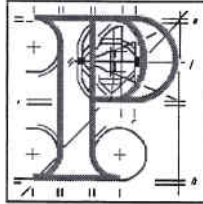


An Bord Pleanála



RAILWAY ORDER

TRANSPORT (RAILWAY INFRASTRUCTURE) ACT 2001 - 2006

**RAILWAY (DUBLIN LIGHT RAIL LINE A1- BELGARD TO
SAGGART) ORDER 2008**

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PREAMBLE
(Including reasons and considerations)

AN BORD PLEANÁLA in exercise of the powers conferred on it by Section 43 of the Transport (Infrastructure) Act 2001 (as amended by the Planning and Development (Strategic Infrastructure) Act 2006) having considered:

- an application, duly made on the 20th day of December, 2007 by the Railway Procurement Agency for a railway order to be designated as appears hereunder, authorising railway works between Belgard and Saggart in the County of Dublin,
- the draft Order and documents that accompanied the application including the environmental impact statement,
- the submissions duly made to it under section 40(3) and not withdrawn,
- the written and oral submissions made by the observers and the responses by the applicant,
- the submissions duly made to it by an authority referred to in section 40(1)(c),
- the additional information submitted to the Board at the oral hearing,
- the report of the oral hearing held under section 42 of the Act and the recommendations contained therein,
- 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,
- national policy contained in the provisions of Transport 21 (November 2005), National Development Plan 2007-2013 and Department of Transport Statement of Strategy (2005-2007),
- regional policy contained in the Dublin Transportation Office document entitled "Platform for Change"(2001) and Regional Planning Guidelines for the Greater Dublin Area 2004-2016
- the provisions of South County Dublin Development Plan 2004-2010, Variation No.2 (Development Plan) Fortunestown Lane / Garters Lane, Cooldown Commons Area Plan and the Tallaght Town Centre Local Area Plan,

has concluded that the proposed construction and operation of a light railway described as LUAS Line A1 from Belgard to Saggart would have a positive overall effect on the environment and would be in accordance with the proper planning and sustainable development of the area.

The Board noted that the Minister for Transport has given his consent to the granting of the Railway Order and to the designation by the Board of the railway as a light railway and, being of the opinion that the said application should be granted and that the acquisition of the land and any substratum of land specified in this Order and of the rights in over or under public roads specified in this Order is necessary for giving effect to this Order, hereby orders as follows-

PART 1
PRELIMINARY

Citation.

1. This Order may be cited as the Railway (Dublin Light Rail Line A1 — Belgard to Saggart) Order 2008.

Interpretation.

2. In this Order —

“Act of 1993” means the Roads Act 1993 (No. 14 of 1993);

“Agency” means the Railway Procurement Agency or a person with whom, or with which, the Railway Procurement Agency has made an arrangement pursuant to section 43 (6) of the Principal Act;

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

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

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

“plan” means the plan of the proposed railway works submitted to An Bord Pleanála pursuant to section 37 (2) of the Principal Act;

“Principal Act” means the Transport (Railway Infrastructure) Act 2001 (No. 55 of 2001) as amended by Planning and Development (Strategic Infrastructure) Act 2006 (No. 27 of 2006);

“public road” means a public road within the meaning of the Act of 1993 or a road which becomes a public road during the currency of this Order;

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

“rights”, in relation to rights over land, water or a road, includes rights to do, place or maintain anything in, on, over or under that land, water or road;

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

“road authority” has the meaning assigned to it by the Act of 1993;

“sanitary authority” has the meaning assigned to it by the Environmental Protection Agency Act 1992 (No. 7 of 1992);

“stop” means a halting place where passengers or intending passengers may alight from or board light railway vehicles;

Incorporation of enactments.

3. The Regulation of Railways Acts 1840 to 1889 and any other Act relating to railways apply to the light railway authorised by this Order so far as they are applicable for the purposes of, and are not inconsistent with or varied by, this Order, and the Principal Act, together with this Order, shall be deemed to be the Special Act for the

purposes of those enactments.

Designation of railway.

4. The railway to which the railway works authorised by this Order relate is designated as a light railway.

PART 2 RAILWAY WORKS AND RELATED PROVISIONS

Construction of railway works and operation of light railway.

5. (1) The Agency may construct, maintain, improve and, subject to section 11 (7) of the Principal Act, operate the light railway or the railway works specified in this Order or any part thereof in the manner and subject to the conditions (including, in particular, the conditions set out in Schedule 12), restrictions and requirements specified in this Order.
 - (2) Subject to this Order, the Agency may, on the lines, in the places and according to the levels shown on the plan, execute the railway works specified in Part 1 of Schedule 1 and all other necessary or ancillary works.
 - (3) Subject to this Order, the Agency may, on the lines, in the places and according to the levels shown on the plan, execute the further railway works described in Part 2 of Schedule 1 and all other necessary or ancillary works.

Deviation.

- 6.—(1) In executing any railway works the Agency may —
 - (a) where those works are situated in a public road —
 - (i) deviate laterally by an amount not exceeding 2.5 metres from the lines or situations shown on the plan,
 - (ii) deviate vertically by an amount not exceeding 1 metre upwards or downwards from the levels shown on the plan,
 - (iii) deviate longitudinally by an amount not exceeding 20 metres,
 - (b) where those works are situated otherwise than in a public road —
 - (i) deviate laterally by an amount not exceeding 5 metres from the lines or situations shown on the plan,
 - (ii) deviate vertically by an amount not exceeding 2 metres upwards or downwards from the levels shown on the plan,
 - (iii) deviate longitudinally by an amount not exceeding 20 metres.
- (2) The Agency may, in executing railway works, lay down either single or interlacing tracks of parallel rails in places where double tracks are shown on the plan.

Power to alter the layout of public roads.

- 7.—(1) In exercise of the powers conferred by section 50 of the Principal Act and subject to that section and to paragraph (2), the Agency 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 plan 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 or other land within the boundary of the road;
 - (c) realign the road;
 - (d) carry out works to the carriageway of the road for the purpose of deterring or inhibiting vehicles other than light rail vehicles from passing along the tracks of the light railway or from passing along any particular section or sections of the road.
- (2) Before exercising any power under paragraph (1), the Agency shall obtain the consent of the relevant road authority, which consent shall not be unreasonably withheld or delayed.
 - (3) The railway works authorised by this Order may be executed on, in, over, under or adjacent to the roads specified in Schedule 6.

Temporary closure of public roads.

- 8.—(1) Subject to paragraph (2), the Agency may, for the purpose of executing railway works or for any purpose incidental thereto, request the relevant road authority by order to temporarily close a public road to traffic, and paragraphs (2) to (8) apply in relation to such a request.
- (2) The Agency shall give to 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 the Agency, it is necessary to temporarily close the road,
 - (c) give particulars of any alternative route or routes (if any) which the Agency believes will be available while the road is temporarily closed, and
 - (d) contain a brief description of the works which the Agency 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 the Agency, 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 temporarily close a road it shall give at least 7 days' notice of its decision to so close the road —
 - (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) The Agency shall provide reasonable access for pedestrians going to or from premises abutting on a road affected by the exercise of the powers conferred by this Article.
- (8) The Agency may provide such access for vehicular traffic along the road closed in consequence of the exercise of the powers conferred by this Article as the Agency 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 the Agency 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 the Agency to execute in an emergency railway works immediately necessary to eliminate or reduce danger or risk to persons or property.

Construction of new roads.

9. For convenience of reference, there is set out in Schedule 5 the form used in the book of reference in respect of new roads required to be constructed in connection with the railway works authorised by this Order.

Construction of bridges.

- 10.—(1) Subject to paragraph (2), the Agency shall maintain at its own expense each bridge constructed by the Agency pursuant to this Order to carry the light railway over a public road or a waterway or to carry a public road over the light railway.
- (2) Where the bridge carries a road, the Agency 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.

Fixing of brackets to buildings and erection of poles.

- 11.—(1) The Agency may enter on the lands specified in Part 1 of Schedule 3 and may attach to any wall, house, building or structure thereon any bracket, cable or wire or other fixture required for or in connection with the

construction, operation or maintenance of a light railway authorised by this Order (in respect of which none were identified).

- (2) The Agency may enter on the lands specified in Part 2 of Schedule 3 and may erect thereon any pole or poles required for or in connection with the construction, operation or maintenance of a light railway authorised by this Order.

Underpinning of buildings.

- 12.—(1) The Agency 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 railway works where the Agency considers it necessary or expedient to do so for the purpose of preventing or minimising injury, loss or damage to that house, building or structure or any part thereof.
- (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, the Agency 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 as the Agency deems necessary or expedient.

Discharge of water.

- 13.—(1) Subject to paragraphs (2) and (3), the Agency may use any public watercourse, sewer or drain for the drainage of water in connection with the execution of the railway works and the operation or maintenance of the light railway, and for that purpose may make any convenient connections with any such watercourse, sewer or drain.
- (2) The Agency shall not discharge any water into any public watercourse, sewer or drain 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 or delayed, and
 - (b) in accordance with such terms and conditions as that authority reasonably imposes.
- (3) The Agency shall take such steps as are reasonably practicable to ensure that any water discharged into a public watercourse, sewer or drain under the powers conferred on the Agency by this Article is free from soil or polluting or deleterious material.

Characteristics of the light railway.

- 14.—(1) The light railway shall be operated by electrical or any other mechanical motive power.
- (2) So far as is practicable the light railway shall be laid, constructed and maintained so as to ensure that the uppermost surface of the rails of the

railway is generally level with the adjacent surface of the ground on which it is laid.

- (3) The gauge of the light railway shall be nominally 1435mm.

Period within which the Agency is authorised to carry out railway works.

- 15.—(1) So far as is reasonably practicable, execution of the railway works authorised by this Order shall be substantially completed by the end of the period of 6 years beginning on the commencement of this Order.
- (2) Paragraph (1) does not apply to any works which are required for safety or maintenance purposes in connection with the operation of the light railway.

PART 3

ACQUISITION AND POSSESSION OF LAND

Power to acquire land.

- 16.—(1) Subject to the Principal Act, the Agency may acquire compulsorily and use all or such part of the lands shown on the plan and specified in Schedule 2 as the Agency requires for the purposes of the execution of the railway works and the operation of the light railway or for purposes incidental or ancillary to those purposes.
- (2) Without prejudice to Article 19 and subject to the Principal Act, the Agency may acquire compulsorily and use all of the basements specified in Schedule 4 or such parts thereof as the Agency considers necessary to acquire for the purposes of the execution of the railway works and the operation of the light railway authorised by this Order (in respect of which none were identified).

Acquisition of rights.

17. Subject to the Principal Act, the Agency may acquire compulsorily such rights over the lands, water or roads shown on the plan and specified in Schedule 7 as are required for the purposes of the execution of the railway works and the operation of the light railway authorised by this Order, together with such rights as are necessary for the full and free exercise at all times of the first-mentioned rights.

Extinguishment of rights of way.

- 18.—(1) For convenience of reference, there is set out in Part 1 of Schedule 8 the form used in the book of reference in respect of public rights of way required to be extinguished in connection with the railway works authorised by this Order.
- (2) For convenience of reference, there is set out in Part 2 of Schedule 8 the form used in the book of reference in respect of private rights including rights of way, required to be extinguished in connection with the railway works authorised by this Order.
- (3) For convenience of reference, there is set out in Schedule 9 the form used in the book of reference in respect of rights of way required to be temporarily

interrupted in connection with the railway works authorised by this Order (in respect of which none were identified).

Use of air space.

- 19.—(1) Without prejudice to Article 16, the Agency may enter on and use so much of the air-space over a road as is reasonably required for the purposes of, or in connection with, the light railway authorised by this Order.
- (2) The power under paragraph (1) may be exercised in relation to a road without the Agency being required to acquire any part of the road or any easement or other right in relation to the surface of the road.

Temporary possession of land.

- 20.—(1) Subject to the Principal Act, the Agency may enter upon and take temporary possession of the lands specified in Schedule 10 or any part of those lands.
- (2) In particular, and without prejudice to the generality of paragraph (1) —
- (a) the Agency 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, construct and remove any structures thereon, 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 exercise of the powers conferred on the Agency 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, the Agency 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, the part of that building so acquired or interfered with.
- (3) Before giving up possession of land specified in Schedule 10, the Agency shall remove all temporary works and structures constructed by it on the land and, subject to any agreement to the contrary with the owners and occupiers of the land, shall restore the land as far as possible to its former state.
- (4) The Agency shall not be required to acquire any land of which it takes temporary possession pursuant to this Article.
- (5) The Agency shall pay to the owners and occupiers of land of which it takes temporary possession under this Article compensation for any loss thereby suffered as if that loss were loss suffered in consequence of the exercise by the Agency 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.

Period within which the Agency may compulsorily acquire land and interests in land.

- 21.—(1) The powers conferred on the Agency by this Order to compulsorily acquire land or rights over land, water or a road and the power conferred by Article 20 to enter upon and take temporary possession of land shall cease at the end of the period of 6 years beginning on the commencement of this Order.
- (2) The powers of the Agency to compulsorily acquire land or rights over 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), the Agency shall be entitled to remain in temporary possession of land pursuant to Article 20 after the end of the period mentioned in paragraph (1) where possession of the land was taken before the end of that period.

**PART 4
MISCELLANEOUS AND GENERAL**

Interference with apparatus.

- 22.—(1) This Article applies where it appears to the Agency, in relation to apparatus in the vicinity of a place in which it proposes to execute railway works authorised by this Order, that —
- (a) the functioning of the apparatus will, or is likely to, interfere with the execution of those railway works or the proper functioning of the light railway, or
- (b) the execution of the railway works or the operation of the light railway will, or is likely to, interfere with the proper functioning of the apparatus.
- (2) The undertaker may and, upon reasonable request by the Agency, shall without unreasonable delay do either or both of the following:
- (a) remove the apparatus and relocate it or other apparatus in substitution for it in such other position or location as is agreed with the Agency,
- (b) take such further or other steps or make such further or other provision with the agreement of the Agency as secures the apparatus and the railway works and the proper functioning of each of them respectively from mutual interference or damage.
- (3) Subject to paragraph (4), the Agency 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 the Agency 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 the Agency 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 the Agency and the undertaker, but the undertaker is not obliged to enter into any such agreement.

- (6) In this Article —

“apparatus” means any item of infrastructure (including, in particular, any sub-station, inspection chamber, junction box, booster station, pipe, sewer, drain, duct, tunnel, conduit, wire, cable, fibre or insulator) used for or in connection with the provision or acceptance of a service to the public;

“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 this Article.

Arbitration.

- 23.—(1) Paragraphs (2) to (4) apply to any dispute arising between the Agency and any other party in relation to the execution of railway works authorised by this Order or the exercise by the Agency of the powers granted by this Order.
- (2) The Agency and the other party shall use their best endeavours to resolve the dispute on mutually acceptable terms.
- (3) If, after such period as the Agency 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;

(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.

(4) The Arbitration Acts 1954 to 1998 apply to the arbitration, and the decision of the arbitrator in relation to the dispute and all matters connected with it is binding on the parties.

Agreement between the Agency and a road authority.

24. The Agency 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 regard to —

(a) laying down, making, paving, metalling or keeping in repair any road and the light railway thereon, or

(b) altering the levels of the whole or any part of any road in which the Agency is authorised to lay down the light railway, and the proportion to be paid by them, or either of them, of the expenses of any such works.

Interference with roads.

25. If, in the course of constructing or maintaining the light railway, the Agency interferes with any road, it shall make good all damage done by it to the road.

Rights of third parties to open up roads, etc.

26.—(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 light railway is laid or to lay down, repair, alter or remove any apparatus, as defined in Article 22.

(2) No power referred to in paragraph (1) shall be exercised so as to affect a light railway or its operation without the prior consent in writing of the Agency, 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 the Agency as necessary for or in connection with the construction, maintenance, operation or protection of the light railway or the railway works.

Margaret Byrne

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

Dated this 16th day of *June* 2008.