



**METRO NORTH
ORAL HEARING
OPENING STATEMENT**

**James Connolly
Wednesday 1st April 2009**

METRO NORTH ORAL HEARING

OPENING ADDRESS OF COUNSEL

INTRODUCTION

1. Mr. Inspector, my name is James Connolly. I am a Senior Counsel and I appear with Mr. Michael O'Donnell B.L. and Mr. Neil Steen B.L., both barristers, for the Railway Procurement Agency (which I will refer to as "RPA"). We are instructed by Ms. Jennifer Noctor, Solicitor.
2. I wish to introduce the Project leader, Mr. Rory O'Connor, who will give evidence relating to the nature, design and operation of the proposed Metro North scheme and who will be present for the duration of this hearing. Mr. Frank Allen, the Chief Executive of the Agency, will open the evidence to be given in support of the project.

THE APPLICATION

3. RPA was established under the Transport (Railway Infrastructure) Act, 2001. It is charged, under section 11 of that Act, with the function of securing the provision of such metro railway infrastructure as may be determined from time to time under relevant statutory authority.
4. This is an oral hearing convened by An Bord Pleanála (which I will refer to as "the Board") into an application by RPA for a Railway Order. In these brief opening remarks, my intention is to introduce the Metro North project that is the subject of this application, and then to set the procedure in which we are now engaged in its proper statutory and legal context, with a view to framing the evidence that will be given on behalf of RPA.
5. The power of RPA to apply to the Board for a railway order is conferred by section 37(2) of the Act of 2001, as amended by the Planning and Development (Strategic Infrastructure) Act, 2006.
6. The making of a railway order has two fundamental effects, as follows.
 - (a) First, it authorises the construction, maintenance, improvement and operation of a railway, subject to whatever conditions the Board thinks appropriate. Under Section 38 of the Act of 2001 the carrying out of railway works under a railway order and the use of those works for the operation of a railway are deemed to be exempted development under the planning code.
 - (b) A railway order also has the effect of authorising RPA to acquire compulsorily any land or rights in respect of land (including below the surface) specified in the order. In this regard, (by virtue of section 45 of the Act of 2001) it takes effect as if it were a compulsory purchase order ("CPO").

7. The railway order may also specify the manner in which the railway works are to be constructed, operated and maintained, and fix the period within which the construction of the railway works are to be completed. In the instant case, RPA has requested a period of 10 years within which to complete the railway works. This period has been requested having regard to the need for a number of steps to be completed after a railway order is granted, including completion of the Public Private Partnership tendering process, obtaining Government approval, and an expected construction period of five years.
8. As is required under section 37(2) of the Act of 2001, a Draft Railway Order has accompanied the initial application to the Board. Arising from negotiations that RPA has conducted with various third parties in an effort to address their concerns regarding the effects of the project, some relatively minor modifications to the drawings and specifications accompanying the Draft Railway Order have become necessary. It is expected that, during the currency of this hearing, further modifications will be made in order to implement negotiated solutions to particular concerns of third parties. A revised Draft Order including the final modifications will be presented near the conclusion of the oral hearing.

THE PROJECT

9. Metro North project is probably the largest public infrastructure project in the history of the State. It involves the development of a metro line serving an 18 kilometre corridor from Belinstown in North County Dublin to St. Stephen's Green in the city centre via Dublin Airport. It will be a light rail system on a segregated alignment, running for part of the route under full signal control and elsewhere on a line of sight basis. It will serve 17 stops, 9 of which are on the surface and 8 of which are underground. The tunnel excavations will be a mix of cut and cover and boring. There will be three park and ride facilities, at Belinstown, Fosterstown and Dardistown, which together provide car parking spaces for 2,600 vehicles.
10. The stops served are as follows:
 - (a) Belinstown (terminus and the location of the depot)
 - (b) Lissenhall
 - (c) Estuary
 - (d) Seatown
 - (e) Swords
 - (f) Fosterstown
 - (g) Dublin Airport (the stop will be close to the existing Terminal and will be the first of the underground stops)

- (h) Dardistown
 - (i) Northwood
 - (j) Ballymun (the service will run underground from this point to St. Stephen's Green)
 - (k) Dublin City University
 - (l) Griffith Avenue
 - (m) Drumcondra
 - (n) Mater Hospital
 - (o) Parnell Square
 - (p) O'Connell Bridge
 - (q) St. Stephen's Green (the other terminus)
11. The stops will be described in more detail by Mr. Rory O'Connor (who will be giving evidence later this morning) and by Mr. John Smith (who will give evidence later in the week).
 12. Assuming that a railway order is granted this year, construction will commence in 2010 and will be carried out simultaneously across various locations of the alignment, with the expectation that the Project will be completed in the year 2015.
 13. Metro North will deliver a fast, reliable, regular and efficient transport option through the north of Dublin City, to Dublin Airport and onwards to Swords and beyond. Metro North has been specified to be capable of carrying up to 20,000 passengers per direction per hour with light metro vehicles up to 90 metres long running at frequencies up to every two minutes. It is expected that the scheme will initially carry in excess of 35,000,000 passengers a year. Metro North will provide substantial improvements in journey times, service frequency and operating hours in comparison to the current level of bus service. It will also provide car based commuters with significantly reduced journey times and improved quality of life.
 14. The service will provide for a travel time between St. Stephen's Green and Belinstown of 30 minutes and 20 minutes to Dublin Airport. The scheme will be inter-operable with the existing Luas system. It is emphasised that the proposed project is not solely aimed at providing convenient and efficient public transport from Dublin City Centre to the Airport (although it will achieve this). The project also aims to provide greater accessibility, amenity and development potential, along with a reduction in traffic congestion, for a large number of areas in north Dublin. The project will

have the capacity to grow with the city but for the case for Metro North is not dependent on urban growth.

15. The proposed scheme will also result in positive development and economic impacts for the Greater Dublin Area – and beyond – by assisting people in moving through and around the area. The proposed scheme is likely to go a considerable way to reducing wider costs arising from congestion and delays in commuting to work, and it will have a positive impact in the economy in terms of development and reduced congestion. It will help to create a positive image of the city, both for national and international markets.
16. The Metro North alignment passes through the functional areas of two local authorities, namely Fingal County Council and Dublin County Council. The alignment crosses the administrative boundary at the Ballymun Road and Santry Avenue/St. Margaret's Road intersection.
17. The proposed development is supported by the provisions of the Fingal County Development Plan 2005-2011 and the Dublin County Development Plan 2005-2011. It is also endorsed by the National Development Plan and various local plans, including the Dublin Airport Master Plan. It is consistent with various regional policy documents, and is also in line with the objectives of *Transport 21*.
18. The Metro line passes through the following areas which are the subject of local area plans ("LAPs") and action area plans:
 - (a) Proposed Swords LAP
 - (b) Ballymun North LAP
 - (c) Dublin Airport LAP
 - (d) Nevinstown ST1 LAP
 - (e) Nevinstown Residential Action Area Plan
 - (f) Balcurris/Balbutcher Action Area Plan
 - (g) Richmond Road Area Action Plan
19. The development is in harmony with all of the objectives of these plans.
20. It is estimated that the project will, if approved, create direct employment for up to 4,000 people and indirect employment for a further 2,000. Given the significant loss of construction employment in the Greater Dublin Area (and across the whole of Ireland), the construction of Metro North will result in very beneficial impacts in this sector of the economy.
21. During the operation phase, it is expected that a total of 350 people will be required to operate the service in the first nine years of operation

(comprising vehicle drivers, station staff, customer service staff, maintenance workers and car park staff). This figure is predicted to rise to 420 staff during year-ten of the operation.

CONSULTATION PROCESS

22. In advance of applying to the Board for a railway order, a comprehensive public consultation process was set up and pursued by RPA. This process has gone far beyond the minimum required by law. RPA has met, and continues to engage, with those likely to be affected by the project, including residents' groups, businesses, business associations, Íarnród Éireann, Dublin Bus, An Garda Síochána, Ballymun Regeneration Limited and also the relevant local authorities. Evidence on the subject will be given to the hearing. Consultation has centred on the topics of: (i) alternatives, (ii) scoping, and (iii) impacts and mitigation. In relation to alternatives, the focus was initially on route selection and then progressed to stop locations, detailed vertical alignment and associated infrastructure design and location. As for scoping, the objective here was to ensure that the environmental impacts of the project were suitably addressed. Finally, where the potential for significant impacts was identified, detailed consultation with those likely to be affected was undertaken with a view to mitigating any adverse effects.
23. The public consultation process included:
- (a) Press releases and updates to local and media outlets
 - (b) Newsletters circulated to peoples' homes
 - (c) Open days in Local Civic Centres, Community Halls and hotels
 - (d) Meetings with Residents' Associations, businesses, schools, sporting clubs and Public Representatives
 - (e) Meetings and correspondence with individual residents
 - (f) The establishment of a freephone line
 - (g) Responding in writing directly to observers in relation to the concerns raised by them in the context of the current procedure. (A list of these submissions and responses will be circulated at the hearing, except where particular parties have requested confidentiality regarding their communications and negotiations with RPA.)
24. The consultation process encompassed the important issue of route selection, and provided significant input in relation to the final decision in this regard. The Environmental Impact Statement ("EIS") identifies the principal route corridors considered, and where possible the proposed routes were chosen and adapted to take account of the concerns raised by various affected parties.

WORKS

25. To facilitate the development of the St. Stephen's Green stop it will be necessary for the temporary closure of the north western portion of the park. In addition, it will be necessary for the short term relocation within the Green of the statues of Robert Emmett and Lord Ardilaun, the O'Donovan Rossa Memorial and the African Rose Bowl. The footpaths and perimeter railings, together with the granite footpath and bollards, the metal bollards and the public toilets will all be temporarily removed. It is anticipated that agreement will be concluded shortly between the Office of Public Works, the Department of the Environment, Heritage & Local Government, Dublin City Council and RPA dealing with the exact mitigation measures for St. Stephen's Green Park. After the completion of the construction works St. Stephen's Green will be restored to its original condition.
26. During the construction work in O'Connell Street the William Smith O'Brien Monument, the O'Connell Monument and the Jim Larkin and Sir John Gray statues will be relocated on a short term basis to the National Museum of Ireland at Collins Barracks, where public access will be facilitated. Agreement has been reached between the OPW, the Department of the Environment, Heritage & Local Government, Dublin City Council and RPA detailing the exact mitigation measures for the dismantling, removal and storage of the O'Connell and O'Brien monuments.
27. Some protected structures in O'Connell Street Lower and Westmoreland Street will be affected by the construction of stop boxes and the diversion of utilities around these areas. This will result in partial loss of basements of structures in these locations.
28. While some protected structures in Parnell Square East were identified in the EIS as likely to be affected, it has been possible to avoid this through further mitigation. By revising the utility diversion design, no intrusive works are now planned to the protected structures in this area. The evidence in this regard will be given by Doug Thompson.
29. To allow for continued access across the River Liffey during construction work it will be necessary to construct a temporary bridge between Aston Quay and Burgh Quay.
30. The bridges at Balheary and Lissenhall Great (including the Five Arches Bridge at Broadmeadow River) will need to be strengthened to carry Metro vehicles.
31. It is recognised that the construction phase of the Project will cause some local traffic disruption in the Dublin area, but mitigation measures to reduce this impact to tolerable levels will be addressed in the Scheme Traffic Management Plan ("STMP"). This is the most comprehensive Traffic Management Plan ever undertaken for the Dublin area and follows

detailed consultation between RPA, An Garda Síochána and the relevant Road Authorities, as well as various businesses and business associations. It provides (*inter alia*) for measures to allow for continuity of road traffic flow by the provision of a northbound public transport lane to be maintained on Westmoreland Street, and for the provision of two-lane traffic in each direction on O'Connell Street. The STMP is a live document that will develop over the course of the Metro North Project. Key measures involved in the reduction of impact on traffic arising from construction work will include:

- (a) The implementation of a public transport gate at College Green. (This is already, and independently of the Metro North scheme, an objective of Dublin City Council.)
 - (b) Provision of a new bridge linking Marlborough Street and Hawkins Street across the River Liffey.
 - (c) Imposition of a complete ban on right-turning vehicles from Bachelor's Walk to O'Connell Bridge.
 - (d) A complete ban on right-turning vehicles from O'Connell Bridge to Eden Quay.
32. The modelling that has been carried out indicates that, overall, the effect of the project on traffic during the construction phase will be minimal or neutral. The STMP forecasts a 3.8% decrease in average AM peak hour traffic speeds across the full road network (compared with a 12% decrease forecast in the EIS). For a bus, the STMP forecasts an actual increase of 1% on average AM peak hour network speeds (compared to the 21% decrease forecast in the EIS).
33. There will be several construction compounds along the alignment, for which sites will be temporarily acquired. These include a compound at Albert College Park near the DCU stop, from which the tunnel boring machines will be launched. A number of liaison officers will be appointed in order to maintain contact with local interests and to address any concerns or complaints raised during the carrying out of construction works. The majority of these construction compounds will be reinstated to their previous use post-construction.
34. Where land is taken to accommodate permanent features of the scheme (such as tracks and stops) the minimum amount of land required will be taken. In addition to surface land acquisition, there will be a need for the permanent acquisition of substratum land rights in the area of the bored tunnels. This type of land acquisition will not prevent surface lands from being used for most purposes, although it may restrict limited categories of development, such as high rise buildings where deep piles may be required.

THIRD PARTIES

35. I now propose to address a number of issues raised in third party submissions.
36. While the proposed metro system is not anticipated to give rise to problems from electro-magnetic interference, concerns have been raised by the Rotunda and Mater Private Hospitals regarding possible interference with sensitive equipment for the treatment of patients, arising from tunnel boring and other activity during the construction phase. In order to address and resolve these issues many meetings have taken place, involving a working group comprising key personnel from the Hospitals and RPA. Various options have been proposed and considered to address these issues in order to ensure that there is no encroachment on patient treatment in these Hospitals.
37. A large number of householders have expressed concerns about the impact of tunnel construction on the structural soundness of their properties and also in relation to possible damage that might be caused during construction works. RPA is satisfied and will demonstrate that the tunnel has been placed at an appropriate depth to ensure that the buildings above will not be adversely affected. Since January 2009, RPA has committed itself to a Property Owners' Protection Scheme. This applies to private residential property owners whose property is located within 30 metres of the edge of the Metro tunnel corridors or within 50 metres from the underground stop structures. Under this scheme, an initial independent condition survey of the property will be carried out, monitoring will take place during works, and a final condition survey will be done after construction. The scheme provides for repairs to property should there be damage caused by Metro North works, which will extend to repairs up to a cost of €30,000, as agreed by a building surveyor. This scheme is an additional layer of protection for residents and a fast-track method of managing the repair of any scheme member's property if it were to be damaged as a result of the Metro North underground works. Nothing in the scheme dilutes the legal rights of participants. It is simply a quicker and simpler method of rectifying any damage that might result from the works. To date, about 250 home owners have agreed to join the scheme and RPA has produced and uploaded a list of frequently asked questions (FAQs) on its website (www.rpa.ie). RPA staff continue to engage with residents to address their concerns.
38. In cases where parts of properties are occupied by the development, access to the remaining unoccupied parts will be maintained where it is possible and safe to do so.
39. Where necessary, hoarding will be put in place to prevent damage occurring outside the boundary of the project construction sites and, where damage cannot be avoided, it will be repaired.

Environmental Impact Assessment ("EIA")

40. The Board is required to carry out an assessment of the likely effects of the project on the environment – an environmental impact assessment or EIA. In order to facilitate this exercise, the Agency has retained highly qualified experts to prepare an environmental impact statement or EIS, in which information and data regarding the effects of the scheme on the environment have been compiled, assessed and published. Evidence will be given that the EIS has been carried out in line with Environmental Protection Agency guidelines and advice notes, in compliance with legislation and in line with best practice and multiple standards and other guidance documents. However, as various third party submissions have been considered and assessed, further investigations have been carried out with the result that further information has since become available. This information will be presented during the course of this oral hearing.
41. It is important to bear in mind that this oral hearing forms part of an assessment process, in respect of which the EIS constitutes only what Mr. Justice McMahon has called “the point of departure” (*Klohn v. An Bord Pleanála* [2008] IEHC 111 at pp. 4-5). He said that it is intended to launch a process which will attract comment and submissions from other parties, including observations from those with entitlements to participate in the process. Its purpose is to set the agenda for further discussion and deliberation, which will finally provide a body of information that will enable the decision maker (here, the Board) to make its assessment in full possession of the relevant environmental facts.
42. For this reason, RPA believes that the criticism that some observers have made of the EIS is misplaced. The EIS meets all the statutory requirements and cannot and should not be viewed as the end of the process. It is more properly regarded as the beginning.
43. The information that must be provided by the promoter of a project is set out in article 5(3) of the Environmental Impact Assessment Directive (Directive 85/337/EEC), which, in the present context, is transposed into Irish law by section 39 of the Act of 2001 (as amended). It provides that an EIS shall contain the following information:
- “(a) a description of the proposed railway works comprising information on the site, design and size of the proposed railway works;
 - (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
 - (c) the data required to identify and assess the main effects which the proposed railway works are likely to have on the environment;
 - (d) an outline of the main alternatives studied by the applicant and an indication of the main reasons for its choice, taking into account the environmental effects; and

(e) a summary in non-technical language of the above information.”

44. It is notable, for example, that in relation to alternatives, the requirement is merely to provide an “outline” of the “main alternatives” studied. There is no obligation to place before the decision maker – or members of the public – every scrap of information relied upon by the promoter of the scheme, or even every alternative to which consideration was given, provided that the main alternatives are identified, together with the reasons for selecting the option ultimately preferred.
45. The essential purpose of this hearing is, then, to ensure that the Board has before it as complete a picture as possible of what will be involved in the development of Metro North, to allow it to exercise its statutory function of deciding whether – and if so, subject to what conditions – to approve the scheme.
46. The likely consequences for the environment of the proposed works are but one of the factors that the Board will be required to consider. Others include:
 - (a) the likely consequences for proper planning and sustainable development in the area in which it is proposed to carry out the railway works;
 - (b) the policies and objectives for the time being of the Government, the Minister for the Environment and other bodies enjoying functions that may have a bearing on proper planning and sustainable development;
 - (c) the national interest and any effect the performance of the Board’s functions may have on issues of strategic economic or social importance to the State.

PROCEDURES

47. The Board has given certain procedural directions, which are welcomed by RPA. These include a direction that cross-examination of RPA and local authority witnesses will be required to take place immediately after the presentation of evidence by RPA and the local authorities respectively, but that cross-examination by other parties cannot take place at this stage.
48. RPA has assembled a team of highly qualified individuals who will give evidence on a wide variety of topics relating to the project. While some of these are RPA staff members, many others are outside consultants, who have commitments beyond this hearing and whose time must be paid for by RPA, and ultimately by the taxpayer. Many will have to travel from abroad to be present and, while here, will have to be accommodated at the taxpayer’s expense. Having regard to these factors, we look forward to discussing with you, Mr. Inspector, suitable arrangements that will allow the business of the hearing to be conducted in an expeditious and orderly

manner, while making the most efficient use of the resources available to RPA. We are particularly concerned that there should be clarity as to the days when RPA's expert witnesses are expected to be available for cross-examination. In order to minimise the expense involved, it is respectfully suggested that this should occur towards the end of the hearing. To require these experts to attend at the end of each of the 13 modules proposed in the Board's letter of 11 March 2009 would be logistically impossible, given the other commitments of the individuals in question, and would also constitute a massive drain on the Agency's funds.

49. It is respectfully submitted that the fairest and most efficient structure for the hearing would involve the cross-examination of witnesses by third parties taking place after the hearing of *all* of the evidence of *all* of the parties involved. This is a tried and tested formula, which has been applied in most of the recent oral hearings conducted on behalf of the Board. It has the advantage that the parties, and particularly RPA, can avoid the expense of the prolonged attendance of expert witnesses. Such witnesses would not need to be present except on the days of their initial oral presentations (or in turn to deal with queries by local authorities) and also on the day (or days) on which they are required to return for cross-examination, at a time when all of the evidence in chief has been heard.
50. Third parties who wish to take the opportunity to cross-examine RPA witnesses should be required (as far as possible) to signal that intention well in advance of the cross-examination module of the hearing and to identify the particular witness whose attendance is required. This is necessary to allow RPA to arrange for the attendance of the appropriate witnesses to deal with the issue, as there may be a number of witnesses required to respond to an area of concern.
51. A further procedural direction which is urged on the Inspector at this stage is to exercise discretion to allow for cross-examination to be limited to parties who have actually made a presentation of their own at the hearing and that (as far as possible) their questioning be confined to issues raised in those parties' own presentations.
52. The oral hearing is an information-gathering exercise to assist the Board in being fully informed in its deliberations. This process, it is submitted, is better served by adopting the proposed approach rather than by allowing parties to cross-examine at large on matters which are unrelated to areas of concerns raised by them.
53. The next procedural matter that arises relates to a matter raised at the preliminary hearing. Specifically, RPA has requested the Inspector to allow for a module to address the issue of conditions that might be imposed in railway order that may ultimately be granted by the Board. The Agency fully respects the Board's power to impose conditions, but it is important that, when deciding whether, and how, to exercise that power, the Board should bear certain considerations in mind. One of the most significant of these is the procurement process for Metro North, which is currently

underway. If a railway order is granted, the scheme will (pursuant to Government policy) be implemented by way of a public private partnership ("PPP"). This mechanism has been selected to capture the benefits of innovation from qualified and experienced contractors. Tenders have already been received. In order to ensure that RPA achieves the best value for money possible, and also for reasons of commercial sensitivity and confidence, details of the procurement process cannot be disclosed. However, in general terms it is crucial to realise that the imposition of even seemingly innocuous conditions could have far-reaching implications, not only for the PPP process, but also for the price and viability of the project as a whole. It is news to no one that we are living in changed economic times and that value for money is more important than ever. I would respectfully suggest if you, Mr. Inspector, are considering the imposition of any kind of condition, that RPA be afforded an opportunity to make submissions to you on its potential impact on this public policy objective before you recommend it to the Board.

54. It is noted that the Inspector has stated that parties will be allowed to make submissions that have not previously been foreshadowed in writing. While RPA does not object to this, it reserves the right to respond to matters that have not previously been raised by any of the parties prior to the oral hearing. This is particularly important because parties ought not (and on the legal authorities cannot) raise in later judicial review proceedings arguments that are not raised at the oral hearing.
55. RPA particularly requests that an opportunity be given to respond to third party submissions, particularly where technical information is presented. In such a situation, RPA may wish to call back one of its technical witnesses to deal with the issues. Furthermore, it may be necessary where new information is presented by a third party, for RPA to be given the opportunity to call a new witness to deal with technical matters that have not been previously raised at the hearing. Any such a witness, whether new or recalled, would of course be subject to cross-examination by the third party to whom the response is being made.

WITNESSES

56. I now propose to identify the witnesses that I intend to call :

CONCLUDING REMARKS

57. RPA is well aware of the burden being shouldered by you, Mr. Inspector, and by the Board members in coming to terms with a project of this magnitude. We hope to be able to offer you any assistance that you require in order to make your arduous task a little less difficult.
58. We look forward to a constructive engagement with the prescribed bodies and with observers, which we hope can be conducted in a non-adversarial manner.

59. It is the respectful submission of RPA that the scheme the subject of this oral hearing is one of the most exciting projects ever undertaken in the State. It is one that will, if approved, bring myriad benefits to our capital city. We therefore commend the scheme to the Board, and subject to you, Mr. Inspector, I propose to call my first witness.

JAMES CONNOLLY S.C.

Railway Procurement Agency
Ghníomhaireacht um Fháil Iarnróid
Parkgate Business Centre,
Parkgate Street, Dublin 8, Ireland
Phone +353 1 646 3400
Fax +353 1 646 3401
www.rpa.ie

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