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**An Tuarascáil ar Údarás Forbartha Dugthailte Bhaile
Átha Cliath.**

Samhain, 2015.

Public Accounts Committee

**Report on the
The Dublin Docklands Development Authority**

November, 2015



Foreword by the Chairman of the Public Accounts Committee, John McGuinness, T.D.

I welcome the publication today of the Committee's report on the Dublin Docklands Development Authority, whose demise is now imminent.

The circumstances that led to the abolition of the DDDA arise in the main from its disastrous decision to get involved in the acquisition of the Irish Glass Bottle site. As a case study it highlights many of the things that went wrong with development and property in Ireland in the period leading up to the economic and financial crisis in 2008.

There was a deal that was made in a hurry and the level of uncertainty about key aspects of the joint venture should have led those making decisions to take a cautious approach. Had they done so, the State and to an even greater extent the communities that live in the docklands would not have had to bear the costs that arise from the repercussions of the joint venture.

In holding to account those who should have done better, the Committee also wants to ensure that this never happens again.

I commend this report to Dáil Eireann.

John McGuinness, T.D.,
Chairman,
Public Accounts Committee,
18 November, 2015

Public Accounts Committee

Report on the Dublin Docklands Development Authority (DDDA)

Introduction

Chapter 1 The Financial Status of the Authority

Chapter 2 The Acquisition of the Glass Bottle Site

Chapter 3 Corporate Governance issues at the DDDA

Chapter 4 Ministerial Oversight

Chapter 5 Ongoing miscellaneous issues

Findings and Recommendations

APPENDIX 1: DDDA Board papers from October 2006

APPENDIX 2: Submission for Professor Niamh Brennan

APPENDIX 3: Terms of Reference of the Committee

APPENDIX 4: Members of the Committee

Introduction

The Dublin Docklands Development Authority (DDDA) was established in 1997 and given responsibility for the development of an area of roughly 526 hectares of land in Dublin's Docklands for which it had planning and development functions. In the years after its establishment the Authority developed large parts of the docklands and it was a profitable semi-state company.

In late 2006, it made one of its biggest commercial decisions when it decided to be part of a joint venture that would purchase the 25 acre site of the old Irish Glass Bottle (IGB) factory in Ringsend. As was outlined by the Comptroller and Auditor General in Special Report 77¹ and in the meetings of the Committee which examined this Report, the IGB acquisition was to prove disastrous for the DDDA and has contributed hugely to its demise. In 2012, the Government decided to wind up the Authority and the legislation to achieve that end was published in 2015.

The manner in which the DDDA got itself involved in a joint venture and the adequacy of the analysis and the decision making raise significant concerns about corporate governance and risk management arrangements at DDDA and has consequences for all commercial state entities.

The Committee also received a written submission from Professor Niamh Brennan, the former Chairman of the DDDA who was appointed in 2009 which outlines the significant impact of the decision to enter a joint venture and her submission is contained in Appendix 2.

The Authority is about to be dissolved and over the last five years it has sold off its entire asset base to extinguish liabilities. There are issues around the sale of one of these properties in Hanover Quay and the Authority will also hand over the Jeannie Johnstone which proved a costly investment. Finally there are legacy issues arising from some substandard developments which will fall to the Authority and its successor, Dublin City Council, to rectify.

Accountability Issues:

The following accountability issues arise and are dealt with in the remaining chapters of this Report:

1. The financial status of the Authority
2. The IGB acquisition
3. The failure of oversight and of risk management

¹ [C&AG Special Report 77](#)

4. The ongoing issues arising for the Authority

CHAPTER One

The Financial Status of the DDDA

Introduction.

The DDDA went from being a successful commercial state body to being one that had to be dissolved as it no longer deemed a going concern. The years following its establishment in 1997 saw significant progress in redeveloping the docklands in Dublin and the Authority was a key driver in that success, both as a developer and as the planner for the area. By 2006, as will be outlined below, it was a cash rich body which was adding value to the docklands. A decision taken in October 2006 wiped out all the financial gains that had accumulated at the Authority and eventually led to the Authority having to sell off its remaining assets to meet liabilities. That decision related to the Authorities involvement in the acquisition of the Irish Glass Bottle Site in Ringsend.

The financial decline the DDDA

At the end of 2006 the DDDA was in a very healthy financial position with its accounts posted the following key results:

1. a net worth of **€149 million**,
2. an annual turnover of **€85 million** and
3. an operating surplus of **€42 million**.

It had built up €30 million in cash reserves. These results point to a solid business performance. It was, at the time, well placed to face any potential downturn because of the capacity and the capital buffers it had accumulated.

By contrast, the 2010² financial statements, which were the first set of accounts audited by the Comptroller and Auditor General, outline that the Authority has moved to a precarious financial position. The key financial data in the financial statements for 2010 show the following:

1. an operating deficit of **€2 million**
2. current liabilities **of €32 million** which includes
3. an overdraft of **€12 million**.

At that stage it was effectively liquidating assets in depressed market conditions in order to meet its liabilities and there was a question mark over whether it could be considered a going concern. It had difficulty in securing banking facilities. It had to massively

² See also Appendix 2 where in 2008 DDDA reported an operating deficit of €13 million

reduce its cost base and its future was dependent on being able to sell assets in order to meet its repayment schedules.

The financial exposure of the Authority arising from the IGB site acquisition.

The Board of the DDDA considered joining a joint venture and bidding for the IGB site on three occasions [4th, 20th & 24th October, 2006.] When the board gave its consent to participating in the bid for this site it was told that its exposure was limited to €36 million (€29 million in equity and €7 million in recourse financing). However that exposure increased when a shareholder agreement was signed and when the banks sought and received certain guarantees from the DDDA in respect of the loan for €291 million which had been loaned to Becbay³ to purchase the site. There were also increased costs associated with the remediation of the site which was contaminated. By the end of 2010 the DDDA faced a potential exposure of **€81.9 million**. At this stage the loans of Becbay were taken over by NAMA who called in the guarantees. In a mediated settlement, those guarantees signed by the DDDA were extinguished in return for the transfer of seven assets that by then had a net book value of €7.8 million. The DDDA had paid €50 million in acquiring those assets in previous years.

The direct costs associated with the IGB site were €52.1 million as follows:

1. €32.8 million in equity
2. €11.1 million in interest payments
3. €7.8 million in asset transfers to NAMA
4. €400,000 in other costs

The current financial position of the Authority

Since 2010 the DDDA has off-loaded the majority of its property portfolio in order to repay its debts. The Committee was informed in 2015 is that the DDDA was likely to have a surplus of €5 million which will return to the State when it is finally dissolved: however the pension liability for the staff of the DDDA, which is approximately €8 million, was also taken over by the State. There are also ongoing issues in relation to remediation of buildings in the docklands, in particular an apartment block in Longboat Quay which will require a financial input from the Authority. This issue is dealt with in Chapter Five

³ Becbay was the company formed as a result of the joint venture to purchase and develop the Glass Bottle Site. The DDDA took a 26% equity stake in Becbay.

Conclusion

The main reason the Authorities financial status declined so drastically between 2006 and 2010 was because of its decision to go into a joint venture with a developer in order to buy the site of the old Irish Glass Bottle Factory in Ringsend. The DDDA could not carry that loss and ultimately a profitable State company had to be wound-up as a result of its decisions on the IGB site.

Chapter Two

The acquisition of the Irish Glass Bottle Site

Introduction

The Committee, in examining how all aspects of the deal were managed, had access to the board papers, the minutes of the board and also took evidence from the individuals who were central to this decision to participate in a joint venture. This chapter examines the way in which the DDDA got itself into a joint venture and the adequacy of both the business case and the risk assessment. The oversight of the deal, including the issue of risk management, is dealt with in Chapter Three.

The Business case

It is clear from the evidence taken by the Committee that the executive of the Authority pushed hard to get a favourable decision on the joint venture proposal. The DDDA records (see Appendix 1) outline that the merits of the proposal and rationale for getting involved in the joint venture. These can be summarised as follows:

1. It would give an element of control over the development, especially in getting the social, amenity and less commercially- desirable elements of included in the development. In that regard, the former Chairman of the Board [Mr. Bradshaw] cited the experience with the Bord Gais site in Sir John Rogerson's Quay⁴.
2. The DDDA would have control over the pace of the development. In that regard reference was made in both board papers and at the Committee by the former CEO⁵ [Mr. Maloney] to the experience when the DDDA was an under-bidder for the old AIB sports complex which had remained undeveloped almost ten years after it was bought. That site also happened to be adjacent to the IGB site.
3. It would give the DDDA a say in the planning and architectural elements of the development
4. The DDDA would make a significant profit from the venture. The board was told that 26% of the profits from the development would accrue to the Authority.

The business case, as contained in the board papers, is strongly supportive of the proposal to get involved in the ownership of this site which had to be by way of a joint venture given the potential cost. What emerged from the oral evidence given to the Committee was that the DDDA:

⁴ [PAC Meeting 26th June 2013](#)

⁵ [PAC Meeting 12th December 2013](#)

1. Had been involved and had built up capacity to deliver a project of this scale arising from its experience going back to the Bord Gáis site
2. It was working with a developer whom it could trust
3. It was going to make a lot of money (26% of the profits of the joint venture, estimated by the CEO to be somewhere in the region of €50 million) from being involved in the joint venture.
4. It had limited exposure (€35 million was the figure provided to the Board at the meeting on 24th October, when the irrevocable decision was made to make a bid for the site)

The Board papers also identified a number of risks including the ability of the Joint Venture Company to repay its borrowings and the fact that the IGB site would most likely be purchased at the top end of what was already an overheated commercial property market. No proposals are on record as to how these risks would be dealt with and notwithstanding the risk, some of which materialised, the executive were of the view that the project could deliver for the Authority.

Key dimensions to the purchase of the Glass Bottle Site

In getting involved in a joint venture, the key issues facing the Authority were as follows:

1. Was there a risk that the Dublin property market had overheated?
2. How much is this site worth?
3. What is the extent of the financial commitment?
4. What return would accrue to the Authority?

There was a huge degree of uncertainty about these issues as the proposal gained momentum prior to the deadline for the submission of tenders on 25th October 2006.

Overheated property market

When the DDDA executive started to examine the possibility of being directly involved in the development of the IGB site in Ringsend in July 2006, it was aware of reports that the property market in Dublin was overheating. The executive paper to the board for the meeting of 20th October 2006 (Appendix 1) acknowledged the overheated state of the property market but recommended that the upsides to any potential deal outweighed any concerns in this regard. There was also an acknowledgment that the IGB site would be bought at the top of the market as a number of developers and construction firms were likely to bid for this property. As the discussions progressed, this is exactly what happened and bid price had to take account of potential interest in the market. At the meeting of 20th October, 2006 (Appendix 1), the DDDA board agreed that, based on its assessments, the property was valued at between €275 and €375 million. Yet it was

prepared four days later to rely on the judgment of the developer and allow a bid of up to **€437 million** on the basis that the risk for the difference would be borne by the said developer (Appendix 1). The risk that the Authority was about to participate in a bidding war and that it would ultimately overpay for a property should have been analysed in greater detail.

The Value of the site.

Nothing illustrates better the change in the property market in 2005 and 2006 better than the valuation outcomes arising from exercises undertaken prior to deciding to buy the IGB site. The Authority did not obtain a formal independent evaluation before it agreed to bid for the IGB site as part of the joint venture.

The following information was available to the DDDA executive:

1. As part of the terms of the sale, a bid price higher than **€251 million** would be accepted
2. The DDDA had obtained an independent valuation of the site in June 2005, which placed a value of **€240** (2 : 1 plot ratio) and internal appraisals of the site valued it at **€303 million** (3:1 plot ratio).
3. As outlined by CEO to the Committee, the DDDA had its own qualified valuers who, in 2006, reviewed the valuations based on different parameters and having regard to a recent transaction (site sold in East Wall) it valued the IGB site at **€350 million**.
4. A member of the DDDA executive also contacted different estate agents who suggested that the site could fetch **€400 million** in the market.
5. Based on this level of information the executive suggested to the Board that the site was worth up to a maximum of **€375 million** and the board agreed on 20th October to allowing the joint venture placing a bid up to this amount.
6. Donatex⁶ Ltd. (the other party to the joint venture) had estimated that the site was worth **€430 million**.
7. In discussions with the Chairman and CEO of the DDDA, Mr Mc Namara⁷ indicated that a bid of **€437** might be necessary to secure the site.

The final bid of €412 was successful. Between 2005 and 2006, the already inflated value had jumped another 30%.

⁶ Donatex was the legal entity that entered the joint venture with the Authority to form Becbay. Donatex was a company owned by Bernard Mc Namara. Mr. Mc Namara subsequent to the successful bid for the IGB site brought Derek Quinlan in as a partner in Donatex.

⁷ Bernard Mc Namara was one of Ireland's biggest developers and the principal partner in the the joint venture with the DDDA to acquire the IGB site. When the financial crisis hit in 2008 and the property market collapsed, Mr Mc Namara filed for bankruptcy and his loans were taken over by NAMA

The financial commitment required.

The executive, having reviewed its valuations of the IGB site was aware that it could not purchase the site outright. As outlined in Chapter One, it had a healthy balance sheet with access to up to €30 million in cash. It has also, prior to the submission of the bid, got Ministerial approval to increase its borrowing capacity to €127 million. When the board decided on 20th October, 2006 that a maximum bid of €375 million could be made for the IGB site, it was told that its potential exposure was estimated to be **€9 million** as, at that stage the proposal was that 90% of the cost of the site was being borrowed using the site itself as security for the loan. The board was not comfortable with this high level gearing and told the executive that it needed to be lowered which thus increased its equity liability. On 24th October, the board agreed to the joint venture based on a commitment that was set at **€35 million** (€29 million in equity and a further €7 million in recourse finance).

That level of financial exposure changed substantially a little over a week later, [2nd November, 2006] when the shareholders agreement was agreed which increased the exposure. Subsequently the financial guarantees sought by the banks significantly increased the liability of the Authority. The banks sought to have €100 million of the borrowings guaranteed and the Authority, as a 26% shareholder in Becbay, became liable for €26 million of the borrowing plus 26% interest repayments. That interest liability changed also as the shareholders agreement put a two year stipulation on the liability and that limit was not part of the financial agreement with the banks. The Committee notes that in three weeks, the commitment went from a projected figure of €9 million to an accepted figure of €35 million to a potential exposure arising from banking arrangements of €61 million. In fact as outlined by the C&AG, the potential exposure had risen to €81.9 million by 2010.

Projected Outcomes

The business case submitted to the Board of the Authority for its meeting on 20th October, 2006 gave a broad outline of the projected outcomes which was supportive of getting involved in a joint venture. These are outlined above and were further elaborated on by the former CEO when he made reference to:-

1. Securing the non-commercial aspects of the development i.e. the social housing and the community amenities.
2. Repayment of the investment made by the Authority in Becbay after the development costs were met.
3. A 26% share in the profits which was likely to bring in a sum of €50 million.

As will be outlined in Chapter Three, there is a paucity of detail in the records of the Authority on the development of the IGB site. The Committee would expect that a major

commercial decision to be part of a multi-million euro bid would require detailed analysis of projected outcomes. None of that work is evidence in the records of the Authority prior to the key decision to allow a bid to be submitted. There were no projections given to the board as to how this major project was going to pan out and what the likely return on investment would be. There were no cash-flow projections. There was no sensitivity analysis done on how the increased bid price would impact on the profits of the joint venture. There were no detailed maps showing what could potentially be built on the site. There was no indicative timescale including the planning process. Crucially there was no note on due diligence on Donatex Ltd. which was the joint partner of the Authority. As with the lack of clarity around how much this venture would cost, there is a similar degree of opaqueness around what the outcome would be like.

Conclusion

While the DDDA was in a strong financial position when it entered the joint venture, there was a degree of uncertainty around key aspects of the project, including the value of the site and the extent of the Authorities financial commitment. The value of the site and the likely bid to acquire the site varied from €375 and €437 million. The extent of the financial contribution by the Authority was estimated at €35 million when the bid was made, however that figure increased to €61 million two weeks after the bid was deemed successful. Finally the records of the Authority do not contain a level of analysis that would have led to informed decision making.

Chapter Three

Corporate Governance at the DDDA

Introduction

The board of the Authority made key decisions at three meetings to enter a joint venture and to approve a bid for the IGB site. The Committee has relied on the minutes of those meeting, the board papers and the findings of the Comptroller & Auditor General into the adequacy of the business case when reviewing the performance of the board. As outlined in Chapter Two, there was uncertainty around key elements of the joint venture up to and following on from the decision to be part of the bid. This and the fact that the deal proved catastrophic for the Authority raise issues of corporate governance at the Authority.

Role of the Board

The Board had a number of key responsibilities, the two main ones being:

1. It had a fiduciary duty to the Authority
2. It had to make the key decisions

In performing its fiduciary duties it needed to manage the risks associated with proposals and, as was outlined to the Committee, it sought to mitigate some of the risks especially by bringing down the extent to which the site purchase would be funded by bank borrowings. There were a number of other risks and there is a paucity of evidence that it addressed the risks around its financial commitments and the price to be paid for the site.

As a decision maker, the board was required to interrogate the information that came from the executive. To do that it needed to evaluate proposals based on the experience of board members and to have a clear segregation of roles between it and the executive. As was outlined in Chapter Two, the level of the analysis that should surround a multi- million euro investment, as contained in the board papers, indicates that there was not enough information going to the Board to allow it to make informed decisions.

Key Decisions in respect of the Joint Venture

The Board met on three occasions to discuss and approve aspects of the joint venture. It was under time pressure as the bids had to be submitted on 25th October 2006 which may have prevented a greater level of analysis.

First Meeting

On 3rd October, 2006 at a board meeting held in San Sebastian in Spain, the issue of a possible joint venture was raised: At that stage the Board was not informed as to the identity of the developer who would be party to the joint venture and it gave agreement in principle to examine the possibility of entering a joint venture.

Second Meeting

The board as an entity did not engage on the issue again until the meeting of 20th October, 2006 when the sole item on the agenda was the joint venture. At that meeting the business case for the joint venture was considered and the board gave its consent to entering a joint venture subject to finalisation of the bid price. At that meeting the board was told that the extent of its financial commitment was limited to €9 million which raised concerns that the project was too highly geared and thus the executive was required to review the issue with the development partner. It also agreed that the maximum bid for the site by the Joint Venture Company should be €375 million.

Third Meeting

The final meeting took place at 8am on 24th October, 2006. The minutes of that meeting, which the Committee was told lasted one hour and at which six of the seven board members were not physically present (they were participating via conference call), show that the Board agreed that bid should be €411 (Appendix 1). It further agreed that the bid by Mr Mc Namara could be as high as €437 million. It was also informed that its financial liability was €35 million (€29 million in equity and €7 million in recourse finance)

Outcome of key decisions

The board made certain decision which did not hold. Its analysis of the value of the site and on what the bid should be capped at changed over a weekend when it basically accepted that the bid could be up to €62million more than what it had agreed the site was worth. This change appears to have been accepted solely on the basis that the developer was more knowledgeable on such matters. The Committee finds it unique that a public body would act in such a manner. A board faced with such a scenario in the future should get an independent valuation and all risks associated with going above that value should be outlined clearly and recorded. While the Board was told that extend of the increased bid was at the developers risk, the fact is that the DDDA had to take on some of this risk when it was required to give guarantees in respect of the borrowings of Becbay.

The second key outcome was that its financial commitment went in a matter of two weeks from €9 million to €61 million. In fact the commitments made by the DDDA in November eventually exposed it to a potential charge of €81.9 million. The fact that the financial commitment changed almost immediately after the bid was submitted supports the finding of the Committee that the board did not have hard analysed data available to it when it made its decisions.

Conclusion

The absence of sound information especially on the valuation of site and on the extent of financial commitment required meant that the board did not have a clear line of vision on what it was getting involved in. The time constraints most likely prevented the board from seeking greater levels of analysis. Good governance is dependent on sound information and its absence can lead to certain risks being overlooked or not fully understood with a view to mitigation. That is what transpired in the case of the joint venture.

Chapter Four

Ministerial Oversight.

Introduction

The DDDA is a commercial state body under the aegis of the Department of the Environment, Community and Local Government. The Departmental relationship with a commercial state body is generally one where the body gets on with its commercial activity with minimal interference from the Minister or the Department. The Minister had, since the establishment of the Authority, appointed a senior Departmental official to the board. Under the Dublin Docklands Development Authority Act, 1997, the Authority had the capacity to borrow up to a maximum of €127 million, subject to the approval of the Minister and with the consent of the Minister for Finance⁸. The code of Practice for the Governance of State Bodies also provided that the approval of the Minister with the consent of the Minister for Finance was necessary in order that the DDDA could enter a joint venture. As with all state bodies, the day to day oversight responsibility within the parent Department is assigned to a line division, in this case the head of that line division was also a member of the board of the Authority.

Request for to authorisation.

The board of the Authority was informed on the 3rd October 2006 (Appendix 1) that the IGB was likely to sell for somewhere in the region of €400 million. Notwithstanding the likelihood of such an outcome, the letter to the Department stated that the DDDA was proposing to get involved in a joint venture in the Poolbeg area where the site was valued at €220 million. The approval of the Minister for the Environment, Community and Local Government and the consent of Minister for Finance was given to increase the borrowings of the DDDA to its maximum (€127 million) and to enter a joint venture on the basis of inaccurate information. It was outlined to the Committee that, as the DDDA had the capacity to service the borrowing and therefore there was no expenditure required of the Department, the Minister was only required to give consent to improve the borrowing limit and, as such, the underlying detail of the proposal and the fact that the joint venture was to likely to have to spent at least €400 million to acquire the site was not of matter that needed to be conveyed to the Minister. The Committee does not accept this position. Both the Minister for the Environment and the Minister for Finance should have been informed of the broad parameters of the joint venture proposal so as to ensure that the sanction to go ahead with the joint venture and to increase the borrowings was made on accurate information.

⁸ This is now a function of the Minister for Public Expenditure and Reform

Role of Department officials on State boards.

The civil servant on the board also had responsibility for Departmental oversight of the DDDA. The DDDA letter of 12th October, 2006 which sought approval to borrow up to a limit of €127 million and to enter a joint venture was addressed to this official. As a board Member, this official would have known the key aspects of this deal including the fact that the IGB site was likely to fetch up to €400 million. As a board member the official owed a fiduciary duty to the Authority which would have prevented disclosure of any knowledge obtained by virtue of being a board member to either the Minister or to Departmental colleagues. Therefore, when the Authority's request to increase its borrowing potential was discussed with the Minister the final bid price or the potential price of the IGB site was not disclosed. While the Committee recognises the difficulty of a public official in this case, a board member should raise such concerns directly with the Chairman or the CEO. Had this happened, the Authority would have been forced to correct its misleading submission and decisions taken by both Ministers would have been done in the full knowledge of what the joint venture company was going to pay for the IGB site.

The Department has since recognised that there needs to be a separation of roles between a board member and the official who has a remit to oversee the state body on the part of the Department. The Committee welcomes this development which should apply to all Departments where there are officials on State boards. The Department of Public Expenditure and Reform should also review the protocol to the Code of Governance for State bodies so that it has application to the commercial state bodies.

Conclusion

The Committee finds that the integrity of the approval process was compromised by the failure of the executive of the DDDA to accurately reflect to its parent Department and to the Department of Finance the fact that the Irish Glass bottle site would be purchased for approximately €400 million or almost double the value it placed on the letter seeking Ministerial approval to increase its borrowings. In addition the fiduciary role the civil servant on the board of a state body should not impinge on that person's responsibility to the Minister and there is a need for a segregation of duties between board membership and direct oversight responsibilities. This is an issue that should be examined in respect of all appointments of civil servants to all boards.

Chapter Five

Issues arising from the examination of the Accounts of the DDDA.

Introduction

At its meeting on 26th March, 2015⁹, the Committee examined the 2013 Financial Statements of the DDDA where issues relating to the disposal of property and on-going liabilities were raised. This Chapter deals with three issues, namely

1. The sale of 16 Hanover Quay
2. The costs associated with the Jeannie Johnstone
3. The remedial works required at the Long Boat Quay Development.

Sale of 16 Hanover Quay.

No 16 Hanover Quay was acquired along with No 12 Hanover Quay in 2004 by way of a CPO for €5.1 million. At the time the intent of the DDDA was to acquire the row of buildings on Hanover Quay with a view to demolishing them so as to create a boulevard on the Grand Canal basin. The DDDA ran out of money to go ahead with this plan for Hanover Quay and in 2013 it was under pressure to extinguish its liabilities so it had to sell No 16 Hanover Quay. It did this by way of a private agreement with the entity which was occupying the property under licence since 2004 and which happened to own the adjacent building. The licence allowed usage for storing equipment and as a recording studio. The price received was €450,000. The DDDA outlined to the Committee that it got market value having regard to the restricted development potential of the site.

The Committee raised this issue out of concern that this property was worth a great deal more than what was obtained by the DDDA and because of the restricted manner in which the property was sold. The lease was bringing in an income €63,000 per annum which indicates that the sale was 7.5 times the value of the recurring income when commercial sales outcomes would normally suggest that a figure in excess of 10 times annual rent would be factored into the sales price. The Committee notes also that the building was insured for €598,000 in 2014.

The question of whether the Authority got value for money in this transaction cannot be answered definitively given that the market was not tested and the sale only achieved the benchmark set by the independent valuation carried out on behalf of the Authority. Notwithstanding the fact that there was some concern over possible legal action, arising from the original CPO in 2004, the Committee can find no justification for engaging in such a restricted disposal of this property. The property should have been put on the market in order to ascertain the level of competitive tension that existed for the property.

⁹ [PAC Meeting 26th March 2015](#)

The Jeannie Johnstone

The *Jeannie Johnstone*, which is a replica famine ship, was built at a total cost €15.5 million in the late 1990's. The State funding for the project amounted to €12.24 million. In 2005 the Authority bought the ship for €2.7 million and since 2005 it has incurred operating costs of approximately €870,000. The *Jeannie Johnstone* continues to be a drain on the now meagre resources of the Authority. The Authority wrote down its value in the 2013 Financial Statements to €150,000 although evidence given to the Committee suggests that it has a current day value of €600,000. The ship is not seaworthy and therefore can only be used as a tourist location. It would require an investment of in excess of €500,000 to allow it to be used for sail training and this is money the Authority does not have. It is currently berthed on the Liffey at the Custom House Docks and its day to day operations as a tourist attraction are outsourced. The Authority, whilst not getting an income from its operations, has to meet insurance and significant maintenance costs.

The *Jeannie Johnstone* will transfer to the Dublin City Council following the dissolution of the Authority. The future of the ship appears to be purely as a tourist destination on the Liffey and a business plan is being drawn up which will increase tourist footfall. A delegation from the Committee visited the *Jeannie Johnstone* in 2015 and sees a future for the ship if the proposal to create a famine museum in the docklands comes to fruition as the ship would be part of the attraction for museum visitors. However the legacy of the *Jeannie Johnstone* is one of failure given the public funding that has been directed to the project over the past twenty years.

Longboat Quay

Longboat Quay is an apartment complex of 300 units located in the docklands that was built by Bernard Mc Namara, the developer and the principal behind the company involved with the Authority in the joint venture for the acquisition of the Glass Bottle Site in 2006. A receiver appointed by NAMA to take control over the assets of Mr. Mc Namara, following bankruptcy, now has control of 18 of those apartments. NAMA has informed the Committee that the other apartments are owned by those that bought them and the DDDA has a co-ownership interest in 37 of those as they were purchased as affordable homes. The DDDA has already taken steps, at a cost of €1 million to address fire alarm system deficiencies; however a bigger problem that will cost approximately €4 million to solve remains to be addressed. This latter problem relates to structural deficiencies relating to fire compartmentalisation and smoke ventilation systems.

The Committee was informed that negotiations were ongoing between the Dublin Fire Service and the City Council, the DDDA, the receiver (acting in consultation with NAMA) and the residents with a view to coming up with the funding to remedy these structural deficiencies.

It is a matter for the authorities in the State to review how this happened and have recourse where necessary to the criminal justice system where negligence can be proved against developers and their agents. In addition the public authorities, principally

the DDDA and Dublin City Council, had and retain responsibility for ensuring that this apartment complex complies with building regulations especially in the area of fire safety. Given the failure of oversight, there is now an onus on both bodies to play a significant role in delivering a solution that will see the structural deficiencies rectified. As there is likely to be a liability arising for the DDDA, the Committee will recommend that the dissolution of the DDDA be deferred until this issue is dealt with.

Findings and Recommendations

<p>Finding 1</p> <p>The records of the DDDA indicate there was insufficient level of analysis undertaken by the executive prior to it recommending a joint venture to purchase the Irish Glass Bottle Site</p>	<p>Recommendation 1</p> <p>All public bodies should ensure that their records in respect of investment decisions, including joint ventures, are comprehensive. The public spending code should be reviewed to ensure that it has standard requirements relating to cost benefit analysis and risk assessment with particular reference to joint ventures.</p>
<p>Finding 2</p> <p>The Board of the DDDA agreed to be part of a joint venture to purchase the Irish Glass Bottle site on the basis of incomplete information about the value of the land and the extent of its financial commitment. The data on costs, benefits and risks lacked comprehensiveness which made sound decision making difficult.</p>	<p>Recommendation 2</p> <p>Boards, in compliance with their fiduciary duties, need to ensure that decisions are taken on the basis of comprehensive analysis and that a comprehensive record of decision making is in place. The Code of Governance for State bodies should be reviewed to establish whether its provisions need to be enhanced in light of the experiences at the DDDA.</p>
<p>Finding 3</p> <p>Civil Servants on board of State Companies are no different from other board members in terms of their duties and responsibilities.</p>	<p>Recommendation 3</p> <p>The oversight of a body under the aegis of a Department should not be the function of a civil servant who is also a member of the board of that body.</p>
<p>Finding 4</p> <p>Inaccurate information was given to two Ministers by the DDDA in a formal submission seeking approval to enter a joint venture and to increase its borrowing.</p>	<p>Recommendation 4</p> <p>Notwithstanding the commercial sensitivity of any proposal, it should be a requirement that there is disclosure of key financial data as part of the comprehensive cost benefit analysis that should be part of any submission seeking Ministerial approval to enter joint ventures or to increase borrowings.</p>

<p>Finding No 5</p> <p>While primary responsibility for structural deficiencies at the Longboat Quay Apartment Block rests with the developer of Longboat Quay, the authorities who were responsible for adherence to fire safety regulations also bear some responsibility</p>	<p>Recommendation No. 5</p> <p>The dissolution of the DDDA should be deferred until any liabilities, that arise for public authorities in respect of the structural deficiencies that now exist at the Longboat Quay Apartment complex, are discharged</p>
<p>Finding No. 7</p> <p>The <i>Jeannie Johnstone</i> famine ship, which has cost the State in excess of €13 million, continues to be a drain on the resources of the DDDA.</p>	<p>Recommendation No 7</p> <p>Dublin City Council should now bring forward a proposal for the efficient use of the <i>Jeannie Johnstone</i></p>
<p>Finding No 8</p> <p>The sale of No. 16 Hanover Quay to the sitting tenant raises serious concerns about the achievement of value for money.</p>	<p>Recommendation No. 8</p> <p>Where sales of State assets occur without an open process, the reasons for that private sale should be clearly documented and reported to parent Department and should be highlighted by way of a note in the accounts of the State body.</p>

APPENDIX 1

Board papers from meetings 3rd October 2006, 20th October 2006 and 24th October 2006

Dublin Docklands Development Authority

Correspondence 3A.1
Meeting 81 – 25/04/2013

139th Executive Board Meeting

to be held on

Tuesday, 3rd October, 2006
in San Sebastian

AGENDA

1. Minutes
Minutes of the 137th Meeting of the Board held on Thursday, 7th September, 2006.*
2. Project Listings & Development Projects Consultants List.**
3. Educational Visit – *Itinerary*.*
4. Matters for Decision
 - 4.1 IGB Site – *approach to current tender.*
 - 4.2 Property Acquisition – *No. 1 Pickford Terrace.**
5. Matters for Discussion
 - 5.1 Education – *report on sports programme.**
 - 5.2 Section 25 applications – *report from 2nd of October Board meeting.*
 - 5.3 Occupy the River project – *report on progress.*
 - 5.4 chq – *update.*
6. Matters for Information
 - 6.1 Housing – *update.*
 - 6.2 Abbey Theatre in George's Dock – *report on Government decision.**
 - 6.3 Iconic Public Art – *progress report.**
7. Any Other Business

* Papers attached
** Papers to follow
*** No presentation – will move
directly to discussion.

NM14-0060

**Minutes of the 139th Meeting of the Executive Board of the
Dublin Docklands Development Authority**

Present:

Mr Lar Bradshaw, Chairman
Ms Angela Cavendish
Mr Dónall Curtin
Mr Sean FitzPatrick
Mr Declan McCourt
Ms Mary Moylan
Ms Joan O'Connor
Ms Niamh O'Sullivan

In Attendance:

Mr Paul Maloney, Chief Executive Officer
Mr David Higgins, Director of Finance
Mr John McLaughlin, Director of Architecture
Mr Gerry Kelly, Director of Social Regeneration
Mr Neil Mulcahy, Secretary

Held on Tuesday, 3rd October, 2006 at 4pm.

1. Minutes

- 1.1 The minutes of the 137th meeting of the Executive Board held on Thursday, 7th September, 2006 were amended by replacing subparagraph of 10.3 of the minutes with the following:

"Branding – following the presentation, the Board confirmed its previous decision to adopt the area branding proposed and when it should be used. The existing lighthouse logo remains as the corporate logo and will continue to be displayed on appropriate promotional publications".

2. Project Listings

- 2.1 The Chief Executive circulated the Project Listings sheet dated 2nd October 2006 and reported to the Board on the various projects being undertaken by the Authority, in particular:
- The Occupy the River project
 - The U2 / Britain Quay request for proposals
 - The completion of Grand Canal Square
 - The seeking of tenders for operating the car park at Grand Canal Square
 - The work being undertaken on the East Wall Community Centre
 - The current situation in relation to the new Beckett Bridge.
-

2.2 Arts Culture Building

The Chief Executive expressed his concern about the failure of Terry Devey and Heritage Properties to bring forward the design of the building and indicated the pressure that was being put on Mr Devey to comply.

3. IGB Site

3.1 An additional agenda paper, entitled "Development site at Poolbeg" dated the 2nd October 2006, was circulated. The paper detailed the development site of 24.9 acres on Poolbeg and the tender procedure which has been undertaken by the vendors. The Chief Executive briefed the Board on the confidential negotiations which he had undertaken with a developer who had indicated an intention to bid for the site. The developer confirmed that he would welcome the involvement of the Authority jointly in tender.

3.2 After a careful consideration of the proposal and subject to being satisfied that the proposed involvement of the Authority in the tender process and the future development of the site would not breach Public Procurement Rules, the Board agreed that the Executive could open negotiations with the potential tender partner with a view to formulating a joint bid.

3.3 There will be a special Board meeting to review the specific details with the development partner if a joint bid is to be made.

4. No. 1 Pickford Terrace

4.1 Having reviewed the Agenda Paper, the Board agreed that the Executive could complete the acquisition of No. 1 Pickford Terrace for the price of €460,000.00, plus costs.

5. Education – Sports Programme

5.1 The Director of Social Regeneration reported to the Board on the evaluation of the pilot project for healthy sports within Dockland primary schools which is being prepared by Dr Noel McAffrey and Dr Kieran Mooran. The Board noted that it was proposed to continue with further pilot projects in three other schools.

6. **Section 25 Applications**

6.1 The Director of Architecture gave a presentation to the Board showing the various buildings for which Section 25's had been granted at the 138th meeting of the Board on the 2nd of October.

6.2 DD393 – Point Village Watch Tower at Point Square – Point Village Company.

As had been agreed at the 138th meeting, the Board further reviewed this application. The Board agreed that the design did not meet the requirements of the Planning Scheme, particularly in that it did not *"have a wider city presence by virtue of its height, its exceptional design quality and its relationship to the River"*. It was noted that the Executive were engaged in consultation with Dublin Port in relation to the residential use of the Tower.

7. **Occupy the River Project**

7.1 The Director of Finance gave a presentation to the Board on the various proposals for use of the River which had been received in response to the invitation to submit projects for consideration by the Authority. The proposals for restaurant boats are being reviewed and a full report will be given to the Board at a future meeting.

8. **chq**

8.1 The Secretary reported to the Board on the ongoing marketing campaign for chq and on the tenant mix which is being targeted.

9. **Social and Affordable Housing**

9.1 The Director of Social Programmes updated the Board on the current situation in relation to Social and Affordable homes and the numbers being occupied in Hanover Quay and Gallery Quay and on the success which had been achieved with developers and management companies in having play space for young children made available within developments.

10. Abbey Theatre and George's Dock

10.1 The Board noted the Government's decision to procure the design of the new theatre via an international design competition to be managed by the OPW. The Director of Architecture will be the Authority's nominee on the inter-agency group being set up to oversee both the design competition and the build finance and operate public private partnership procurement of the building.

11. Iconic Public Art Project

11.1 Mr Declan McCourt, Chairperson of the Public Art Working Group, briefed the Board on the five projects which had been reviewed by the Working Group. Issues relating to the siting and scale of the projects are a matter of ongoing discussion with the various artists and a further meeting has been scheduled to review final submissions in late October.

12. Any Other Business

12.1 Development in Docklands North Lotts

The Board noted the recent announcement that Anglo-Irish Banks will be relocating to a new office building and Docklands North Lotts is being constructed by one of Mr Liam Carroll's companies.

There being no further business the meeting concluded.

* * * * *

Dublin Docklands Development Authority

140th Executive Board Meeting

to be held on

**Friday, 20th October, 2006
at 8am in the offices of the Authority**

AGENDA

1. **Site at Poolbeg – to consider the Executive’s recommendation for acquisition and, in particular, to consider:**
 - Procurement
 - Ministerial consent
 - Preferred Partner
 - Limit of bid
 - Draft Heads of Agreement.

2. **Any Other Business.**

**Minutes of the 140th Meeting of the Executive Board of the
Dublin Docklands Development Authority**

Present:

Mr Lar Bradshaw, Chairman
Ms Angela Cavendish (by conference call)
Mr Dónall Curtin
Ms Mary Moylan
Ms Niamh O'Sullivan
Ms Joan O'Connor (by conference call)

In Attendance:

Mr Paul Maloney, Chief Executive Officer
Ms Loretta Lambkin, Director of Marketing
Mr David Higgins, Director of Finance

Apologies: *Mr Sean FitzPatrick and Mr Declan McCourt*

**Held on Friday, 20th October, 2006 at 8am
in the offices of the Authority**

- | | |
|---|--|
| <ol style="list-style-type: none">1. Acquisition of IGB Site<ol style="list-style-type: none">1.1 The Board reviewed the agenda paper recommending the involvement of the Authority in a tender bid to acquire this premises.1.2 The Authority is in negotiations with Bernard McNamara regarding a joint venture arrangement to purchase the IGB site.1.3 It was noted that the deposit arrangement is not satisfactory. The issue has been raised by our legal advisors with the vendor and their response is awaited.1.4 The Board agreed that all the issues in the tender documents be reviewed by A&L Goodbody to ensure the Authority's interests are protected.1.5 The Board rejected the "dragalong" option in the event that the Partner wishes to sell part or all of its stake.1.6 It was noted that an architectural control by the Authority will be included with the JV agreement.1.7 The Executive will clarify in further documents that community issues will be the responsibility of the Authority and the JV Company must fund those issues through planning gain or through a community fund. | |
|---|--|
-

- 1.8 The Board agreed that the Partner can bid for sites covered under JV agreement subject to public procurement (at arms length).
- 1.9 The Board will accept up to 90% gearing with the caveat that the Authority has Step In rights and the option to restructure the deal in line with market forces.
- 1.10 Concern was raised that some terms of the JV agreement will trigger procurement issues for the Authority. Opinions to be sought on same.
- 1.11 Any tax planning measures with the Partner must not constitute 'aggressive' tax planning.
- 1.12 An arbitration clause should be added to the JV agreement.
- 1.13 The Executive advised that they understood that McNamara's were dealing with the Royal Bank of Scotland for funding to secure the acquisition.
- 1.14 Conclusion
That the obligations of the Authority within the Master Plan are achieved by being involved in the development of this area and this is best achieved by land ownership.

2. Tender Offer

- 2.1 The Joint Venture company will make the offer on behalf of the Partner. The Board agreed to an upper limit of €375m, but given there were so many issues and valuation issues still to be addressed it was agreed, if necessary, for a further meeting to finalise the bid.
- 2.2 It was noted that the vendor has insisted that, as a plc, it has a fiduciary responsibility to its shareholders to optimise site value even after the conclusion of the tender. The Board advised review of this position prior to bid. The final format to be agreed with the Board.
- 2.3 Members noted the requirement to declare any interest in the PLC or vendor company.
- 2.4 Closing date for tender is Wednesday 25th October at 12 noon.

There being no further business the meeting concluded.

* * * * *

Paper to the Board

Dublin Docklands Development Authority

Meeting of Friday, 20th October, 2006

Site at Poolbeg – Proposal for Acquisition

1. Summary

- 1.1 Following the decision of the Board at its meeting on the 3rd of October, the Executive have been in active negotiation with a potential partner to join in a bid for the acquisition of the IGB site at Poolbeg in accordance with the scheme of arrangement under the Companies Act, on offer from the joint vendors.
- 1.2 The Authority has engaged the assistance of PriceWaterhouseCoopers Financial Consultants and A&L Goodbody Solicitors in assessing the potential risks in the proposed scheme. (see summary documents).
- 1.3 The Executive recommend that the Authority should make a joint bid, with Mr Bernard McNamara, Developer, (“McNamara Companies”) to acquire the site for a sum in the range of €275m-€375m. The Authority’s involvement will be to take 26% of the equity while the McNamara Companies will take 74%. The relationship of the parties in the bid and in future development of the site (if the bid is successful) would be governed by a joint venture/shareholders agreement which protects and secures both parties’ interests (see attached draft Heads of Agreement).

2. Background

The background to this project was explained in the Board Paper circulated at the 3rd of October meeting – copy attached.

3. Procurement

- 3.1 The Authority has received legal advice which, while qualified, suggests that provided the development is not providing buildings specifically for the Authority, there would be no breach of procurement rules. The conclusion reached by A&L Goodbody’s is:

“In summary, provided that the DDDA does not exercise control over the joint venture company, it should not constitute a contracting authority for the purposes of the procurement rules. We do not envisage that the preliminary site works would trigger procurement rules provided that the DDDA has a limited role in specifying the works to be carried out. Finally, with regard to the nature of the

DDDA's involvement in the joint venture arrangement, we consider that option 2 ie splitting the site, would be more advantageous to the DDDA".

(see legal advice from A&L Goodbody's attached).

3.2 Therefore, the Authority has negotiated as part of the joint venture agreement that up to 25% of the site will be developed in accordance with a Public Procurement Process to be controlled by the Authority.

4. **Ministerial Consent**

While the Authority is a body corporate with perpetual succession and power to sue and be sued in its corporate name and to acquire hold and dispose of land (Section 14 (3) of the Act), nevertheless the Authority has undertaken to abide by the Code of Practice for the Governance of State Bodies which requires the consent of the Minister in respect of the involvement of the Authority in the acquisition of a company. A copy of the application for consent is attached.

5. **Need for Tender Partner**

It is obvious from the extent of funds required for the acquisition and future development of the property that the Authority could not proceed as a single bidder. In the circumstances the Executive, following negotiations, recommend that the Authority enter into a joint venture agreement with the McNamara Companies (through various companies which they will use) to engage in a bid and future development of the site (if the bid is successful).

6. **Scheme for Purchase**

The site is only available for sale through a mechanism put forward by the vendors which involves the acquisition by the tenderer of a listed PLC. The proposed JV will involve the Authority taking 26% of the shareholding and the McNamara Companies 74%. However, the JV agreement provides equal control over the actions of the JV company in the development of the site in specific instances – see schedule to the Heads of Agreement.

7. **Financial Commitment**

The McNamara companies will arrange the securing of finance and they believe that they can raise up to 90% of the bid price, guaranteed solely against the assets of the JV. This will require an injection by the Authority and the McNamara Companies of some €35m in equity in the JV. The Authority's proportion is approximately €9m and this will be provided from our existing resources.

8. **Valuation of Site**

8.1 An independent valuation from CBRE Richard Ellis Gunne for the Authority in June 2005 put the market value of the site at €240m. This was based on the plot ratio of approximately 2:1 as provided for in the Poolbeg Framework Plan.

8.2 A recent valuation carried out internally puts the value at €268m, based on a projected plot ratio of 2.5:1. This valuation also includes an

estimated €60m cost for remediation; 20% social and affordable housing and other projected costs.

9. **Draft Heads of Agreement**

The attached draft Heads of Agreement seek to detail the areas of control by the Authority, including architectural and community issues.

10. **Declarations of Interest**

As this is a listed PLC which will be acquired by an acquisition of shares in same, it is essential, as part of the takeover process, that any interest which the Authority members or others working for the Authority have in respect of shareholding or dealings in shares or any dealings with the public limited company are disclosed at this time.

11. **Planning Scheme for Poolbeg**

As part of our commitment under the JV, the Authority will seek to implement the provisions of the Master Plan which indicate an intention to seek Ministerial approval for a planning scheme for this area.

12. **Resolutions by the Authority**

As part of the tender process it will be necessary to produce a resolution by the Authority confirming its intent to make a bid and giving an irrevocable financial commitment to the €9m.

It will also be necessary to resolve that the Authority is prepared to make the bid jointly with the McNamara companies in accordance with the Heads of Agreement.

13. **Risk –v- Reward**

13.1 **Reward** – The involvement of the Authority in this site, albeit as a minority partner, ensures that the Authority has some element of control over when development of the site occurs. Also, as provided for in the Heads of Terms, the Authority has a major input into the planning and architectural elements of the development. Further, the Authority has a better opportunity of achieving its social/community objectives. In addition, the Authority can expect to share (26%) in the profits generated by the development.

13.2 **Risk** –

13.2.1 The financial risk to the Authority in the current structure is minimised and should be ring-fenced at the level of equity (circa €9m).

13.2.2 It must be accepted that the bid price is at the 'top of the market' and the general perception is that the Irish commercial market is 'over-heated'. The level of gearing proposed by our partner (ie 90%) is considered very high and may constitute a risk in itself if there is any downturn in the market or if our partner gets into financial difficulties.

13.2.3 As the bid is being made to a PLC, they will claim to have a fiduciary duty to accept a higher bid if it was made subsequent to their accepting our tender bid. This could happen at any time prior to the scheme of arrangement being approved by the High Court and the deal closing – projected March 2007.

13.2.4 Examination of the scheme of arrangements proposed in the data room reveals a potentially significant risk in terms of forfeiture of the deposit of €15m. The legal advisors are questioning the vendor's solicitors in this regard.

Neil Mulcahy

19th October 2006

Dublin Docklands Development Authority

141st Executive Board Meeting

to be held on

Tuesday, 24th October, 2006 at 8am

AGENDA

1. Site at Poolbeg – to further consider the Executive's recommendation for acquisition and, in particular, to review:
 - Risk management of issues relating to the forfeiture of the Deposit
 - Control of any financial restructuring of the jv company
 - Valuation
 - Revised Heads of Agreement.

2. Any Other Business.

**Minutes of the 141st Meeting of the Executive Board of the
Dublin Docklands Development Authority**

Present:

Mr Lar Bradshaw, Chairman (by conference call)
Ms Angela Cavendish (by conference call)
Mr Dónall Curtin (by conference call)
Mr Sean FitzPatrick (by conference call)
Mr Declan McCourt
Ms Mary Moylan (by conference call)
Ms Niamh O'Sullivan (by conference call)
Ms Joan O'Connor (by conference call)

In Attendance:

*Mr Paul Maloney, Chief
Executive Officer*
*Mr David Higgins, Director of
Finance*
*Mr Gerry Kelly, Director of
Social Regeneration (part)*
Mr Neil Mulcahy, Secretary

**Held on Tuesday, 24th October, 2006 at 8am
in the offices of the Authority**

1. Agenda

1.1 An agenda had been circulated by e-mail. The only item on the agenda was to further consider the Executive's recommendation for the acquisition of a site by way of involvement in a joint venture with Mr Bernard McNamara.

2. Declaration of Interest

2.1 Opening the meeting, the Chairman drew attention to the fact that he and the Chief Executive had been advised by Mr McNamara at 8.30pm the previous night that McNamara was in discussions with the Bank of Ireland and Anglo Irish Banks in order to secure the acquisition funding. For his own part, the Chairman advised that he was a Non-Executive Director of Anglo Irish Banks and would not be involved in executive decisions with the Bank relating to funding. Mr Sean FitzPatrick declared himself to be in a similar position. Mr Declan McCourt, declaring himself to be in a similar position with the Bank of Ireland, also confirmed that he was not aware of or involved in any credit decisions relating to particular funding transactions.

2.2 In the course of a full discussion on this issue and recognising the provisions of the Code of Conduct adopted by the Board on the 8th of September 2005, the Board concluded that no material conflict of interest existed in respect of the participation by the

Board members in the discussion and decision on the proposed acquisition.

2.3 Members were concerned that to some people there might be a perception of conflict but, following further discussion, it was agreed that such perceived conflict, if it was ever alleged, would have to be dealt with by declaring the facts of the situation. In addition, the primary decision to acquire the site and enter into the joint venture had been made by the Board at its meeting on the 20th of January, before any issues of conflict arose.

2.4 The Chief Executive confirmed that all of the negotiation and preparation of documentation by the Executive had been virtually completed before the issue arose. He had understood that Mr McNamara had been in discussion with the Bank of Scotland but was only advised of the Bank of Ireland/Anglo Irish involvement in the same meeting as the Chairman.

2.5 It was agreed that the Executive would seek confirmation from the Authority's solicitors that the method of dealing with conflicts of interest was being undertaken in accordance with best practice.

3. Tender Documentation

3.1 The Chief Executive briefed the Board on the work which had been undertaken to resolve issues of concern raised at the previous Board meeting:-

- Security of the deposit – the vendors had agreed that the deposit would be returned in full, provided the failure to complete the transaction was not the fault of the purchaser.
- McNamara's have now confirmed that the leverage would be between 70% and 80% as opposed to the previously intended 90%.
- The requirement that tax planning would have to be agreed by both parties was accepted by McNamara's.
- In relation to countering the risk of counter-bids post acceptance of a tender, the vendors had agreed to make reasonable endeavours to have the 'irrevocables' assigned to the preferred bidder post acceptance of their bid.
- On the issue of public procurement, Goodbody's have advised that where the rights reserved to the Authority were matters for approval rather than 'direction', no breach of procurement rules should arise.
- Stamp Duty – A&L Goodbody's had advised that as the intermediate leases had been stamped, it should be difficult for the Revenue Commissioners to seek to have the matter re-adjudicated.

4. Capital Gains Tax

- 4.1 The Executive had raised the concern about the Capital Gains Tax liability on the property with our development partner. McNamara's tax advice is that the transaction is, in effect, the purchase of land and they believe that they will be able to convince Revenue that there is no latent capital gain. It was agreed that the Executive should take advice.

5. Valuation

- 5.1 The Chief Executive briefed the Board on the valuation report on which McNamara's were basing their potential bid price. The plot ratio proposed was approximately 2.6:1 with a mix of 70% residential and 30% commercial. Overall the Executive felt that the costs and projected income used in the McNamara valuation were reasonable. Assuming no liability for capital gains, the report concluded that the site value is in the region of €430m.
- 5.2 The Chairman and Chief Executive had, the previous evening, met with Bernard McNamara and discussed the various issues, including the valuation advice. Recognising that the Authority's valuation suggested a reasonable figure at €375m, Mr McNamara had offered that he would fund a higher bid on the basis of the difference being secured against the property but that the Authority's 26% shareholding would remain.

6. Financial Risk

- 6.1 The Director of Finance outlined to the Board the maximum liability to which the Authority would be exposed in terms of the acquisition of the property if the agreement as currently proposed goes ahead. Actual shareholder's loan/equity on the basis of the €375m with 70% funding would equate to approximately €29m. There would be an additional €7m in recourse finance which would have to be available to the JV.

7. Mezzanine Finance

- 7.1 Bernard McNamara had indicated that he would be raising mezzanine finance as part of his equity contribution but confirmed that that would not rank ahead of the Authority's equity.

8. Tender Bid

8.1 Following a long discussion on the merits of the various valuations and after careful consideration of the issues and risks and rewards involved, the Board agreed that the tender bid should be in the sum of €411m. However, recognising the expertise and experience of Bernard McNamara and, if he had some additional information which convinced him that the bid should be increased, then the Board agreed that Mr McNamara could be allowed to increase the bid as he saw fit up to a maximum of €437m.

8.2 Ministerial Sanction

The Board noted that Ministerial sanction to increase borrowing and to the acquisition of shares in a company was expected to be received during the day. In relation to the book valuation of some €250m which had been included in the Authority's submission to the Minister, it was noted that this figure was based on a plot ratio of 2:1 and on the basis that the Authority would be acquiring some 49% of the shareholding in the company (as opposed to the 26% in the current transaction).

9. Conclusion

9.1 Having carefully considered all the issues involved, the Board agreed that they would enter into a JV arrangement with Bernard McNamara for the acquisition of the site by way of taking 26% of the shareholding in the JV company and ultimately in the PLC. It was agreed that the Executive should make the necessary arrangements.

There being no further business the meeting concluded.

* * * * *

APPENDIX 2

Submission to the Committee from Professor Niamh Brennan, who chaired the Authority from 2009 to 2013.

PAC-R-1762 Correspondence 3B.8
Meeting 155 26/03/15

40, Charleston Road
Ranelagh
Dublin 6.

Mr Ted McEnery
Clerk to the Committee
Committee of Public Accounts
Leinster House
Dublin 2

11 March 2015

**Examination of the Special Report No. 77 of the Comptroller and Auditor General
on the Dublin Docklands Development Authority (DDDA)**

Dear Mr McEnery,

I refer to your letter of 11 February 2015 and your request that I make a written submission on any issues that arose during my tenure as chairman of the DDDA which arose as a result of the DDDA's decision to purchase the Irish Glass Bottle site in 2006.

Background to my appointment

On the request of Minister John Gormley, then Minister for the Environment, Heritage and Local Authority, I became Chairman of the Dublin Docklands Development Authority on 27 March 2009, to complete the three years remaining of the five year term of the previous chairman, Mr Donal O'Connor, who resigned on his appointment as Chairman of Anglo Irish Bank.

Together with my fellow Board colleagues, we addressed complex financial and corporate problems faced by the DDDA following the ill-fated Irish Glass Bottle site deal in 2006 and the expensive loss of the North Quay Investments Limited/Mountbrook case in 2008. That board completed its term of office in May 2012.

Tough measures were required to restore the Authority to financial stability, to restore its reputation and to ensure it operated within its available resources without recourse to the Exchequer. This statement summarises the key complexities addressed by the Executive Board [the Board] and management of the DDDA during my term as Chairman. The key complexities included:

1. Immediately retrenching the Authority's expenditure to bring it into a break even position
2. Consequences of the Mountbrook case
3. Corporate governance reviews initiated on the Minister's request of 17 August 2009
4. Defending the Donatex/McNamara legal proceedings initiated in July 2009
5. Settlement with NAMA concerning the Irish Glass Bottle site borrowings
6. Special Report No. 77 of the Comptroller and Auditor General

1. Retrenching expenditure

When I became Chairman of the DDDA in April 2009, it was clear that the Authority was on the edge of insolvency. In 2008, the DDDA reported an operating deficit of €213 million, resulting in a balance sheet net liability position of £48.5 million. Good progress was made in stabilising the day-to-day financial performance of the Authority. This meant taking difficult decisions on an almost daily basis as we cut operational expenditure severely.

On completion of the Board's term in May 2012, the financial position of the Authority had been stabilised and turned around by virtue of a strong focus on cost control, asset management and debt collection. In 2011, the Authority reported an operating surplus of €1.1 million and a balance sheet net asset position of £5 million. The successor board continued the parameters established during my chairmanship, such that by 2013 the Authority had reported in its submission to the Public Accounts Committee in January 2014 a projected balance sheet net asset position of approximately €5 million.

2. Consequences of the Mountbrook case

Although I am aware that the Committee has decided not to investigate the North Quay Investments Limited matter, the "Mountbrook case" had certain implications for the governance of the DDDA.

During 2008, the Authority lost a very significant Court case (referred to as "the Mountbrook case") relating to the use by the Authority of its statutory planning powers. These were legal proceedings taken by Mr Sean Dunne's Mountbrook Homes against (i) the Authority and (ii) Mr Liam Carroll's North Quay Investments Limited (NQIL).

Central to understanding these events is a secret agreement dated 31 May 2007 entered into by senior executives of the Authority apparently without the knowledge or authority of the Board in place in July 2007. The agreement was between the DDDA and North Quay Investments Limited (a Liam Carroll company). When the then executives subsequently informed the Board in July 2007 of the existence of the agreement, the board was not informed of its true content, other than that it was for the innocuous purpose of a routine transfer of land from the Developer to the Authority.

Surprisingly, the agreement was not furnished by the then executives of the Authority during the discovery stage of this litigation. It was first brought to the attention of counsel for the Authority by counsel for Mr Liam Carroll in late December 2007. The case was heard in the High Court over four days in April 2008.

The agreement covered the development of what is known as the NQIL building and it was envisaged that one of the three buildings would be the new Headquarters for Anglo Irish Bank.

The agreement involved the transfer of a strip of surface land (not to exceed a depth of three metres so as not to interfere with the car park underneath) from Liam Carroll's NQIL to the Authority. As far as can be ascertained, it would appear that the *quid pro quo* for this transfer concerned a three-stage planning process involving:

- (1) The then executives of the Authority first obtaining approval from the Board of the Authority for an eight storey building. The North Lotts Planning Scheme only allows for a maximum of seven stories plus a set back storey. This first stage in the process was completed and resulted in the issuance of a Section 25 planning certificate (this Section 25 planning certificate was subsequently found to be *ultra vires* by the High Court);
- (2) Secondly, the then executives of the Authority undertook on behalf of the Authority in the agreement to use their best endeavours to obtain the Board's approval of a proposed new North Lotts Planning Scheme (in which the NQIL building is located) which would allow for extra height.
- (3) At a third stage, the original Section 25 application was to have been brought back to the Board for amendment to allow for a 16 storey building (Stages 2 and 3 did not proceed).

Thus, the effect of the agreement was to facilitate a development of 16 storeys high, when at that time the maximum height permitted by the North Lotts Planning Scheme was seven stories plus a setback top floor.

The judgment of Ms Justice Finlay Geoghegan in the Mountbrook case had a significant effect on the Authority's planning processes and procedures. In October 2008, the Board commissioned a review of the events that led to the Mountbrook case, from Mr Declan Moylan, then chairman of Mason Hayes and Curran, solicitors. In addition to the Board's formal terms of reference, Mr Moylan informed me that he had received verbal instructions from the then Chairman of the DDDA, Mr Donal O'Connor.

The Moylan Report was not finalised when I became Chairman of the Authority. I was provided with a draft of the Moylan Report at my first meeting with the CEO, Mr Paul Maloney, on 31 March 2009. I read the Moylan Report but found its contents hard to follow. However, after a number of readings, I began to make sense of the events being reported on.

Having perused the draft of the Moylan Report, I was concerned about issues of clarity, attribution of responsibility and as to why certain persons were interviewed and others were not interviewed in its preparation.

A number of meetings and some correspondence (which was subsequently made public under the Freedom of Information Act) ensued.

Ultimately, the Moylan Report was not formally finalised. The terms of reference given to Mr Moylan, including verbal instructions from the previous Chairman of the DDDA, did not in my opinion permit an adequate enquiry to be undertaken into, and analysis of, the serious issues which emerged in that case.

3. Corporate Governance Reviews

The Minister for Environment, Heritage and Local Government wrote to the Authority in August 2009 and requested that a comprehensive review of corporate governance be conducted within the Authority. The timeframe for the review was extremely short. Accordingly, the Board decided to commission an evidence-based review of the key business and planning documentary records within the Authority and to focus on the key areas of activity within the Authority.

The Board decided to conduct two reviews, one to examine planning issues and one to consider the financial aspects of the Authority. Terms of reference were prepared which are included with each review. The firms of Declan Brassil & Company Limited, Chartered Planning Consultants, and Ray King and Associates, Incorporated Public Accountants, Registered Auditors, were selected to carry out the Planning and Financial reviews respectively.

3.1 Financial Review

The findings of the Financial Review pointed to a loose culture in relation to internal systems of financial control. While the Authority had in place a system of internal controls, in some instances it was found that the system was over-ridden at senior management level. In some areas, notably salary increases and the renewal of staff contracts, there was an absence of systems, with authority for transactions resting entirely with the CEO. There was no evidence of oversight of the CEO by his superiors in his execution of these responsibilities, partly because it was found that the CEO did not bring these matters to the Board's attention. In other areas, notably project costs, there were extensive systems for cost control but these systems were not always implemented in practice.

In addition, and possibly reflecting its financial successes until 2007, the Financial Review identified that value-for-money considerations were largely absent in the work of the Authority.

Significant changes in oversight arrangements at Board level and in the composition and management approach of the Senior Management Team took place in 2009. Further changes arose from the Authority's straitened financial circumstances and the Government moratorium. These changes resulted in a major culture change within the Authority.

3.2 Planning Review

The Planning Review found serious weakness across aspects of the planning functions of the Authority. Under its legislation, the Authority had a planning remit and a development remit. Until the judgment of Ms Justice Finlay Geoghegan in the Mountbrook case, it appears that the Authority's planning functions were generally subservient to its development and architectural functions and that planning was used to promote development. This approach seriously compromised the integrity of the planning function.

In the preparation of these reports, information came to the Board's attention concerning inappropriate planning decisions in the past. Mr Brassil's Review reflected these

inappropriate planning decisions. Many of Mr Brassil's findings were commercially sensitive.

3.3 Brady Shipman Martin review of the draft Poolbeg Planning Scheme

In December 2009, the Board commissioned Brady Shipman Martin to conduct a review of the draft Poolbeg Planning Scheme. The Brady Shipman Martin review found that the preparation of the Scheme "was not carried out in a fair, equitable and transparent manner".

3.4 Conclusions from the corporate governance reviews

The Minister's letter indicated that the Board's report should include an assessment as to whether a more detailed investigation was warranted on foot of the reviews' findings.

The Board concluded that, except for the Irish Glass Bottle site transaction, the issues raised concerning the Authority's system of internal financial controls in the Corporate Governance Financial Review had been addressed and required no further investigation. Questions remained, however, in relation to the background to the purchase of the Irish Glass Bottle site. In addition, the Board was of the view that there were unanswered questions concerning evidence that had come to light in the Corporate Governance Planning Review, in particular the rationale for the granting of non-compliant S.25 planning certificates and S.25 planning certificates that represented an inconsistent or inappropriate interpretation of the relevant planning scheme. The Board took the view that further independent investigation would be required to address these questions.

The Comptroller and Auditor General found that the recommendations in these reviews had been addressed by the Authority during my term of office.

4. The Donatex/McNamara Litigation

Shortly after my appointment as Chairman, Mr Bernard McNamara and his company, Donatex Limited, commenced a €100 million legal action against the DDDA in connection with the Irish Glass Bottle Site transaction. The Board chaired by me, together with its lawyers, very robustly and with considerable effort defended the DDDA/Irish taxpayer against this litigation. Later, in March 2013, Donatex Limited's/Mr McNamara's case was dismissed by Mr Justice Peter Kelly, with all costs awarded in favour of the DDDA.

5. Settlement with the National Asset Management Agency (NAMA)

In 2011, the Board of the DDDA concluded a mediated settlement with NAMA to settle outstanding liabilities relating to the Irish Glass Bottle site transaction. The loans relating to the Irish Glass Bottle (IGB) site, part-owned by the Authority, were transferred to NAMA. As part of the settlement, the Authority transferred a number of sites to the ownership of NAMA. The effect of this settlement was to put the Authority's finances into the black and on a firm financial footing.

6. The Comptroller and Auditor General Special Report No. 77

In relation to the Comptroller and Auditor General's Special Report No. 77, I believe this report provides a careful and balanced account of the events that took place. I support the findings of that Report. I note the Comptroller and Auditor General's positive conclusion (p. 12) that the board I chaired "*has taken steps to scale back its operations in the light of its financial circumstances and has implemented the recommendations of reviews of its planning and financial management systems*".

The then Minister for the Environment, Community and Local Government observed "*It's important to recognise that the [Comptroller and Auditor General] Report also acknowledges the many reforms that have been introduced following the internal governance reviews carried out by the DDDA and notes that the Authority's current practices are robust and represent good practice. This is in large part attributable to the corporate governance expertise of the outgoing Chair, Professor Niamh Brennan, who is to be highly commended for the very significant contribution which she has made over the past three years. I want to thank Professor Brennan and the other members of the outgoing Executive Board for their tireless work in steering the Authority through its most challenging times.*"

Concluding comment

It was a privilege to have served as Chairman of the Authority and to have served the Irish taxpayer and the local Docklands community by taking the robust forcible action required to regularise the Authority's financial situation and its planning processes.

For the record, the Committee should be aware that I waived all fees and claimed no expenses in respect of the term I served as Chairman.

I think it is a shame that the Dublin Docklands redevelopment project foundered on a single, high-risk Irish Glass Bottle Site throw of the dice, bringing the DDDA from a cash-rich successful organisation to the brink of insolvency and irretrievable reputational damage. Irish taxpayers and the local Docklands community deserved better.

I sincerely hope that the Docklands redevelopment project can be resurrected and completed by the State for the benefit of the good people in the Docklands area and Dubliners generally.

Yours sincerely,



Professor Niamh Brennan
Michael MacCormac Professor of Management

APPENDIX 3

Orders of Reference of the Committee of Public Accounts

(1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, to be known as the Committee of Public Accounts, to examine and report to the Dáil upon—

(a) the accounts showing the appropriation of the sums granted by the Dáil to meet the public expenditure and such other accounts as they see fit (not being accounts of persons included in the Second Schedule of the Comptroller and Auditor General (Amendment) Act, 1993) which are audited by the Comptroller and Auditor General and presented to the Dáil, together with any reports by the Comptroller and Auditor General thereon:

Provided that in relation to accounts other than Appropriation Accounts, only accounts for a financial year beginning not earlier than 1 January, 1994, shall be examined by the Committee;

(b) the Comptroller and Auditor General's reports on his or her examinations of economy, efficiency, effectiveness evaluation systems, procedures and practices; and

(c) other reports carried out by the Comptroller and Auditor General under the Act.

(2) The Committee may suggest alterations and improvements in the form of the Estimates submitted to the Dáil.

(3) The Committee may proceed with its examination of an account or a report of the Comptroller and Auditor General at any time after that account or report is presented to Dáil Éireann.

(4) The Committee shall have the following powers:

(a) power to send for persons, papers and records as defined in Standing Order 83(2A) and Standing Order 85;

(b) power to take oral and written evidence as defined in Standing Order 83(1);

(c) power to appoint sub-Committees as defined in Standing Order 83(3);

(d) power to engage consultants as defined in Standing Order 83(8); and

(e) power to travel as defined in Standing Order 83(9).

(5) Every report which the Committee proposes to make shall, on adoption by the Committee, be laid before the Dáil forthwith whereupon the Committee shall be empowered to print and publish such report together with such related documents as it thinks fit.

(6) The Committee shall present an annual progress report to Dáil Éireann on its activities and plans.

(7) The Committee shall refrain from—

(a) enquiring into in public session, or publishing, confidential information regarding the activities and plans of a Government Department or office, or of a body which is subject to audit, examination or inspection by the Comptroller and Auditor General, if so requested either by a member of the Government, or the body concerned; and

(b) enquiring into the merits of a policy or policies of the Government or a member of the Government or the merits of the objectives of such policies.

(8) The Committee may, without prejudice to the independence of the Comptroller and Auditor General in determining the work to be carried out by his or her Office or the manner in which it is carried out, in private communication, make such suggestions to the Comptroller and Auditor General regarding that work as it sees fit.

(9) The Committee shall consist of thirteen members, none of whom shall be a member of the Government or a Minister of State, and five of whom shall constitute a quorum. The Committee and any sub-Committee which it may appoint shall be constituted so as to be impartially representative of the Dáil.

APPENDIX 4
MEMBERS OF COMMITTEE

Áine Collins TD ¹	(Fine Gael)	
Paul J Connaughton TD	(Fine Gael)	
Joe Costello TD ²	(Labour)	
John Deasy TD	(Fine Gael)	Vice Chairman
Robert Dowds TD ³	(Labour)	
Seán Fleming ⁴	(Fianna Fáil)	
Mary Lou McDonald TD	(Sinn Féin)	
Gabrielle McFadden TD ⁵	(Fine Gael)	
John McGuinness TD	(Fianna Fáil)	Chairman
Derek Nolan TD	(Labour)	
Patrick O'Donovan ⁵	(Fine Gael)	
John Perry ⁵	(Fine Gael)	
Shane Ross TD	(Independent)	

NOTES

1. Deputy Áine Collins appointed to the Committee by order of Dáil Éireann on 18 July 2013 in place of Deputy Pascal Donohoe who was discharged on his appointment as Minister of State 12 July 2013.
2. Deputy Joe Costello appointed to the Committee by order of Dáil Éireann on 17 July 2014 in place of Deputy Gerald Nash who was discharged on his appointment as Minister of State 17 July 2014 having replaced Deputy Anne Ferris on 8 May 2012.
3. Deputy Robert Dowds appointed to the Committee by order of Dáil Éireann on 17 January 2013 in place of Deputy Colm Keaveney who was appointed on 28 November 2012 in place of Deputy Michael McCarthy.
4. Deputy Seán Fleming appointed to the Committee by order of Dáil Éireann on 21 June 2011 in place of Deputy Michael McGrath.
5. Deputies Gabrielle McFadden, Patrick O'Donovan and John Perry appointed to the Committee by order of Dáil Éireann on 2 December 2014 in place of Deputies Simon Harris, Eoghan Murphy and Kieran O'Donnell.