendments² were codified by Directive 2011/92/EU of 13 December 2011. Directive 2011/92/EU was amended in 2014 by Directive 2014/52/EU (which came into force in May 2014) and together all of these Directives are referred to as “the EIA Directive.”

The 2001 Act now provides for what is known as a *coordinated assessment* in section 42A of the 2001 Act. Therefore, in carrying out an environmental impact assessment (EIA) in respect of an application made under section 37 of the 2001 Act the Board shall, where appropriate, co-ordinate the assessment with any assessment under the Habitats Directive (Council Directive 92/43/EEC of 21 May 1992) or the Birds Directive (Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009).

Section 3 of the 2001 Act repealed sections 2-11 of the Transport Act 1963 and the entire of the Transport (Dublin Light Rail) Act, 1996. In order to facilitate possible public-private partnerships in heavy rail, the 2001 Act replaced the previous “railway works order process” set out in sections 2-11 of the Transport Act 1963 with

² The Environment Directorate of the EU Commission (ec.europa.eu) states that: (i) Directive 97/11/EC brought the EIA Directive in line with the UN ECE Espoo Convention on EIA in a Transboundary Context and widened the scope of the EIA Directive by increasing the types of projects covered, and the number of projects requiring mandatory environmental impact assessment (Annex I). It also provided for new screening arrangements, including new screening criteria (at Annex III) for Annex II projects, and established minimum information requirements; (ii) Directive 2003/35/EC was seeking to align the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters; (iii) Directive 2009/31/EC amended the Annexes I and II of the EIA Directive, by adding projects related to the transport, capture and storage of carbon dioxide (CO₂).

the railway order application process similar to that set out in the Transport (Dublin Light Rail) Act 1996 (i.e., the legislation underpinning the initial Luas network). This represented a change in the statutory process for heavy rail by providing for a public inquiry prior to the making of a Railway Order. In addition – and again emphasising the many distinguishing features of An Bord Pleanála's role on a railway order application – is the fact that the Commission for Railway Regulation (CRR, previously known as the Railway Safety Commission) under the Railway Safety Act 2005 and EU law³ plays an important role in the operation of the railway after a Railway Order is granted. Thus, by virtue of section 5 of the Railway Safety Act 2005, sections 11(1)(b), 51, 55 and 57 of the 2001 Act were repealed.

The 2001 Act is a Public General Act which addresses both the regulation of the railway and the acquisition of land in a manner similar to how the Clauses Acts operated. Accordingly, the combination of Railway Order + the 2001 Act + the Regulation of Railways Acts and Railway Order + the 2001 Act + the Housing Act 1966 finds expression in both the 2001 Act and the Railway Order itself and applies both in the context of the regulation of the operation of railways and in the acquisition of land for the construction of a railway and railway works. For example, section 69 of the 2001 Act provides for the application of the Railway Acts by providing that *"the Regulation of Railways Acts, 1840 to 1889, and any other Act relating to railways shall, in so far as they are not inconsistent with the provisions of this Act, apply to railway undertakings and any railway constructed under this Act."* However, section 4(2) of the Railway Safety Act 2005 provides that "Notwithstanding section 69 of the Transport (Railway Infrastructure) Act 2001, this Act [i.e., the Railway Safety Act 2005] applies to any railway works authorised by a railway order under section 43 of that Act [i.e., the 2001 Act].

The effects of the Railway Order process under the 2001 Act are similar to the provision of major infrastructural railway development in the UK which involves what is known as a *Hybrid Bill*. For example, the Crossrail Act 2008 authorised the construction of the Crossrail railway from Maidenhead and Heathrow Airport to Shenfield and Abbeywood. The Channel Tunnel Rail Link Act 1996 was also a hybrid bill.

The initial land referencing process and the CPO in the Railway Order bookend the land acquisition process in the draft Railway Order. Section 45 of the 2001 Act as amended provides that the "Railway Order is to have effect as if it were a CPO (compulsory purchase order) referred to in Section 10(1) of the Local Government (No.2) Act 1960 (inserted by Section 86 of the Housing Act 1966) and that Section is to apply and have effect with certain prescribed modifications "and with any other necessary modifications." The first sentence of section 45(1) of the 2001 Act provides that that upon the commencement of a Railway Order, CIÉ shall thereupon be authorised to acquire compulsorily any land or rights in, under or over land or any substratum of land specified in the order. Generally, the purpose of section 86 of the Housing Act 1966 was essentially to enable local authorities to effect compulsory acquisitions for the purposes of any of their powers and duties. As is well known, section 76 of the Housing Act 1966 confers compulsory acquisition powers on housing authorities for the purposes of that legislation while section 86 of the Housing Act 1966 in substituting a new section 10 of the Local Government (No.2) Act 1960 grants such compulsory acquisition powers to local authorities for non-housing or partially housing purposes. Thus, it provides for a compensatable acquisition and the compensation provisions of Housing Act 1966 and the Land Clauses Acts etc have to be seen in that context i.e., thus the reference to "have effect." For example, section 79(2) of the Housing Act 1966 deems the notice to treat to be so for the purposes of the Acquisition of Land (Assessment of Compensation) Act 1919 and further amendment in recent years refers to the form of any vesting order.

The Schedules to the Book of Reference and the various Plans referred to in the draft Railway Order specify these matters in detail. These Schedules and Plans are referred to in the draft Railway Order and accompany the draft Railway Order and detailed specifications are contained in the actual volumes of Schedules and Plans comprising the application for a Railway Order. The contents page of the draft Railway Order – Arrangements of Articles – illustrates the iterative and organic nature of the draft Railway Order both before and after an oral hearing. The 2001 Act provides that what is applied for is a draft Railway Order, where the subsequent provisions in relation to works and acquisition of land are subject to modification and where many of the

³ SI 476 2020 transposed Directive EU 2016/798 and SI 477 2020 transposes Directive EU 2016/797. In 2016 the European Union adopted Regulation (EU) 2016/424 on cableway installations. SI 543 2020 the European Union (Cableway Installations) Regulations gives effect to this and allocated specific functions to the CRR.

schedules can only be addressed and updated at the holding of the oral hearing and during the hearing. As with every oral hearing for a Railway Order, this oral hearing will be provided with the updates of the Schedules and Plans (the suite of technical documentation and drawings which accompany the draft Railway Order) and the current list (as of the date of this Statement) are set out at **Appendix 1** to this Statement.

6. WHAT IS THE PROCESS BEFORE AN BORD PLEANÁLA?

The Railway Order process is a bespoke statutory process before An Bord Pleanála (“the Board”).

The process can be viewed through six stages:

- pre-application;
- the making of the initial Railway Order application (including the submission of a draft Railway Order);
- the holding of an oral hearing by an Inspector appointed by the Board;
- the consideration by the Board of the Inspector’s Report and the submissions of all stakeholders;
- if the Board so decides, the granting of a Railway Order;
- the consequences of a Railway Order.

In line with the provisions of the 2001 Act, in its Submission on Observations to the Draft Railway Order Application and Addendum (May, August 2023) the submissions received from all stakeholders arising from the public consultation in response to this Railway Order application were (i) broken down into groups either associated with a particular location along the proposed electrification of the existing line or of a more general nature (ii) comprehensively addressed. As indicated in the Submission on Observations document the draft Railway Order provides for the attachment of a Schedule of Agreements which includes inter alia agreements with those persons who have an interest in lands the subject of the draft Railway Order and which agreements may be reached after the Submissions on Observations document was furnished and during this oral hearing. The flexible and organic nature of the process can be seen at each stage which will now be briefly examined. While ultimately what happens in Stages 2-6 are entirely matters for An Bord Pleanála and, as in the case with all railway order applications, CIÉ will indicate during this oral hearing its position and further responses on potential agreements with all stakeholders and possible conditions (including environmental conditions), modifications, restrictions, the default position of CIÉ, of course, is that it is satisfied to implement the Railway Order as initially submitted.

We will briefly now look at each of these stages:

Pre-application

In addition to the carrying out of surveys and pre-application meetings with the Board, CIÉ and its consultants carried out non-statutory consultations which are contained in the PC1 and PC2 Reports, which are included in Volume 4 of the EIAR submitted as part of the Railway Order application.

The application & draft Railway Order

The unique and perhaps most significant feature is that the process envisages the submission of a draft Railway Order.

The draft Railway Order is divided into four parts together with a preamble and several Schedules presently amounting to thirteen.

Part I of the draft Railway Order deals with preliminary matters.

In the context of a Railway Order, typically an early article deals with the “incorporation of enactments” and refers to the ‘Special Act’. Of significance here is Article 3, which deals with the “incorporation of enactments”, and refers to the ‘Special Act’:

“The Regulation of Railways Acts, 1840-1893 and any other Act relating to railways shall apply to the railway so far as they are applicable for the purposes of and are not inconsistent with or varied by the conditions of this Order, **and the Principal Act**

together with the Order shall be deemed to be the Special Act for the purposes of those enactments.”⁴

The Principal Act referred to means the Transport (Railway Infrastructure) Act 2001. In *Garnett v. Bradley*⁵ Lord Hatherley referred to a Special Act as an “Act directed towards a special object, or special class of objects, will not be repealed by a subsequent general Act embracing in its generality those particular objects, unless some reference be made directly or by necessary interference to the preceding special Act.” Section 48 of the 2001 Act deals with the power of a railway undertaking to carry out railway works and to enter land and provides another example of the 2001 Act being a Clauses Act.

The significance of the designation of “Special Act” status is relevant to the CPO process.

By way of analogy, section 213 of the Planning and Development Act 2000 (as amended)⁶ concerns land acquisition by local authorities which may be compulsorily acquired or by agreement. Section 213(4) of the 2000 Act provides that “a local authority may be authorised by compulsory purchase order to acquire land for any of the purposes referred to in *subsection (2)* of this section and section 10 (as amended by section 86 of the Housing Act, 1966) of the Local Government (No. 2) Act, 1960, shall be construed so as to apply accordingly and the reference to “purposes” in section 10(1)(a) of that Act shall be construed as including purposes referred to in *subsection (2)* of this section” (see *Clinton v An Bord Pleanála (No. 2)*).⁷

Part II, Articles 5 to 17 (the First, Ninth and Tenth Schedules) of the draft Railway Order addresses the varied nature of the railway works and deals with the construction, operation, improvement and maintenance of railway works and works and power to execute works (Article 5), deviation (Article 6), discharge of water (Article 7), construction of flood compensatory areas (Article 8), temporary closure of Royal Canal (Article 9), roads (Articles 10 to 13), the erection of poles and fixing of brackets, cable or other fixtures to buildings or in lands (Article 14), the strengthening and underpinning of structures or buildings (Article 15), tree lopping (Article 16) and the period within which the Railway Undertaking (in this case CIÉ) is authorised to carry out the construction of authorised and scheduled works (Article 17).

Part III, Articles 18 to 24 (and the Second to Eighth Schedules) of the draft Railway Order addresses the acquisition and possession of land and rights.

Section 43 of the 2001 Act provides for the “Railway Order” with section 44 (as amended by section 115 of the Dublin Transport Authority Act 2008) setting out the provisions in relation to the Railway Order. Importantly section 44(1) of the 2001 Act provides that a Railway order shall contain such provisions as the Board considers necessary or expedient for the purpose of the order. The purpose of the order in this regard includes the acquisition of land for the purpose of carrying out the railway works which are specified in the order. Furthermore section 44(2)(a) of the 2001 Act provides that without prejudice to the generality of section 44(1), a railway order may specify any land or any substratum of land, the acquisition of which, is in the opinion of the Board, necessary for giving effect to the order. Section 44(2)(b) provides that without prejudice to the generality of section 44(1), a railway order may specify any rights in, under or over land or water or, subject to the consent of the Minister in the case of a national road or the Minister for the Environment, Heritage and Local Government in the case of any other public road, in, under or over any public road, the acquisition of which is, in the opinion of the Board, necessary for giving effect to the order.

Section 45(1) of the 2001 Act is the provision of the legislation dealing with the compulsory acquisition of land. This provision has been further amended by Schedule 1, Part 3 of the Public Transport Regulation Act 2009. The reference in section 45 of the 2001 Act to section 10(1) of the Local Government (No.2) Act 1960 (as inserted by section 86 of the Housing Act 1966) includes a reference to section 10(4) which refers to section 79 of the Housing Act 1966 which itself is referred to in section 217(6) of the Planning and Development Act 2000. Arising from the decision of the High Court (Peart J.) in *Flancrest Enterprises Limited and others and*

⁴ Emphasis added.

⁵ (1877-78) LR 3 950.

⁶ Also referred to herein as “2000 Act.”

⁷ [2007] 4 IR 716

Sherborough Securities Limited & Others v. An Bord Pleanála, Ireland and the Attorney General (December 2013) the court held that the period for the service of a Notice to Treat for Railway Orders was that prescribed under section 217(6) of the Planning and Development Act 2000 and that this period was 18 months and therefore, a Notice to Treat is to be served “within 18 months of the Railway Order becoming operative.”

Part IV, Articles 25 to 29 of the draft Railway Order addresses miscellaneous and general matters.

In accordance with section 40 of the 2001 Act, CIÉ deposited (and kept deposited) the application for the Railway Order at places directed by the Board, published the requisite newspaper notices, served copies of the newspaper notices and the relevant extracts of the application documentation on the various planning authorities and on landowners and occupiers and presented the application in electronic format on a dedicated website.

The purpose of the notification and consultation provisions in the 2001 Act is to provide persons, landowners and occupiers with an opportunity to make submissions in relation to the application for the Railway Order. This was achieved and all interested parties have made submissions. This oral hearing is not, of course, concerned with compensation arising from the CPO process and that is addressed in another forum before the Property Arbitrator.

In accordance with Section 39 of the 2001 Act the EIAR for this Railway Order Application *inter alia* contains:- (i) a description of the proposed railway works comprising information on the site, design, size and other relevant features of the proposed works; (ii) a description of the likely significant effects of the proposed railway works on the environment; (iii) the data required to identify and assess the main effects which the proposed railway works are likely to have on the environment; (iv) a description of any features of the proposed railway works, and of any measures envisaged to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment; (v) a description of the reasonable alternatives studied by CIÉ which are relevant to the proposed railway works and their specific characteristics and an indication of the main reasons for the option chosen, taking into account the effects of the railway works on the environment; and (vi) a summary in non-technical language of the above information.

The examination, analysis and evaluation is carried out by the Board (including the Report and recommendation of the Inspector to this oral hearing) in order to identify, describe and assess the direct and indirect significant effects of the proposed railway works, including significant effects derived from the vulnerability of the activity to risks of major accidents and disasters relevant to it, on: population and human health; biodiversity, including species and habitats protected under the Habitats and Birds Directives; land, soil, water, air and climate; material assets, cultural heritage and the landscape, and the interaction between the above factors.

The EIAR considers the available results of other relevant assessments under European Union or national legislation with a view to avoiding duplication of assessments. As mentioned earlier, the assessments contained in the EIAR have also been co-ordinated with the assessment under the Habitats Directive and Birds Directives) and the NIS which has been prepared for this Railway Order application.

The EIAR, in addition to addressing the matters set out in section 39(1) of the 2001 Act contains information specified in Annex IV to the EIA Directive relevant to the specific characteristics of the particular railway works and type of railway works proposed here.

Section 42B of the 2001 Act includes provisions in relation a “reasoned conclusion” and the reasoned conclusion must be integrated into the Railway Order. This is a matter to be addressed by the Inspector and the Board as provided for in the Preamble and in the Final Schedule to the draft Railway Order, both of which are to be inserted. Accordingly, before deciding whether to grant a Railway Order the Inspector and the Board consider *inter alia* the following matters:

- the EIAR;
- additional information, if any;

- any submissions or observations made in relation to the likely significant effects on the environment of the activity to which the application relates duly made to it;
- consider any other evidence it has obtained in relation to the likely significant effects on the environment of the activity to which the application relates, and
- taking into account the results of the examination of matters referred to above and reach a reasoned conclusion on the significant effects on the environment of the activity to which the application relates.

The changes to the Railway Order process brought about by S.I. No.743/2021 also include reference to environmental conditions and an enhanced supervisory role for the Minister for Transport. Now, arising from the amendments to the 2001 Act brought about by S.I. No.743/2021, “environmental conditions” are provided for and include conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring, to which the authorisation is subject, and a description of any features of the proposed railway works, or any measures envisaged, to avoid, prevent or reduce, or offset significant adverse effects on the environment.

In summary, new provisions in the 2001 Act as amended by SI 743 of 2021 provide that the Minister for Transport can take all reasonable steps to ensure that a railway undertaking complies with any environmental condition to which a Railway Order is subject. In terms, S.I. No. 743 of 2021 inserted new sections 43A to 43F into the 2001 Act.

Section 43A defines “environmental condition” as follows: “An environmental condition in relation to a Railway Order means any condition, modification, restriction or requirement to which a Railway Order is subject that relates to:- (a) features of the railway works or measures envisaged to avoid, prevent, reduce or offset significant adverse effects on the environment, or (b) the monitoring of significant adverse effects on the environment, (including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring)”. Section 43B of the 2001 Act deals with a duty to notify and comply with modification and conditions of the Railway Order approval. Section 43C provides that the Minister for Transport shall take all reasonable steps to ensure that a railway undertaking complies with “environmental conditions.”

As stated, the Minister for Transport now has a supervisory role in ensuring that each railway undertaking complies with the environmental conditions and can request information in relation to compliance with the conditions and can carry out an assessment of this issue. Ultimately, the Minister for Transport can issue a direction seeking compliance and can address any failure to comply by way of statutory sanction.

Oral hearing/the consideration by the Board of the Inspector's Report and the submissions of all stakeholders

The Railway Order Legislation provides that before deciding whether to grant a Railway Order, the Board will inter alia consider:

- the application;
- the draft Railway Order and documents that accompanied the application;
- the report of any oral hearing held and recommendations (if any);
- the likely consequences for proper planning and sustainable development in the area in which it is proposed to carry out the railway works and for the environment of such works; and
- the matters (including policy) referred to in section 143.

After considering these matters and having taken into account its *reasoned conclusion* (section 42B(c)) and being satisfied that that reasoned conclusion remains up-to-date, the Board can make a Railway Order authorising CIÉ to construct, maintain, improve and, operate the railway or the railway works specified in the order or any part thereof, in such manner and subject to such conditions (including environmental conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring), modifications, restrictions and requirements (and on such other terms) as the Board thinks proper and specifies in the Railway Order.

Not only does the 2001 Act vest a very wide discretion in An Bord Pleanála between the making of the initial application which includes the submission of a draft railway order and the granting of a Railway Order which authorises the construction, maintenance, improvement and operation of the railway and the railway works but the flexibility in the response to submissions received (including all the matters outlined in section 43(1)) is recognised by the fact that the Board can do so in such manner and subject to such conditions (including environmental conditions – conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring), modifications, restrictions and requirements (and on such other terms) as the Board thinks proper and specifies in the order. This is much wider suite of matters than the “conditions” referred to in section 34 (planning authority) and in section 37 (An Bord Pleanála).

As mentioned earlier, the 2001 Act provides that the applicant (in this case CIÉ) submits for the consideration of the public and the Board a draft Railway Order. This draft contains several matters which at the time and stage of the oral hearing are necessarily silent. For example, the reasoned conclusion is matter for the Board.

Likewise, scheduled conditions, including environmental conditions, modifications, restrictions and requirements, and on such other terms, as the Board may direct are presently referred to in the Eleventh Schedule of the draft Railway Order. Agreements (currently set out in the Thirteenth Schedule of the draft Railway Order) including those with landowners, local authorities (including planning authorities) and scheduled conditions as per the Eleventh Schedule are necessarily silent at the time prior to the oral hearing and, for example, may be referred to whenever the planning authorities make their submissions (in this case, this would be Module A on 28 September, 2023) and other agreements/agreed conditions with public and prescribed bodies are often only reached during the oral hearing. In addition, agreements, modifications and the provision and further particularisation of, for example, design iterations have been specifically requested by stakeholders including landowners and observers, a summary of which are set out at **Appendix 2** and can be provided to this oral hearing.

As mentioned earlier, consistent with the provisions of the 2001 Act, in its Submission on Observations to the Draft Railway Order Application and Addendum (May, August 2023) the submissions received from all stakeholders arising from the public consultation in response to this Railway Order application have been carefully considered and responded to. In this regard, CIÉ has sought to engage with the submissions of all statutory and landowner stakeholders. Ultimately, these are all matters for An Bord Pleanála and, as stated earlier, CIÉ's default position is its initial application. It has sought, however, in line with the legislative framework to respond meaningfully to the responses from all stakeholders.

This flexibility is also mirrored post Railway Order in the CPO legislative code which, as mentioned above, is expressly incorporated into the 2001 Act and the Railway Code. For example, if a Railway order is granted, when it comes to serve a Notice to Treat, CIÉ can take less land than that shown in the Railway Order Book of Reference.

Further the continuing nature the process is reflected by the fact that the Board is required to apply the law that applies at the date of the Board's decision rather than at the time of the initial application. ⁽⁸⁾ This would also apply, for example, to development plan changes, changes in ministerial guidelines etc. The law to be applied is that as of the date of the of the Board's decision and not the date of the original application. A list of the updated position which applies at the date of this oral hearing is provided for in **Appendix 3** to this Opening Statement (the full details of which can be furnished during the oral hearing). It is, of course, a matter for An Bord Pleanála as to the position which applies in relation to these matters at the time of the making of its decision.

Ultimately, the Board may, if it is provisionally of the view that it would be appropriate to grant the railway order concerned, were certain alterations to be made to the terms of the application or the proposed railway order, notify the applicant that it is of that view and invite the applicant to make to the terms of the application or the proposed order alterations specified in the notification (which is then published and forms part of a further consultation and information process (and where necessary, may include a revised EIAR)).⁸

⁸ Section 47D (4)-(7) of the 2001 Act.

The consequences of a Railway Order

As mentioned above, section 45 of the 2001 Act provides that the “Railway Order is to have effect as if it were a CPO referred to in Section 10(1) of the Local Government (2) Act 1960 (inserted by Section 86 of the Housing Act 1966)” and that Section is to apply and have effect with certain prescribed modifications “and with any other necessary modifications.”

As just referred to – and a further example of the flexibility of the process – in the event that the Railway Order is granted, the fact that a Railway Order may be made does not of course oblige CIÉ to serve a Notice to Treat in respect of every portion of the land comprised in the operative Railway Order. Therefore, a Notice to Treat can be served in respect of a portion only of the land and then a subsequent Notice to Treat can be served if further land is required.⁹ Again, this is in accordance with nature and type of infrastructural development associated with Railway Orders.

⁹ See page 249 of Keane, *The Law of Local Government in the Republic of Ireland* (First ed.) where at fn 68 he refers to *Tawny v. Lynn and Ely Railway Co.* (1847) 16 LJ Ch. 282.

7. CONCLUSION

As the agenda for the hearing progresses, CIÉ and its team of consultants are available to address any questions which the Inspector or any person attending this hearing may have.

APPENDIX 1

Current list of updates to the draft Railway Order Schedules & Plans

1. OBG13 Collins Bridge description amended to match EIAR, updates to Railway Order Book of Reference Schedules, First Schedule, Railway Order - Sheet 26.
2. OBG18 Pike Bridge description amended to match EIAR, updates to Railway Order Book of Reference Schedules, First Schedule, Railway Order - Sheet 33.
3. Ashtown, particularisation of bridge and location of substation, updates to Railway Order Book of Reference Schedules, First Schedule, Railway Order - Sheet 9, Works Layout Plan No. WP009 and Structures Plans.
4. Coolmine, particularisation of bridge, updates to Railway Order Book of Reference Schedules, First Schedule, Railway Order - Sheet 13, Works Layout Plan No. WP013 and Structures Plans.
5. Porterstown, particularisation of bridge, updates to Railway Order Book of Reference Schedule - First Schedule, Railway Order - Sheet 14, Second Schedule Part 1, Fourth Schedule, Works Layout Plan No. WP014 & WP015, Property Plan No. DW.014 & DW015 and Structures Plans.
6. Clonsilla, particularisation of bridge, updates to Railway Order Book of Reference Schedule - First Schedule, Railway Order - Sheet 16, Second Schedule Part 1, Fourth Schedule, Works Layout Plan No. WP016, Property Plan No. DW.016 and Structures Plans.
7. Hansfield, changes to Land referencing for Barnhill Gardens Development (Bord Pleanála Case reference: TA06F.314125) - updates to Railway Order Book of Reference Schedule - Second Schedule Part 1, Fourth Schedule, Fifth Schedule, Works Layout Plan No. WP018 and Property Plan No. DW.018.
8. Barberstown, inclusion of landowner accommodation underpass for Seamus Ross - updates to Railway Order Book of Reference Schedule - First Schedule, Railway Order - Sheet 25, Works Layout Plan No. WP025 & WP017 and Structures Plans.
9. North of St. Catherine's Park, CIE Property Boundary updated to reflect extent of ownership, updates to Property Plan No. DW.027 and Works Layout Plan No. WP027.
10. Laraghbryan East, provision of an accommodation access over the Lyreen to provide access to Sherwood Homes lands from the L5041, updates to Railway Order Book of Reference Schedule - First Schedule, Railway Order - Sheet 38, Works Layout Plan No. WP038 and Structures Plans.

APPENDIX 2

List of the modifications to be proposed by Local Authorities / Landowners

1. Particularisation of the pedestrian/cycle bridge designs to set the clearance over the railway to 5.3m, to standardise the pedestrian/cycle bridge materials to corten steel, to enhance transparency of parapets and to include lifts at Ashtown, Coolmine and Clonsilla train stations. The pedestrian/cycle bridges will be lower, will incorporate shortened ramps and a spiral ramp configuration will be implemented at Porterstown and Clonsilla.
2. Increased buffer zone for the proposed preservation in-situ of AH04 (RMP DU013-018) conjoined barrows, Kellystown.
3. Ashtown substation to move 10m to the east to reduce impacts on Martin Savage Park residents.
4. Provision of an accommodations access over the Lyreen River to provide access to Sherwood Homes lands from the L5041.
5. Inclusion of an accommodation underpass for Seamus Ross on lands at Barberstown. The underpass is included as a mitigation measure in Table 16-6 in Chapter 16 of the EIAR Material Assets: Agricultural Properties.

APPENDIX 3

List of plan and policy updates since publication of the draft Railway Order

Presented in the draft Railway Order submitted July 2022	New or updated since RO submitted
EU Level	
EU White Paper on Transport: Roadmap to a single European Transport Area - Towards a competitive and resource efficient transport system	N/A
European Green Deal	N/A
National Level	
Project Ireland 2040: National Planning Framework – Ireland, Our Plan 2040, and National Development Plan 2021-2030	Review of NPF commenced. Due to be completed in 2024
National Sustainable Mobility Policy (2022)	N/A
National Investment Framework for Transport in Ireland (2021)	N/A
Climate Action and Low Carbon Development (Amendment) Act 2021	N/A
Climate Action Plan	Carbon Budgets and Sectoral Emissions Ceilings supported by Climate Action Plan 2023
The White Paper: Ireland's Transition to a Low Carbon Energy Future 2015-2030	N/A
Regional Level	
Eastern and Midland Regional Spatial and Economic Strategy 2019-2031	N/A
Transport Strategy for the Greater Dublin Area 2016-2035 & Draft Transport Strategy for the Greater Dublin Area 2022-2042	Transport Strategy for the Greater Dublin Area 2022-2042 adopted January 2023. Including GDA Cycle Network 2022
Integrated Implementation Plan 2019-2024	N/A
Greater Dublin Area Cycle Network Plan	As above superseded by the updated Transport Strategy for the GDA 2022-2042
Rail Policy	
2030 Rail Network Strategy Review	All-Island Strategic Rail Review – Public Consultation – no further updates since RO published. Rail Freight 2040 Strategy.
Iarnród Éireann Strategy 2027	

Local Level	
Dublin City Development Plan 2016–2022; and Draft Dublin City Development Plan 2022-2028	Dublin City Development Plan 2022-2028 adopted 2 nd Nov. 2022. It came into effect on the 14 th December 2022.
Local Level	
North Lotts and Grand Canal Dock SDZ Planning Scheme 2014	No change.
Ashtown-Pelletstown Local Area Plan 2014	No change
Fingal Development Plan 2017 – 2023; and Draft Fingal Development Plan 2023 - 2029	Fingal Development Plan 2023 – 2029 adopted 22nd February 2023. It came into effect 5th April 2023.
Hansfield Strategic Development Zone Planning Scheme 2006	No change.
Barnhill Local Area Plan 2019	No change
Kelystown Local Area Plan 2021	No change.
Kildare County Development Plan 2017 – 2023; and Draft Kildare County Development Plan 2023-2029	Kildare County Development Plan 2023-2029 adopted 9th December 2022 came into effect 28th January 2023.
Leixlip Local Area Plan 2020-2023	Extension of Leixlip Local Area Plan 2020 - 2023 to 30 th March 2026 (inclusive).
Maynooth Local Area Plan 2013-2019	Maynooth and Environs Joint Local Area Plan 2024-2030. (Kildare County Council and Meath County Council) submissions closed 11 th November 2022.
Kilcock Local Area Plan 2015-2021	No change.
Meath County Development Plan 2021-2027	No change
Dunboyne, Clonee & Pace Local Area Plan 2009 - 2015	Superseded by a Written Statement and Land Use Zoning Map contained in Volume 2 of the Meath County Development Plan 2021-2027.