

Draft Railway Order

RAILWAY ORDER

TRANSPORT (RAILWAY INFRASTRUCTURE) ACT 2001 – 2021

RAILWAY (METROLINK – ESTUARY TO CHARLEMONT VIA DUBLIN

AIRPORT) ORDER [2022]

Draft Railway Order

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PREAMBLE
(Including reasons and considerations)

AN BORD PLEANÁLA (“the **Board**”) in exercise of the powers conferred on it by Section 43 of the Transport (Railway Infrastructure) Act 2001 as amended and substituted (including by *inter alia* the European Union (Railway Orders) (Environmental Impact Assessment) (Amendment) Regulations 2021 (Statutory Instrument No. 743/2021) (hereafter also referred to as the “**Act of 2001**” or “**Principal Act**”) and having considered and duly taken into account:

- the application, made on the [•] day of [•], 2022 by the National Roads Authority operating as Transport Infrastructure Ireland (“**TII**”) for a Railway Order to be designated as appears hereunder, authorising railway works between Estuary and Charlemont via Dublin Airport in the County of Dublin,
- the draft Railway Order and all documents that accompanied the application in physical and electronic version including the Environmental Impact Assessment Report submitted under section 37 of the Act of 2001 [and any revised Environmental Impact Assessment Report submitted under section 47D],¹ Appropriate Assessment Screening Report and Natura Impact Statement,
- the prior written consent given by the National Transport Authority for the application for this Railway Order,
- any submissions or observations duly made to it in relation to the likely significant effects on the environment of the activity to which the application relates:
 - under section 40(3) or [41(4)]² of the Act of 2001 and not withdrawn,
 - by an authority or designated body referred to in section 40(1)(c) or (e) of the Act of 2001,
 - [on foot of a request under section 47D(1) or a notice under section 47D(6) of the Act of 2001.]³
- the written and oral submissions made by the observers and the responses by the Applicant,
- [the Applicant’s response, received on the [•], to the Board's request for further information dated the [•],]⁴
- [the report of the Oral Hearing held under section 42 of the Act of 2001 during [•] and the recommendations (if any) contained therein and the written and oral submissions made by the observers and the Applicant at the Oral Hearing],

¹ If required

² If required

³ If required

⁴ If required

- the matters referred to in section 143 of the Planning and Development Act 2000 (as provided for in section 43 of the Act of 2001) including:
 - national policy including that contained in the provisions of the National Planning Framework - Ireland 2040 Our Plan, under Project Ireland 2040 which contains an objective to deliver key rail projects including MetroLink and the provisions of the National Development Plan 2021-2030 which lists the construction of MetroLink as a national strategic outcome, the Climate Action Plan 2021, the White Paper: Ireland's Transition to a Low Carbon Energy Future 2015-2030, the Department of Transport National Investment Framework for Transport in Ireland, the National Sustainable Mobility Policy and the Action Plan 2022-2025, [the Infrastructure and Capital Investment Plan 2016-2021 from the Department of Public Expenditure and Reform which lists a new metro as the largest single project in transport⁵], the Department of Transport Statement of Strategy 2021-2023 and the National Transport Authority Statement of Strategy 2018-2022 [and Statement of Strategy for the period 2023-2025]⁶,
 - regional policy contained in the provisions of the Transport Strategy for the Greater Dublin Area 2016-2035 and the [Draft Transport Strategy for the Greater Dublin Area 2022 – 2042]⁷ developed by the National Transport Authority, the National Transport Authority Integrated Implementation Plan 2019 – 2024 which details the MetroLink Project, and the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019-2031 which includes the Dublin Metropolitan Area Strategic Plan,
 - the provisions of the Fingal Development Plan 2017-2023, the [Draft Fingal Development Plan 2023-2029], the Dublin City Development Plan 2016-2022 and [Draft Dublin City Development Plan 2022 – 2028],⁸
- the agreements and undertakings between the Applicant and the local authorities (Fingal County Council and Dublin City Council) and the Applicant and various other parties,
- the Applicant's proposed 'Property Owners Protection Scheme' ("POPS") which will provide an independent survey service and redress scheme to property owners of private property located within the scheme area on an individual basis,
- the Applicant's Construction Environmental Management Plan ("CEMP"),

⁵ The relevant national plans in force at the time of the grant of the RO must be referenced. This Plan is dated in that it lists the project as MetroNorth.

⁶ We have square bracketed this to be referenced if this plan has been adopted.

⁷ The relevant plans in force at the time of grant of the RO must be referenced. We have square bracketed this to be referenced if this plan has been adopted.

⁸ The relevant City and County Development Plans in force at the time of the grant of the RO must be referenced.

- the Scheme Traffic Management Plan ("STMP") which aims to minimise traffic disruption for road users during the construction of railway works, in co-operation with the road authorities, An Garda Síochána, and other stakeholders,
- 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,
- its reasoned conclusion under section 42B(c), and
- the report of the Inspector, including the examination, analysis and evaluation undertaken therein in relation to Appropriate Assessment and Environmental Impact Assessment.

The Board is satisfied that the information before it was adequate to undertake an Appropriate Assessment and an Environmental Impact Assessment of the subject development.

[Appropriate Assessment Screening: Stage 1:⁹

The Board agreed with and adopted the screening assessment and conclusions carried out in the Inspector's Report, (and reports of specialist advisers appointed to assist the Inspector), that the European Sites on which the proposed development, individually or in combination with other plans or projects, has the potential to have a significant effect are as follows: Baldoyle Bay SAC [000199]; Baldoyle Bay SPA [004026]; Dalkey Islands SPA [004172]; Howth Head Coast SPA [004113]; Ireland's Eye SPA [0040117]; Lambay Island SPA [004069]; Malahide Estuary SAC [000205]; Malahide Estuary SPA [004025]; North Dublin Bay SAC [000206]; North Bull Island SPA [004006]; Rockabill SPA [004014]; Rogerstown Estuary SPA [004015]; Skerries Islands SPA [004122]; South Dublin Bay and River Tolka Estuary SPA [004024]; South Dublin Bay SAC [000210]; The Murrrough SPA [004186]; and Wicklow Mountains SAC [002122].

Appropriate Assessment: Stage 2:

The Board considered the Natura Impact Statement and associated documentation submitted with the application, the mitigation measures contained therein, the relevant information, submissions and observations on file, any additional information provided prior to the close of the Oral Hearing, in the form of submissions and responses to submissions, additional information, errata, corrigenda, Briefs of Evidence, etc. and the Inspector's analysis of potential impacts on European Sites.

The Board completed an Appropriate Assessment of the implications of the proposed development for the aforementioned European Sites in view of the sites' Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the Appropriate Assessment, the Board considered, in particular, the following:

⁹ This is the language proposed by the Applicant. Of course it is a matter for An Bord Pleanála as competent authority to carry out AA / EIA Screening and then AA and EIA.

- a) the likely direct and indirect impacts arising from the proposed development of the MetroLink Project individually and in combination with other plans or projects,
- b) the mitigation measures, which are included as part of the current proposal, and
- c) the Conservation Objectives for the European Sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's Report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of any European Sites, in view of the sites' Conservation Objectives.]

[Environmental Impact Assessment:¹⁰

The Board completed an Environmental Impact Assessment in relation to the proposed development, taking into account and examining:

- a) the nature, scale and location of the proposed development,
- b) the Environmental Impact Assessment Report and associated appendices submitted with the application, the Appropriate Assessment Screening Report and Natura Impact Statement and supporting documentation submitted with the application,
- c) the mitigation measures proposed for the proposed development,
- d) any relevant information, submissions and observations on file,
- e) any additional information provided prior to the close of the Oral Hearing, in the form of submissions and responses to submissions, additional information, errata, corrigenda, Briefs of Evidence, etc., and
- f) the Inspector's Report (and reports of specialist advisers appointed to assist the Inspector) which is noted and adopted.

The Board agreed with the summary of the results of consultations and information gathered in the course of the Environmental Impact Assessment, and the examination of the information contained in the Environmental Impact Assessment Report associated appendices and the associated documentation submitted by the Applicant, the submissions made in the course of the application pursuant to the Act of 2001, as set out in the Inspector's Report. The Board was satisfied that the Inspector's Report sets out how these various environmental issues were addressed in the examination and recommendation and are incorporated into the Board's decision.]

Coordinated Assessment:

¹⁰ This is the language proposed by the Applicant. Of course it is a matter for An Bord Pleanála as competent authority to carry out AA / EIA Screening and then AA and EIA.

In carrying out its Environmental Impact Assessment in respect of the application, the Board co-ordinated its assessment with its Appropriate Assessment under Council Directive 92/43/EEC of 21 May 1992 and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009.

Reasoned Conclusion:

[To be prepared by An Bord Pleanála and included in the Sixteenth Schedule to this Order].

In making **its reasoned conclusion** in accordance with section 42B of the Act of 2001 on the significant effects of the proposed railway works on the environment, taking into account the results of the examination of the information presented in the Environmental Impact Assessment Report, any further information provided by the Applicant under section 41 and where applicable, section 47D of the Act of 2001, and any relevant information received through consultation under section 40, section 41 and, where applicable, section 47D of the Act of 2001 and, where appropriate, its own supplementary examination, and the integration by the Board of its reasoned conclusion into this decision under section 43 of the Act of 2001, the Board has regard *inter alia* to the following:

- Environmental Impact Assessment Report and associated Appendices;
- Supporting documents;
- Appropriate Assessment (Natura Impact Statement);
- Draft Railway Order, Book of Reference, Schedules, Plans and Drawings;
- Any additional information which may be provided prior to the close of the Oral Hearing in the form of submissions and responses to submissions, additional information errata, corrigenda, Briefs of Evidence, etc.;
- Agreements referred to in this Railway Order and the Schedules thereto;
- The Inspector's Report (and reports of specialist advisers appointed to assist the Inspector); and
- Conditions attached by the Board set out in the Schedules.

After considering the totality of the documentation and evidence as set out above, the Board has made its **reasoned conclusion** in accordance with section 42B(c) of the Act of 2001 as set out at the **Sixteenth Schedule** [to be inserted by the Board] hereto.

AND AFTER CONSIDERING the matters referred to in section 43(1) of the Act of 2001 and having taken into account the aforesaid reasoned conclusion under section 42B(c) of the Act of 2001 and being satisfied that that reasoned conclusion remains up-to-date, the Board being of the opinion that the application should be granted and also being of the opinion that the acquisition of the land and any substratum of land specified in this Order, and the acquisition of the easements and other rights over land specified in this Order, are necessary for giving effect to this Order,

HEREBY AUTHORISES:

The Applicant – TII – to construct, maintain, improve and operate the railway and the railway works and works specified in this Order or any part thereof, in such manner and subject to such conditions – including 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 has specified in this Order,

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

PART 1
PRELIMINARY

1 Citation

- 1) This Order may be cited as the Railway (MetroLink – Estuary to Charlemont via Dublin Airport) Order, [2022].

2 Interpretation

- 1) In this Order—

“*Act of 1919*” means the Acquisition of Land (Assessment of Compensation) Act, 1919 as amended and substituted;

“*Act of 1961*” means the Road Traffic Act 1961, as amended and substituted;

“*Act of 1993*” means the Roads Act, 1993, as amended and substituted;

“*Act of 2000*” means the Planning and Development Act 2000, as amended and substituted;

“*Act of 2001*” or “*Principal Act*” means the Transport (Railway Infrastructure) Act 2001 as amended and substituted including by inter alia the European Union (Railway Orders) (Environmental Impact Assessment) (Amendment) Regulations 2021 (Statutory Instrument No. 743/2021);

“*Act of 2006*” means the Planning and Development (Strategic Infrastructure) Act 2006;

“*apparatus*” means any item of infrastructure and includes any substation, inspection chamber, junction box, booster station, pipe, sewer, drain, duct, tunnel, conduit, wire, cable, fibre, insulator, masts, support structures and including such other thing as may be used by an undertaker for or in connection with the provision of a service to the public;

“*Agency*” means the National Roads Authority operating as Transport Infrastructure Ireland as provided for in Statutory Instrument No. 297 of 2015, Roads Act 2015 (Operational Name of National Roads Authority) Order 2015 and is the Applicant for this Railway Order and the words “Agency” and “Applicant” and acronym “TII” are used interchangeably;

“*Applicant*” means the Agency;

“*authorised works*” means all works described and all works authorised in this Order and in the schedules thereto (also referred to as the “*scheduled works*”) and includes railway works, works, or any part of them;

“*Board*” or “*the Board*” means An Bord Pleanála;

“Book of Reference” means the book of reference to the plan, submitted to the Board pursuant to section 37(3) of the Principal Act and certified by the Board as the book of reference for the purpose of this Order and including the schedules thereto;

“construct” includes to build, make, modify, assemble and put together;

“designated body” means an authority designated by the Minister for Transport under section 39A of the Principal Act;

“environmental condition” includes an environmental condition and environmental conditions as defined in the European Union (Railway Orders) (Environmental Impact Assessment) (Amendment) Regulations 2021 (Statutory Instrument No. 743/2021) and in the Principal Act;

“EIA Directive” and *“Environmental Impact Assessment Directive”* means Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014;

“Environmental Impact Assessment” includes an environmental impact assessment in relation to proposed railway works and as defined in the European Union (Railway Orders) (Environmental Impact Assessment) (Amendment) Regulations 2021 (Statutory Instrument No. 743/2021) and in the Principal Act;

“Environmental Impact Assessment Report” includes an Environmental Impact Assessment Report in relation to proposed railway works and as defined in the European Union (Railway Orders) (Environmental Impact Assessment) (Amendment) Regulations 2021 (Statutory Instrument No. 743/2021) and in the Principal Act;

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

“land” has the meaning ascribed to that term under the Land and Conveyancing Law Reform Act 2009 as amended and substituted;

“limits of deviation” means the limits of deviation for the scheduled works mentioned in Article 6;

“limits of land to be used temporarily” means the limits so shown and described in the plans;

“Local Authority” includes the definition assigned to it by the Act of 1993 and the Local Government Act, 2001 as amended and substituted;

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

“mechanical power” means electrical and any other motive power;

“Minister” means the Minister for Transport;

“*occupier*” includes a person occupying land under a tenancy for a period of more than one month;

“*Order*” means this Railway Order;

“*owner*” in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion and includes also a person holding or entitled to the rents and profits of the land under a lease or agreement the unexpired term whereof exceeds three years;

“*Plan*” or “*plans*” includes the plan of the proposed railway works together with all documents that accompany the application, including (but not limited to) alignment drawings/plans, structural drawings/plans, utility drawings/plans, property drawings/plans, landscape drawings/plans together with a plan of any proposed commercial development of land adjacent to the proposed railway works submitted to the Board pursuant to section 37(3) of the Principal Act and deposited or to be deposited at the head office of TII pursuant to section 46(a) of the Principal Act;

“*public road*” means a public road within the meaning of the Act of 1993 and includes any road which may become a public road during the currency of this Order;

“*railway*” means the railway authorised by this Order or any part of it;

“*railway infrastructure*” means any land, buildings, bridges, structures, equipment, systems, masts, cables, level crossing, vehicles, services or other thing used in connection with, or necessary or incidental to, the movement of passengers or freight by railway;

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

“*railway undertaking*” has the meaning ascribed to it under section 2 of the Principal Act;

“*railway works*” means any works required for the purposes of the railway or any part of the railway, including works ancillary to the purposes aforesaid such as parking by buses, bicycles or by persons using vehicles who intend to complete their journey by railway, and relocation of utilities and in this definition “works” includes any act or operation of construction, excavation, tunnelling, demolition, extension, alteration, reinstatement, reconstruction, making good, repair or renewal;

“*reasoned conclusion*” includes a reasoned conclusion as referred to in the European Union (Railway Orders) (Environmental Impact Assessment) (Amendment) Regulations 2021 (Statutory Instrument No. 743/2021) and in the Principal Act and as set out in the Sixteenth Schedule to this Railway Order;

“*reconstruct*” includes to wholly or partially rebuild, modify, restore, replace, alter, reinstate, strengthen, relocate, repair and cognate words shall be construed accordingly;

“*rights*” includes rights which exist or which TII is authorised to create by this Order;

“*relevant road authority*” in relation to a road or a proposed road, means the road authority in whose functional area the road is located or is proposed to be constructed;

“*road*” has the meaning assigned to it by the Roads Acts;

“*Roads Acts*” means the Roads Acts, 1993 to 2015;

“*road authority*” has the meaning assigned to it by the Roads Acts;

“*Sanitary Authority*” includes a sanitary authority for the purposes of the Local Government (Sanitary Services) Acts 1878 to 2001 as further amended and substituted;

“*Schedule*” means a schedule to this Order or a schedule to the Book of Reference;

“*scheduled works*” means the works and plans specified in the schedules to this Order and shall also include all such other works and railway works referred to in this Order and the schedules to this Order including any addendum thereto or any part of them;

“*station*” means a halting place where passengers or intending passengers may alight from or board railway vehicles. The halting place may be situated on the surface or underground at depth with associated access and mechanical and electrical equipment arrangements;

“*stratum of land*” means any subsoil or anything beneath the surface of land required—

- i. for the purposes of the authorised works, or
- ii. for any other purposes connected with this Order;

“*TII*” means Transport Infrastructure Ireland and includes:

- i. any person with whom or with which (as the case may be) Transport Infrastructure Ireland has made an arrangement pursuant to section 43(5) of the Principal Act;
- ii. in respect of the performance of any function of Transport Infrastructure Ireland, any person duly authorised by Transport Infrastructure Ireland to perform that function;
- iii. any references to the Railway Procurement Agency or the National Roads Authority operating as Transport Infrastructure Ireland shall mean Transport Infrastructure Ireland;
- iv. the Agency; and
- v. the Applicant.

“*undertaker*” in relation to apparatus, means a person or body with power and authority, independently of the operation of this Order, to locate or relocate the apparatus, or cause it to be located or relocated, as provided for in Article 25;

“works” includes any act or operation of construction, excavation, tunnelling, demolition, extension, alteration, reinstatement, decommissioning of any equipment, reconstruction, making good, repair or renewal and includes railway works as defined in the Principal 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 Principal Act and, for the avoidance of doubt, includes surveys and investigations and the methods by which such said acts or operations are executed and cognate words shall be construed accordingly; and

- 2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in or on land or in the substratum of land or in the air space over its surface.
- 3) Any reference in this Order to a work identified by the number of the work shall be construed as a reference to the work of that number authorised by this Order.
- 4) References in this Order to points identified by letters, with or without numbers, shall be construed as reference to the points marked on the plan.
- 5) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, direction and length, and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

3 Incorporation of Enactments

- 1) The Regulation of Railways Acts, 1840 – 1893 and any other Act relating to railways shall apply to the railway authorised by this Order 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 Principal Act together with the Order shall be deemed to be the Special Act for the purposes of those enactments.

4 Designation of Railway

- 1) The railway is designated as a metro.

PART 2
RAILWAY WORKS, WORKS AND RELATED PROVISIONS

5 Construction, operation, improvement and maintenance of railway works and works and power to execute works

- 1) Subject to the provisions of this Order, TII may, on the lines, in the places and according to the levels shown on the Plan (and plans), execute the authorised and the scheduled works or any part thereof, including those works described in the First Schedule and the Plan (and plans) and in all other Schedules referred to in this Railway Order and all other necessary, consequent or ancillary works or things.
- 2) Without prejudice to the matters referred to paragraph (1) hereof and to the generality of the foregoing, the authorised works include *inter alia*: construction of a railway approximately 18.8 kilometres in length which is mostly underground comprising *inter alia* 9.4 kilometres section of single bore tunnel running beneath Dublin City Centre from Charlemont to Northwood Station, 2.3 kilometres section of single bore tunnel running beneath Dublin Airport; tunnel sections include intervention access facilities for emergency services at Dublin Airport, Albert College Park and just south of Charlemont Station, tunnel Portal structures will be provided at Northwood, Dardistown and Dublin Airport; north of Dublin Airport the railway will emerge from tunnel and will run at surface level and in cut and cover structures to Estuary Station; surface running sections and cut and cover sections will include earthworks, the use of retained cut and cover structures, elevated sections plus miscellaneous drainage and accommodation works; a new 99m long bridge will be constructed over the M50 and a 261m long multi-span Viaduct over the Broadmeadow and Ward River; the construction of 16 stations, including 11 underground stations at Dublin Airport, Northwood, Ballymun, Collins Avenue, Griffith Park, Glasnevin, Mater, O'Connell Street, Tara, St. Stephen's Green and Charlemont; 4 retained cut stations at Seatown, Swords Central, Fosterstown and Dardistown and 1 at grade station at Estuary; a multi-storey 3000 space park and ride close to the M1 Motorway will be provided at Estuary Station, a maintenance depot is located near Dardistown Station which will house all the facilities required for the maintenance and operation of the MetroLink and its rolling stock and the Operational Control Centre; the works will also *inter alia* include railway signalling, command and control and communications systems; provision of electrical substations; establishment of temporary construction compounds; establishment of temporary traffic management and road diversions; new and realigned access routes and road junction improvements; diversion of existing utilities; provision of new drainage infrastructure; provision of environmental mitigation measures; and other infrastructural modifications to facilitate the overall project.
- 3) Subject to section 11(7) of the Principal Act, TII may operate and maintain the railway or any part thereof in the manner and subject to the conditions (including, in particular, the conditions set out in Fourteenth Schedule - Conditions imposed by An Bord Pleanála), restrictions and requirements specified in this Order.
- 4) In executing the authorised and scheduled works, TII may lay, maintain and install such number of railway lines, switches and crossings, as it deems necessary or expedient.

6 Deviation

- 1) In executing any of the authorised works TII may —
 - (a) where those works are situated in a public road —
 - i. deviate laterally by any distance not exceeding 2.5 metres from the lines or situations shown on the plans,
 - ii. deviate vertically by any distance not exceeding 1 metre upwards from the levels shown on the plans,
 - iii. deviate vertically by any distance not exceeding 1 metre downwards from the levels shown on the plans,
 - (b) where those works are not situated in a public road —
 - i. deviate laterally by any distance not exceeding 5 metres from the lines or situations shown on the plans,
 - ii. deviate vertically by any distance not exceeding 2 metres upwards from the levels shown on the plans,
 - iii. deviate vertically by any distance not exceeding 2 metres downwards from the levels shown on the plans,
 - (c) where those works form part of a station, amend the internal layout of the station,
 - (d) where those works form part of an underground tunnel—
 - i. deviate laterally by any distance not exceeding 15 metres from the lines or situations shown on the plans,
 - ii. deviate vertically by any distance not exceeding 5 metres upwards from the levels shown on the plans,
 - iii. deviate vertically by any distance not exceeding 10 metres downwards from the levels shown on the plans,
 - (e) where those works form part of an underground station —
 - i. deviate laterally by any distance not exceeding 2 metres from the lines or situations shown on the plans,
 - ii. deviate vertically by any distance not exceeding 5 metres upwards from the levels shown on the plans,
 - iii. deviate vertically by any distance not exceeding 10 metres downwards from the levels shown on the plans,

- (f) where those works form part of Retained Cut and Cover Alignment, including stations —
 - i. deviate laterally by any distance not exceeding 2.5 metres from the lines or situations shown on the plans,
 - ii. deviate vertically by any distance not exceeding 1 metre upwards from the levels shown on the plans,
 - iii. deviate vertically by any distance not exceeding 2 metres downwards from the levels shown on the plans.

7 Temporary closure of Royal Canal

- 1) TII may, for the purpose of executing the railway works authorised by this Order or for any purpose incidental thereto, from time to time request Waterways Ireland to close temporarily navigation on the Royal Canal to traffic to allow draining and over-pumping of sections of the canal where construction crosses this watercourse and to close temporarily any one or more public roads in accordance with Article 9 to traffic and the following provisions shall apply in relation to such a request:
 - (a) TII shall give to Waterways Ireland not less than 21 days' prior notice in writing of its requirement to close temporarily each such section of the canal and such notice shall:
 - i. specify the canal section which is required to be closed temporarily;
 - ii. state the period for which, in the reasonable opinion of TII, it is necessary to close temporarily such canal section; and
 - iii. contain a brief description of the works (set out in Article 5 and the First Schedule) which TII proposes to carry out while the section of the canal is closed temporarily.
 - (b) Where a request is made to Waterways Ireland under this Article, the consent, agreement or approval concerned must, if given, be given in writing and is not to be unreasonably withheld, conditioned or delayed.

8 Power to alter layout of public roads

- 1) In exercise of the powers conferred by section 50 of the Principal Act and subject to that section and to paragraph (2), TII may in connection with or for the purpose of railway works on, in, over, under or adjacent to any public road and in accordance with the plans do any one or more of the following:
 - (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 the road;
 - (b) break up, alter or interfere with the level of any carriageway, kerb, footway, cycle track, verge of other land within the boundary of the road;

- (c) realign the road;
 - (d) alter street furniture;
 - (e) change the signalisation of junctions and crossings where required; and
 - (f) carry out works to the carriageway of the road for the purpose of deterring or inhibiting vehicles other than authorised vehicles from passing along the tracks of the railway or from passing along any particular section or sections of the road.
- 2) Before exercising any power under paragraph (1), TII shall obtain the consent of the relevant road authority, which consent shall not be unreasonably withheld, conditioned or delayed.
 - 3) The authorised works may be executed on, in, over, under or adjacent to the public roads specified in the Twelfth Schedule.

9 Temporary closure of public roads

- 1) Subject to paragraph (3), TII may, for the purpose of executing the authorised works or for any purpose incidental thereto, request the relevant road authority by order temporarily to close a public road to traffic, and paragraphs (2) to (8) shall apply in relation to such a request.
- 2) TII shall give the road authority notice in writing of its requirement to close the road and the notice shall—
 - (a) specify the road which is required to be temporarily closed,
 - (b) state a period for which, in the reasonable opinion of TII, it is necessary temporarily to close the road,
 - (c) give particulars of any alternative route or routes (if any) which TII believes will be available while the road is temporarily closed, and
 - (d) contain a brief description of the works which TII proposes to carry out while the road is temporarily closed.
- 3) Within 12 days of the receipt by a road authority of a notice referred to in paragraph (2), the road authority shall give at least 14 days' notice of its intention to close the road—
 - (a) in at least one newspaper circulating in the area in which the road is situated, and
 - (b) in writing to the Superintendent of the Garda Síochána within whose district the road is situated.
- 4) The notice required to be given by paragraph (3) shall—

- (a) contain the information set out in the notice given to the road authority by TII, and
 - (b) state that objections may be made in writing to the road authority in relation to the proposed temporary closure of the road before a specified date (which date shall not be less than 3 days after the publication of the notice).
- 5) A road authority shall consider any objections made to it in writing pursuant to paragraph (4) and not withdrawn.
- 6) Where a road authority, having complied with paragraphs (3) to (5), decides to close a road temporarily, it shall give at least 7 days' notice of its decision—
- (a) in each newspaper in which the notice of its intention temporarily to close the road was published, and
 - (b) in writing to the Superintendent of the Garda Síochána within whose district the road is situated,

and the temporary closure shall not take effect earlier than the date specified in the notice of intention under paragraph (3). The notice of decision required to be given by this paragraph shall contain the information specified in paragraph (2).

- 7) TII shall provide reasonable access for pedestrians going to or from premises abutting on a road affected by the powers conferred by this Article.
- 8) TII may provide such access for vehicular traffic along the road closed in consequence of the exercise of the powers conferred by this Article as TII from time to time considers reasonable having regard to the nature of the railway works and the need to preserve the safety of persons and vehicles permitted to use the road, and TII may impose such restrictions and conditions upon the passage of vehicles on the road as it considers reasonable in the circumstances.
- 9) Paragraphs (1) to (8) are without prejudice to the power of TII to execute in an emergency railway works immediately necessary to eliminate or reduce danger or risk to persons or property.

10 Construction of new roads

- 1) TII may, subject to section 50 of the Principal Act, with the consent of the relevant road authority, construct the new roads specified in the Eleventh 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, unless otherwise agreed between TII and the relevant road authority, be maintained by and at the expense of the relevant road authority upon the expiry of the period of twelve months after its completion, the commencement of which period shall be certified by notice in writing given by TII to the relevant road authority.

11 Bridges and Culverts

- 1) Subject to paragraph (2), TII shall maintain at its own expense each bridge and culvert constructed by TII pursuant to this Order to carry the railway over or under a public road or waterway or to carry a public road or waterway over or under the railway, public road or waterway.
- 2) Where a bridge or culvert carries a public road over or under the railway, TII and the relevant road authority may enter into agreements upon such terms as may be agreed between them for the maintenance, improvement, or relaying of the road surface.

12 Fixing of brackets etc., to buildings and erection of poles

- 1) Without prejudice to the exercise by TII of its powers under section 48 of the Principal Act, TII may enter on the lands specified in the Seventh Schedule and may attach to any wall, house, building, structure or lands thereon any bracket, cable or wire or other fixture required for or in connection with the construction, operation, maintenance or improvement of the railway and may do on such land all such other things as are, in the opinion of TII, ancillary to or reasonably necessary for such purposes.
- 2) TII may enter on the lands specified in the Eighth Schedule and may erect thereon any pole or poles required for or in connection with the construction, operation, maintenance or improvement of the railway.

13 Fixing of monitoring equipment

- 1) In order to avoid prevent, reduce or offset effects (including significant adverse effects on the environment) and to provide for the monitoring of the said effects (including significant adverse effects on the environment), this Order subject to (any environmental condition including any condition, modification, restriction or requirement contained therein) and, where applicable, section 48 of the Principal Act, authorises TII, its servants or agents to establish and provide for monitoring measures including any inquiry, investigation or examination, parameters to be monitored and the duration of monitoring.
- 2) Without prejudice to the generality of paragraph (1) and for the avoidance of doubt, the monitoring measures to avoid, prevent, reduce or offset significant adverse effects on the environment includes equipment, instruments and gear that may be attached to a wall, house, building, structure or lands for the purposes, among other things, of monitoring the effect on such wall, house, building, structure or lands of the authorised works and the operation of the railway, and TII, its servants or agents may from time to time and at such times as TII shall determine re-enter the lands in question for the purpose of inspecting such equipment, instruments and gear and for taking readings.
- 3) In carrying out such monitoring, TII, its servants or agents, will ensure that it records (a) the number and location of places within an area at which monitoring is being carried out and the frequency of such monitoring (including where applicable any land, premises or structure occupied by TII, its servants or agents, for the purposes of assessing its compliance with any monitoring provisions authorised by this Order

or with any environmental condition), (b) the manner in which samples and measurements are taken and analyses are carried out, (c) the equipment being used for the purposes of taking such samples and measurements, or of carrying out such analyses, and (d) the results of any monitoring carried out.

- 4) Upon the making of the Railway Order, TII its servants or agents, shall notify the Minister for Transport of the matters set out in paragraphs (1), (2) and (3) hereof or of any similar provision contained in any environmental condition.

14 Underpinning or strengthening of any house, building or structure

- 1) TII may, in accordance with section 48 of the Principal Act, enter on any land and underpin or otherwise strengthen any house, building or structure affected or likely to be affected by the authorised works or the railway and may do on such land all such other things as are, in the opinion of TII, ancillary to or reasonably necessary for such purposes.
- 2) Where any house, building, or other structure has been underpinned or strengthened in accordance with section 48 of the Principal Act and this Article, TII may from time to time thereafter, in accordance with that section and this Article, re-enter on the land and do such further underpinning or strengthening or other activity reasonably necessary for the purposes aforesaid as TII deems necessary or expedient.

15 Discharge of water

- 1) Subject to paragraphs (2) and (3), TII may use any public watercourse, sewer, drain or treatment plant for the drainage of water in connection with the execution of the railway works and works authorised by this Order and the operation or maintenance of the railway, and for that purpose may make any convenient connections with any such watercourse, sewer or drain.
- 2) TII shall not discharge any water into any public watercourse, sewer, drain or treatment plant except—
 - (a) with the consent of the sanitary or other authority responsible for that watercourse, sewer or drain, which consent shall not be unreasonably withheld, conditioned or delayed, and
 - (b) in accordance with such terms and conditions as that authority reasonably imposes.
- 3) TII shall take such steps as are reasonably practicable to ensure that any water discharged into a public watercourse, sewer, drain or treatment plant under the powers conferred on TII by this Article is free from soil or polluting or deleterious material.
- 4) Should any dispute occur in relation to any provisions of this Article between TII and the sanitary or other authority it shall be referred to arbitration in accordance with the provisions of Article 26 of this Order.

16 Characteristics of the Railway

- 1) The railway shall be operated by electrical or any other mechanical motive power.
- 2) The gauge of the railway shall be nominally 1435 millimetres.

17 Period within which TII is authorised to execute the authorised and scheduled works

- 1) Subject to paragraph (2) and so far as is reasonably practicable, execution of the authorised works shall be substantially completed by the end of the period of 10 years, or such further period as the Board may allow, beginning on the date on which this Order comes into operation pursuant to section 43(4) of the Principal Act.
- 2) Paragraph (1) does not apply to any works which are required for safety or maintenance purposes in connection with the operation of the railway.

PART 3
ACQUISITION AND POSSESSION OF LAND AND RIGHTS

18 Power to acquire land

- 1) Subject to the Principal Act, TII may acquire compulsorily and use all or such part of the lands shown on the plans and specified in the Second Schedule as TII may require for the purposes of the execution of the authorised works and the operation of the railway or for purposes incidental or ancillary to those purposes.
- 2) Subject to the Principal Act, TII may acquire compulsorily and use all or such part of the substrata of lands shown on the plans and specified in the Third Schedule as TII may require for the purposes of the execution of the authorised works and the operation of the railway or for purposes incidental or ancillary to those purposes.
- 3) Without prejudice to the generality of this Article and subject to the Principal Act, TII may acquire compulsorily and use all of the basements specified in the Sixth Schedule or such parts thereof as TII considers necessary to acquire for the purposes of the execution of the authorised works and the operation of the railway or for purposes incidental or ancillary to those purposes.
- 4) For the avoidance of doubt, in relation to any such acquisition of land, the provisions of sections 4 and 8 of the Railways Act, 1851 shall not apply.

19 Acquisition of rights over lands

- 1) Subject to the Principal Act, TII may acquire compulsorily such rights over the lands, water, railways or roads shown on the plans and specified in the Fifth Schedule as may be required for the purposes of the execution of the authorised works and the operation of the railway, together with such rights as are necessary for the full and free exercise at all times of the first-mentioned rights.

20 Extinguishment of public rights of way

- 1) TII may extinguish the public rights of way shown on the plans and specified in the Ninth Schedule for the purposes of the execution of the authorised works and the operation of the railway or for purposes incidental or ancillary to those purposes.

21 Extinguishment of and interference with private rights

- 1) TII may extinguish the private rights on the lands shown on the plans and specified in the Tenth Schedule for the purposes of the execution of the authorised works and the operation of the railway or for purposes incidental or ancillary to those purposes.
- 2) For the avoidance of doubt, the identification of any particular private rights to be extinguished on the plans are indicative only and do not limit the effect of paragraph (1).

22 Use of air space

- 1) Without prejudice to Article 18, TII may enter on and use so much of the air space over any lands as is reasonably required for the purposes of, or in connection with the execution of the authorised works and the operation, maintenance or improvement of the railway or for purposes incidental or ancillary to those purposes.
- 2) The power under paragraph (1) may be exercised in relation to any lands without TII being required to acquire any part of the lands or any easement or other right in relation to the surface of the land.

23 Temporary possession of land

- 1) Subject to the Principal Act, TII may enter upon, occupy and take temporary possession of the land shown in the plans and specified in the Fourth Schedule or any part of that land, for the purpose of carrying out the authorised works.
- 2) In particular, and without prejudice to the generality of paragraph (1) —
 - (a) TII may—
 - i. enter on and take temporary possession of that land for the provision of working sites and access for construction purposes, and
 - ii. for those purposes, remove any structures thereon, construct other structures, cut and remove anything growing on that land or part thereof, and generally do all things to and on that land that are required to adapt it for those working sites or that access.
 - (b) where, in the exercise of the powers conferred on TII by the Principal Act and this Order, a part of a building has been compulsorily acquired or interfered with for the purpose of carrying out railway works and works authorised by this Order, TII may enter on, and take temporary possession of, another part of that building with a view to minimising the damage or injury done or likely to be done by the acquisition or removal of, or interference with, that part of the building so acquired or interfered with.
- 3) Before giving up possession of land specified in the Fourth Schedule, and subject to any agreement to the contrary with the owners and occupiers of the land, TII shall remove all temporary works and structures constructed by it on the land and shall restore the land as far as possible to its former state.
- 4) TII shall not be required to acquire any land of which it takes temporary possession pursuant to this Article.
- 5) TII shall pay to the owners and occupiers of land of which it takes temporary possession under this Article compensation for any loss, injury or damage thereby suffered or expenditure thereby incurred as if that loss, injury, damage or expenditure were suffered or incurred in consequence of the exercise by TII of a power conferred upon it by section 48 of the Principal Act, and the amount of the compensation shall be determined in accordance with that section.

24 Period within which TII may compulsorily acquire land and interests in land

- 1) The powers conferred on TII by this Order compulsorily to acquire permanently land or rights over or under land, water or a road and the power conferred by Article 23 to enter upon and take temporary possession of land shall cease at the end of the period specified in section 217(6) of the Act of 2000 beginning on the date on which this Order comes into operation pursuant to section 43(4) of the Principal Act.
- 2) The powers of TII compulsorily to acquire land or rights over or under land shall, for the purposes of this Article, be deemed to have been exercised if a notice to treat has been served in respect of the land or rights before the end of the period mentioned in paragraph (1).
- 3) Notwithstanding paragraph (1), TII shall be entitled to enter into and remain in temporary possession of land after the end of the period mentioned in paragraph (1).

PART 4
MISCELLANEOUS AND GENERAL

25 Interference with Apparatus

- 1) This Article applies where it appears to TII, in relation to apparatus in the vicinity of a place in which it proposes to execute authorised works, that —
 - (a) the functioning of the apparatus will, or is likely to, interfere with the execution of those works or the proper functioning of the railway, or
 - (b) the execution of the authorised works or the operation of the railway will or is likely to interfere with the proper functioning of the apparatus.
- 2) The relevant undertaker may and, upon reasonable request by TII, shall without unreasonable delay do either or both of the following:
 - (a) remove the apparatus and/or relocate it or other apparatus in substitution for it in such other position or location as may be agreed with TII,
 - (b) take such further or other steps or make such further or other provision with the agreement of TII as secures the apparatus and the authorised works and the proper functioning of each of them respectively from mutual interference or damage.
- 3) Subject to paragraph (4), TII shall pay to the undertaker an amount equal to the cost reasonably incurred by the undertaker in the discharge of its obligations under paragraph (2).
- 4) Where an undertaker, in the course of the discharge of obligations under paragraph (2), unnecessarily provides, in substitution for existing apparatus, apparatus that, whether because of its type, construction, design, layout, placement or any other feature, is an improved or superior version of the existing apparatus, the sum payable by TII under paragraph (3) shall not exceed the cost that would have been reasonably incurred by the undertaker if the substituted apparatus had not been an improved or superior version of the existing apparatus.
- 5) An undertaker may permit TII to carry out or cause to be carried out such portion of the undertaker's obligations under this Article as the undertaker agrees in accordance with such conditions as are agreed between TII and the undertaker, but the undertaker is not obliged to enter into any such agreement.

26 Arbitration

- 1) The provisions of this Article shall not apply to any dispute concerning the matters referred to in the Fourteenth Schedule – Conditions imposed by An Bord Pleanála – which are described in that Schedule as determinable by An Bord Pleanála.

- 2) Subject to paragraph (1), paragraphs (3) to (5) apply to any dispute arising between TII and any other party in relation to the execution of the authorised works or the exercise by TII of the powers granted by this Order.
- 3) TII and the other party shall use their best endeavours to resolve the dispute on mutually acceptable terms.
- 4) If, after such period as TII or the other party considers reasonable, the dispute has not been resolved to the satisfaction of both parties, the following shall apply:
 - (a) 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 that notice, nominate a person to arbitrate upon the subject matter of the dispute;
 - (b) the party receiving the notice may, within that period of 14 days, by a counter-notice, either —
 - i. accept the arbitrator nominated by the party serving the original notice, or
 - ii. nominate at least 2 alternative persons to act as arbitrator;
 - (c) if any one of the persons nominated by the parties is acceptable to both parties, the subject-matter of the dispute shall be referred to the arbitrator as soon as may be after that person has indicated his or her willingness to act as arbitrator;
 - (d) if —
 - i. after service of the notice and counter-notice, the parties fail to agree upon an arbitrator, or
 - ii. the person agreed upon to be the arbitrator has failed to indicate, within 14 days' of being so requested, his or her willingness to act,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; and
 - (e) the arbitrator so appointed by the Chairman of the Irish Branch of the Chartered Institute of Arbitrators 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 that Institute.
- 5) The Arbitration Act 2010 shall apply to the arbitration, and the decision of the arbitrator in relation to the dispute and all matters connected with it shall be binding on the parties.

27 Agreement between TII and a Road Authority

- 1) TII 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 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 in which TII 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.

28 Interference with roads

- 1) If, in the course of constructing or maintaining the railway, TII interferes with any public road, it shall make good all damage done by it to the public road.

29 Rights of third parties to open up roads etc.

- 1) Subject to paragraphs (2) and (3), nothing in this Order takes away or abridges any power lawfully vested in any person to open or break up any road in which a railway is laid or to lay down, repair, alter or remove any apparatus, as defined.
- 2) No power referred to in paragraph (1) shall be exercised so as to affect a railway or its operation without the prior consent in writing of TII, which consent shall not be unreasonably withheld or delayed.
- 3) A person exercising a power to which paragraph (1) relates shall in all respects comply with any reasonable conditions specified by TII as necessary for or in connection with the construction, maintenance, operation or protection of the railway or the railway works.

30 Bye-Laws

- 1) Pursuant to the powers conferred by section 66 of the Principal Act, and in accordance with the procedure laid down therein, Bye-Laws may be made in relation to the management, control, operation and regulation of the railway by TII or, with the consent of TII, by a railway undertaking which operates the railway or under whose control the railway is and, without prejudice to the generality of the foregoing, in relation to any one or more of the following matters —
 - (a) The general regulation, subject to any statutory provisions in that behalf of —
 - i. the travelling upon or use of the railway, (including a requirement to travel with a valid ticket or pass and the issue of such),
 - ii. the working of railway transport services by the relevant railway undertaking,
 - (b) the prevention of the commission of nuisances in or upon the railway,

- (c) the prevention of damage to railway infrastructure,
 - (d) the removal from or the prohibition of the use on the railway of any vehicle or thing which is or may become a danger to life, health, the operation or maintenance of the railway or would otherwise interfere with the proper operation of the railway,
 - (e) the regulation of parking of vehicles on or adjacent to the railway,
 - (f) the safe custody and return or disposal of any property found on the railway,
 - (g) the detention, storage, release and disposal of vehicles,
 - (h) the repair, improvement, extension and development of the railway,
 - (i) subject to any statutory provisions in that behalf, the regulation of works that would affect the operation or maintenance of the railway or would otherwise interfere with the proper operation of the railway.
- 2) Bye-Laws under paragraph (1) may contain such incidental, subsidiary and ancillary provisions as TII, or as the case may be, the relevant railway undertaking, considers necessary or expedient for the purposes of the Bye-Laws.
 - 3) TII, or as the case may be, the relevant railway undertaking may provide for reasonable charges in respect of matters provided for in Bye-Laws made by it under this clause.
 - 4) Where it is proposed to make Bye-Laws TII, or the relevant railway undertaking as the case may be, shall publish notice of the proposal-
 - i. On its website, and
 - ii. In at least 2 national newspapers circulating within the State or in the area to which the Bye-Laws relate.

The notice shall include-

- i. a statement of the purposes for which the Bye-Laws are to be made,
- ii. confirmation that—
 - (I) a copy of the draft Bye-Laws is open for public inspection at the principal offices in the State of TII or the undertaking, as the case may be, and
 - (II) that the draft Bye-Laws are published on TII or the relevant railway undertaking's website, as the case may be, and
- iii. confirmation that any person may submit to TII or the relevant railway undertaking, as the case may be, objections to the draft Bye-Laws at any

time during the period of 30 days' commencing on the date of the first publication of the notice.

- 5) TII, or the relevant railway undertaking, as the case may be, shall, during the 30 day period keep a copy of the draft Bye-Laws open for public inspection during ordinary office hours at its principal offices. Any person who objects to the draft Bye-Laws may submit his or her objection to TII or the relevant railway undertaking, as the case may be, in writing at any time during that period of 30 days and TII or the relevant railway undertaking, as the case may be, shall consider the objections, and on the completion of that period of 30 days, TII or the relevant railway undertaking, as the case may be, shall as it thinks proper, refrain from making the Bye-Laws or make the Bye-Laws either with or without modification as it thinks proper.
- 6) TII or the relevant railway undertaking shall publish on its website Bye-Laws made by it under this clause. The failure to publish such Bye-Laws is not a defence to a contravention of or a failure to comply with such Bye-Laws.
- 7) Such details of Bye-Laws under this clause shall be displayed on a railway where practicable, in conspicuous places in such manner as –
 - (a) TII, where the Bye-Laws are made by it, or
 - (b) The relevant railway undertaking, where the Bye-Laws are made by it, subject to any general direction of TII,considers best adapted for giving information to the public. The absence of any such display is not a defence to a contravention of or a failure to comply with such Bye-Laws.
- 8) Bye-Laws under this clause shall not be made without the consent of the Minister.
- 9) Every Bye-Law made under this section, shall be laid, where they are made by TII, by TII, and where they are made by a railway undertaking, by the railway undertaking, before each House of the Oireachtas, as soon as may be after it is made and, if a resolution annulling the Bye-Law is passed by either such House within the next 21 days on which that House has sat after the Bye-Law is laid before it, the Bye-Law shall be annulled accordingly, but without prejudice to anything previously done under it.
- 10) A person who contravenes a Bye-Law under paragraph (1) shall be guilty of an offence and shall be liable on summary conviction to a Class D fine or such other fine as may be fixed from time to time by law.
- 11) The liability of an offender to a fine does not prejudice the recovery of any fare, tariff or fee payable by him or her to TII or the railway undertaking for any damage caused by him or her to property of TII or the relevant railway undertaking.