



UCD Michael Smurfit  
Graduate Business School



UCD Quinn School of Business

100 YEARS  
IN BUSINESS EDUCATION

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

16 January 2014

**Examination of the Report of the Comptroller & Auditor General  
on the Dublin Docklands Development Authority**

Dear Mr McEnery,

Many thanks for your e-mail of 6 January 2014 enclosing a transcript of the Committee's proceedings on 12 December 2013.

I have now had an opportunity to study that transcript in full.

For completeness sake, I refer to your email of 13 November 2013 and to my email response dated 22 November 2013. I further refer to my previous letters dated 31 May 2012, 3 July 2012, 10 April 2013, 22 May 2013 and 23 December 2013.

You will recall that I indicated in the letter dated 22 May 2013 (see Appendix A to this letter) that *"it seems to me that the Committee ought in logic first seek to inquire into and establish as far as possible the primary facts of what happened before addressing the later response of the Authority to those events during my chairmanship."*

In the Committee's response to that letter the same day (see Appendix B to this letter), you signalled agreement with that observation stating: *"I see an awful lot of logic in what you are saying!"* and stating that you would *"propose to the PAC that we defer your evidence until we have heard from those central to decision to acquire the IGB."*

It seems to me, based on the transcript of the meetings of 26 June 2013 and 12 December 2013, that we have not yet approached the point of establishing the primary facts of what happened in relation to the Irish Glass Bottle site joint venture and that a significant number of persons *"central to the decision to acquire the IGB"* remain to be heard from.

The Committee has also indicated to me that an area on which they wished to have my views was the North Quay Investments Limited/Mountbrook litigation referred to by the Comptroller & Auditor General at each of the Committee meetings dealing with the DDDA.

The Committee will be aware that the North Quay Investments Limited/Mountbrook High Court case involved an agreement (see Appendix C to this letter) entered into by senior executives of the DDDA apparently without the knowledge of the Board of the DDDA, relating to the development of new headquarters for Anglo Irish Bank (two of whose directors, Mr Fitzpatrick and Mr Bradshaw, were also board members of the Authority).

The effect of that agreement was that the DDDA would facilitate the construction of a 16 storeys high development (see Item 3 in the Schedule to the Agreement), when at that time the maximum height permitted by the North Lotts Planning Scheme was seven storeys plus a set-back top floor.

It was following the loss of the North Quay Investments Limited/Mountbrook High Court case that the Board commissioned the report referred to by witnesses before the Public Accounts Committee on the 26 June 2013 and 12 December 2013. The decision of the Board to commission the report and the decision as to the terms of reference of the report itself were made prior to my appointment as Chairman.

It seems to me that primary facts in relation to the North Quay Investments Limited/Mountbrook issue have not yet been established or examined by the Committee.

In that light, it seems to me that the Committee still has a considerable task in establishing the primary facts in respect of the IGB and North Quay Investments Limited/Mountbrook issues.

I would like the Committee to know that I have UCD commitments which will require me to be abroad in Germany and Switzerland during this month and that I will thereafter be in Toronto, on foot of a visiting professorship at the Rotman School of Business, University of Toronto, from 1 February 2014.

Following annual leave, I will be back at my desk in UCD at the end of August, 2014.

Yours sincerely,



Professor Niamh Brennan  
Michael MacCormac Professor of Management

- Enclosures:
- Appendix A Copy of letter of Prof Niamh Brennan dated 22 May 2013 to the Committee of Public Accounts
  - Appendix B Copy of email response from the Clerk to the Committee to Prof Niamh Brennan's letter dated 22 May 2013 to the Committee of Public Accounts
  - Appendix C Copy of the agreement between the Authority and North Quay Investments Limited (A Liam Carroll company)



UCD Michael Smurfit  
Graduate Business School



UCD Quinn School of Business



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

22 May 2013

**Examination of the Report of the Comptroller & Auditor General  
on the Dublin Docklands Development Authority (DDDA)**

Dear Mr McEnery,

I refer to your letter of 30<sup>th</sup> April 2013 and to the transcript of the Committee's proceedings of 2<sup>nd</sup> May 2013, supplied to me on 7<sup>th</sup> May 2013. I further refer to my three previous letters dated 31<sup>st</sup> May 2012, 3<sup>rd</sup> July 2012 and 10<sup>th</sup> April 2013.

I regret that pressure of work at this time of year has delayed my response.

I note that the Public Accounts Committee now intends inviting a number of named persons to attend before it and to give the Committee evidence in relation to the Comptroller and Auditor General's Special Report No. 77 in relation to the DDDA.

Your previous letter (27<sup>th</sup> March 2013) indicated that it was the intention to conduct hearings in the following sequence:

1. Departmental oversight,
2. My evidence,
3. "Key witnesses who were central to the decision to get involved in the Glass Bottle project".

It seems to me, however, that the proposed order of hearings is very problematic indeed.

Since the first topic which you indicated in your letter of 30<sup>th</sup> April 2013 that the Committee intended to raise with me deals with "judgment errors" relating to the Irish Glass Bottle site issue, and since you have now indicated in your letter that the Committee intends to take evidence from Mr Bradshaw and Mr Maloney in relation to the site's acquisition, it seems to me that the Committee ought in logic first seek to inquire into and establish as far as possible the primary facts of what happened before addressing the later response of the Authority to those events during my chairmanship.

This logic is referred to extensively by members of the PAC in the transcript of its meeting of 2<sup>nd</sup> May 2013, for example, *"We will not be able to complete the picture in the absence of evidence from other individuals named...Mr Maloney, Mr Bradshaw, Mr Fitzpatrick...To coin a phrase, there is no show without Punch"*.

It would be most unfair and would put me in an almost impossible position if I were asked to comment publicly on events, behaviour and "judgment errors" that occurred before my appointment when my awareness of those matters is based, at best, on secondary accounts, inferences and information, and when those in a position to give first-hand accounts to the Committee had not yet been heard.

It would not be fair to me if I were to be asked to publicly deal with issues which occurred before my appointment such as the Glass Bottle site acquisition and the North Quay Development litigation (as is now proposed), before the parties directly involved in those matters were afforded an opportunity to give the Committee a full comprehensive factual account of those events which has never been given to me. Nor would it be fair to those parties to follow such a course.

It may also be that the Committee may well wish to consider whether it wishes to hear from other persons holding executive or board positions in addition to Mr Bradshaw and Mr Maloney on those matters.

I very much believe that the Committee has a very important role in relation to the issues raised in the Special Report. It is for that reason that I am most concerned that the Committee should seek to elucidate the primary facts from the persons with first-hand knowledge of the relevant events before asking me to deal with those issues.

I cannot reasonably be asked to deal publicly with or express opinions or judgments on factual matters which still remain quite unclear and which it is proposed to clarify in evidence before the Committee only after I have given public evidence about them.

I would accordingly suggest, in reason and logic, that the Committee should now reconsider the order in which it intends to conduct its public hearings, and that it should deal next with evidence from all the persons who were actually involved in the primary factual issues.

Yours sincerely,



---

Professor Niamh Brennan  
Michael MacCormac Professor of Management

----- Forwarded message -----

From: **Ted McEnery** <Ted.McEnery@oireachtas.ie>

Date: 22 May 2013 17:59

Subject: RE: PAC

To: Prof Niamh Brennan <niamh.brennan@ucd.ie>

Dear Professor Brennan

I will bring your letter to the attention of the PAC. I see an awful lot of logic in what you are saying!

I suppose I didn't expect any volunteers to come from the previous regime, but as it turns out Mr Bradshaw has agreed to give evidence and that will arise in June, so I will propose to the PAC that we defer your evidence until we have heard from those central to decision to acquire the IGB.

I will be in contact with you.

Ted

Oireachtas email policy and disclaimer.

<http://www.oireachtas.ie/parliament/about/oireachtasemailpolicyanddisclaimer/>

Beartas ríomhphoist an Oireachtais agus séanadh.

<http://www.oireachtas.ie/parliament/ga/eolas/beartasriomhphoistanoireachtaisagusseanadh/>

--

Professor Niamh Brennan

[niamh.brennan@ucd.ie](mailto:niamh.brennan@ucd.ie)

Tel: 7164707

Appendix G  
Agreement of 31 May 2007

DRAFT

THIS AGREEMENT is dated the day of 31<sup>st</sup> day of May 2007 .


**BETWEEN**

1. **NORTH QUAY INVESTMENTS LIMITED** of Chapel House, 21-26 Parnell Street, Dublin 1 ("NQIL") of the one part; and
2. **THE DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY** having its head office at Sir John Rogerson's Quay, Dublin 2 (the "Authority") of the other part

**WHEREAS**

- A. The Authority adopted the current North Lotts Planning Scheme in 2002 ("the NLPS").
- B. The Authority has initiated the statutory process to adopt a revised NLPS (which would need to go through the statutory process provided for under the Dublin Docklands Development Authority Act 1996) with the intention of providing for more public open space while increasing the quantum of development envisaged by the current NLPS.
- C. NQIL owns the former Brooks Thomas / Tilesavers premises at North Wall Quay, Dublin 1 as more particularly shown outlined in red on the map attached ("the Site"). NQIL has made arrangements with prospective tenants for the construction of buildings on the Site.
- D. The Authority has identified that part of the Site more particularly shown on the plan attached hereto and initialled by the parties as being appropriate for public open space. The Authority requires a portion of the Site fronting Mayor Street Upper to facilitate those public works.
- E. The current NLPS would not permit a development of the nature intended by NQIL.
- F. NQIL is desirous of proceeding with the first phase of its proposed development as soon as is practicable.
- G. The Authority is desirous of facilitating NQIL in this regard subject to terms and conditions set out below.

**IT IS HEREBY AGREED AS FOLLOWS:**

1. NQIL lodged on Friday 11<sup>th</sup> May 2007 an application with the Authority, within the parameters of the current NLPS, for a Section 25 Certificate for the Site in respect of a modified version of its proposed office development.
2. Subject to receipt of the application referred to at Clause 3 below, the Authority will complete the processing of Section 25 Certificate in respect of the enabling works application for the development lodged with the Authority on 8<sup>th</sup> December 2006 (Ref: DD416) by 23<sup>rd</sup> May 2007.
3.  The executive of the Authority will recommend to the Board that the application for a Section 25 Certificate received from NQIL pursuant to Clause 1 be granted by the Authority by no later than 31 July 2007.

4. The Authority will continue to implement the necessary procedures pursuant to the Act to adopt a modified planning scheme for the North Lotts area which scheme once adopted would enable NQIL to apply for, and obtain, a Section 25 Certificate or Certificates for an increased quantum of development, predominantly commercial, on the Site within 12 months of the date of this Agreement. The Authority acknowledges that the area of the land to be ceded to them under clause 6 below by NQIL will be included in calculating the total area of the site for plot ratio purposes. In determining the ratio of commercial space to be permitted in any development proposal the Authority will take cognisance of the following: -
- (i) A baseline land use ratio of 60:40 (in favour of commercial use) be applied;
  - (ii) The baseline land use ratio noted above will be further weighted in favour commercial use in consideration of the mix of use of developments completed, under construction or to be developed by NQIL or its associated Group Companies within the North Lotts Planning Scheme area.
  - (iii) The area to be ceded to the Authority under clause 6 below by NQIL will be included for residential land use purposes in calculating use ratio in any application by NQIL or any associated company for development on the Site or any other site within the North Lotts Planning Scheme area.
  - (iv) In any regard the maximum ratio of residential development to be provided within the Site will be 25%.
5. The Authority acknowledges that it is critical to NQIL to obtain such a Certificate, or alternatively planning permission from Dublin City Council, within the said twelve month time frame in order to allow NQIL honour its commitments to certain prospective tenants at North Wall Quay.
6. In consideration of the Authority granting the Section 25 Certificates to be applied for under clauses 1, 2 and 3 above NQIL will transfer free of cost to the Authority good and marketable title to that portion of the Site more particularly identified on the plan attached hereto and shown hatched green ("the Strip") in order to facilitate the Authority's long term plans for a major public space in the North Lotts area subject to:
- (i) if the Authority constructs a public park without a major water feature/canal then NQIL will retain ownership of the Strip below a depth of 3 metres (sufficient to allow for soft landscaping) or,
  - (ii) if the Authority constructs a public park with a major water feature/canal then NQIL will retain ownership of the Strip below a depth to be agreed between the parties within 2 years of the date of this agreement.
- and in the case of either (i) or (ii) above NQIL will be entitled but not obliged to construct a single or double level basement beneath the relevant depth of the Strip.
- (iii) if the Authority has not within 5 years from the date hereof either:
    - a) constructed a public park without a major water feature/canal; or
    - b) substantially commenced construction of a public park with a major water feature/canal
- then NQIL will be entitled to call on the Authority and the Authority must surrender the Strip to NQIL.
- Provided Further that if the Authority has within 5 years of the date hereof substantially commenced construction of a public park with a major water



feature/canal but has not completed same within 2 years of the date construction commences then NQIL will at the expiration of the said 2 years and in any event no later than the seventh anniversary of the date of this agreement be entitled to call on the Authority and the Authority must surrender the Strip to NQIL.

- (iv) where the Authority is constructing a public park with a major water feature/canal the Authority undertakes that at all stages of construction it will ensure that appropriate temporary landscaping is provided to ameliorate the impact of construction work on adjoining properties.
  - (v) NQIL will be entitled (but not obliged) to pile the boundary of the Site along Mayor Street, New Wapping Street and Castleforbes Road between points marked X1 - X; X - Y; Y - Y1 on the map attached hereto and further to provide for the structure and servicing of the basement car park (below the relevant depth as may be permitted by 6(i) or 6(ii)).
  - (vi) the Authority will ensure (no later than the date the first tenant of NQIL moves into its new office premises on the adjoining property) that appropriate temporary landscaping consistent with a first class HQ office campus is provided on the Site.
  - (vii) the transfer of the Strip by NQIL to the Authority will be by way of long lease for 999 years at a peppercorn rent in a format to be agreed between the parties' respective solicitors with all necessary reciprocal easements and reservations. The solicitors for NQIL shall furnish a first draft of the said Lease to the solicitors for the Authority by the 29<sup>th</sup> June 2007. In the event of the parties' respective solicitors not agreeing the format of the said lease by the 27<sup>th</sup> July 2007 then either party may at any time thereof refer the matter to an independent commercial conveyancing solicitor of at least ten years standing whose decision shall be final and binding on the parties, such solicitor to be appointed in default of agreement on the application of either party to the then President of the Law Society of Ireland. Completion of the grant of the Lease by NQIL shall occur within 28 days of the issue of a Section 25 Certificate under Clause 3.
7. The executive of the Authority will use best endeavours to provide in the revised draft planning scheme for the North Lotts area the key NQIL development issues/aspirations for the Site as more particularly set out in the Schedule to this Agreement. NQIL acknowledges and recognises that the adoption of a revised planning scheme is a statutory process.
  8. This Agreement does not create nor shall it in any circumstance be taken or construed as having created any partnership between the Authority and NQIL.
  9. If any term of this Agreement would, but for this provision, be void in whole or in part under the Rule Against Perpetuities then such term or provision or part thereof shall to that extent be read and construed as if there had been included therein a restriction limiting the vesting of future interests in the property thereby purported to be vested in the period commencing on the date of this Agreement and ending on the expiration of twenty years from the date of death of the last survivor of the issue now living of the late President of Ireland Eamon de Valera.
  10. The parties agree with one another that they will keep confidential the contents of this Agreement and will not without the prior consent of the other party (such consent not to be unreasonably withheld or delayed) divulge to any third party whatsoever the details thereof (other than to necessary professional advisors and others who are necessary for NQIL in connection with its funding and other dealings with the development e.g. respective tenants and in any proceedings issued or intended to be issued or as required by law.

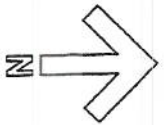
11. Nothing in this Agreement shall prejudice or affect any of the statutory rights, powers or duties for the time being vested in the Authority as the Statutory Authority for the area in which the Site is located.
12. **IT IS HEREBY AGREED** by the parties that any notice to be served on NQIL shall be deemed to be well and sufficiently given if served by prepaid post address to NQIL at the address shown at the start of this Agreement and shall be deemed to have been delivered on the date two working days following the date upon which it was posted. **IT IS HEREBY FURTHER AGREED** by the parties that any notice to be served on the Authority should be deemed to be well and sufficiently given if served by prepaid post addressed to the Authority at the address shown in this Agreement or at such other address the Authority may inform NQIL in writing from time to time and should be deemed to have been delivered on the day two working days following the date upon which it was posted.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement the day and year first herein written.

## SCHEDULE

### KEY DEVELOPMENT OBJECTIVES

1. Quantum of Development:- 108,000m<sup>2</sup>
2. Use Predominantly commercial
3. Building Heights - Max 16 storeys



RIVER LIFFEY

MAP  
SCALE 1:2000



Dated the 31<sup>st</sup> day of MAY 2007

BETWEEN

**NORTH QUAY INVESTMENTS LIMITED**

of the one part

-and-

**THE DUBLIN DOCKLANDS DEVELOPMENT  
AUTHORITY**

of the other part

**O'Donnell Sweeney Eversheds  
Solicitors  
One Earlsfort Centre  
Earlsfort Terrace  
Dublin 2**

**SIGNED FOR AND ON BEHALF OF  
NORTH QUAY INVESTMENTS LIMITED**  
By **LIAM CARROLL**  
In the presence of:

*Liam Carroll*

*Liam Carroll*

**SIGNED FOR AND ON BEHALF OF  
THE AUTHORITY**  
By  
In the presence of:

*Liam Carroll*