



**METRO NORTH  
ORAL HEARING**

**PROOF OF EVIDENCE**

**Wendy Thompson**

**Property Owners Protection Scheme**

**Thursday 9th April 2009**



**Metro North Oral Hearing**  
**Proof of Evidence**  
**Property Owners' Protection Scheme**  
**Wendy Thompson**

## **1. Introduction**

**1.1.** My name is Wendy Thompson. I am the Insurance and Litigation Manager for the Railway Procurement Agency. I have a degree in Civil Law which I received in 1993; I am a Fellow of the Chartered Insurance Institute and a Chartered Member of the Institution of Occupational Safety and Health. I have 15 years experience working in insurance and claims. I have worked with the Railway Procurement Agency since 2006 on the management of claims and insurance across all projects, including Metro North and the procurement of insurances for the construction of the Luas line extensions. I am presenting evidence in relation to the Metro North Property Owners' Protection Scheme.

## **2. Background**

**2.1.** A number of householders have expressed concerns in relation to possible damage that might be caused during the construction of Metro North. RPA is satisfied that the tunnel will be constructed at an appropriate depth and using appropriate methodologies to ensure that the buildings above it will not suffer significant adverse affects. However, in order to alleviate any concerns that private property owners may have regarding possible damage to their homes as a result of the Metro North underground works, a Property Owners' Protection Scheme has been established and underwritten by RPA as a free, additional layer of control and confidence for those private property owners and as a "fast track" option for relevant repairs in the event that a Scheme member's property were to be damaged as a result of the Metro North works.

**2.2.** Nothing in this Scheme takes away from or dilutes any of the legal rights of householders to claim against Metro North. Members of the Scheme will not be in any way restricted to making a claim through the Scheme. All members will remain fully entitled to hire their own consultants and pursue any claims for damages through legal channels if they wish. It is simply a fast track option for rectifying relevant damage which might result from the works and a way to provide property owners, at the expense of RPA, with certainty as to the condition of their homes before and after the works. It provides a cost efficient procedure to speed up the claims process and have repairs completed by Metro North contractors without the property owner having to hire external consultants or contractors to work on their behalf if they so wish.

**2.3.** The Metro North construction project will have extensive public liability insurance cover for damage to third party properties as is normal for any similar construction project. The contract with the consortium who will build Metro North is very clear in relation to the legal obligations on the building contractor to have sufficient insurance in place to cover all liability associated with damage caused by their negligence. This is entirely separate from the Property Owners Protection Scheme.

**2.4.** This additional, fast track Property Owners' Protection Scheme is not underwritten by an insurance company but rather by RPA directly. It is over and above the project insurances in place. As with any RPA expenditure, there must be a calculable estimation of the costs to be borne by RPA, either directly or through our contract with the Metro North Contractor, for this Scheme; so the Scheme provides for repairs of up to a cost of €30,000 per property. This upper figure is solely in relation to this fast track Scheme. Any valid claims amounting to more than €30,000 will be covered by the Metro North insurance policies. This figure was arrived at having reviewed the Dublin City Council claims experience in relation to their construction of the Dublin Port Tunnel, together with ensuring that the figure reflected what RPA could afford to underwrite without recourse to Insurers. The Dublin City Council claims experience at the end of July 2008 was that 537 residents signed up to the Dublin Port Tunnel Building Guarantee Scheme and had initial and follow up surveys completed. 87% of the claims received were finalised for under €30,000.

**2.5.** The Scheme is open to any private property owner whose property lies within 30m of the edge of the tunnels or 50m of the underground stop structures themselves.

These zones of settlement were selected by our engineers on foot of empirical evidence relating to ground movement as explained by Professor John Burland in his evidence. This captures approximately 1,100 private properties covered by the Scheme.

- 2.6. This Scheme will run for 12 months after the completion of construction of underground works in the relevant section. In his evidence, Professor John Burland noted that ground movement is normally recognised as taking place in two phases; during and shortly after excavation and tunnel construction; and again, some time after completion of construction in what is called the time dependent phase. To cater for both of these phases, a scheme duration of 12 months after the completion of construction of the underground works was decided upon by RPA. However, in the unlikely event that property damage is sustained after the Scheme has closed, the property owner will still have the right bring a claim for damages against the contractor at common law as the limitation period of six years for bringing property damage claims will continue to apply and is not in any way diminished by this Scheme.
- 2.7. RPA will establish the Scheme and RPA's public relations department will remain the point of contact for all Scheme members throughout the life of the Scheme.
- 2.8. The Scheme will be operated by the Metro North consortium when appointed.
- 2.9. Data Protection legislation will be strictly complied with at all times.

### **3. The Process**

The Scheme in practice shall operate as follows:

- 3.1. Over 1,100 private property owners were invited to register with the Scheme by letter from RPA containing a freepost form to return with appropriate contact details for that property owner.
- 3.2. Two to three months prior to underground works beginning in a particular area, relevant Scheme members will receive a letter inviting them to select one firm from a panel of three independent condition survey firms.
- 3.3. The property owner will choose which of the independent condition survey firms they would like to inspect their home and inform RPA of their decision.
- 3.4. RPA will log that owner's selection and provide the chosen condition survey firm with the contact details for the relevant member of the Scheme.
- 3.5. The independent condition survey firm will contact the Scheme member directly and arrange a convenient time to attend at the member's property to conduct the survey, which should take no more than an hour depending on the size of the property.
- 3.6. The survey will comprise a photographic and written record of the condition of the property. It will identify general information, outline and comment upon the condition of and clearly highlight any particularly sensitive internal and external features of each property and any existing cracking or other damage.
- 3.7. The completed initial condition survey report will be issued to the Scheme member and RPA on the same day by the independent condition survey firm.
- 3.8. Once the underground works have been completed in a particular area, relevant Scheme members will receive a letter advising this and inviting them to contact RPA

to arrange for the same independent condition survey firm to carry out a follow up condition survey report. Once carried out, this report will be issued to the Scheme member and RPA on the same day by the independent condition survey firm. A comparison of the initial and follow up condition survey reports will highlight to the property owner any difference in the condition of the property before and after the works.

- 3.9.** If a Scheme member notices possible damage to their property prior to the RPA invitation to avail of a follow up condition survey, they may contact RPA and request an interim condition survey by their selected condition survey firm.
- 3.10.** If the property owner wishes to initiate a claim for damage as a result of the Metro North works, they will write to RPA directly and RPA will arrange for relevant damage which has been caused by Metro North underground works to be rectified up to a total repairs ceiling of €30,000, as agreed by the condition survey firm, at no cost to the owner. Any repairs identified shall be carried out as promptly as possible at a mutually convenient time by contractors appointed under the Scheme. No compensation shall be paid under this scheme, rather the Scheme member's property will be returned to the condition it was in prior to the tunnelling works occurring.
- 3.11.** If a dispute arises between a member of the Scheme and RPA in relation to, for example, the cause of damage or the level of damage, the matter can be referred by either party to an independent engineer chosen by the Scheme member from a panel of competent, autonomous engineers proposed by the Institution of Engineers in Ireland. The result of any investigation by this independent engineer will be binding on RPA but not on the Scheme member who has recourse to their common law rights as usual.

#### **4. Panel of Independent Condition Survey Firms**

- 4.1.** This panel is currently being procured by RPA in accordance with European and national public procurement rules.
- 4.2.** Three experienced, reputable, adequately resourced, independent condition survey firms will be appointed to the panel on obtaining an enforceable railway order for Metro North.

This concludes my evidence.  
Thank you for your time.

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