

[REDACTED]

From: [REDACTED]
Sent: 27 March 2014 08:28
To: [REDACTED]
Cc: [REDACTED]
Subject: Dart Underground High Court Orders
Attachments: JR_80_140212.doc; JR_85_140212.doc

Importance: High

[REDACTED]

For information - the DART Underground High Court orders are attached. They allow up to 24th September 2015 to serve the Notices to Treat.

Regards,

[REDACTED]

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Tá eolas sa teachtaireacht leictreonach seo a d'fhéadfadh bheith príobháideach nó faoi rún agus b'fhéidir go mbeadh ábhar rúnda nó pribhléideach ann. Is le h-aghaidh an duine/na ndaoine nó le h-aghaidh an aonáin atá ainmnithe thuas agus le haghaidh an duine/na ndaoine sin amháin atá an t-eolas. Tá cosc ar rochtain don teachtaireacht leictreonach seo do aon duine eile. Murab ionann tusa agus an té a bhfuil an teachtaireacht ceaptha dó bíodh a fhios agat nach gceadaítear nochtadh, cóipeáil, scaipeadh nó úsáid an eolais agus/nó an chomhaid seo agus b'fhéidir d'fhéadfadh bheith mídhleathach.

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THE HIGH COURT

JUDICIAL REVIEW

2012 No. 80 JR

Wednesday the 12th day of February 2014

BEFORE MR. JUSTICE PEART

**IN THE MATTER OF SECTION 47 OF THE TRANSPORT (RAILWAY
INFRASTRUCTURE) ACT 2001 AS AMENDED BY THE PLANNING AND
DEVELOPMENT (STRATEGIC INFRASTRUCTURE) ACT 2006**

BETWEEN

FLANCREST ENTERPRISES LIMITED

APPLICANT

-AND-

AN BORD PLEANÁLA IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

-AND-

CÓRAS IOMPAIR ÉIREANN

NOTICE PARTIES

The Motion of Counsel on behalf of the Applicant pursuant to Notice of Motion filed herein on the 06th day of February 2012 “for the following reliefs:

1. An order pursuant to section 47 of the Transport (Railway Infrastructure) Act 2001 (as amended by Section 49 of the Planning and Development (Strategic Infrastructure) Act 2006) granting leave to apply for judicial review for the reliefs more particularly set out in the Statement Required to ground Application for Judicial Review herein.
2. Liberty to serve such other parties as this Honourable Court may direct.
3. Such further or other reliefs as this Honourable Court may direct.
4. An order for the costs of, and incidental to, the within proceedings.”

having come before the Court for the hearing of a preliminary issue that issue being whether An Bord Pleanála the Respondent herein acted *ultra vires* when it made a Railway Order which *inter alia* permits Córas Iompair Éireann the Notice Party herein a period of up to seven years for the service of a notice to treat in respect of the lands to be acquired by

And this matter having come before the Court for mention accordingly this day in the presence of said Counsel on behalf of the respective parties

And on opening and reading the Affidavit of Edmond Moloney filed on the 28th day of January 2014 the documents and exhibits therein referred to

And on hearing said Counsel on behalf of the respective parties

THE COURT DOTH DECLARE that

- i. section 217(6) of the Planning and Development Act 2000 applies to the DART Underground Electrified Heavy Railway Order 2011 in prescribing the period within which the said Railway Undertaking (CIE) may compulsorily acquire land and interests in land
- ii. in prescribing a period of seven (7) years in the DART Underground Electrified Heavy Railway Order 2011 as a period within which the said Railway Undertaking (CIE) may compulsorily acquire land and interests in land An Bord Pleanála acted *ultra vires* the provisions of the Transport (Railway Infrastructure) Act 2001 (as amended and substituted)

and doth Order accordingly

AND THE COURT DOTH DIRECT pursuant to section 47A(9) of the Transport (Railway Infrastructure) Act 2001 (as amended and substituted by section 49 of the Planning and Development (Strategic Infrastructure) Act 2006) that Article 16 of the DART Underground Electrified Heavy Railway Order be replaced by the following amended Article 16

ARTICLE 16

Period within which the Railway Undertaking may Compulsorily

Acquire Land and Interests in Land

1. The powers conferred by this Order to acquire compulsorily land or rights in relation to land permanently and to acquire compulsorily land or rights in relation to land temporarily

Mason Hayes & Curran
Solicitors on behalf of the Applicant

Barry Doyle & Company
Solicitors on behalf of the First Named Respondent

Chief State Solicitor on behalf of the Second and Third Named Respondent

Colm Costello
Group Solicitor on behalf of the Notice Party

**THE HIGH COURT
JUDICIAL REVIEW**

2012 No. 85 JR

Wednesday the 12th day of February 2014

BEFORE MR. JUSTICE PEART

**IN THE MATTER OF SECTION 47 OF THE TRANSPORT (RAILWAY
INFRASTRUCTURE) ACT 2001 AS AMENDED BY THE PLANNING AND
DEVELOPMENT (STRATEGIC INFRASTRUCTURE) ACT 2006**

BETWEEN

SHERBOROUGH SECURITIES LIMITED GOLDRUN PROPERTIES LIMITED

AC TAYLOR PROPERTY LIMITED PHANTOM PROPERTIES LIMITED

AND ZONDA PROPERTIES LIMITED

APPLICANTS

-AND-

AN BORD PLEANÁLA AND CÓRAS IOMPAIR ÉIREANN

RESPONDENTS

The Motion of Counsel on behalf of the Applicants pursuant to Notice of Motion filed herein on the 06th day of February 2012 “for leave to apply for the following Orders:

1. An Order of *Certiorari*, by way of an application for Judicial Review, quashing the DART Underground Electrified Heavy Railway Order 2011 made on the 14th day of December 2011. (hereinafter the Railway Order)
2. An Order of *Certiorari*, by way of an application for Judicial Review, quashing the decision of the First named Respondent to make the said Railway Order made the 14th day of December 2011.
3. A Declaration by way of Judicial Review that the said Railway Order is null and void and of no legal effect.
4. A Declaration, by way of an application for Judicial Review, that in making the Railway Order and including a period of 7 years for the exercise of the powers, by the Railway Undertaking namely the second named Respondent, to compulsorily acquire lands or

THE HIGH COURT

40.3.2 and Article 43 of the Constitution of Ireland and Article 1 of the first protocol of the European Convention on Human Rights and Fundamental Freedoms.

11. Damages pursuant to Order 84 rule 24 of the Rules of the Superior Courts
12. An order for discovery on oath of all documents which are or have been in the possession power or procurement of the Respondents and which are relevant to an issue in these proceedings.
13. Liberty to file further Affidavits.
14. Liberty to serve such other parties as this Honourable Court may so direct.
15. Further or other order.
16. Liberty to apply.
17. The costs of the within proceedings.”

having come before the Court for the hearing of a preliminary issue that issue being whether An Bord Pleanála the Respondent herein acted *ultra vires* when it made a Railway Order which *inter alia* permits Córas Iompair Éireann the Notice Party herein a period of up to seven years for the service of a notice to treat in respect of the lands to be acquired by way of compulsory acquisition and of an additional issue of *locus standi* of the First Named Applicant herein pursuant to the Order of this Court made herein dated the 17th day of October 2013 on the 23rd day of July 2013 the 24th day of July 2013 and the 25th day of July 2013 in the presence of said Counsel on behalf of the Applicants Counsel on behalf of the First Named Respondent and Counsel on behalf of the Second Named Respondent

Whereupon and on opening and reading the said Notice of Motion the Statement of Grounds signed by the Solicitor on behalf of the Applicants and filed on the 06th day of February 2012 the Affidavit of Bryan O’Callaghan filed on the 06th day of February 2012 verifying the facts as set out in the said Statement the Statement of Opposition filed on behalf of the First Named Respondent on the 11th day of July 2012 the verifying Affidavit thereto of Michael Donlon filed on the 11th day of July 2012 the Statement of Opposition filed on behalf of the Second Named Respondent on the 23rd day of July 2012 the verifying Affidavit thereto of Peter Muldoon filed on the 23rd day of July 2012 the Affidavit of Noel O’Callaghan filed on the 15th day of February 2013 the Affidavit of Frank Masterson filed on

provisions of the Transport (Railway Infrastructure) Act 2001 (as amended and substituted)

and doth Order accordingly

AND THE COURT DOTH DIRECT pursuant to section 47A(9) of the Transport (Railway Infrastructure) Act 2001 (as amended and substituted by section 49 of the Planning and Development (Strategic Infrastructure) Act 2006) that Article 16 of the DART Underground Electrified Heavy Railway Order be replaced by the following amended Article 16

ARTICLE 16

**Period within which the Railway Undertaking may Compulsorily
Acquire Land and Interests in Land**

1. The powers conferred by this Order to acquire compulsorily land or rights in relation to land permanently and to acquire compulsorily land or rights in relation to land temporarily shall be in accordance with the provisions of Section 217 (6) of the Act of 2000.
2. The power to acquire compulsorily land or rights in relation to land permanently and temporarily, shall, for the purpose of this Article, be deemed to have been exercised where Notice to Treat has been served in respect of such land or rights before the end of the period specified in paragraph 1 of this Article and at any time thereafter the Railway Undertaking may enter upon and take possession and occupy the said land.
3. Where Notice to Treat is served in accordance with paragraph 1 relating to land and rights in relation to land to be compulsorily acquired temporarily, the Railway Undertaking shall be entitled to remain in possession and occupation of said land pursuant to Article 13 up to the period specified in Article 4(2) of this Order.