



Comptroller and Auditor General

Special Report

Department of the Environment, Community and Local Government

Dublin Docklands Development Authority

February 2012

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This report was prepared on the basis of information, documentation and explanations obtained from the public bodies referred to in the report. The draft report was sent to the Dublin Docklands Development Authority and the Departments of the Environment, Community and Local Government, Finance and Public Expenditure and Reform. The Department of Transport, Tourism and Sport was sent an extract from the draft report on matters relating to its area of responsibility. Where appropriate, the comments received were incorporated in the final version of the report.

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Report of the Comptroller and Auditor General

Dublin Docklands Development Authority

I have, in accordance with the provisions of Section 9 of the Comptroller and Auditor General (Amendment) Act, 1993, carried out an examination of the Dublin Docklands Development Authority.

I hereby submit my report on the above examinations for presentation to Dáil Éireann pursuant to Section 11 of the said Act.

A handwritten signature in black ink, appearing to read 'John Buckley', with a stylized flourish at the end.

John Buckley

Comptroller and Auditor General

24 February 2012

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Summary of Findings

Summary of Findings

The Dublin Docklands Development Authority (the Authority) was established in 1997 as successor to the Custom House Docks Development Authority. It has planning and development functions for over 500 hectares of land in the Docklands.

It develops periodic Master Plans for the area and prepares planning schemes for specific areas within the Docklands. Developers who submit planning applications that comply with planning scheme conditions receive a certificate of exemption. The process is designed to allow a development to proceed at a faster rate than applications dealt with by planning authorities. Nonetheless, the planning authority for the area, Dublin City Council, has a coexisting competence under the planning and development legislation and is the sole authority in the area of enforcement of planning conditions and services such as roads, drainage, water and sewerage.

In addition to its planning functions, the Authority has from time to time engaged in ventures with partners in order to secure the development of particular sites in the Docklands area.

The work of the Authority has been scaled back substantially due to the downturn in the property market. The area of commercial space that has been the subject of exemption certificates has reduced considerably since its peak in 2006 and its most recent major development venture relating to the Irish Glass Bottle site on the Poolbeg peninsula has resulted in the write off of its investment in the related joint venture company — Becbay Limited.

The Comptroller and Auditor General was appointed auditor of the Authority and its subsidiaries beginning with the financial year 2010. The audit report on its financial statements for that year was issued on 7 November 2011. The purpose of this special report is give a fuller account of

- the overall financial status and administration of the Authority
- the management of its investment in the Irish Glass Bottle site
- how its planning function is being administered.

The Authority is engaged in a number of legal cases. This report does not purport to draw conclusions about the subject matter of those cases. Consequently, to the extent that those matters may have relevance to the public accountability of the Authority, they may give rise, upon their disposal, to further reporting either by the Authority itself or in a future Special Report.

Financial Management

My audit report on the 2010 financial statements of the Authority drew attention to the fact that the Authority had current liabilities of €32 million at the end of 2010. These liabilities were funding property assets that will be difficult to dispose of in the short-term. The Authority's capacity to fund itself depends on the availability to it of banking facilities until such time as it can liquidate those property assets and collect its debts.

The Authority used the following assumptions in deciding to prepare its financial statements for 2010 on a going concern basis

- The existing banking facilities would remain in place and new facilities would be made available to the Authority.
- The Authority's remaining affordable housing stock and car parking spaces would be disposed of in 2011.
- The Authority would dispose of its investment assets, as and when required, to finance its operational costs.

- Litigation cases would be successfully defended.

While financial statements have yet to be prepared for 2011, a preliminary review of the records suggests that the same basic position pertained at the end of that year.

Looking forward to 2012, much of the cash inflows being projected and the timing of the outflows on foot of matured liabilities are contingent on events not entirely within the Authority's control as they require negotiation and agreement with external parties. Because the Authority has limited cash reserves, any failure to realise projected income or any requirement to advance the timing of payment of liabilities would require the identification of other sources of funding.

From an administrative perspective, the Authority has had its internal financial control reviewed in the course of 2010 and the status of implementation of the recommendations of that review is set out at Appendix D. In addition, it has begun to comprehensively record and review the title of its assets. However, the Authority's lower staff levels and reduced level of activity may require further alterations in its operating systems in order to cost-effectively address the risks and exposures associated with the current nature of its business. It is recognised that the same level of separation of function and supervisory control may not be achievable with current staffing levels. Accordingly, the Authority may need to review its risks and controls with a view to achieving the optimum level of control within its current resources.

Irish Glass Bottle Site

The failed venture to develop the Irish Glass Bottle site on the Poolbeg peninsula has impacted on the Authority's financial position.

A freehold interest in the Irish Glass Bottle site was originally held by the Dublin Port Company which had leased it to a private company. By taking advantage of the provisions of landlord and tenant legislation through creating a subsidiary, the lessee sought to gain a freehold interest. Ultimately, the Dublin Port Company only managed to secure one third of the proceeds from the sale of land in respect of which it originally had freehold title. When the property was sold, a joint venture, including the Authority, paid €412 million for the ten-hectare site. Stamp duty and other costs brought the acquisition costs to €431 million and further costs arose out of the need to carry out remediation works on the site.

Becbay Limited borrowed from two banks to fund the acquisition and remediation work. The Authority guaranteed the repayment of loans by Becbay Limited up to a level of €29.1 million plus interest. The loans of Becbay Limited were taken over by NAMA and the guarantee provided by the Authority was called in by NAMA in January 2011. A mediated settlement was agreed with the agency in July 2011 under which the Authority's obligations under the guarantee were extinguished in return for the transfer to NAMA of assets with an accounting net book value of €7.8 million, in full and final settlement, of all sums due under the guarantees.

The total outlay of the Authority on the Irish Glass Bottle site transaction was €52.1 million, including the value of assets transferred as part of a settlement with NAMA. The value of the site has reduced considerably since it was purchased in 2007. It was valued at €45 million in January 2011.

In regard to the decision to become involved in the venture

- The Executive advised the Board of the Authority that the joint venture bid for the Irish Glass Bottle site would be made in an over-heated commercial property market. While an assessment of the level of investment, benefits and risks of the project was presented to the Board during the decision-making process, a detailed analysis of those factors does not seem to have been carried out by the Board or management of the Authority.

- The Authority recognised that in order to fully achieve its objectives under the Master Plan, a planning scheme would need to be developed for the Poolbeg peninsula. It prepared a draft planning scheme by December 2008 but the scheme has not since been completed.
- The Authority did not obtain its own independent valuation of the site when it was deciding on the bid Becbay Limited would make for the site.
- The Authority obtained Ministerial approval to increase its borrowing capacity up to its statutory limit of €127 million. However, the information submitted to the Department of the Environment, Community and Local Government (the Department) requesting the approval for increased borrowing did not reflect the planned scale of the project. The Authority had informed the Department that the value of the site was approximately €220 million while an outlay of over €400 million was being contemporaneously discussed.
- No documentary evidence was located on audit to indicate that the Authority formally updated the Department when the decision was made to bid double the amount previously notified to it. Consequently, consent by both the Minister and the Minister for Public Expenditure and Reform for increased borrowing and for the Authority's participation in the joint venture was evidently given on the understanding that a transaction to the value of around €220 million was being contemplated.
- The Authority believed at the time of signing a shareholders agreement with two other partners in November 2006 that its financial commitment to the joint venture would be limited to €35 million. The Authority's exposure had increased to €81.9 million by end 2010 but it crystallised at €52.1 million following the settlement with NAMA.

Management of Board Business

Where Boards include persons with an interest in the business that is regulated by a State body or who provide services to the body, there is an increased risk of conflicts of interest occurring. Because some Board members disclosed their connections with banks that were providing finance for the Irish Glass Bottle site joint venture, the Authority took steps to assure itself that its decision-making in relation to the Becbay Limited funding decisions was in accordance with its own Code of Conduct.

The Executive Board minutes do not record disclosure of any other personal, professional or business interests of Board members that could represent a conflict of interest in relation to the acquisition of the Irish Glass Bottle site.

More generally, direction is necessary on the need to maintain the public record by ensuring that all parties to a decision or business discussion are subsequently identifiable.

Planning

In October 2008, the High Court found against the Authority in regard to its handling of a Section 25 application made by a development company called North Quay Investments Limited to the Authority. The basis of the adverse finding was that

- an agreement entered into by the Authority with the development company prior to the issue of the Section 25 planning certificate was *ultra vires*, in that the Authority should not have entered it in advance of determining the application for the Section 25 certificate and that it could also be construed as either the Authority or its executives committing that its executives would make a particular recommendation to the Board.
- the proposed development was inconsistent with the North Lotts Planning Scheme, and non-compliant applications cannot be made compliant by the Authority imposing conditions requiring modifications (which it had purported to do)

- the procedures employed by the Authority were unfair as they did not allow adjacent landowners an opportunity to make submissions prior to the Section 25 application decision being reached.

The Authority's Section 25 process has since been amended. The revised process has been applied to Section 25 planning applications since December 2008. Following a formal review, it was found to be satisfactory.

The process for drawing up a planning scheme for the Poolbeg area was also found to be deficient in certain respects, resulting in the draft scheme not being completed.

General Conclusions

The Authority has taken steps to scale back its operations in the light of its financial circumstances and has substantially implemented the recommendations of reviews of its planning and financial management systems.

Because of the structure of its balance sheet with long-term assets financed by short-term funding, the Authority faces 'going concern' challenges for the foreseeable future. However, it has processes to actively monitor its cash flows and operates a risk management system.

The Authority's assessment of its position is

- It has a short-term banking facility, which it intends to continue to renegotiate annually.
- All costs are carefully monitored including significant costs arising out of legal cases.
- The Authority continues with vigorous pursuit of non-performing debtors.
- An orderly disposal of the Authority's assets will take place to generate cash flow.

Dublin Docklands Development Authority

Chapter 1

Introduction

1.1 The Custom House Docks Development Authority (CHDDA) was established under the Urban Renewal Act 1986. Initially, the CHDDA had responsibility for developing an area of eleven hectares situated in the docks area of Dublin (the Docklands). Subsequently, its remit was extended under the Urban Renewal Acts of 1986 and 1987 to cover the redevelopment of an area of approximately 30 hectares.

1.2 In 1997, the Dublin Docklands Development Authority (the Authority) was established under the Dublin Docklands Development Authority Act 1997 (the Act). On its establishment, the Authority assumed the functions of the CHDDA and it was given responsibility for leading and coordinating the development of an increased area of approximately 526 hectares of land in the Docklands. Appendix A to this report provides a map of the Docklands area for which the Authority has development functions.

Functions of the Authority

1.3 The legislative remit of the Authority requires it to secure

- the social and economic regeneration of the Docklands area on a sustainable basis
- improvements in the physical environment of the Docklands area
- the continued development of financial services activities in the Custom House Docks area.

In order to implement this mandate, the Authority was given both planning and development functions.

Area Development and Planning

1.4 The Authority is required to publish periodic plans setting out the strategic framework within which the Docklands area will be developed. Public consultation is a legal requirement as part of the preparation of the plans, which are referred to as Master Plans. Three Master Plans have been published to date — in 1997, 2003 and 2008.

1.5 The Authority also has power to prepare action plans for specific areas within the Docklands. The main purpose of the area action plans is to identify key issues relating to land use, transport and urban design for a specific area, and to formulate strategies — including investment in infrastructure — to address those issues. However, there is no statutory obligation on the Authority, or on other bodies responsible for infrastructure development, to implement the proposals set out in the action plans.

1.6 The Authority can also prepare planning schemes for areas within the Docklands specified in statutory orders by the Minister for the Environment, Community and Local Government (the Minister), under the provisions of Section 25 of the Act. Preparation of the schemes involves a public consultation process. For areas covered by planning schemes, developers may submit applications to the Authority in respect of proposed developments including, change of use. Where applications comply with the conditions for development specified in the relevant planning scheme — relating to such matters as mix of land use, urban design and building height — the Authority issues a Section 25 ‘certificate of exemption’ which allows the development to proceed.

1.7 The adoption of a planning scheme and the involvement of the Authority in certifying development proposals does not remove the capacity of the existing planning authority — Dublin City Council (DCC). Consequently, for areas where Section 25 planning schemes are in place, developers have the option to submit planning applications in the normal way to DCC, or to seek a Section 25 certificate from the Authority.

1.8 DCC is responsible for enforcement of planning rules in the Docklands area. The Authority has no formal function in that regard.

Regeneration Objectives

1.9 In addition to the physical regeneration of the area, the Authority is tasked with a wider regeneration mandate. This gives rise to initiatives in the areas of education and training as well as employment and community development. The Authority may also provide social and affordable housing within its area of remit.

Social Housing

1.10 Social housing in the Docklands is provided to persons on DCC's housing list based on housing need. The housing need of each applicant is assessed in accordance with a '*Scheme of Letting Priorities*' published by DCC. The social housing provided is managed by voluntary housing associations and the rent charged is similar to rents charged by DCC. However, a service charge¹ also applies which is payable to a management company.

1.11 The Authority is not a housing authority under the Housing Acts 1966 to 2009 and, consequently, has no involvement in the assessment of applicants for social housing or the management of housing lists. This is the responsibility of DCC. All applications for social housing are made to DCC. The Authority liaises with DCC and the voluntary housing associations to ensure that when two households of equal housing need are being considered, and one of them is from Docklands, Docklanders receive preference.

Affordable Housing

1.12 Affordable housing units are acquired by the Authority in two ways

- from developers as part of their Section 25 obligations and for which consideration is given or
- as part of an arrangement with developers whereby, in exchange for a site, the developer delivers the affordable unit(s) to the Authority.

1.13 A wholly-owned subsidiary of the Authority, the Dublin Docklands Affordable Housing Limited, was established in November 2007 in order to provide a mechanism by which the Authority could provide affordable housing.

1.14 When the affordable units are acquired by the Authority, a new lease (100 year plus leasehold) is created between

- the developer and Dublin Docklands Affordable Housing Limited in the case of Section 25 acquisitions or
- joint venture partners (which includes the Authority) and Dublin Docklands Affordable Housing Limited in the case of other acquisitions.

1.15 In order to qualify as an affordable housing purchaser, persons must be first time buyers, owner-occupiers and earn below €58,000 for a sole purchaser and €75,000 for joint purchasers. For each of the affordable housing units sold, a service charge/management fee applies and is payable to the management company in charge of the development. Individuals purchasing affordable housing units from the Authority do not need to already be registered as an affordable purchaser with a housing authority. However, in order to complete a sale the Authority requires the purchaser to register with a housing authority.

¹ The service charge payable varies depending on the particular scheme and size of the property but it is usually between €12 – €18 per week.

1.16 Total proceeds from the sale of affordable homes by the Authority during the period 2008 to 2011 was €27 million.

Becbay Limited Joint Venture

1.17 In October 2006, the Authority decided to enter a joint venture arrangement with property developers, aimed at securing ownership of a ten-hectare plot of land in Poolbeg, within the Docklands area, referred to as the Irish Glass Bottle site. The Authority took a 26% stake in the joint venture company, called Becbay Limited. In addition to a cash investment, it provided a guarantee in respect of bank borrowings by Becbay Limited and related interest payments.

1.18 The site was acquired by Becbay Limited in January 2007 for €412 million. Stamp duty, professional fees and arrangement fees for the banking facility resulted in a total cost of €431 million. The Authority has stated that a further €32.5 million was subsequently spent by Becbay Limited on remediation of the site and other costs. However, the development of the site has not progressed as originally planned. A planning scheme for the Poolbeg area was drafted by the Authority in December 2008 but was not subsequently completed. The Irish Glass Bottle site diminished in value and was valued on behalf of the Authority at €45 million at end 2010.

1.19 The Authority has written off its investment in the joint venture, with significant negative impacts on its financial position and Becbay Limited's loans have been taken over by the National Asset Management Agency.

Other Related Undertakings

1.20 The Authority had six subsidiary companies at the end of 2009 and was involved in two trusts². Two non-trading subsidiaries were struck off (at the request of the Authority) in January 2010 and a further subsidiary, which was a management company with responsibility for maintaining the public areas in or about the North Wall Quay/Mayor Street development, was transferred to the owners of the development during 2010.

1.21 The three remaining subsidiary companies are

- **Dublin Docklands Affordable Housing Limited** – This is a wholly-owned subsidiary of the Authority. The principal activity of this company is to facilitate the transfer of legal title to purchasers of affordable housing.
- **Grand Canal Harbour Management Company Limited** – This is a wholly-owned subsidiary of the Authority. The principal activity of the company is to maintain the public areas of the Grand Canal Harbour development.
- **Butlers Court (Block B) Management Limited** – This company is limited by guarantee. The principal activity of the company is the management of the residential property at Butlers Court.

The subsidiaries are not consolidated in the accounts of the Authority as their turnover is not deemed material. However, provisions, as appropriate, arising out of subsidiary company operational deficits have been made in the financial statements of the Authority.

² The two Trusts were set up in 2007 – the Docklands Community Trust was set up to facilitate the advancement of education in the Docklands area and its surrounding hinterland and the Docklands Housing Trust was set up to purchase social housing for members of the local community.

Judicial Review of Planning Case

1.22 The Authority issued a Section 25 certificate in August 2007 in respect of a development proposal submitted by North Quay Investments Limited (NQIL). In November 2007, the developer of an adjoining property sought a judicial review of the Authority's decision in relation to the NQIL development. In October 2008, the High Court found against the Authority in a number of respects related to its handling of the NQIL application, including that the proposed development was inconsistent with the relevant planning scheme, and that the procedures employed by the Authority were unfair because they did not allow third parties an opportunity to make submissions prior to decisions on Section 25 applications. As a result, the Section 25 certificate issued by the Authority to NQIL was quashed.

1.23 Following the High Court ruling, the Authority commissioned a comprehensive review of its planning processes, and subsequently made changes to its procedures.

Background to the Report

1.24 The audit of the Authority and its subsidiaries was assigned to the Comptroller and Auditor General commencing with the accounting year ended 31 December 2010. The organisation had by then reduced in size, scaled back on its activity level and begun to address certain legacy issues relating to its previous transactions and its system of internal control and governance. The purpose of this report is to record the results of the first audit in some detail, outline the financial status of the Authority and how it is dealing with legacy issues.

Report Focus

1.25 This report, which is set out in the three chapters that follow, records

- the overall financial status of the Authority
- the implications of the investment by the Authority in the Irish Glass Bottle site
- how the planning function of the Authority is being administered.

Appendix B sets out a general outline of the development of the Docklands, both social and physical, since the establishment of the Authority.

Current Litigation

1.26 The Authority is engaged in a number of legal cases. This report does not purport to draw conclusions about the subject matter of those cases. Consequently, to the extent that those matters may have relevance to the public accountability of the Authority, they may give rise, upon their disposal, to further reporting either by the Authority itself or in a future Special Report.

Names of Departments

1.27 For convenience, the current names of Departments are used throughout this report in respect of relevant functions to which they have succeeded. Thus, reference is made to the Department of Public Expenditure and Reform where it now has responsibility for functions carried out previously by the Department of Finance.

Chapter 2

Financial Status of the Authority

2.1 The financial statements of the Authority for the year ended 31 December 2010 were adopted by the Authority on 20 October 2011. The Authority furnished me with certain representations relating to its financial status at that date and these are set out at Appendix C. I issued my audit report on those accounts on 7 November 2011.

Chapter Focus

This chapter outlines the financial status of the Authority at the end of 2010, examining its assets and the structure of its funding. It also outlines its general arrangements for financial management.

Financial Position of the Authority

2.2 At 31 December 2010, the Authority had a net asset position of €2.3 million (at end 2009 : €4 million). The main components of this accumulated surplus are set out in Figure 1.

Figure 1 Financial Status of the Authority as at 31 December 2010

	Levy activity ^a	Other activity	Total
	€000	€000	€000
Assets			
Property assets ^b	—	28,993	28,993
Levy debtors	3,852	—	3,852
Trade and other debtors	—	2,105	2,105
Cash	7,399 ^c	(2,102)	5,297
	11,251	28,996	40,247
Liabilities			
<i>Liabilities falling due within one year</i>			
Bank loan	—	(12,004)	(12,004)
Trade creditors and accrued expenses	—	(4,827)	(4,827)
Legal and other provisions	—	(3,446)	(3,446)
Levy creditors – current obligations	(1,657)	—	(1,657)
Levy creditors – pending receipt from levy debtors	(3,852)	—	(3,852)
Levy creditors – suspense	(5,742)	—	(5,742)
Other liabilities	—	(370)	(370)
<i>Liabilities falling due after more than one year</i>			
Pension liabilities ^d	—	(6,082)	(6,082)
Total liabilities	(11,251)	(26,729)	(37,980)
Net asset position at 31 December 2010	—	2,267	2,267

- Notes:
- a This column outlines the elements of the Authority's assets and liabilities relating to levy administration that are attributable to external entities.
 - b Included in 'property assets' are fixed assets of €2.4 million. The balance of the assets are held for trading or are investment properties.
 - c This represents the call on the cash resources of the Authority represented by levy receipts classified as payable to third parties or held pending the disposal of disputes with third parties.
 - d The Authority operates two unfunded defined benefit pension schemes for its staff and their dependents. Its financial obligations under its pension schemes at end 2010 was €6 million. The intention was that on completion of the Docklands project that the accumulated reserves of the DDDA would cover the obligations arising under the pension schemes.

2.3 The financial position reported in Figure 1 takes account of all assets and liabilities of the Authority. The Authority accounts for certain assets at the lower of cost or net realisable value in accordance with accounting standards. When those assets are eventually sold, they may achieve a higher value in the open market. For instance, the Authority holds two properties that have either been fully depreciated or expensed in total in previous financial statements. Based on internal valuations carried out by the Authority's property surveyor, those properties were valued at €1.2 million at the end of 2010.

Factors Impacting on the Financial Status of the Authority

2.4 The Authority's financial position has been materially affected by the discharge of obligations arising out of its involvement in the Becbay Limited joint venture. This is dealt with in Chapter 3.

2.5 The Authority holds assets which may prove difficult to immediately dispose of. In addition, the related funding for those assets is short-term. On an ongoing basis, the challenge for the Authority will be to continue to fund its assets and remunerate its borrowings from property income. The financial viability of the Authority needs to be viewed in light of the following main factors

- the realisability or short-term performance of its assets
- the structure of the funding of its property assets and its capacity to meet its financial obligations in the short-run including its obligations to third parties in respect of levies collected on their behalf.

Realisability of Assets

2.6 The wider conditions that impacted on the economy generally since 2008 have also affected the Authority's business. In particular, because of the oversupply of property, the demand for properties in development has fallen away. Consequently, the Authority holds investment and development property assets valued at €26.6 million which it may be difficult to sell in the short-term. These properties can be classified into three main categories.

- **Investment properties** are completed developments held by the Authority for the purpose of their investment potential and rental generation. These properties comprise approximately 14,000 m² of commercial space together with a public car park (almost 4,000 m²) in the Grand Canal area. The investment properties were valued at €24.4 million at 31 December 2010. The Authority's investment property asset holdings, their location and rental status are set out in Figure 2.
- **Fixed development assets** are properties acquired by the Authority for the purpose of securing redevelopment. At the end of 2010, the Authority's fixed development assets comprised two properties³ totalling 472m² with a combined valuation of €600,000.
- **Current development assets** are properties on which development has commenced. They also include housing stock acquired by the Authority for the provision of social and affordable housing. Current development assets were valued at €1.6 million at the end of 2010 and included seven affordable housing units with a combined value of almost €1 million. The remainder represents land, soil removal and infrastructure costs relating to the residue of a specific development.

³ One property is a residential unit which is currently on the market and the other property comprises four terraced derelict units.

Figure 2 Investment Properties held by the Authority

Property	Area m ²	Rental status at end 2011
Custom House Quay Building	11,132	Rental units: 11 occupied, 22 vacant. Vaults: 1 occupied, 4 vacant.
52-55 Sir John Rogerson's Quay	1,189	Vacant office building
Grand Canal Square Public Car Park ^b	3,961	Operating
Units 3, 4 and 5 Longboat Quay	289	Occupied
Unit 1 Longboat Quay	240	Occupied
Units 3 and 4 Hanover Quay	145	Occupied
Unit 1 and 5 Hanover Quay	139	Vacant
Unit 2 Hanover Quay	86	Occupied
Block F, Hanover Wharf, Grand Canal Harbour	596	Vacant
Café Unit located on the Campshires	79	Occupied
Restaurant Unit located on the Campshires	107	Occupied
3-4 East Road (includes 4 car park spaces)	481	Occupied
Block 4, Excise Walk, Clarion Quay (fitted out for its current use as security control unit and includes 3 car park spaces)	24	Occupied

Note: a This car park has 150 car park spaces and is located under the Grand Canal Theatre and the Grand Canal Plaza. It is run under a three-year agreement by Q Park Management Limited.

2.7 The Authority's major asset is a building at Custom House Quay. It comprises 33 retail units, five vaulted basement areas and mezzanine storage. As of December 2011, 26 of the 38 available rental units were vacant.

2.8 The Authority's records indicate that some of its tenants were in arrears for the payment of both rent and rates. Arrears owed to the Authority by tenants in the Custom House Quay building stood at €1.4 million at the end of December 2010. Rates totalling an estimated €340,000 were owed by the tenants to DCC⁴.

2.9 The Authority incurs costs of approximately €700,000 a year in respect of rates, insurance and service charges for the Custom House Quay building.

⁴ Where tenants vacate units, the Authority (as occupying owner) may become liable to pay some rates arrears outstanding to DCC.

Conclusion – Asset Realisability

In the current economic environment, the Authority faces considerable challenges to realise those assets that are potentially saleable and to generate sufficient cash flow from its investment assets in order to meet its expenditure in the medium term.

Funding and Liabilities of the Authority

2.10 While the property assets of the Authority are likely to be held in the medium term, the bulk of the related funding is short-term and payable on demand. The principal liabilities of the Authority at 31 December 2010 were

- a bank loan of €12 million
- levies which the Authority is currently obliged to pay to other agencies totalling €1.7 million
- levies yet to be received from developers totalling €3.9 million that are payable on collection to third parties
- levies currently held in suspense pending decisions on their disposal – €5.7 million
- amounts owing to trade creditors and accrued expenses – €4.8 million
- legal fees and provisions totalling €3.4 million
- liabilities for future pensions of €6.1 million
- other liabilities⁵ totalling €370,000.

2.11 The legal and other provisions of €3.4 million at the end of 2010 included a provision of €1.7 million in relation to three legal claims against the Authority, one of which was settled following arbitration in February 2011.

2.12 The Authority imposes development levies as a condition of the grant of Section 25 planning certificates on behalf of itself and other external agencies. The Authority's liabilities to external agencies arise from the fact that separate levy amounts may be set (depending on the location of development) in respect of services and/or infrastructure provided by DCC, the Railway Procurement Agency (RPA) and Iarnród Éireann. While levies due to DCC are payable directly to DCC, the Authority is responsible for collecting the other levies and paying them on to the agencies concerned.

2.13 At 31 December 2010, the Authority held €7.4 million in cash that had been collected from levy debtors and a further €3.9 million was outstanding.

⁵ 'Other liabilities' comprise capital accruals (€210,000) and PAYE/PRSI/withholding tax (€160,000).

Banking Facilities

2.14 In June 2008, the Authority was granted a revolving loan facility by National Irish Bank for €50 million. The facility was provided for a term of four years and was unsecured. It was subject to annual review and renewal by the bank subject to its satisfaction with the operation of the Authority's account and its ongoing trading position. By December 2009, the Authority had drawn down €32 million of the loan facility.

2.15 In March 2010, the loan facility was reviewed by National Irish Bank and a new facility agreed. This took the form of an overdraft facility of €35 million repayable on demand and subject to review in December 2010. An arrangement fee of €350,000 was charged by the Bank for providing the overdraft facility. The bank requested security to be provided by the Authority in the form of a charge over ten of its investment properties. The Authority also agreed to assign a payment of €20 million to the bank which was due to the Authority in September 2010⁶. The payment was received by the Authority in December 2010 and paid over to the Bank.

2.16 The loan facility that has been drawn stood at €12 million at 31 December 2010.

2.17 The overdraft facility was subsequently reviewed by the Bank and renewed in May 2011, with the same investment properties used as security for the facility. An arrangement fee of €117,000 was charged and the Authority committed to making quarterly capital payments of €200,000 each. The loan is repayable on demand and subject to review, with the next review being scheduled for May 2012.

2.18 In this connection, the Authority stated that it is conscious of its obligation to achieve value for money and has made considerable efforts to manage its cost of borrowing. It had sought that legislation be amended to allow it to borrow from the National Treasury Management Agency (NTMA), but this was not acceded to. In December 2010, the Authority engaged directly with the NTMA to investigate if there was an alternative to borrowing in the market to finance its operations.

2.19 At the same time, the Authority continued to seek the cheapest possible funding in the market. Coming up to the renewal of its loan facility with National Irish Bank, the Authority also approached a number of other banks, only one of which would engage with the Authority. However, ultimately, acceptance of a loan application was declined by that bank.

Conclusion – Funding and Liabilities of the Authority

At 31 December 2010, the Authority was heavily reliant on bank overdraft, levy proceeds and amounts held in suspense pending dispute resolution. While financial statements have yet to be prepared for 2011, a preliminary review of the records suggests that the same basic position pertained at the end of that year.

Looking forward to 2012, much of the cash inflows being projected or the timing of the outflows on foot of matured liabilities are contingent on events not entirely within the Authority's control and requiring negotiation and agreement with external parties. Because the Authority has limited cash reserves, any failure to realise projected income or any requirement to advance the timing of payment of liabilities would require the identification of other sources of funding.

⁶ This was the final payment due to the Authority from Ramford Limited in respect of certain developments carried out in the Grand Canal area of the Docklands. Prior to 2010, €10 million was also received in respect of this development. The agreement stipulates that the Authority is also entitled to a 30% share of any future profits on disposal.

Financial Control and Management

2.20 In 2009, the Authority commenced a cost reduction programme. Operating costs including marketing, consultancy and legal fees, were significantly reduced from 2008 to 2009 and have continued to fall since then. Area regeneration projects were wound down in 2009 with only committed expenditure proceeding in subsequent years. The resource and cost base of the Authority is outlined in Figure 3.

Figure 3 Costs and Staffing of the Authority 2008-2012

Year		Average staff number	Operational costs €m	Area and social regeneration spending €m
2008	Actual	55	16.7	27.7
2009	Actual	46	6.4	5.8
2010	Actual	30	5.3	0.3
2011	Forecast	21	4.2	1.3
2012	Budget	15	1.6	0.9

Source: Dublin Docklands Development Authority

2.21 The downsizing of the Authority in the past three years has implications for its capacity to control its operations and assets and for its corporate memory. Certain key functions are delivered on a consultancy basis including the financial and legal direction of the Authority's business.

2.22 The finance function of the Authority is currently staffed by three people – an external financial consultant (acting in the position of Finance Director), a Project Accountant and a Senior Finance Administrator. The Audit, Finance and Risk Committee, which is a sub-committee of the Board, monitors the finance function's operations. The Audit, Finance and Risk Committee met six times during 2010.

2.23 The decreased size and consequent capacity of the Authority to maintain an adequate separation of function impacted on its internal control.

2.24 Certain administrative shortcomings were noted in the area of procurement in the course of the 2010 audit. In a sample of 17 procurements, it was found in two cases that services had been procured for around ten years without tendering. In four other cases, the Authority had engaged suppliers without a competition for a variety of reasons including urgency or on the basis of the Authority's requirement for specific expertise on the basis that they are permissible under EU procurement rules.

2.25 The value of the property assets held by the Authority at end 2010 was approximately €26 million. In 2009, the Authority began developing a property management system which is maintained on a standard assets management package and records certain information relating to the Authority's property interests. The property register does not include details such as map references, folio numbers, purchase price, costs incurred or current value and it is not linked to the Authority's accounting system⁷. However, assurance relating to the recording of its assets can be taken from due diligence completed in association with pledges to its bankers and transfers to NAMA.

⁷ Some of this information is recorded on a separate register of contracts but the two systems are not linked.

2.26 The Authority has pledged a number of assets to National Irish Bank as security for a loan facility. The value of those assets at end 2010 was €23 million. As part of the agreement with the Bank, the Authority was obliged to confirm legal title to the ten assets being pledged. In order to do so, the Authority had its solicitors confirm title to each of the relevant assets. The documentation relating to the solicitors' confirmation was reviewed by my audit team as part of the 2010 audit.

2.27 As part of the settlement reached with NAMA regarding the Authority's involvement in a joint venture company, Becbay Limited, to purchase the Irish Glass Bottle site, the Authority agreed to transfer assets with a net book value at 31 December 2010 of €7.8 million to NAMA in full and final settlement of amounts owed in respect of Becbay Limited. As part of the agreement with NAMA, the Authority had to confirm title to each of the properties being transferred.

2.28 The remaining property assets of the Authority, following the transfer of assets to NAMA and excluding the assets pledged to NIB, total approximately €3 million.

2.29 In 2011, the Authority commenced a project which involves

- confirming title for all unincumbered assets⁸
- carrying out legal and planning searches in respect of all unincumbered assets
- documenting all pledges or commitments⁹ made in respect of unincumbered assets
- detailing the arrangements in respect of maintenance charges and insurance.

The Authority expects that this exercise will be substantially complete by mid-2012.

2.30 In September 2009, the Authority commenced an exercise to establish all of the contracts it was a party to. The exercise was carried out in two stages. First, the Authority reviewed its own documents and listed all of the contracts it was aware it was party to. Then, the Authority contacted each solicitor it had done business with in the past or was currently using and asked them for details of the legal documents and contracts the solicitors were holding on behalf of the Authority. This exercise was completed by the Authority by the end of 2011.

2.31 The Authority has been taking steps to address its internal financial control. A report¹⁰ on the Authority's finance function was published in May 2010. The report was requested by the Minister and was conducted by an external consultant commissioned by the Authority. The stated terms of reference of the report were to review the finance function in place to approve, authorise and control the Authority's expenditure particularly procurement and payroll. The recommendations of the report are presented in Appendix D, together with a brief note of the actions taken by the Authority in response to the recommendations made.

Conclusion – Internal Financial Control

The Authority's reduced staff levels and level of activity may require further alterations in its systems to cost-effectively address the risks and exposures associated with the current nature of its business. It is recognised that the same level of separation of function and supervisory control may not be achievable with current staffing levels. Accordingly, the Authority may need to review its risks and controls with a view to achieving the optimum level of control within its current resources.

⁸ Unincumbered assets include all public realm areas e.g. campshires, moorings and public art displays.

⁹ In order to obtain this information the Authority is reviewing its files and Board papers.

¹⁰ **Report on the Finance Function – particularly procurement and payroll**, Ray King & Associates, February 2010.

Views of the Authority

2.32 The Authority has pointed out that in November 2010, taking into account the recommendations of the reports on its planning and financial functions, the Code of Governance for State Bodies and the Dublin Docklands Development Authority Act 1997, it implemented a new corporate governance framework that is consistent with the highest standards of governance. Under the framework, the Authority has risk management processes that comprise an operation risk management system used by management on a weekly basis for prioritisation of work and allocation of its limited resources.

2.33 The Authority considers that the operation risk management system allows for careful management of the human resources in order to ensure that the Authority can continue to risk manage its operations. This is critical as the Government employment moratorium on recruitment or renewal of fixed term contracts continues to force reductions in staff numbers.

2.34 In regard to its funding plans, the Authority stated that its funding strategy into the medium term is to operate within its own financial resources for the next two to three years without recourse to State funding. The business plan which the Authority is operating is dealing with medium term cash flow in a number of ways including

- The Authority has a short-term banking facility which it intends to continue to renegotiate annually.
- All costs are carefully monitored. Defence of a case taken by Donatex Limited, one of the Becbay Limited joint venture partners, continues to be a significant legal cost.
- The Authority continues with its vigorous pursuit of non-performing debtors.
- An orderly disposal of the Authority's assets will take place to generate cash flow.

Overall Conclusion – Financial Status of the Authority

The Authority prepared its 2010 financial statements on a going concern basis. This was based on the following assumptions

- The existing banking facilities would remain in place and new facilities would be made available to the Authority.
- The Authority's remaining affordable housing stock and car parking spaces would be disposed of in 2011.
- The Authority would dispose of its investment assets, as and when required, to finance its operational costs.
- Litigation cases would be successfully defended

My audit report on the 2010 financial statements of the Authority drew attention to the fact that it had current liabilities of €32 million at the end of 2010. The Authority's capacity to fund itself depends on the availability to it of banking facilities until such time as it can liquidate its property assets and collect its debts.

The Authority has had its internal financial control reviewed and the status of implementation of the recommendations of that review is set out at Appendix D. In addition, it has begun comprehensively recording and reviewing the title of its assets.

Chapter 3

Irish Glass Bottle Site

3.1 The Irish Glass Bottle site is a ten-hectare site situated on the Poolbeg peninsula which forms part of the Dublin Docklands area. In early 2007, the Authority acquired an interest in the site. The Authority took a 26% stake in a joint venture company called Becbay Limited which was intended to acquire and develop the site. The remaining shareholding was owned by two development companies – Donatex Limited and Mempal Limited¹¹. Becbay Limited used bank finance together with funds provided by the venture partners to fund its purchase of the site.

Chapter Focus

The Chapter outlines the history of the Irish Glass Bottle site, the deliberations of the Board prior to investment in the site, the extent of authorisation of financial commitments by the supervising Departments, the arrangements for valuation of the property and management of Board business.

Background to the Joint Venture

3.2 In the 2003 Docklands Master Plan, the Authority recognised that land on the Poolbeg peninsula was under-utilised and poorly laid out and that the Authority should continue to investigate the possibility of acquiring lands on the peninsula to facilitate research and development, and industrial and commercial development. The 2003 Master Plan recommended that the future development of the Poolbeg peninsula would be best achieved through the Section 25 process and that consideration should be given to preparing a planning scheme for the area. However, a planning scheme for the area was not progressed at that time.

History of the Irish Glass Bottle Site

3.3 Landlord and tenant legislation allows tenants to rearrange their holding of leased premises so as to confer on a subsidiary or associate company a statutory right to buy out the freehold title to the land being rented¹².

3.4 In March 2005, IDA Ireland, following legal advice, allowed a sub-lessee to buy out the title as part of the settlement of a legal action. A confidentiality clause in the settlement prevented immediate publication of the terms. This allowed the Minister of Jobs, Enterprise and Innovation to introduce legislation¹³ in May 2005 protecting the interests of IDA Ireland, Shannon Development and Údarás na Gaeltachta by specifically adding them to the list of State authorities to which the 1978 Act does not apply. Following the amendment to the legislation, the Secretary General of the Department of Jobs, Enterprise, and Innovation wrote to all Secretaries General highlighting the matter and the possible exposure of other departments and State bodies.

3.5 The Dublin Port Company had freehold title to the Irish Glass Bottle site in Poolbeg which it leased to the South Wharf Group. In May 2005, South Wharf sub-leased the land to its own subsidiary company – South Bank Glass Manufacturing Limited. At the end of May 2005, the subsidiary served a notice of intention on Dublin Port Company to acquire the title¹⁴ to the property under statutory provisions contained in the Landlord and Tenant (Ground Rents) (No. 2) Act 1978.

¹¹ The principals in the companies were Mr Bernard McNamara and Mr Derek Quinlan, respectively.

¹² Landlord and Tenant (Ground Rents) (No. 2) Act 1978.

¹³ Landlord and Tenant (Ground Rents) Act 2005.

¹⁴ The subsidiary, South Bank, applied to acquire the fee simple to the property. The 'fee simple' is defined as the absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance.

3.6 The Dublin Port Company wrote to its supervising Minister¹⁵ in June 2005 informing him of the application by South Bank and seeking the exemption of the port companies from the 1978 Act.

3.7 The Maritime Safety Act 2005 was enacted in June 2005 and amended Section 4 of the 1978 Act to exempt companies within the meaning of Section 2 of the Harbours Act 1996 from the provisions of the Act. However, the amended Act did not apply retrospectively and, consequently, it had no bearing on the dispute between the Dublin Port Company and South Bank regarding the ownership of the site.

3.8 In June 2006, following a period of mediation, agreement was reached between Dublin Port Company and South Bank to sell the land to a third party using a tender process and to abandon the legal proceedings which were ongoing. Tender bids had to be received by 25 October 2006 and a reserve price of €250 million was placed on the sale. The sale proceeds were to be split in the proportion of two thirds, one third between the parties with the Dublin Port Company receiving one third of the proceeds.

3.9 Following queries on audit, the Department of Transport informed me that it received advice at the time of the sale which stated that the normal split between landlord and tenant on such a site, under a long-term renewable commercial lease, would be in the region of 50/50. On this basis, the Department considers that the problem caused by the 1978 Act can be said to have reduced the proceeds received by Dublin Port Company by approximately 17%.

3.10 In October 2006, Becbay Limited offered through the tender process to purchase the site for €412 million¹⁶. The sale¹⁷ was approved by the High Court in January 2007 and was completed shortly thereafter.

Conclusion – Protection of the State Interest

The exposure of the State caused by the provisions of the 1978 Act had been highlighted by the Land Law Working Group of the Law Reform Commission in 1992 when a recommendation was made that the loophole should be closed off. The continuation of the loophole resulted in losses to the State.

- In March 2005, the Department of Jobs, Enterprise and Innovation had to settle a case based on this provision in the 1978 Act.
- Further losses arose in early 2007 when the Dublin Port Company only managed to secure one third of the sales proceeds from land to which it originally had freehold title.

¹⁵ The functions are now exercised by the Minister for Transport, Tourism and Sport.

¹⁶ The total cost of the site was €431 million. This includes site cost (€412 million), arrangement fee for the banking facilities (€4.75 million), stamp duty (€12 million) and professional fees (€2.3 million).

¹⁷ The sale was carried out by way of a scheme of arrangement. A scheme of arrangement is a statutory procedure pursuant to the Companies Acts under which the High Court may approve, and thus bind a company to an arrangement with its shareholders.

Rationale for Investment by the Authority

When State resources are being committed, a clear business case which outlines the expected benefits should be developed to support such an investment decision.

3.11 At a meeting of the Authority's Council in July 2006 it was agreed that the Authority would examine the opportunities that existed to secure ownership of property on the Poolbeg peninsula thereby implementing the Master Plan objectives in relation to the area. The minutes noted that this was particularly relevant in relation to the Irish Glass Bottle site which had been offered for sale. At the Council's meeting in September 2006, the CEO informed the Council that the Authority was investigating how it might become involved in the development of this property and how it could ensure that construction was commenced in the near future rather than being 'land-banked'. The minutes stated that it had to be recognised that this was a very valuable property, being offered for sale on the open market and that it was expected that there would be considerable interest from both the development and construction industry.

3.12 The formal decision-making process by the Authority to become involved in acquiring the Irish Glass Bottle site commenced in early October 2006. In the course of three meetings in that month¹⁸, the Board discussed the extent to which the Authority might become involved in the project, the value of the site and the possible risks and rewards of acquiring the site.

3.13 In the course of its deliberations, the Board identified the potential benefits, the limits of its financial exposure and risks associated with the project.

Assessment of Benefits

3.14 At a Board meeting on 3 October 2006, the Executive recommended that the Authority should, if possible, get involved with a partner or partners to develop the site if the DDDA was to achieve its objectives under the Master Plan for the Poolbeg area.

3.15 The Executive advised the Board that the site represented a major development opportunity and that its development would set the tone for the rest of the area. The potential benefits of the project identified were as follows

- a better opportunity of achieving the social amenity and less commercially-desirable elements of the Master Plan – The previous experience of the Authority in dealing with developers of properties where the Authority had no involvement had shown that it was extremely difficult to get the full measure of the social, amenity and less commercially-desirable elements included in the Master Plan.
- ensure the timely development of the site – If the site were purchased by a developer and the Authority was not involved there would be no guarantee that the development would be carried out expeditiously. However, if the Authority was involved in the acquisition of the site, it would have some element of control over when the development would occur. To illustrate this point, the briefing note for the Board referred to the case of the site adjoining the Irish Glass Bottle site, which was offered for sale in the summer of 1998. It stated that the Authority tendered €23.2 million for the site but was not successful, and that the site was bought for an amount in excess of €29 million. That property had remained undeveloped.

¹⁸ The meetings were held on 3, 20 and 24 October 2006.

- greater incentive to prepare a planning scheme for the Poolbeg area – ownership within the area would give the Authority an added impetus to prepare a planning scheme for the area in the knowledge that, if approved by the Minister, implementation could commence immediately.
- having major input into the planning and architectural elements of the development.
- 26% share of the profits generated by the development.

Limitations on Investment

3.16 Regarding the extent of the Authority's financial commitment to the project, the Executive recommended that the Authority's involvement should not exceed €100 million. The stated reason this limit was placed on the Authority's involvement was to ensure that it could continue with its programmes for the development of family living and education elsewhere in the Docklands.

3.17 At a meeting on 24 October 2006, the Director of Finance confirmed to the Executive Board the maximum liability to which the Authority would be exposed. Based on a maximum bid price of €375 million with 70% debt funding, the Authority would have to provide approximately €29 million in equity funding and there would be an additional €7 million required in recourse finance which would have to be made available to the joint venture.

Risks

3.18 A number of risks were identified to the Board, some of which were resolved before the Authority became involved in the project. One of the risks discussed was the level of gearing¹⁹ proposed. The Executive noted that the level of gearing proposed by Donatex Limited was very high (90%) and could constitute a risk if there were a downturn in the market or if Donatex Limited got into financial difficulty. The minutes noted that the Board would accept up to 90% gearing on condition that the Authority had step-in rights and the option to restructure the deal in line with market forces. By the Board meeting on 24 October 2006, Donatex Limited had confirmed that the level of gearing would be between 70% and 80% and not 90% as previously proposed.

3.19 The financial risk to the Authority was also identified as significant. The Executive noted that the property would be of interest to a large number of property developers and would therefore be likely to attract a premium price. The Executive also pointed out that the proposed bid would be made at the 'top of the market' and the general perception at that time was that the Irish commercial market was 'over-heated'. It also noted that, if the Authority were to get involved in the acquisition and development of the site with a partner, it would tie up a considerable portion of its equity and resources.

3.20 While the concerns raised about the proposed level of gearing were partly addressed, the minutes did not record any further discussion regarding the risks about the bid being at the top end of the market in a time when the market was regarded as over-heated.

¹⁹ Gearing is the ratio of debt to equity.

Conclusion – Case for Investment

The Executive advised the Board of the Authority that the joint venture bid for the Irish Glass Bottle site would be made in an over-heated commercial property market. While an assessment of the level of investment, benefits and risks of the project was presented to the Board during the decision-making process, a detailed analysis of those factors does not seem to have been carried out by the Board or management of the Authority.

The Authority became involved in the joint venture to acquire and develop the Irish Glass Bottle site in order to advance its objectives under the Master Plan. The Authority recognised that in order to fully achieve its objectives under the Master Plan, a planning scheme should be developed for the Poolbeg peninsula. However, while a draft planning scheme was prepared by the Authority in December 2008, it has not been completed.

Obtaining Authorisations

Decisions on whether to enter into commercial property transactions are a matter for the Authority itself within its statutory mandate granted by the Oireachtas. The Authority requires authorisation to borrow and to guarantee borrowing. Under Section 30 of the Dublin Docklands Development Authority Act 1997 (the Act), the Authority can borrow up to €127 million for current or capital purposes subject to the approval of the Minister for the Environment, Community and Local Government (the Minister) and the consent of the Minister for Public Expenditure and Reform²⁰.

In addition, in order to comply with the requirements of the Code of Practice for the Governance of State Bodies,²¹ the Authority had to obtain the approval of the Minister and the consent of the Minister for Public Expenditure and Reform prior to entering into a joint venture.

3.21 On 2 October 2006, the Authority wrote to the Department seeking approval to put a borrowing facility in place in order to provide the Authority with funds to pursue a number of land acquisitions in the succeeding months. The letter stated that acquisitions would be pursued in joint venture with private developers on a commercial basis where the development would seek a return that would equate to that being achieved in the open market. An estimate of the expected return was quoted as approximately 15%.

3.22 On 12 October 2006, the CEO of the Authority wrote to the Department requesting approval to borrow up to its limit of €127 million and to enter a joint venture with a development partner in order to acquire a site. This letter did not specify the Irish Glass Bottle site but mentioned a “*substantial site in the Poolbeg area*” which the Authority intended to secure in a joint venture with a development partner. Despite discussions at the Board meeting on 3 October 2006 when it was stated that advice received informally from letting agents suggested that bids for the site could reach €400 million, the proposed bid amount quoted in the letter to the Department on 12 October 2006 was €220 million. A site value of €220 million was also quoted by the Department in its letter to the Department of Public Expenditure and Reform on 17 October 2006 seeking sanction for the Authority to incur borrowings up to its statutory limit of €127 million.

²⁰ Section 30 of the 1997 Act states that the Authority can borrow up to IR£50 million (€63.5 million). Section 16 of the Urban Renewal Act 1998 increased the borrowing limit to IR£100 million (€127 million).

²¹ Section 6 of the *Code of Practice for the Governance of State Bodies*, Department of Finance, 2001.

3.23 Ministerial approval to increase the borrowing of the Authority to its limit of €127 million and to enter the joint venture was received by the Authority following the Board meeting on 24 October 2006. The letter referred to the CEO's letter of 12 October 2006, which quoted a bid price of €220 million for the site. A value of €430 million for the site had been discussed at the Board meeting earlier that day, and a proposed tender bid of €411 million had been approved by the Board. There is no evidence of the increased scale of the proposed investment being formally relayed to the Department at that time.

3.24 The critical factor in the Department's (and the Department of Public Expenditure and Reform's) assessment of the application for approval of increased borrowing and participation in the joint venture was the Authority's capacity to service the borrowings involved. The Department received assurance from the Authority that it had the capacity to service the borrowing without recourse to Exchequer resources. The audit found no evidence of formal analysis by the Department in that regard, or any testing of the sensitivity of the Authority's servicing capacity to different joint venture outturns. The Department has stated that it would have undertaken a fuller independent assessment if Exchequer funds were sought.

Conclusion – Obtaining Authorisations

The Authority obtained Ministerial approval to borrow up to the statutory limit of €127 million pursuant to Section 30 of the Dublin Docklands Development Authority Act 1997, and to take a shareholding in a joint venture company for the purpose of acquiring property. However, the information submitted to the Department requesting the approval of the Minister did not reflect the planned scale of the project. The Authority informed the Department that the expected bid for the site was approximately €220 million.

No evidence was located on audit to indicate that the Authority formally updated the Department when the decision was made to bid double that amount for the site. Consequently, consent by both the Minister and the Minister for Public Expenditure and Reform for increased borrowing and participation in the joint venture was evidently given on the understanding that the site was valued at €220 million, and on limited analysis of the Authority's financial exposure to the joint venture project.

The Department has stated that there is no requirement on the Authority to report to the Minister on a case by case basis on its commercial property transactions, or to seek Ministerial approval for them. In the normal course, such transactions would be reflected in the arrangements for reporting to the Minister through the Authority's annual report and accounts, which are laid before the Oireachtas.

Cost Control

In order to ensure that the Authority did not commit to expenditure above what it could reasonably afford, a mechanism should have been put in place to ensure that the costs of the project were being sufficiently monitored and managed.

- 3.25 To ensure that the Authority was in control of the costs involved in the project would necessitate
- obtaining, by the Authority, of an independent valuation to support the bid being made for the site
 - agreeing, in advance of submitting a bid for the site, the maximum bid which the Authority would support
 - ensuring that the Authority was fully informed of the ongoing exposure to cost involved in the project whether in the form of equity or guarantees of borrowings.

Valuation of the Site

3.26 In the course of the three Board meetings held in the three weeks ending on 24 October 2006 to discuss the acquisition of the Irish Glass Bottle site, a number of ‘valuations’ of the property were mentioned ranging between €220 million and €430 million.

3.27 Prior to deciding on the bid to be made for the site, the Authority needed to establish the current market value of the site. In June 2005, the Authority had obtained an independent valuation of the property which placed a value of €240 million (exclusive of VAT) on the site. This was reported to the Board on 20 October 2006 as being based on an assumed plot ratio²² of 2:1. Two internal appraisals were carried out by the Authority in 2005 and 2006, which valued the site at €303 million (based on a plot ratio of 3:1) and €264 million (based on a ratio of 2.5:1) respectively. However, the Authority did not obtain any further independent valuations of the site prior to the bid being placed by the joint venture company in October 2006.

3.28 The Board minutes also noted that the higher valuations placed on the site by Donatex Limited – up to €430 million – were based on a plot ratio of 2.6:1 with a 70%:30% mix of residential and commercial development²³.

3.29 After the bid had been submitted, Becbay Limited commissioned the valuers CBRE to carry out a formal valuation of the site to support the financing application to Anglo Irish Bank. Their report placed a value of €412 million on the site as at 3 November 2006.

Tender Bid for Site

3.30 The closing date for receipt of tenders for the site was 25 October 2006.

3.31 While the Board decided at its meeting on 20 October 2006 that the bid made by the joint venture company should not exceed €375 million, at its meeting on 24 October 2006 it agreed that the tender bid should be €411 million. The Board minutes record that the Authority estimated that €375 million was a reasonable figure for the site, and that Donatex Limited had offered to fund a higher bid on the basis of the difference being secured against the property but that the Authority’s 26% shareholding would remain. The minutes of that Board meeting stated that *“recognising the expertise and experience of Mr 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 to a maximum of €437 million.”*

²² Plot ratio is defined as the ratio of the gross floor area of a building(s) to its site area.

²³ The only documentary evidence of this made available on audit was a spreadsheet appraisal which sought to determine the costs, income and developers margin assuming a site cost of €430 million. While this was discussed at the Board meeting on 24 October 2006, the Authority has informed me it was not circulated to the Board until a meeting on 2 November 2006 which was after the Board had agreed to bid for the site.

Exposure to Cost

3.32 The Board was informed at its meeting on 24 October 2006 that the maximum liability to which the Authority would be exposed in relation to the acquisition of the site was approximately €29 million in shareholders' loans and equity with an additional €7 million in recourse finance.

3.33 In November 2006, the shareholders signed an agreement that set out the details of the transaction to acquire the Irish Glass Bottle site. The agreement outlined the liability of the Authority. It stated that the Authority's commitment in respect of Becbay Limited's borrowing would be capped at €26 million plus its 26% share of interest due by Becbay Limited for a period of two years. The Authority's liability otherwise under the agreement was limited to €35 million.

3.34 In order to purchase the site, Becbay Limited borrowed €291 million with the remaining amount (€138 million) being provided as working capital by the shareholders. The Authority invested €32.8 million in the joint venture on its establishment in late 2006. One of the conditions of the loan facility offered by Anglo Irish Bank was that the shareholders would provide a guarantee totalling €100 million over the borrowings of Becbay Limited. This guarantee was to be divided between the joint venture partners in proportion to their shareholding in the company i.e. the Authority provided a guarantee of €26 million.

3.35 In January 2007, a loan agreement was entered into by Becbay Limited with Anglo Irish Bank to fund the joint venture. By June 2008, the facilities were being provided by two banks – Anglo Irish Bank and Allied Irish Bank – and an agreement in that month provided for additional borrowing of up to €36.3 million to cover the costs of remediation of the Irish Glass Bottle site.

3.36 The loan agreements entered into by the shareholders with the two banks differed from the arrangement envisaged in the shareholders agreement which stated that loan interest liability of the Authority would be capped to that accruing in a two-year period. In the loan agreements, the interest liability was not limited in time.

3.37 Associated with the loan agreements, the Authority provided a series of three guarantees²⁴ ultimately covering borrowings of Becbay Limited up to €29.1 million and 26% of all interest due and 26% of all cost overruns on the remediation of the site²⁵.

Conclusion – Cost Control

The Authority did not obtain its own independent valuation of the site prior to deciding on the bid to be made for the site. According to the Board minutes, the bid authorised by the Authority was largely based on an assessment of site value which was provided by Donatex Limited.

The Authority believed at the time of signing the shareholders agreement in November 2006 that its financial commitment would be limited to €35 million. The Authority's liability increased significantly beyond the amount originally envisaged.

²⁴ Guarantees were provided on 9 November 2006, 29 January 2007 and 27 March 2009.

²⁵ The guarantees were ultimately called in by NAMA which acquired the loans from the banks, and they were discharged following a settlement with the Agency.

Financial Outturn on Transaction

3.38 The Authority has invested over €44 million in the joint venture to date – comprising €32.8 million in equity and shareholders loans, €11.1 million in interest repayments and €400,000 in other costs. It ceased paying its portion of the interest due in 2008.

3.39 At the end of December 2010, the Authority had the following liabilities in respect of its share in the joint venture (Becbay Limited) established to purchase the Irish Glass Bottle site

- a guarantee of €29.1 million of the loan obtained by Becbay Limited to purchase the site
- €8.5 million in payments related to interest on Becbay Limited's borrowing.

3.40 The Becbay Limited loans had been taken over by the National Asset Management Agency (NAMA) and payment under the guarantee was demanded by NAMA in January 2011. Following mediation between the Authority and NAMA, a settlement was agreed in July 2011 under which the Authority agreed to transfer certain assets with a net book value of €7.8 million at 31 December 2010 to NAMA in exchange for receiving a discharge of the guarantee in full. The assets were transferred to NAMA on 1 October 2011.

3.41 In November 2009, one of the joint venture partners, Donatex Limited, issued legal proceedings against the Authority which are currently ongoing. The Authority has not had any representation on the Board of Becbay Limited since March 2010. The Authority's representatives stepped down from the Board of Becbay on their resignation from the Authority. Having taken legal advice, the Authority decided not to appoint replacement directors to the Board of Becbay. The Irish Glass Bottle site was valued in January 2011 at €45 million.

Conclusion – Financial Outturn

The total outlay by the Authority on the Irish Glass Bottle site transaction was €52.1 million including the value of assets transferred as part of a settlement with NAMA. The value of the site has reduced considerably since it was purchased in 2007. In addition to its direct outlay, the Authority guaranteed the borrowings of Becbay Limited up to an amount of €29.1 million and 26% of all interest due.

The loans of Becbay Limited were taken over by NAMA and the guarantee provided by the Authority was called in by NAMA in January 2011. A mediated settlement was agreed with NAMA in July 2011 under which the Authority's obligations under the guarantee were extinguished in return for the transfer to NAMA of assets with an accounting net book value of €7.8 million, in full and final settlement of all sums due.

The Authority has continued to vigorously defend the legal action taken against it by Donatex Limited, arising out of the joint venture purchase of the Irish Glass Bottle site, applying significant time and resources to the defence of the case.

Management of Board Business

A broad principle that underlies the safe and ethical conduct of public business is that when an entity is taking a decision or pursuing an interest those Board members that have connections to parties that are interested in the same transaction should not be involved in the decision. This can arise in situations of shared business interest, or where a Board member acts for a banker or other service provider. Where Board members are also civil servants of the supervising Department, there may be a conflict between those member's fiduciary duties to the State body and their line responsibilities within the Department.

A related principle is that any decisions of a public Board or a Board sub-committee should be recorded in full and all parties be identifiable from the record.

Operation of Authority Code of Conduct

3.42 The Authority adopted a Code of Conduct in September 2005 which recognises that as the members of the Executive Board are appointed on the basis of their professional and business skills in property and related activities, that this would from time to time lead to a conflict of interest between the personal, professional or business interest of a Board member and the objectives of the Authority.

3.43 The Code sets out the procedures to be followed when a Board member has a material conflict of interest or a perceived conflict of interest. In such cases the Board member should

- make an oral declaration to the meeting of the conflict of interest – any such declaration and subsequent action taken should be recorded in the minutes
- take no part in any consideration of the matter and neither influence nor seek to influence the decision to be made in relation to the matter
- withdraw from the meeting while it is being discussed and decided upon.

3.44 Where a Board member has declared a material interest in an item and withdrawn from a meeting, the Code requires the Chairman and the Secretary to ensure that, while the matter is sensitive, the minutes of meetings and Board papers regarding that item will not be circulated to the Board member. Once the sensitivity has passed then all relevant information can be forwarded to the Board member. The Code states that the responsibility to deal with any conflict of interest or potential conflict of interest remains at all times with individual Board members.

3.45 An instance of potential conflict was recorded in the Board minutes in the context of the Irish Glass Bottle site acquisition and this related to the funding of the Becbay Limited joint venture.

3.46 The Executive Board minutes recorded that in attempting to secure funding for the purchase of the Irish Glass Bottle site, negotiations took place with a number of commercial banks including Anglo Irish Bank and Bank of Ireland. The Chairman of the Executive Board of the Authority at the time the Board was deciding to enter a joint venture to purchase the Irish Glass Bottle site was Mr Lar Bradshaw. At that time, Mr Bradshaw was also a non-executive director of Anglo Irish Bank. Two other members of the Executive Board were also members of the boards of Anglo Irish Bank and Bank of Ireland – Mr Seán Fitzpatrick was Chairman of the Board of Anglo Irish Bank and Mr Declan McCourt was a non-executive director of Bank of Ireland.

3.47 The borrowings by Becbay Limited to purchase the Irish Glass Bottle site were organised by Donatex Limited. The Authority's Board minutes record that up to 23 October 2006, the Authority was under the impression that Mr McNamara/Donatex Limited was negotiating borrowing facilities for Becbay Limited to acquire the Irish Glass Bottle site with a named commercial bank. However, at the Board meeting on 24 October 2006, the Chairman of the Authority told the Board that Donatex Limited had informed him and the Chief Executive the previous evening that it was in discussions with Bank of Ireland and Anglo Irish Bank regarding the required funding.

3.48 The Chairman advised that as a non-executive director of Anglo Irish Bank, he would not be involved in executive decisions with the Bank relating to funding. Mr Fitzpatrick declared himself to be in a similar position, as did Mr McCourt in respect of Bank of Ireland.

3.49 Following a discussion of the issue, which involved consideration of the provisions of the Authority's Code of Conduct, the Board concluded that no material conflict of interest existed in respect of the participation by the three Board members in the discussion and decision on the proposed acquisition of the site. Regarding possible or perceived conflicts of interest, the Board was satisfied that the primary decisions to acquire the site and enter the joint venture had already been made before the conflicts of interest arose. The Board minutes reflected this discussion.

3.50 The decision to formally approve the borrowings of Becbay Limited from Anglo Irish Bank was taken at a Board meeting on 2 November 2006. Mr Bradshaw and Mr Fitzpatrick declared their interests in that matter and left the meeting while it was being discussed and decided upon. In the absence of the Chairman, the remaining members chose Mr McCourt to chair the meeting. At the same meeting, the funding of the Authority's equity portion in Becbay Limited was discussed. As this was being provided by Bank of Ireland, Mr McCourt declared an interest in the item and left while it was being discussed and decided upon. The Board approved both loan facilities at that meeting. At the December 2006 meeting of the Board, the terms of the loan facility being offered by Anglo Irish Bank were discussed again – the Chairman and Mr Fitzpatrick left the meeting while it was being discussed and another Board member, Mr Dónall Curtin, chaired the meeting in the absence of the Chairman. Once that item had been discussed, the Chairman and Mr Fitzpatrick rejoined the meeting.

3.51 While both directors of Anglo Irish Bank withdrew from the meetings while the proposed terms of the loan offer from Anglo Irish Bank were discussed, when the guarantee agreements were eventually signed with the Bank in November 2006 and January 2007, the Chairman of the Board and then non-executive director of Anglo Irish Bank, signed the agreements on behalf of the Authority.

3.52 In December 2006, the Authority obtained legal advice in relation to the actions of the Board in relation to the management of conflicts of interest in the context of the acquisition of the Irish Glass Bottle site as documented in Executive Board minutes in the period 3 October to 7 December 2006.

3.53 The legal advisors concluded that the approach of the Board was the correct one and in accordance with the Authority's Code of Conduct as the relevant Board members made their declarations at the earliest opportunity and full details were recorded in the minutes of the meeting of 24 October 2006.

3.54 They also concluded that the Board was correct in its approach to treating the declarations made to the Board at its meeting on 24 October 2006 as not giving rise to a material conflict of interest, and accordingly regarded the decisions of the Board members to leave the meeting during discussions of bank funding as erring on the side of caution and not strictly necessitated by the Authority's Code of Conduct.

3.55 The Executive Board minutes do not record disclosure of any other personal, professional or business interests of Board members that could represent a conflict of interest in relation to the site acquisition through the Becbay Limited joint venture proposal.

Record of Public Business

3.56 In the case of recording of business, it was noted that certain persons were only identified by way of initials in a Board sub-committee minute dealing with Irish Glass Bottle site matters. This can lead to a situation where the record of the business that was transacted is not complete, transparent or auditable on the basis of the official record alone. When this is compounded by high personnel turnover rates, it makes interpretation of discussions and decisions even more difficult.

Public Servants as Board Members

3.57 At the time the Board was considering its involvement in the Irish Glass Bottle site acquisition, a civil servant of the Department with line responsibilities in relation to the Authority's affairs was included in its membership. This gave rise to a situation where there was potential for a conflict between that Board member's fiduciary duties to the Authority and the member's line responsibilities within the Department.

3.58 Subsequently, the Department introduced a clear delineation of responsibilities in relation to Authority matters. One senior Department official now serves as a member of the Board of the Authority, and a different senior official, in a separate Division of the Department, has line responsibility for the Authority.

Conclusion – Management of Board Business

Where Boards include persons with an interest in a business that is regulated by a State body or that provide services to the body, there is an increased risk of conflicts of interest occurring. The Authority took steps to assure itself that its decision-making in relation to the Becbay Limited funding decisions was in accordance with its own Code of Conduct.

The Executive Board minutes do not record disclosure of any other personal, professional or business interests of Board members that could represent a conflict of interest in relation to the acquisition of the Irish Glass Bottle site.

In the case of certain Board sub-committee minutes, it was not possible to identify the parties referred to. Direction is necessary on the need to maintain the public record in the case of State bodies by ensuring that all parties to a decision or business discussion are subsequently identifiable whether by auditors or future Board members.

Overall Conclusion – Irish Glass Bottle Site

Together with the venture partners, the Authority was involved in the acquisition of a site for over €400 million. No formal business case was presented to the Board in advance of the purchase. While certain financial risks were identified, no documented strategy to mitigate them was noted on audit. However, the exposure to the Authority was limited to an equity investment of €33 million and guarantees of borrowings up to €29.1 million plus interest, a potential exposure up to the end of 2010 of €81.9 million.

The Authority's investment in Becbay Limited has been fully written off in its financial statements. Ultimately, the cost to the Authority of the venture, following a settlement with NAMA which had acquired the lending banks' loan assets, was €52.1 million. The value of the Irish Glass Bottle site, on which €431 million had been spent before taking account of remediation costs, was put at €45 million at end 2010.

In giving authorisations for borrowing by the Authority and its participation in the venture, there was no evidence that the full scale of the planned outlay on the site acquisition by the joint venture company was made known to the supervising Departments.

Chapter 4

Administration of Planning Function

4.1 The legislative remit of the Authority requires it to secure

- the social and economic regeneration of the Docklands area, on a sustainable basis
- improvements in the physical environment of the Dublin Docklands area
- the continued development of financial services activities in the Custom House Docks area.

In order to implement this mandate, the Authority was given both planning and development functions.

Chapter Focus

This chapter outlines

- the operation of the planning function of the Authority
- the key implications of the judgement in the High Court case concerning the NQIL development
- the response of the Authority to the case, in terms of its planning process.

Administration of Planning Functions

4.2 The Planning Section of the Authority currently consists of two staff members – an Executive Planner and a Senior Planner. The Authority also has a Planning Committee which currently comprises three members of the Executive Board which met twelve times during 2010. The main functions of the Planning Committee are to examine, review and discuss with senior management and planning staff

- all section 25 applications to the Authority
- the preparation of the Master Plan
- all planning schemes being undertaken or amended by the Authority
- issues of planning policy.

Area Development and Planning

4.3 The strategic framework within which the Docklands are developed is set out in Master Plans²⁶. The Authority prepares and oversees the implementation of the Master Plans. Each Master Plan covers a five-year period and sets out the plans for social and economic regeneration, urban design, transport and infrastructural improvements and arts, culture and tourism in the Docklands area.

4.4 The Master Plan is produced following public consultation with relevant stakeholders, including DCC and the local community. Since the establishment of the Authority in 1997, there have been three Master Plans. The current Master Plan for the Docklands was completed in 2008. Each Master Plan is accompanied by a Strategic Environmental Assessment Statement²⁷ and an Environmental Report. The Environmental Report identifies and assesses the likely significant environmental impacts of the Master Plan.

²⁶ This requirement is set by section 24 of the Dublin Docklands Development Authority Act 1997.

²⁷ Strategic Environmental Assessment Statements are required under article 9(1b) of Directive 2001/42/EC of 27 June 2001.

Area Development

4.5 The Act also provides that the Authority can prepare detailed plans and proposals for specific areas within the Docklands²⁸. These proposals are referred to as area action plans. The main purpose of the area action plans is to identify key issues relating to land use, transport and urban design for a specific area and to formulate strategies to address these issues. Area action plans allow the Authority to outline key projects for an area within the period of the Master Plan. However, there is no statutory obligation on the Authority or the bodies responsible for the development of infrastructure in the area such as DCC, the RPA or Iarnród Éireann, to implement the proposals set out by the Authority in the area action plans.

4.6 Four area action plans have been completed to date for the following areas

- Grand Canal Dock (1999)
- Ringsend/Irishtown (1999)
- City Quay and Westland Row (2001)
- East Wall (2004).

4.7 The 2008 Master Plan stated that the Authority had no plans at that time to prepare any further area action plans but that this would be kept under review. The 2008 Master Plan also stated that following publication of the Plan, the Authority would review the area action plans in consultation with DCC and interested parties with a view to “*undertaking, promoting and supporting the implementation of the area action plans as required in association with Dublin City Council.*”

Planning Schemes

4.8 The Act also provides that, once an order²⁹ has been made by the Minister for the Environment, Community and Local Government (the Minister), the Authority can prepare planning schemes for areas specified by the Minister.

4.9 Each planning scheme sets out detailed policies covering matters such as land use mix, urban design and building heights that developments in that area must comply with. Planning applications submitted to the Authority under Section 25 which are consistent with the relevant planning scheme are awarded a Section 25 certificate of exemption³⁰. When granting a Section 25 certificate, the Authority can stipulate conditions that must be fulfilled by the applicant in the course of development work including the amount of levies which apply to the development.

4.10 The aim of the Section 25 process is to achieve coordinated development within the Docklands area. From the viewpoint of applicants, the advantages of submitting a planning application using the Section 25 process by comparison with the normal planning application process is that the application is processed faster and much of the uncertainty associated with the normal planning process is eliminated as the Section 25 planning schemes have outlined, in advance, the conditions that must be satisfied.

4.11 In preparing a planning scheme, the Authority must have regard for any general directives issued by the Minister and must consult with DCC, the Dublin Transport Authority and other statutory bodies that have an interest in the area. The Authority is also required to seek submissions from interested parties in relation to the draft planning scheme.

²⁸ This requirement is set by section 24(2b) of the Dublin Docklands Development Authority Act 1997.

²⁹ These orders are made under section 25 1(a) of the Dublin Docklands Development Authority Act 1997.

³⁰ This means that the development can be designated as ‘exempted development’ for the purposes of the Planning and Development Act 2000.

4.12 An amendment³¹ to the governing legislation in 2007 strengthened the arrangements for public consultation by requiring the Authority to place a notice in a national newspaper stating that a draft planning scheme had been prepared and specifying the dates on which it would be on public display which should at a minimum be 30 days. Submissions received in response to the public consultation process must be considered by the Authority and the draft planning scheme amended, where appropriate, prior to submission to the Minister for approval. On sending the draft planning scheme to the Minister for approval, the Authority is also required to send a copy of the scheme to DCC for its consideration³².

4.13 Following consultation with the Minister for Public Expenditure and Reform and consideration of any objections made by DCC, the Minister can amend the draft scheme as he or she sees fit. Once the planning scheme has been approved by the Minister, a notice is published in *Iris Oifigiúil* and at least one national newspaper.

4.14 Three planning schemes have been introduced for the Docklands area – one by the CHDDA and two by the Authority. The planning schemes are as follows

- **Custom House Docks Development Authority Planning Scheme³³** – this planning scheme covers the Custom House Docks area and was approved by the Minister in February 1995 and amended³⁴ in 1998.
- **Grand Canal Dock Planning Scheme** which was approved in 2000 and amended in July 2006.
- **Docklands North Lotts Area Planning Scheme** which was approved by the Minister in June 2002 and amended in July 2006.

These three planning schemes cover 119 hectares³⁵ of the 526 hectares within the remit of the Authority.

Proposed Poolbeg Scheme

4.15 In June 2007, the Minister granted an Order specifying an area on the Poolbeg peninsula for which the Authority could prepare a planning scheme. Drafting of the planning scheme was completed by the Authority in December 2008. Following the public consultation stage, the Authority commissioned a consultancy firm³⁶ to review the scheme prior to forwarding it to the Minister for approval. That review found that the preparation of the scheme had not been carried out in a fair, equitable and transparent manner consistent with best practice and that the scheme was not robust enough to be submitted to the Minister at that time. The Authority is currently revising the draft scheme.

³¹ Statutory Instrument No. 865/2007, European Communities (Dublin Docklands Development Authority Act 1997) (Amendment) Regulations 2007.

³² Dublin City Council has one month to make objections to the draft planning scheme.

³³ This planning scheme was originally introduced by the Custom House Docks Development Authority.

³⁴ The amendments to the planning scheme referred to changes in land density, the proposed distribution and location of land uses, design (including maximum height and external finish), road layout/parking and traffic management.

³⁵ The area differs from the figures quoted in the original planning schemes due to improvements in mapping and software. The 119 hectares includes 30 hectares relating to water area.

³⁶ ***Review of the Draft Poolbeg Planning Scheme***, Brady Shipman Martin, July 2010.

Relationship with Dublin City Council

4.16 The involvement of the Authority does not remove the capacity of the existing planning authority. The Authority and DCC have a joint competence in planning functions relating to the Docklands area. For those areas covered by a Section 25 planning scheme, planning applications can be made directly to the Authority or to DCC through the normal planning process. Applications can only be made to the Authority in respect of areas covered by Section 25 planning schemes – applications in respect of all other areas in the Docklands must be made to DCC.

4.17 For planning applications received by DCC for areas covered by Section 25 planning schemes there is no statutory obligation on DCC to

- adhere to the planning schemes prepared by the Authority³⁷
- refer any applications received for the Docklands area to the Authority.

Once a planning application complies with DCC's own development plan, permission can be granted by DCC. The Authority can submit an observation to DCC for consideration in those circumstances.

4.18 While the Authority has responsibility for ensuring that applications received under Section 25 of the Act are compliant with the relevant planning schemes, DCC retains certain responsibilities for the Docklands area in that

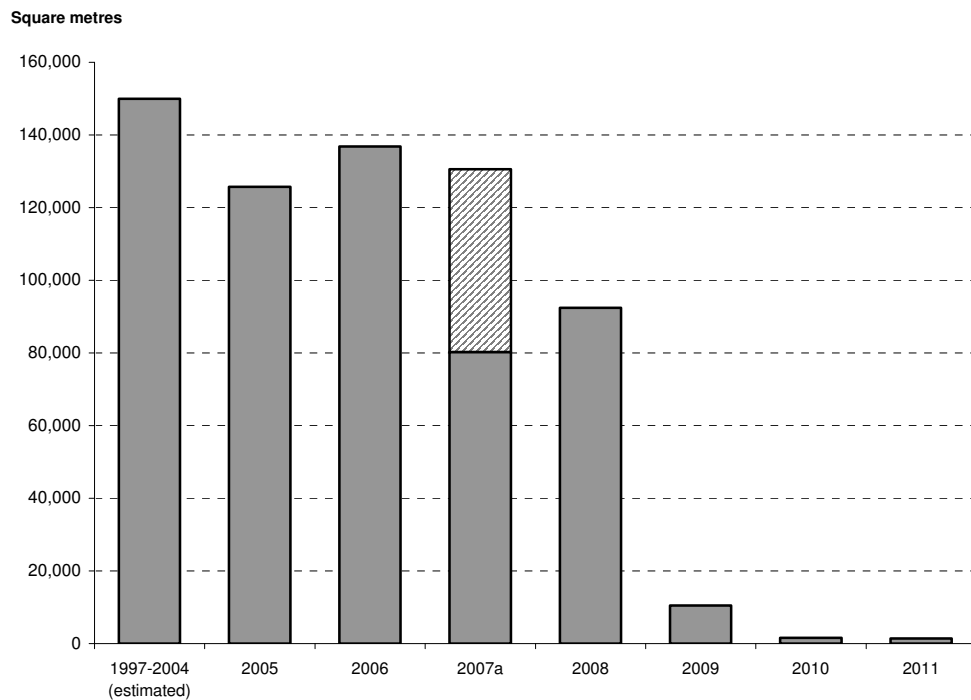
- DCC is the Building Control Authority for the Docklands area which means it is responsible for issuing fire certificates for proposed developments in the Docklands.
- DCC is also the Planning Enforcement Authority for the Docklands area and as a result is responsible for dealing with unauthorised developments and breaches of planning permission whether under Section 25 certificates or planning permission granted by DCC itself. This means it is DCC that is responsible for monitoring compliance of developers in implementing the conditions set by the Authority when issuing Section 25 certificates.
- Commencement notices³⁸ must be submitted to DCC between 14 and 28 days of the commencement of works or the making of a material change of use.
- The Authority does not have responsibility for public roads, drainage, water or sewerage in the Docklands area – these services are the responsibility of DCC.

4.19 The Authority issued Section 25 certificates that allowed for development of between 120,000m² and 140,000 m² of commercial space (including office and retail) each year in the period 2005 to 2007 (see Figure 4). Very little additional commercial space has been permitted under Section 25 certificates in the period 2009 to 2011.

³⁷ However, there is an obligation on DCC to consider the Master Plan.

³⁸ Statutory Instrument Number 496 of 1997, Building Control Regulations 1997 effective from 1 July 1998.

Figure 4 Amount of Commercial Space Permitted by the Authority for development under Section 25 Certification, 1997 to 2011



Source: Dublin Docklands Development Authority

Note: a Data for 2007 includes 51,300 m² of commercial space permitted in respect of an application by North Quay Investments Limited which was subsequently quashed.

Challenge to the Authority's Planning Function

4.20 In November 2007, North Wall Property Holding Company Limited and Mr Seán Dunne (the applicants) were granted leave to apply for judicial review against the Authority, with North Quay Investments Limited (NQIL) cited as notice party. The basis of the applicants' complaint was the handling by the Authority of a Section 25 planning certificate that was issued for a site adjoining land owned by the applicants.

Background to the Case

4.21 The proposed NQIL development was to be completed in two phases and once completed, the development would result in the construction of three corporate office blocks, one of which was to serve as the headquarters of Anglo Irish Bank. In discussions with NQIL prior to the submission of the planning applications, the Authority stated that a condition of the certificate for the proposed development would be a requirement for NQIL to transfer a portion of the site to the Authority which, in order to comply with the North Lotts Planning Scheme, would be used for public amenity.

4.22 On 31 May 2007, an agreement was signed by Mr Liam Carroll on behalf of NQIL and the Director of Property for the Authority. The Board approved NQIL's Section 25 planning application on 13 July 2007.

4.23 A summary of the series of transactions and timescale is outlined in Figure 5.

Figure 5 Summary of Events Relating to NQIL Application

Date	Event
8 December 2006	North Quay Investments Limited (NQIL) submitted a Section 25 planning application to the Authority in respect of enabling works to be carried out on a site in the North Lotts area.
19 and 22 December 2006	NQIL submitted two planning applications to Dublin City Council (DCC)
24 and 29 January 2007	A Senior Planner in the Authority lodged a submission with DCC regarding NQIL's applications.
21 February and 16 April 2007	NQIL's applications were rejected by DCC
11 May 2007	NQIL submitted a Section 25 application to the Authority
31 May 2007	Agreement signed regarding the transfer of a portion of the site from NQIL to the Authority which would be used for public amenity
11 June 2007	Executive Board of the Authority was informed that the Executive had entered into a contract with NQIL whereby NQIL had agreed to transfer land to the Authority, free of charge, which would be used by the Authority as an amenity space subject to certain terms and conditions. A copy of the contract was not provided to the Board and no further details of the terms and conditions of the contract were discussed at the meeting.
13 July 2007	Planning Committee recommended that the Board should approve NQIL's planning application Board approved the issuing of a Section 25 certificate to NQIL
29 August 2007	Section 25 certificate issued to NQIL

Outcome of the Proceedings

4.24 In October 2008, the High Court found against the Authority in regard to its handling of the Section 25 application made by the development company to the Authority. The basis of the adverse finding was that

- an agreement entered into by the Authority with the development company prior to the issue of the Section 25 planning certificate was *ultra vires*, in that the Authority should not have entered it in advance of determining the application for the Section 25 certificate and that it could also be construed as either the Authority or its executives committing that its executives would make a particular recommendation to the Board.
- the proposed development was inconsistent with the North Lotts Planning Scheme, and non-compliant applications cannot be made compliant by the Authority imposing conditions requiring modifications
- the procedures employed by the Authority were unfair as they did not allow adjacent landowners an opportunity to make submissions prior to the Section 25 application decision being reached.

4.25 The High Court granted the following reliefs to the applicants

- an order quashing the decision of 13 July 2007 to grant the Section 25 certificate to NQIL
- a declaration that the agreement of 31 May 2007 between the Authority and NQIL was *ultra vires* the Authority.

Response of the Authority

4.26 In August 2008, the Authority commissioned a review³⁹ of the Section 25 planning process. The High Court judgment regarding NQIL in October 2008 was taken into account in the report produced. The review made a number of recommendations on how the application and decision-making processes surrounding the granting of Section 25 certificates could be improved.

4.27 At the request of the Minister in August 2009 that the Authority carry out a corporate governance review, the Authority commissioned a further report on its planning procedures (the Brassil Report)⁴⁰.

4.28 The Brassil report reviewed the Authority's planning structure and functions, including an assessment of the Section 25 planning procedures. The report was completed in April 2010 and made 41 recommendations under the following headings

- role and function
- consultation
- planning scheme process
- certificate determination and
- IT system.

4.29 In May 2010, on completion of the report on the planning function (and a parallel report on financial controls), the Executive Board produced its own report outlining the findings of both reviews and the status of implementation of all recommendations made. The Executive Board's report also stated that further independent investigation would be required as questions remained regarding

- the background to the purchase of the Irish Glass Bottle site
- the rationale for the granting of non-compliant Section 25 planning certificates and the granting of Section 25 certificates that represented an inconsistent or inappropriate interpretation of the planning scheme.

4.30 The Authority was requested to provide an update in relation to the implementation of each of the recommendations made in the Brassil Report. The recommendations, together with the updated position provided by the Authority, are set out at Appendix E to this report.

³⁹ ***Review of Section 25 Planning Process***, Grant Thornton, Davis Langdon PKS and Tom Phillips and Associates, December 2008.

⁴⁰ ***Review of the DDDA Planning Structures and Functions***, Declan Brassil and Company, April 2010.

Overall Conclusion – Administration of Planning Function

In 2008, the High Court found that the Authority's Section 25 process as applied to the NQIL case was defective. The Authority's Section 25 process has since been amended. Following a formal review, it was found to be satisfactory. The revised process has been applied to Section 25 planning applications since December 2008.

In 2010, an independent review commissioned by the Authority found that the preparation of the planning scheme for the Poolbeg area was not consistent with best practice and the scheme was not robust enough to be presented to the Minister for the Environment, Community and Local Government.

General Views of the Authority in relation to Planning

4.31 The Authority has stated that it has determined some 54 applications, some of which were highly complex in terms of size and the nature of the development proposed, since the implementation of the revised procedures in December 2008. It reports that the planning procedures have been robustly tested by the successful determination of those planning files. It is satisfied that the operational effectiveness of the revised procedures has been proven.

4.32 The Authority also stated that there remains significant development potential in the area, most immediately in the North Lotts and the Grand Canal Dock area. Development of these lands will add to the 40,000 jobs already created in the area and meet the projected needs of the IFSC and other commercial tenants and provide homes and other facilities for the city's expanding population.

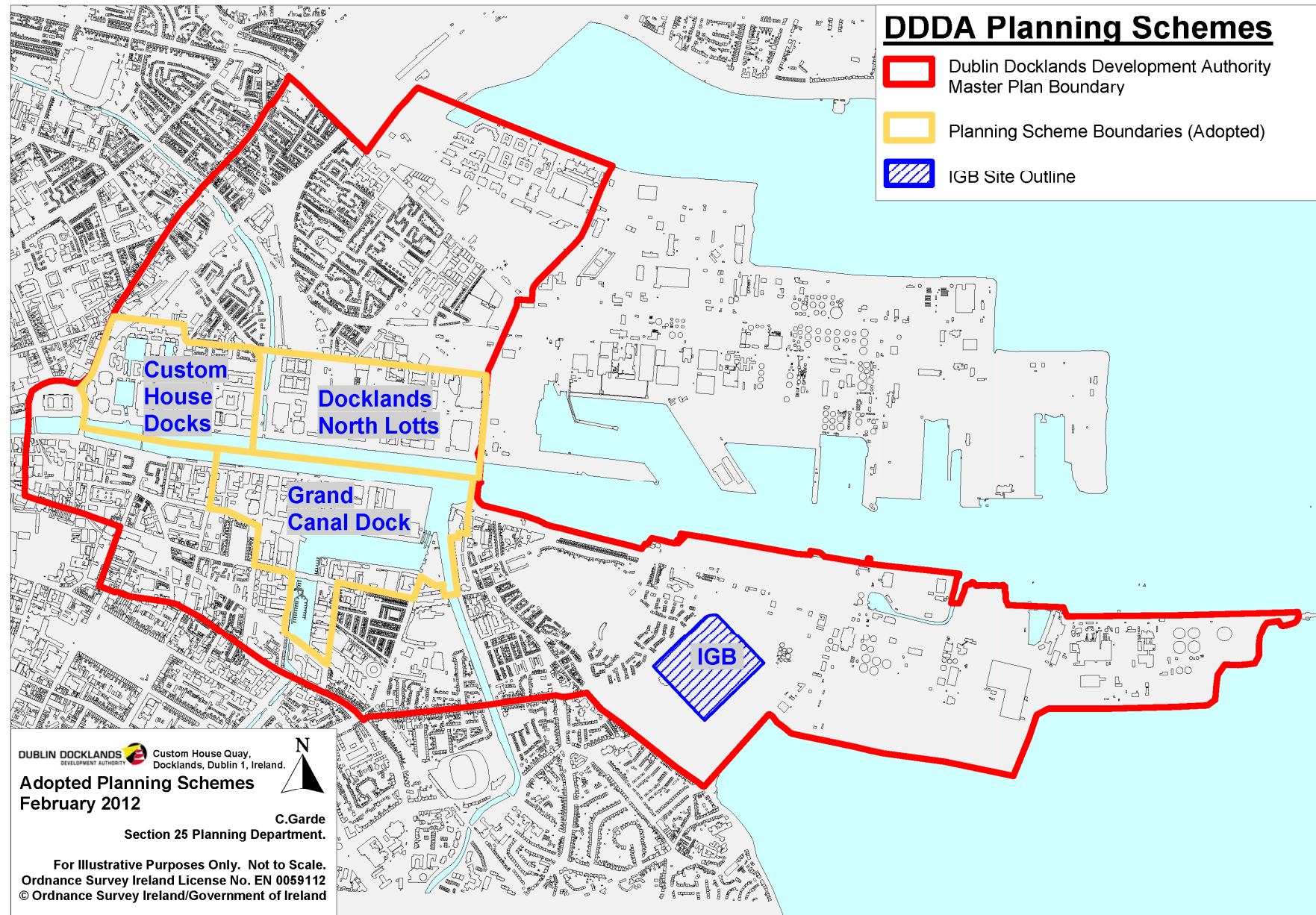
4.33 The Authority continues to be a single-purpose fast-track planning body maximising the build-out of the area, facilitating job creation and provision of new homes. Over 350,000m² of commercial space and 4,000 homes have been delivered in the area as well as the National College of Ireland and well-recognised leisure and business tourism facilities such as the O₂, the Grand Canal Theatre and the Convention Centre which attract thousands of visitors to the area daily.

4.34 The impact of the social regeneration of the area is evident. Local communities and new populations directly benefit from improvements. The 2011 Census of Ireland reports a 53% increase in the population of the Docklands from 17,414 in 1996 to 26,703 in 2011, driven by the continued delivery of housing in the area. Within the community, the Authority's investment in education, specifically, has paid huge dividends with a local population that has gained in confidence and belief and directly benefited from improvements in their area.

4.35 The Authority's function and remit is more important than ever in the current difficult economic climate. The challenge ahead for the Authority is to continue to provide the appropriate planning framework and stimulus to ensure development of under-utilised lands in the area and to continue the important mandate of the physical, economic and social regeneration of the Docklands.

Appendices

Appendix A – Map of the Docklands Area



Appendix B Development in the Docklands Area

The first Master Plan in 1997 envisaged total investment in the Docklands of €1 billion to end 2002 increasing to €2 billion over a 15-year period by the end of 2012. Of this €2 billion projected investment, €1.6 billion (80%) was to be provided by the private sector with the remaining investment to be provided by the public sector. The public sector investment would consist of €127 million from 'normal' public expenditure i.e. infrastructural investment by Dublin Corporation with the balance being met by the Authority through the investment of profits from its involvement in development projects.

Up to 2008, the Authority estimated that it has attracted over €5 billion of public and private investment into the Docklands area.

Borrowing and Funding

When the Authority was established it was envisaged that it would be a self-financing entity, and there was no provision for the allocation of State funding to the Authority. Section 30⁴¹ of the Act provides that the Authority can borrow up to €127 million, subject to Ministerial approval.

The Authority has received the following borrowing sanctions

- Approval to borrow up to €32 million to be applied as €6.5 million to fund general working purposes and a revolving credit facility of €25.5 million to fund specific development activities. This approval was given in June 2001.
- Approval to borrow up to €127 million for the purposes of property acquisition in the Docklands area. This approval was given by the Minister for the Environment, Community and Local Government with the consent of the Minister for Public Expenditure and Reform in October 2006. (Chapter 3 deals with borrowing in connection with the purchase of the Irish Glass Bottle site).

The two sanctions together cannot exceed the statutory maximum borrowing limit of €127 million.

Funding

A scheme of tax incentives for the Docklands area was included in the Finance Act 1997. These tax incentives played an important role in the initial years of the Authority. In 1998, the EU Commission raised objections in relation to the application of double rent and rates remission incentives which it regarded as operational State Aids that are not allowable under EU law. These incentives were terminated with effect from 31 December 2003. This led to a financial short-fall in the Authority.

In May 1999, a Government decision was made to make good the short-fall in the income of the Authority arising from the decision of the EU Commission to terminate the tax incentives. It was decided that the Authority would be allowed to incur borrowing to a maximum of €32 million (£25 million) in order to allow it to meet its expenditure commitments and to continue its programme of work under the Master Plan.

⁴¹ Section 30 of the 1997 Act states that the Authority can borrow up to IR£50 million. This section was amended by section 16 of the Urban Renewal Act 1998 which raised the amount of borrowing to IR£100 million (€127 million).

In December 2000, the Authority was informed by the Department of the Environment, Community and Local Government (following consultation with the Department of Public Expenditure and Reform) that the most appropriate way of implementing the Government commitment made in May 1999 was through the provision of Exchequer funding to the Authority. €31 million in Exchequer funding was provided to the Authority to support a programme of capital investment on public amenity projects as part of the implementation of the Authority's Master Plan. This funding was drawn down by the Authority between 2001 and 2007.

Between 2007 and 2009, the Authority also received €5.5 million in respect of site subsidy payments to Dublin City Council in respect of affordable housing in the Docklands area.

Social Regeneration

The Authority reports the following main achievements under its social regeneration mandate.

- **Education and training** – Since its establishment in 1997 the Authority has funded and provided over 40 educational projects and activities in the Docklands area. The educational programmes funded by the Authority cover primary and secondary education, third level education and adult education and training. A School Principals' Forum was established by the Authority to facilitate the involvement of local schools in the development of the educational initiatives being provided. There are 24 members on the School Principals' Forum representing 16 primary schools, six post-primary schools, a special school and a Centre for early school leavers.
- **Employment** – the Authority introduced a Local Employment Charter in 1997. The Charter specified that 20% of all construction jobs on projects within the Authority's remit had to be filled by local people. The Authority also established a Schools Job Placement Programme whereby the Authority liaises with companies in the Docklands area with a view to obtaining entry-level positions for Leaving Certificate students. The Authority also provides computer training and runs an introduction to financial services course for successful placement students.
- **Community development** – In 1999, the Authority introduced the Community Development Project Initiative (CDPI) which allocates funding towards capital projects being undertaken by local community groups in the Docklands area. Local community groups submit proposals for capital projects to enhance facilities in their area and the Authority provides up to 75% of the requested funding for approved projects with the balance being provided by community funding. The CDPI scheme has helped fund over 250 community projects at a total cost of a €6.25 million since its establishment in 1999. The following are some examples of the types of projects funded by the CDPI
 - building of a community centre in Ringsend
 - floodlighting and drainage work at local GAA pitches
 - the provision of crèche facilities in a local women's centre
 - a local resource centre.

Typical Course of Development of a Docklands Area⁴²

The Authority reviewed the development of the Grand Canal Dock area to outline the nature of its development work.

The Grand Canal Harbour area comprises 32.3 hectares of land and is one of the three areas in the Docklands area to be covered by a planning scheme (see Appendix A). Bodies of water cover an additional 18.3 hectares.

Background to the Site

In February 1999, the Docklands Authority acquired the 9.7 hectare site from An Bord Gáis Éireann for €19 million (£15 million) by way of statutory instrument. The site was the former Dublin Gas Company at Sir John Rogerson's Quay and was used for gas manufacturing and storage. The acquisition of the site followed a decision by the Board in November 1998 to approve an acquisitions strategy focusing on key sites in Dublin Docklands for targeted projects in order to ensure delivery of the Authority's Master Plan objectives. The remediation of the site cost €52 million and took four years to complete. The Authority invested a further €5 million in site infrastructure. Following the remediation of the site the Authority then released the building plots for commercial development. The lands are in a mix of public and private ownership.

Planning for the Grand Canal Dock Area

The Authority developed an area action plan for Grand Canal Dock in 1999 which was to be incorporated into the Dublin City Development Plan as a local area plan. This was overtaken by the designation and adoption of the planning scheme for the area in December 2000. An amendment⁴³ to the planning scheme was approved by the Minister in 2006.

Development of Grand Canal Harbour Site

Property Transactions

The Authority divided the Grand Canal Harbour site up into nine distinct development sites to be disposed of through sale by competitive tender (See Figure B1). A separate leasehold site, Plot 8, acquired by the Authority as part of the same transaction was retained by the Authority for development and was subsequently transferred to NAMA in 2011.

The development sites were transferred by way of Agreement for Lease or Joint Venture agreements to the successful tenderers. The terms of the agreements allowed the developer to take possession of the Authority's land and construct a development on the particular site. In return, the Authority committed itself to granting 200-year leases from its title to all purchasers on completion in accordance with the agreed requirements. The Authority received €169 million in return for the grant of rights to developers for the nine sites. In addition, the Authority received further consideration in respect of seven of the sites including social and affordable housing units at nil cost, commercial units and profit shares.

⁴² The information for this section was provided by Dublin Docklands Development Authority.

⁴³ The specific purpose of the amendment was to recognise the existing and changed development context in the area and provide more detailed guidance for its planning and development. The subject area of the amendment was bounded by Sir John Rogerson's Quay, Britain Quay, Green Street East and Benson Street included one significant urban block 1.65 hectares in size and a smaller site on the Britain Quay/Sir John Rogerson's Quay campshire of approximately 0.25 hectares.

Figure B1 Details of agreements entered into by the Authority in respect of Grand Canal Dock area

Site	Type of Arrangement	Date agreement entered into
Gallery Quay	Joint venture	18 November 2002
Ryde Development	Agreement for lease	30 April 2004
Grand Canal Theatre	Joint venture	15 September 2004
Grand Canal Hotel	Agreement for lease	5 August 2005
Riverside 1	Agreement for lease	31 October 2003
Riverside 2	Agreement for lease	5 March 2004
Riverside 4 Lots 1&2	Agreement for lease	16 April 2004
Hanover Quay	Agreement for lease	2 December 2002
Longboat Quay	Agreement for lease	23 May 2003

Each of the leases put in place allowed for the payment of a portion of the annual public area service charge levied for the upkeep of the common areas. In addition, developments are subject to levies, of which €8.7 million have been collected by the Authority to date. Monies earned were reinvested to deliver on objectives set out in the Docklands Master Plan. Premiums from the Grand Canal Harbour project provided a significant amount of the finance required to fund the wider Docklands project.

A summary of the financial and other benefits to the Authority of the legal agreements is set out in Figure B2.

Figure B2 Consideration received in respect of Grand Canal sites

	Proceeds to the Authority
Site premium receipts	€169 million
Re-negotiation (2011) of terms of joint venture agreement	€1 million
Social housing	116 units
Affordable housing	109 units
Commercial office space	4,556 m ²
Commercial retail/restaurant space	2,443 m ²

Impact of the Grand Canal Dock Planning Scheme

On 16 February 2012, the Authority was announced joint winner of the Irish Planning Institute's Place Making Award for the Grand Canal Square Project. The awards aim to highlight best examples of planning practice and to raise the standard of townscape design and planning awareness both within the public and private sectors.

Residential and Commercial Development

The Docklands Master Plan promotes the development of mixed use areas in its planning schemes. The Grand Canal Dock area accounts for over 1,400 of the 3,300 housing units completed in the Docklands. Since 1997 it also accounts for almost 329,000 m² of commercial space either completed or under completion.

Figure B3 Residential Development in the Grand Canal Dock Area

Grand Canal Dock Housing^a	Private Units	Social/ affordable units	Total Units
Units completed	1,155	297	1,452
Units completed/to be delivered	23	6	29
Units certified/to be completed	130	37	167
Units certified yet to commence	392	96	488

Notes: a This refers to Section 25 housing only.

Figure B4 Commercial Development in the Grand Canal Dock Area

	Completed m²	Commenced m²	Not yet commenced m²
Office	228,689	42,494	33,511
Retail	7,869	1,796	1,877
Tourism/Hotels	31,789	976	8,440
Education	606	—	80
Culture/Recreation	14,760	—	1,375
Totals	283,713	45,266	45,283

Public Amenity

Grand Canal Square

The square was designed by architect Martha Schwartz and was opened in 2007. It covers 10,000 m² and comprises the Grand Canal Theatre, a hotel and an office complex. The Authority funded the architectural project at a cost of €8 million.

Chimney Park

The 1,200 m² park was developed as a children's play area by landscape architects, Snug and Outdoor and was opened in 2009. The park was designed following a series of consultation meetings and workshops with local school children to research and address the ideas and concerns of all, regarding the Chimney Park space. The ideas generated were integrated into the construction of the park.

Campshires

The campshires along the River Liffey at Sir John Rogerson's Quay and around Grand Canal Dock form part of a 2 km thoroughfare developed by the Authority. The campshires are designed to improve the pedestrian amenity along the River Liffey.

Samuel Beckett Bridge

Designed by architect Santiago Calatrava and opened in December 2009 the bridge provides a link between the north and south quays. It was a Dublin City Council project, which was part-funded by the Authority and also included an upgrade of the approach roads.

Transport and Other Infrastructure

The Authority invested over €5 million in the provision of 2 km of roads, paving and cycle paths, networks of water mains, drainage (3 km) and fire protection. A new public car park was developed by the Authority underneath Grand Canal Square to facilitate the theatre and office developments. The area is accessible by public transport and is served by various bus routes and the mainline DART and train-lines at the new Grand Canal Dock Station.

Social Regeneration

The Master Plan prioritises the Authority's social regeneration remit which is designed to create long-term sustainability of the Docklands area from an economic and social perspective.

Population

As a result of housing provision in the Grand Canal Dock area, the adjusted population figure has more than doubled. The electoral division⁴⁴ which the Grand Canal Dock area is situated within recorded an increase in population of 116% between 1996 and 2011.

Figure B5 Population in the Grand Canal Dock Area

	1986	1991	1996	2002	2006	2011
Population	1,493	1,506	1,654	1,882	2,562	3,573

Employment

Employment in the Grand Canal Dock area stands at over 5,700 and includes headquarters locations for both international and domestic financial, legal and IT companies.

The largest property transaction in Ireland in 2010 was the purchase of the Monte Vetro tower by Google for their 1,500 employees.

In the past, the Docklands area would have been characterised by high levels of unemployment. The Authority has operated a number of programmes aimed at enabling local people to take advantage of job opportunities in companies across the Docklands.

⁴⁴

The Grand Canal Dock area is situated within the South Dock Electoral Division.

Figure B6 Unemployment Rates, 1997 versus 2005

Employment Indices	1997	2005
National Unemployment Rate	17%	4.5%
Docklands Unemployment Rate	39%	12%

Programmes such as the Local Labour Charter, the Employment Forum and the Schools Jobs Placement Programme have contributed to improving employment prospects for Docklanders.

Education

The Authority invested €6.2 million in a range of education programmes between 2003 and 2010 to enable children to participate in the regeneration of Docklands.

Investment in education is the foundation of the overall social regeneration programme and many successful educational development projects have been implemented at primary, post-primary and third level. According to research conducted in 2008, the Authority spent more than €370 per pupil per annum in 25 schools in the area, over and above the Department of Education and Skills funding.

The Authority also organises extra-curricular programmes for children during school holidays with a particular focus on sport which has many proven benefits for juvenile development, specifically physical conditioning, teamwork and leadership skills.

Community Facilities

The improvement and provision of community facilities are part-funded by the Authority under the Community Development Project Initiative. Over €3.4 million was invested in community projects across the Docklands area between 2003 and 2010. Examples of projects completed in the Grand Canal Dock and surrounding areas are set out in Figure B7.

Figure B7 Investment by the Authority in community projects completed in the Grand Canal area

Property	Investment	Project
Ringsend/Irishtown Community Centre	€190,460	Redevelopment/extension
St Andrew's Resource Centre	€47,000	CyberCafé
Cambridge Boys Football Club	€32,000	New club house
Life Centre	€66,660	Purchase of minibus/renovations
Poolbeg Training Limited	€8,400	Upgrade/alterations Rinn Voyager
Clanna Gael Fontenoy GAA Club	€606,412	Pitch development
Pearse Centre Recreation Centre	€192,000	Extension of existing building

Since 2009, given the Authority's financial situation, there has been limited funding for social regeneration projects with allocations to key education and community supports only. The Authority has continued to work with community groups to facilitate implementation of projects. The Docklands Business Forum, the Docklands Seniors Forum and other local community groups all actively continue to tackle issues of relevance to the area.

Future for the Grand Canal Dock Planning Scheme Area

Figure B8 indicates that there remains 9.6 hectares of under-utilised lands in the Grand Canal Dock area.

Figure B8 Development Potential in Grand Canal Dock Area

Grand Canal Dock Planning Scheme Area	Hectares	
Utilised land		22.7
<i>Total remaining development potential</i>		
Sites ^a	5.5	
Under-utilised land	4.1	9.6
Total Land Area		32.3
Future Inner Dock Reclamation (currently water)		2.40
Total Land Area		34.7

Source: Dublin Docklands Development Authority

Note a: Planning permissions have been granted but development has been or is yet to commence.

Appendix C General Representations provided by the Authority

The following representations were provided by the Authority to the audit team in relation to the 2010 financial statements.

1. The Board acknowledges its statutory responsibility for the financial statements including its responsibility for the preparation of the financial statements in accordance with the applicable financial reporting framework. All accounting records have been made available to you for the purpose of the audit and all transactions undertaken have been properly recorded and reflected in these records.
2. Except as disclosed in the financial statements, there have been no events since the balance sheet date that would require either revision of the amounts included in the financial statements or disclosure in a note thereto.
3. No transactions were entered into before the accounting date with the intention that they should be reversed shortly after that date, so as not to present a true and fair view of the state of affairs of the Dublin Docklands Development Authority.
4. The value of capital and other commitments entered into and outstanding at 31 December 2010 amounted to €8,346,000⁴⁵.
5. Finance lease commitments at 31 December 2010 amounted to €NIL.
6. Full disclosure and provision has been made for all liabilities at the balance sheet date including any losses arising from sale and purchase commitments. Contingencies have been appropriately disclosed in the notes to the financial statements.
7. We confirm that all known or possible litigation and claims that could have an effect on the financial statements have been disclosed to you and accounted for and appropriately disclosed in the financial statements.
8. Dublin Docklands Development Authority has satisfactory title to all assets included in the balance sheet which were and remain free from any lien, encumbrance or charge, except as pledged to National Irish Bank (NIB) as security for a loan, full details of which have been disclosed to you. In relation to pledged assets, title was reviewed by the Authority's legal advisers in 2010 as part of the provision of security to NIB. Title of unencumbered assets has not yet been reviewed forensically and past experience is that issues arise when such a review happens. It is the Authority's intention to carry out such a review as part of a process to consider the future plans for these assets.
9. We have no plans or intentions that may materially affect the carrying value or classification of assets and liabilities reflected in the financial statements. However, as the Authority is in a difficult financial position it continues to monitor its cash flow and may need to consider asset disposals sooner than anticipated.

⁴⁵ Of this €8.3 million, just over €700,000 related to capital works that were contracted and the remaining amount related to work that was authorised by the Board of the Authority but which was not yet contracted.

10. Except as disclosed to you, there are no assets or future income of the Authority which have been pledged to external parties including bankers.

[The Authority then disclosed details of a claim in respect of a plot of land which it disputes, and is investigating further]

11. Except as disclosed to you, we have no other bank or other financing facilities available. No funds are held by third parties on the Dublin Docklands Development Authority's behalf, either in escrow or on any other fiduciary basis at the balance sheet date. At the balance sheet date, cash on hands and at bank amounted to €5,297,000 as set out in note 22 of the financial statements.
12. Except as disclosed to you, there were no guarantees, letters of comfort or indemnities issued by the Dublin Docklands Development Authority that the Board is aware of. The Authority is currently reviewing its contracts register and this review may identify other issues.
13. We confirm that the debtors are fairly stated and adequate provision has been made for bad or doubtful debts.
14. There was no material consumable stock items on hand at 31 December 2010 and, therefore, nil value of stock included in the financial statements.

We are of the opinion that the Dublin Docklands Development Authority will have sufficient working capital to meet its foreseeable requirements for at least twelve months

15. The Board acknowledges its responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud and irregularity. We have disclosed to you, the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud or irregularity. We have disclosed to you our knowledge of fraud or irregularity, or suspected fraud or irregularity affecting the Dublin Docklands Development Authority.
16. The Dublin Docklands Development Authority has not exceeded the borrowing limits approved by the Department of the Environment, Community and Local Government.
17. Payments and transactions in respect of any grants, loans and investments made during the year conformed with legislation and with Government and Department directives and were authorised, approved and processed in accordance with the Board's internal procedures and controls.
18. The Board members do not have an interest in any grant or other contract entered into by the Dublin Docklands Development Authority during the year other than as disclosed in the financial statements.
19. All relationships and transactions with subsidiary and related parties have been properly recorded and adequately disclosed in the financial statements.
20. We have no subsidiaries, joint ventures, associates, joint undertakings or shareholdings acquired other than those disclosed in the financial statements.
21. The Dublin Docklands Development Authority complied with all aspects of contractual agreements that could have a material effect on the financial statements in the event of non-compliance. There have been no communications concerning non-compliance with requirements of regulatory or tax authorities with respect to any matter. The Dublin Docklands Development Authority is not aware of any actual or possible non-compliance with laws or regulations that could impact on the financial statements.

22. The Dublin Docklands Development Authority has established mechanisms for ensuring the adequacy of the security of its information and communication technology (ICT) systems which include the establishment of appropriate policies and control procedures, effective organisational structures including segregation of duties and the use of the internal audit function for specific reviews and evaluations of ICT systems.
23. The Code of Practice for the Governance of State Bodies has been adopted and is being complied with, and in particular:-
- all appropriate procedures for financial reporting, internal audit, and assets' disposals are being carried out. During the 2010 audit a number of issues arose regarding the tendering process for service contracts which are being dealt with by the Authority;
 - Codes of business conduct for directors and employees have been put in place and adhered to;
 - Government policy on the pay of the Chief Executive and all employees is being complied with;
 - Government guidelines on the payment of directors' fees are being complied with;
 - the Guidelines for the Appraisal and Management of Capital Expenditure Proposals are being complied with;
 - Government travel policy requirements are being complied with in all respects; and
 - the Board has put in place procedures whereby employees may, in confidence, raise concern about possible irregularities in financial reporting or other matters and has, where appropriate, ensured meaningful follow-up of matters raised in this way.
24. The Statement on the System of Internal Financial Control reflects our compliance with the requirements of the Code of Practice for the Governance of State Bodies.
25. We confirm that the figures included/disclosed in the financial statements in respect of subsidiaries reflect the state of affairs of those bodies at 31 December 2010.
- [The Authority then disclosed certain commercially sensitive information about the operation of its subsidiary Grand Canal Harbour Management Limited]*
26. We confirm the completeness and accuracy of the Authority's property assets including land and buildings as disclosed in the financial statements.
27. We confirm that the settlement agreement with NAMA discharges in full all current and future liabilities including the Authority's share of interest for 2009 and 2010 in relation to the guarantee between the Authority and syndicated loan Anglo Irish Bank and Allied Irish Bank (whose interests in same were transferred to NAMA) in respect of Becbay Limited's bank borrowings.
28. We confirm that we have disclosed to you full details of all future claims whether receivable in the form of assets, income or compensation and whether arising under licence arrangement/joint venture or otherwise with developers or other parties, that we are aware of. However, the Authority is currently reviewing all previous joint venture arrangements under its review of contracts and will use this process to identify whether any other claims arise.

Appendix D Report on the Authority's Finance Function – Recommendations and Current Status of Implementation (February 2012)

Topic	Report Recommendations	Authority Update
Salary system	<ul style="list-style-type: none"> ■ No recommendations made 	
Salary increases	<ul style="list-style-type: none"> ■ There should be a document completed by the Executive Director with responsibility for the employee recommending a salary increase and giving the reasons why the employee should receive an increase. ■ There should be a document completed jointly by the Executive Director with responsibility for the employee, and the Human Resources Department, benchmarking the amount of the proposed salary, whether it be benchmarked against other salaries paid by the Dublin Docklands Development Authority, other State Bodies, the Civil Service and the Private Sector, and justifying the choice of benchmarking. ■ The Chief Executive should have authority to approve salary increases for staff below the level of Executive Director, so long as the amount of the salary increase does not exceed a particular percentage to be decided by the Executive Board. ■ The Chief Executive should recommend the salary increases for Executive Directors. The documents detailed in recommendations 1 and 2 should also be completed by the Chief Executive for salary increases for Executive Directors. These salary increases should be approved by the Executive Board. ■ In the case of the Chief Executive the Code of Conduct at 14.2 requires a Remuneration Committee to be established to determine any salary increases for the Chief Executive. ■ Salary reviews should take place on set dates, whether that is the anniversary date of an employee's commencement, which means different dates for every employee, or a set date being the same for every employee. In any event, salary reviews should only take place once every year. ■ The policy adopted on salary increases should be included in the Code of Conduct. 	Implemented

Topic	Report Findings and Recommendations	Authority Update
Contract renewals	<ul style="list-style-type: none"> ■ Three months before a contract expires, there should be a document completed by the Executive Director with responsibility for the position stating whether the position is still required and, if it is, justifying why. ■ If the Executive Director states that the position is still required, the Executive Director should then complete a document making recommendations, and justifying same, as to the filling of the position, whether that be by the existing employee, another employee or a new employee. ■ The Chief Executive should review items 1 and 2, add his own recommendations, and present the documents to the Board. The Board should then make a decision. ■ In the case of Executive Directors, items 1 and 2 should be completed by the Chief Executive and item 3 by the Chairman. ■ In the case of the Chief Executive the Code of Conduct at 14.2 requires a Remuneration Committee to be established and this policy should be extended to deal with any contract renewal for the Chief Executive. ■ The policy adopted on contract renewals should be included in the Code of Conduct. 	Implemented
Credit cards	<ul style="list-style-type: none"> ■ Cash withdrawals should not be allowed. ■ The travel credit card is presently controlled by the Finance Department. The policy of who is entitled to use the travel credit card, and their limit of expenditure, should be reviewed and committed to writing. ■ A policy needs to be prepared and committed to writing, on the level of expenditure allowed on hotels, meals, flights etc. 	Implemented

Topic	Report Findings and Recommendations	Authority Update
Employee expenses	<ul style="list-style-type: none"> ■ The policy of who is entitled to claim expenses, and their limit of expenditure, should be reviewed and committed to writing. ■ A policy needs to be prepared and committed to writing, on the level of expenditure allowed on hotels, meals, flights etc. 	Implemented
<hr/>		
Project expenditure – approval	<p>Project Packs</p> <ul style="list-style-type: none"> ■ The Executive Board needs to decide who should review and approve the project packs monthly whether it be the Executive Board itself, the Audit Finance and Risk Committee, the Chief Executive or a combination thereof. ■ Part of that monthly review should be to take action where any project shows expenditure incurred that is greater than the expenditure approved. <p>Project Approval Documents</p> <ul style="list-style-type: none"> ■ All Project Approval Documents (PADs) should be signed by the Project Director and the Chief Executive before the expenditure is incurred. A third signature, being the Finance Director, seems excessive. ■ There should be at least two copies of the PAD signed, with one copy being retained in the Finance Department and one copy on the project file. 	<p>Implemented</p> <p>Existing control retained</p> <p>Implemented</p>

Topic	Report Findings and Recommendations	Authority Update
Project expenditure – approval (continued)	<p data-bbox="436 316 633 343">Purchase Orders</p> <ul style="list-style-type: none"> <li data-bbox="436 363 1160 391">■ Purchase orders should be completed for all project expenditure. <li data-bbox="436 411 1686 619">■ Expenditure should not be allowed to exceed the level of approval for any project. Accordingly, the Executive Board needs to confirm which of the employees has responsibility for controlling the level of expenditure incurred, and ensuring that it is not greater than the expenditure approved. By the time the cheque request reaches the Finance Department it is too late to prevent the expenditure as the goods and/or services have already been received, usually in accordance with a purchase order. Financial control needs to be exerted at the time the goods and/or services are being ordered and the purchase order is being signed. That means that the responsibility in the first instance should be given to the relevant Project Director. <li data-bbox="436 639 1686 911">■ When a purchase order is being presented to a Project Director for approval, a document needs to be presented to the Project Director showing both the expenditure approved for the project and the expenditure incurred to date. This document should not simply reflect the total amount of expenditure incurred and compare it with the total expenditure approved. It should analyse the expenditure approved over the appropriate categories and compare that analysis with the actual expenditure incurred over the same categories. For instance, if the expenditure that has been approved covers say construction, quantity surveyor's fees, architect's fees etc., then the expenditure approved in each category and the expenditure incurred each category should be compared. This document should be prepared by the Project Manager, approved by the Project Director and finally retained on the project file. <li data-bbox="436 932 1686 1075">■ The Project Director cannot sign a purchase order that increases expenditure on a project beyond the expenditure level approved. Accordingly, the presentation of such a purchase order to the Project Director should automatically instigate an investigation into the project and the expenditure both approved and incurred. If necessary, this investigation could result in the preparation of the relevant documentation to increase the level of expenditure approval, whether that is a PAD or a paper to the Executive Board. <li data-bbox="436 1096 1686 1281">■ The Executive Board might give consideration to deciding that purchase orders over a certain value need to be signed by both the Project Director and the Chief Executive. As PADs for expenditure between €30,000 and €260,000 presently are meant to be signed by the Project Director, the Finance Director and the Chief Executive, it seems only logical that purchase orders over €30,000 and up to €260,000 should be signed by at least the Project Director and the Chief Executive. For consistency, whatever the signing requirements are for PADs, whether that is two or three signatures, should be repeated for purchase orders. 	Implemented

Topic	Report Findings and Recommendations	Authority Update
Project expenditure – approval and procurement (continued)	<ul style="list-style-type: none"> ■ At present, if over €260,000 is to be spent on a project a paper has to be prepared for the Executive Board and the expenditure has to be approved by the Executive Board. It seems logical, therefore, that a purchase order for more than €260,000 should not only be approved by the Project Director and the Chief Executive but also be approved by the Executive Board. 	Implemented
Project files	<ul style="list-style-type: none"> ■ There should be a universal file system for certain basic information on each project. That makes sense in any organisation but is particularly relevant at present where staff are, and will be, leaving the Dublin Docklands Development Authority, leaving the staff remaining to take over projects. ■ The universal file system should contain standard sections for a number of aspects of any project. In the first instance the Project Managers and Project Directors would be best placed to decide the kind of information and documentation that should be included in a universal file system, as they are the people who would be using the files most regularly. The following documents would be amongst those that would be relevant <ul style="list-style-type: none"> ● Original Budget ● PADs completed for project ● Papers submitted to the Executive Board ● Copies of purchase orders issued on project ● Continuous summary of expenditure approved and expenditure incurred ● Tender forms issued ● Tender appraisal forms ● Successful tenders ● Schedule of unsuccessful tenders 	In progress

Topic	Report Findings and Recommendations	Authority Update
Approval of cheque payments	<i>Purchase Orders – General</i>	Implemented
	<ul style="list-style-type: none"> ■ Purchase orders should be completed for all expenditure where goods and/or services are supplied to the Dublin Docklands Development Authority, other than utilities. ■ The Executive Board might give consideration to deciding that purchase orders over a certain value need to be signed by both the Project Director and the Chief Executive. As PADs for expenditure between €30,000 and €260,000 presently are meant to be signed by the Project Director, the Finance Director and the Chief Executive, it seems only logical that Purchase Orders over €30,000 and up to €260,000 should be signed by at least the Project Director and the Chief Executive. For consistency, whatever the signing requirements are for PADs, whether that is two or three signatures, should be repeated for Purchase Orders. ■ At present, if over €260,000 is to be spent on a project a paper has to be prepared for the Executive Board and the expenditure has to be approved by the Executive Board. It seems logical, therefore, that a Purchase Order for more than €260,000 should not only be approved by the Project Director and the Chief Executive but also be approved by the Executive Board. 	
	<i>Purchase Orders – Legal Costs</i>	Implemented
	<ul style="list-style-type: none"> ■ At present, purchase orders are not issued for legal costs. The logic is that it is usually not possible to quantify the total cost of the legal services to be provided, such as with Court proceedings. However, substantial legal costs have been incurred by the Dublin Docklands Development Authority during 2008 and 2009 and it is, therefore, important that a system of control is implemented. Purchase orders should be completed for all legal costs detailing the tasks to be undertaken, the hourly charge out rates to be applied by the solicitors and the frequency of invoicing. ■ Details of charge out rates of the major firms of solicitors have already been obtained by the company so this information is readily available. Naturally, if these rates are changed by the solicitors involved they will have to notify this fact to the Dublin Docklands Development Authority and a fresh purchase order will have to be issued. ■ With regard to frequency of invoicing, the purchase order could provide for invoicing periodically say every month or quarter. Alternatively, invoicing could take place based on the build up of fees, say every time they reach €20,000, €30,000 or €50,000. Such regular invoicing will enable the Dublin Docklands Development Authority to monitor legal costs as they are incurred. 	

Topic	Report Findings and Recommendations	Authority Update
Approval of cheque payments (continued)	<ul style="list-style-type: none"> ■ An indication should also be obtained from the solicitors as to the possible level of fees, whether that is under €30,000, between €30,000 and €260,000 or over €260,000. This will determine who should approve the purchase order, whether it is the Project Director alone, where the fees are likely to be less than €30,000, the Project Director and the Chief Executive, where the fees are likely to be between €30,000 and €260,000, or the Executive Board, where the fees are likely to be more than €260,000. <p>Cheque Requests</p> <ul style="list-style-type: none"> ■ Requests for cheques should only be made where a purchase order has been issued and an invoice received. The exception to this will be in the case of utilities, where only an invoice will have been received. ■ In the first instance, the invoice received should be approved by the Project Director who issued the purchase order. In the case of utilities, the Director of Finance should request the cheque. ■ Where the cheque request is for more than €30,000 it should also be approved by the Chief Executive. ■ Where the cheque request is for more than €260,000 it should also be approved by the Executive Board or one of the Directors nominated by the Executive Board. 	Implemented
Public procurement for project expenditure	<ul style="list-style-type: none"> ■ No recommendations made 	
Public procurement for non-project expenditure	<ul style="list-style-type: none"> ■ The absence of documentation made it impossible to determine whether the Dublin Docklands Development Authority has complied with the Public Procurement Guidelines for non-project expenditure during 2008 and 2009. 	

Appendix E Report on the Authority's Planning Function – Recommendations and Current Status of Implementation (February 2012)

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
<i>Role and Function</i>		
R1	The Department of the Environment, Community and Local Government establish annual reporting requirements including an agreed set of key indicators, and institute a formal review process on a regular basis.	Implemented
R2	A written protocol should be prepared to clearly define the Department's roles and responsibilities in respect of the administration of the Authority.	The Department is keeping the need for further protocols under review
R3	A written protocol should be prepared to clearly define the roles and responsibilities of the Department's representative on the Board and to ensure absolute clarity around reporting procedures between the Board and the Department.	The Department has introduced a clear delineation of responsibilities with one senior official being a member of the Board and a different senior official, in a separate division of the Department, having line responsibility for the Authority
R4	It may also be appropriate for the Minister in making appointments to the Board to consider the skills mix appropriate to the statutory functions required of the Board.	Noted by the Department, and will be considered in the context of future appointments to the Board
R5	A formal procedure should be instituted to ensure that Dublin City Council (DCC) is presented with an opportunity to comment on Section 25 applications and that these comments are taken into account by the Executive Board in adjudicating on such applications.	Implemented
R6	There should be formal liaison meetings between DDDA and DCC planning teams to ensure effective management of areas of shared responsibility such as development levies and enforcement.	Implemented

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R7	The planning functions covering both adjudication and forward planning and plan monitoring should operate as a separate Planning Team within the Authority with a direct reporting line to the Chief Executive, to assist the necessary separation from the Authority's property and development role.	Implemented
R7(a)	Within the Planning Team a Senior Planner should be delegated responsibility for protecting the integrity of the adjudicative function on the basis of a bi-annual monitoring and reporting procedure.	
R8	It is recommended that consideration be given to the creation of a Director of Planning role dedicated to the planning functions of the Authority. This position should be filled by a qualified planner with management experience and with extensive experience of managing the regulatory function within a local authority.	Not Implemented – To be reviewed annually
R9	The legal function of the Authority be separated from the property function to ensure that the planning team is able to access legal advice on the proper application of its planning powers in the light of the Finlay Geoghegan Judgement and any changes in legislation or regulation which may be required.	Implemented
R10	The function of Secretary be separated from the property function. The appointment of a dedicated Secretary or Administrative Officer be considered, to report between the Executive and Board and to support the Board in the carrying out of its functions.	Implemented
R11	The role of the planning administrator to be maintained at least until such time as an IT based system is in place to support the processing of Section 25 applications and a quality and risk management culture is embedded in the leadership and day to day operations of the planning team.	Implemented

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R12	Enforcement powers under the Planning Acts should remain the responsibility of DCC in the Docklands area.	Implemented
Consultation		
R13	Provide for formal 'pre-draft' Masterplan consultation, similar to what many local authorities undertake for Development Plan and though not statutory, Local Area Plan preparation. Submissions in this regard should only be considered where they relate to strategic issues which are generic to the strategic direction of the Masterplan.	Not currently applicable – To be reviewed annually
R14	Adoption of a formal procedure for reporting on submissions to the Council and Board. A report setting out the principal issues identified in submissions and the Executive's recommendations on how those issues are addressed in the draft Masterplan, should be prepared for formal consideration by the Council in advance of a draft Masterplan going on public display.	Not currently applicable – To be reviewed annually
R15	In the event of a review of the 1997 Act and parallel planning legislation, consideration to be afforded to enhancing the status of the both the Masterplan and Planning Schemes as documents to which DCC and An Bord Pleanála must have regard in the event of an application or appeal to those respective authorities.	Not currently applicable – To be reviewed annually

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
<i>Planning Scheme Process</i>		
R16	Introduction of a Design Brief stage to the planning scheme process. The procedure around the Design Brief could be undertaken as a protocol or under statutory instrument with the following steps	Recommendation 16(a) is implemented. Other recommendations are not currently applicable, and will be reviewed annually. The Department has indicated that recommendation R16(f) will be considered in the context of any future planning schemes that are prepared and submitted to the Minister for approval.
R16(a)	The preparation of a new planning scheme or an amendment to an existing scheme is approved by the Board.	
R16(b)	A draft Design Brief is prepared which clearly sets out the following the strategic planning, urban design, architectural and infrastructural reasons for the proposed scheme/amendment; a statement of appropriate objectives relating to the foregoing reasons; the broad parameters around urban form, density, height, public space, and architecture; options and alternatives available in respect of the urban form criteria which are relevant to meeting the stated objectives.	
R16(c)	The Design Brief is considered by the Council. Recommendations by the Council and the Executive response to those recommendations are set out in a report which is furnished to the Board.	
R16(d)	The Board must have regard to the recommendations of the Council.	
R16(e)	The Board directs the Executive to amend/complete the Design Brief as considered appropriate.	
R16(f)	The approved Design Brief is furnished to the Minister. The Minister can modify the Design Brief and give mandatory instructions to the Authority.	
R16(g)	The Design Brief is placed on public display and recommendations and the Executive's response are furnished to the Board.	
R16(h)	Following consideration of the Executive's report and amendment/approval of the Design Brief, the Board instructs the Executive to proceed to drafting the scheme/amendment.	

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R17	A representative Steering Group to be set up at the commencement of the planning scheme/amendment making process. The Steering Group would include representatives from the DDDA Executive, DDDA Council, Dublin City Council Planning Department, Dublin City Council Infrastructure Department, Dublin Transportation Authority and Dublin Regional Authority.	Not currently applicable – To be reviewed annually
R18	Consider, possibly as part of amending legislation, some provision for granting a certificate which is not compliant with the development control standards set out in the planning scheme but by reason of some exceptional circumstance not envisaged at the time of the preparation of the scheme is otherwise compliant with the overall objectives of the scheme, the objectives of the Authority and the proper planning and sustainable development of the area.	Not currently applicable – To be reviewed annually
R18(a)	The decision to proceed to consideration of such an application should be made by the Board in advance of the lodgement of the application.	
R18(b)	Specified criteria relating to exceptional circumstances should be set out in regulations which the Board must be satisfied are met in advance of lodgement of an application.	
R18(c)	Proposals would be presented to the Executive in pre-planning meetings in sufficient detail to allow the Executive to prepare an informed recommendation to the Board as to whether to proceed to further consideration of the lodgement of an application. This decision would rest with the Board.	
R18(d)	In the event that the Board agreed to consider an application, this decision would be notified to the prospective applicant subject to the qualification that it is strictly without prejudice to any decision the Board may subsequently make on an application.	
R18(e)	Upon lodgement of an application, the Executive would make a recommendation to the Board.	

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R18(f)	Should the Board decide to refuse to issue a certificate, this decision and the reasons therefore would be notified to the applicant.	
R18(g)	If the Board decided in principle to issue a certificate, it would send notification of this effect to the Minister and DCC.	
R18(h)	In parallel, it would publish a notice in a national daily newspaper indicating its decision in principle and inviting submissions from third parties.	
R18(i)	Having considered all submissions the Board would issue its final decision.	
<i>Certificate Determination</i>		
<i>Review of procedure associated with application documentation</i>		
R19(a)	The description of development to be checked by the validating officer to ensure that a detailed and accurate description of the proposed development is provided stating the height of buildings (number of storeys), the overall floorspace proposed, and a breakdown of the proposed uses and residential units, if applicable.	Implemented
R19(b)	Upon confirmation of the description of development, which will coincide with the issue of a DD reference number; and after preliminary checks have been carried out, the applicant will erect a site notice reflecting the final and correct wording of the description of development.	
R19(c)	In instances where an application for a minor amendment to a previously certified development is submitted, the description of development shall clearly state the relevant DD reference number of the certificate to be amended, the description of the development as previously certified, and clearly state that the application is for an amendment whereby the proposed amendment is described in detail (see also recommendation in terms of amendment applications).	

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R19(d)	All drawings received should be date stamped together with a stamped DD reference number unique to each application.	
R19(e)	Should the original or subsequently submitted drawings be amended in any way, a fresh set of application drawings shall be submitted and clearly stamped 'amended' together with a date stamp and a stamp showing the unique DD case reference number. One full set of the originally submitted drawings shall be retained on file and stamped 'superseded'.	
R19(f)	Upon the issue of a Section 25 certificate, one full set of approved drawings shall be retained on file and be clearly stamped 'approved' together with the corresponding date that the certificate was issued.	
R19(g)	Section 25 certificates, as issued should clearly reference the list of approved drawings accompanying the certificate.	
R20	The Authority has regard to the guidance note provided (at Appendix J to the Brassil Report) on validating applications.	Implemented

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
<i>Review of procedures associated with the submission of additional information</i>		
R21(a)	Having regard to the objectives of the Section 25 process to expedite decision making and to certify compliant proposals, the Grant Thornton recommendation is endorsed that additional or further information requests should not be entertained by the Authority where a proposal is clearly non-compliant with the relevant planning scheme.	Implemented
R21(b)	Non-compliant proposals should be returned with a letter stating the reasons of non-compliance and inviting the applicant to withdraw the application and submit a fresh application addressing the deemed reasons for non-compliance. In the event that the applicant refuses to withdraw the application (by confirmation in writing), the application shall be registered and processed in an identical manner to other applications, as suggested by Grant Thornton resulting in non-certification following consideration by the Board. However, such applications should be fast tracked to enable an early Board determination in order to avoid time delays resulting from applicant's seeking to amend schemes subsequent to their confirmation of non-withdrawal of a proposal.	Implemented
R21(c)	The Board is recommended to consider extending delegated powers to the Executive officers to confirm non-certification to the applicant without formal consideration by the Board provided that a delegated report by the Planning Officer is signed off by the relevant manager and director; prior to the issue of a notification of decision not to certify the proposed development and stating the reasons for same. Such applications together with delegated reports should be subsequently circulated to the Board for information purposes.	Not Implemented – To be reviewed annually

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
<i>Review of procedure associated with planning reports</i>		
R22(a)	<p>Planner's reports should be prepared according to a standardised template, which includes the following</p> <ul style="list-style-type: none"> ▪ Heading stating whether it is a 'Delegated Report', report to the sub-committee and relevant date of committee meeting or a report to the Board and the date of the Board meeting where the report will be considered. ▪ Reports, whether delegated, sub-committee or for the Board's consideration should be checked and signed by the relevant line manager with final sign-off required by the Director. Copies of signed reports shall then be included and circulated to members of the sub-committee and Board prior to relevant meetings. ▪ Layout of a standard report template should provide for a detailed description of development in table format stating proposed floorspace areas against each use proposed together with a column of the applicable levy rates and calculations. ▪ Standard report templates should provide for a summary of relevant planning scheme standards applicable to the proposal and a section setting out relevant planning history where the subject application relates to a wider/comprehensive redevelopment proposal. 	Implemented
R22(b)	<p>In order to allow feedback from third party consultees to be properly considered by the Board, as reflected in Planner's Reports, it is suggested that the current 10-day consultation period be extended to 21 days. The 21-day period should commence upon the date of erection of the site notice, which should coincide with formal letters of consultation being sent to other consultees, such as DCC. No formal consideration of a proposal shall either be undertaken by the sub-committee or the Board prior to the expiration of the 21-day consultation period.</p>	Recommendation not accepted as ten days is deemed sufficient for third party consultation

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R23	Support for the recommendation of Grant Thornton that the Board should consider delegating powers to the sub-committee of the Board or Senior Executive Officers to make decision on such applications which are of a minor and/or non-contentious nature, including applications for signage and minor changes of use.	Not Implemented – To be reviewed annually
<i>Procedures relating to applications for amendments to previously permitted development</i>		
R24(a)	The Board adopts criteria whereby an application is determined as an amendment application. Such applications should genuinely be of a minor nature, which would not require consultation and would not materially alter the previously certified scheme. Such applications could typically be amendments to the design and appearance of a building – for example a change in fenestration pattern or materials/finishes or pedestrian access arrangements.	Recommendation not accepted – To be reviewed annually
R24(b)	Any application which seeks to increase the volume or height of a previously certified scheme should be subjected to full scrutiny against the provisions of the planning scheme and be subjected to full consultation procedures. Such applications should also include change of use applications where the proposed change of use relates to a floorspace in excess of 100sq.m.	Implemented
R24(c)	Applications for amendment that would result in a volumetric increase in building envelope or a change of use of floorspace in excess of 100sq.m shall not be described in the description of development as an ‘amendment application’ but shall be described and considered as a fresh Section 25 application.	Implemented
R24(d)	Applications for ‘minor amendments’, as described above, shall make reference to the DD reference number of the parent certificate and shall provide a detailed description of the proposed amendment along with the description of the certified development.	Implemented

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R24(e)	Plans/drawings submitted for amendment applications shall include a copy of the final certified drawings of the scheme they seek to amend with the proposed changes clearly marked/indicated on the new plans/drawings for ease of comparison.	Implemented
R24(f)	The Board might consider extending delegated powers to the Executive to deal with such applications for minor amendment meeting the suggested criterion above in order to fast-track decision making.	Not Implemented – To be reviewed annually
<i>Procedures relating to compliance issues</i>		
R25(a)	That a separate procedure is adopted whereby applications for compliance are treated as standalone applications through the allocation of a unique reference number that will link the compliance application with the relevant certificate and condition for compliance. Example - compliance with Condition 13 attached to Certificate Reference DD167 be allocated a unique reference number CDD167.C13.	Implemented
R25(b)	That a separate, parallel compliance register be established and linked to the planning register file.	Implemented
R25(c)	Upon compliance of all relevant conditions that the applicant applies for a compliance certificate to the DDDA requesting confirmation of compliance with all relevant conditions.	Recommendations 25(c) to 25(f) not accepted. It is not the Authority's legal obligation to certify planning compliance.
R25(d)	That the DDDA issue such a compliance certificate only in the event that it is satisfied that all relevant conditions have been complied with and that a copy of the compliance certificate is put on file and distributed to the applicant and other relevant bodies, such as DCC, in the same manner as a Section 25 certificate.	

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R25(e)	In the case that the DDDA is not satisfied that compliance with all conditions has been achieved it shall issue a letter stating the reasons for non-compliance and withholding a Certificate of Compliance together with an invitation to the applicant to submit outstanding items by listing any outstanding conditions. A copy of this letter shall also be put on file and provided to the applicant.	
R25(f)	The Board extend delegated powers to the Executive to determine applications for compliance at sub-committee level.	
<i>Procedures relating to sub-committee and Board meeting requirements</i>		
R26(a)	Minutes of Board and sub-committee meetings should be placed on the planning file.	Implemented
R26(b)	The number of applications to be considered at any one meeting should be regulated/capped in order to focus efforts. Minor applications could be delegated for decision making, as set out above to ease workload.	Not Implemented – To be reviewed annually
R26(c)	Members of relevant committee/Board carry out site visits on large/complex applications prior to meeting – at least the Chair of the planning sub-committee and two other members, which can be on a rota basis.	Implemented
R26(d)	The presenting Planning Officer should provide a 3-5 minute presentation on each agenda item prior to discussion, which will inform discussion and decision making.	Implemented
R26(e)	Relevant planning scheme policies should be highlighted and included in presentation and reports.	Implemented

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R27	A statutory instrument by which certain procedures are provided with a legislative basis should be considered by the Board for recommendation to the Minister. Regulations could specifically address procedures and timeframes for validation of Section 25 applications; further information and additional information requests; public consultation and consultation with statutory consultees; reporting procedures to the Board and its sub-committee; certification; and post-certification compliance.	Not Implemented – To be reviewed annually
R28	A Section 25 certificate should make explicit reference to the plans/drawings numbers certified and refers to the date of the Board meeting where the decision was made to certify a development.	Implemented
R29	A Section 25 certificate should expressly state that the scheme as proposed and considered by the Board is compliant with the relevant planning scheme in operation at the date of making the decision.	Implemented
R30	That protocol be agreed to ensure the consistent and reasonable interpretation of planning schemes which avoids inconsistent and/or overly liberal interpretations of ambiguous references within the planning scheme. The Board should endorse a more prescriptive interpretation of planning scheme standards and provisions in terms of permissible building heights, plot ratios, land use mix, residential mix, social and affordable housing, car parking provision, etc.	Implemented
R31	The Board considers a review of planning schemes whereby potentially ambiguous provisions within planning schemes are identified (for example plot ratio calculation, references to building heights, land use mix, etc.) and are formally reviewed and subjected to Ministerial approval. Such a review could provide an appropriate opportunity to revisit issues of planning importance and the overall strategy and future direction for the planning scheme areas against progress to date. For instance the issue on land use mix (60/40 ratio) and appropriate plot ratios might be revisited in light of implemented schemes and a survey of floorspace and ratios achieved to date.	Not currently applicable – To be reviewed annually

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R32	<p>The Board reviews the practice whereby planning conditions are attached to certificates to</p> <ul style="list-style-type: none"> ▪ seek to render a non-compliant scheme, compliant with the planning scheme; and/or, ▪ seek to transfer or link compliance of one or more elements of a scheme onto a subsequent phase of development for which a formal application had not been lodged; and ▪ seek compliance with the planning scheme in a manner whereby individual sites are linked together that does not form part of the same planning unit, albeit that such sites are in the same ownership. 	Implemented
R33	The role of the Design Review Panel should be limited to large and complex applications or sites which include landmark buildings.	Implemented
IT Systems		
R34	Develop a GIS database of applications, that would aid in identifying relevant certificates and planning histories for a site, and that could potentially be linked to DCC's database.	Partly implemented
R35	Undertake an upgrade to the system would allow the calculation of the consultation period automatically, which could also provide a prompt to planners at key stages to chase comments from consultees prior to the finalisation of planning reports.	Not Implemented – To be reviewed annually
R36	Undertake an upgrade to the system to make provision for the automatic calculation of the full range of levies applicable within the Docklands, without the need for manual manipulation.	Not Implemented – To be reviewed annually

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R37	Investigate the possibility of upgrading the planning software to allow interactive information sharing between accounts information and planning, which would enhance certainty over correct levy calculations and collection at the appropriate phases of development.	Not Implemented – To be reviewed annually
R38	Undertake an upgrade to the system to allow functionality to create and save electronic advisory memorandums following consideration by the sub-committee and Board meetings. Such a function should also make provision for prompts when a final certificate is generated on the system to act as a reminder for conditions to be added, amended or deleted prior to the signing and sealing of the final certificate.	Not Implemented – To be reviewed annually
R39	Upgrade the system software to allow various stages of the Planner's report to be saved on the system at key stages. The system should ideally be set up to make a distinction between reports to the sub-committee and reports to the Board and final versions of a report (in accordance with recommendations from the Board) whereby information contained on advisory memo's are incorporated when prompted to do so and in order to generate a certificate for signing and sealing.	Not Implemented – To be reviewed annually
R40	The adoption of standard practices in order to enhance the transparency of the plan making and development control functions of the Authority and to enhance public participation and consultation strategies.	Not applicable at present in relation to plan making process. Development control functions to be reviewed annually.
R40(a)	To allow electronically submitted third party submissions at the various public consultation phases of the plan making process.	Implemented
R40(b)	To publish a list of third party observations received, together with a Planner's report and recommendations to the Board addressing the same.	Partially implemented

Recommendation Reference	Recommendation	Status Update (by Authority/Department)
R40(c)	To publish relevant minutes of the Board setting out plan making decisions and recommendations to the Executive together with Ministerial guidance received and proposed modifications to the plan/scheme.	Not Implemented – To be reviewed annually
R40(d)	To publish all relevant information submitted on Section 25 applications on the website, including plans/drawings and supporting information, requests for additional information and responses. This information is currently available but is protected to authorised users and password holders.	Not Implemented – To be reviewed annually
R40(e)	To allow interactivity between the Authority's GIS-database (see recommendation above) whereby interested parties can view a map based planning history for the area.	Not Implemented – To be reviewed annually
R40(f)	To allow the submission of electronic third party observations on applications and to make available all received third party observations online.	Partially Implemented – To be reviewed annually
R40(g)	To publish minutes of Board meetings and decisions of the Board online.	Not Implemented – To be reviewed annually
R41	Consider a review of compliance with conditions relating to the delivery of social and affordable housing.	Implemented