

**National Development  
Finance Agency  
(NDFA)**

**Opening Remarks for Members of the  
Joint Committee on Finance, Public  
Expenditure and Reform, and Taoiseach**

**26 July 2018**

*Submitted  
24 July 2018*

## **Opening remarks**

### **David Corrigan – Head of Project Management, National Development Finance Agency (“NDFA”)**

**26 July 2018**

Chairman, Members, I am pleased to be here this morning to assist the Committee in its ongoing consideration of the role and operation of the NDFA with particular reference to the impact on Irish infrastructure projects from the liquidation of the UK Carillion group and also the role of the Dutch Infrastructure Fund in that regard.

I am joined by my colleagues, Gerard Cahillane and Louise Mulcahy.

In advance of NDFA’s appearance before this Committee on 3 July 2018, we provided briefing material to the Committee members which outlined NDFA’s mandate and exposure to the UK Carillion Group. This exposure is confined to NDFA’s role as procuring authority of the Schools PPP Bundle 5 project (“SB5”), comprising six facilities: five replacement schools and one replacement Institute of Further Education. The tendering process and financial, technical and legal due diligence conducted in respect of SB5 including funders and equity providers were addressed. The position at that point regarding completion of the facilities was also outlined. The contractual structure included in the original briefing note is reproduced in appendix 1 for ease of reference. In summary, the PPP contract is between NDFA, acting as Authority for the Department of Education and Skills, and the Inspired Spaces consortium (“PPP Co.”), represented by the Dutch Infrastructure Fund (“DIF”).

I will provide an update on the current status of this project shortly.

### **Issues raised**

During the course of NDFA’s last appearance at this committee and a subsequent meeting of the committee on 5 July on the topic of Contractual Arrangements for Public Sector Infrastructural Projects, a number of issues were raised. We have categorised the issues into three broad categories.

Firstly, the matters of certification, compliance with Building Control Regulations and the role of the assigned certifier have been debated. The NDFA is in ongoing discussions with DIF and the Assigned Certifier to ensure that all necessary Building Control certification will be available to secure a valid Certificate of Compliance on Completion and allow the schools to be opened and occupied in compliance with the Building Control Regulations. DIF, in turn, is engaging with its counterparty, Woodvale, the contractor appointed to the completion works on this matter.

As part of this workstream DIF, together with its subcontractor Woodvale and the Assigned Certifier are developing alternative methodologies for satisfying the Building Control certification requirements to cater for the event that agreement cannot be reached with some or all of the existing subcontractors both to complete the outstanding work and to provide any outstanding Building Control certification. Our legal advice (shared with the Committee previously) and the current assessment of the Assigned Certifier for the project is that this is a valid and viable approach.

Secondly, concerns have been raised by a number of subcontractors to Sammon Construction Ireland Ltd. (“Sammon”) with regard to outstanding payments due for work undertaken. This is clearly a very difficult and distressing position for these subcontractors given that their counterparty, Sammon, who has already been paid for the work, is now in liquidation.

As set out in our earlier briefing note to the Committee the State is not, and was not, party to any works contracts with these subcontractors. These appointments were private, commercial contracting agreements, subject in most cases, we expect, to the provisions and protections of the Construction Contracts Act 2013 (“CCA”).

Notwithstanding that we are not a party to subcontract negotiations or agreements, as stated earlier, the NDFA has relayed to DIF the concerns expressed regarding payments due to Sammon subcontractors and supply chain. We understand that DIF has had this discussion with Woodvale who will endeavour where possible to reach agreement with subcontractors in the existing supply chain to complete the work and certification process and we would encourage those subcontractors to participate constructively in this process.

Whilst DIF (and its counterparty Woodvale) will endeavour to reach agreement with the existing subcontractors where possible, they have made it very clear that they cannot accept a

position whereby they must use the existing subcontractors including resolving the amounts being claimed for work done by those subcontractors but not paid for by Sammon.

On this point, we also note that a meeting took place between representatives of the NDFA, GCCC and a number of the existing subcontractors on 24 July.

Lastly, points have been raised regarding due diligence and recourse to Carillion's auditors, KPMG LLP. As outlined in briefing material previously, the NDFA carried out technical, legal and financial due diligence of the Inspiredspaces ("PPP Co.") consortium and its members prior to the appointment of the consortium as preferred tenderer and prior to the contract award in July 2016. In carrying out the financial robustness assessment the NDFA reviewed and assessed the adequacy of Carillion's financial robustness and its ability to undertake the obligations under the PPP contract. In relation to the specific query as to whether the NDFA should sue KPMG LLP as auditors to Carillion, at this point the preliminary advice received is that there does not appear to be a viable basis for a lawsuit. As no direct loss has yet been incurred by the State under the terms of the NDFA's contract for the project, and the State has no contract or link with the auditors in this matter, it is likely to be difficult to demonstrate sufficient grounds to justify a legal action.

However, we note that following the collapse of Carillion in January 2018 the UK's Financial Reporting Council ("FRC") undertook to investigate Carillion and KPMG's audits of same from 2014-2017 and we await the outcome of this investigation. The FRC is the regulator of chartered accountants in the UK, where the audit was performed, and is therefore the most appropriate body to review the adequacy of the audit in this case.

These points have been addressed in greater detail in our separate response to the Committee's request of 18 July 2018, submitted on 24 July.

### **Update on current position**

As advised previously, following intensive efforts by all parties in the intervening months, as of 25 June 2018 an announcement was made that DIF and the Project Lenders were putting in place arrangements for the appointment of a replacement contractor, Woodvale, to:

- facilitate the completion of the three most advanced schools - Loreto College, Wexford; Coláiste Raithín, Bray, and Ravenswell Primary School, Bray - by the end of August;

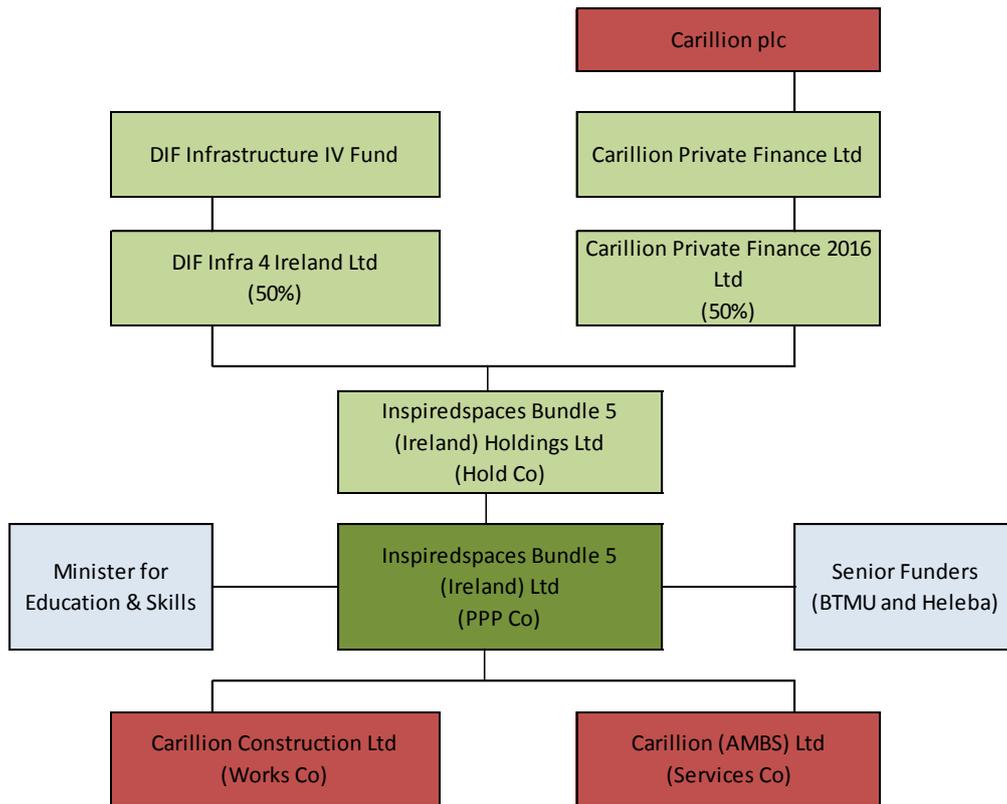
- undertake survey and preliminary work at the other three buildings in the Bundle – Tyndall College, Carlow, Carlow Institute of Further Education, and Eureka Secondary School, Kells. This survey and preliminary work will be undertaken during the summer and will provide a detailed scope of works to enable the contract arrangements to be finalised for the completion of these schools by the end of December.

This arrangement was formalised on 2 July 2018 and site works commenced on 9 July. On 16 July, a number of the project sites were subjected to pickets placed by certain Sammon subcontractors protesting over outstanding payments at the time of Sammon’s liquidation. Construction works temporarily ceased. On 18 July, PPP Co. secured a temporary High Court injunction preventing the subcontractors from blockading or trespassing on the project sites. This was on the basis that the protesters have no legitimate claim against PPP Co. and are not entitled to prevent workers from completing the works. As of 20 July, Woodvale has recommenced works on the first three sites. Progress continues to be made on all outstanding issues which includes arrangements for the completion of the remaining schools by the end of December and the appointment of a facilities management provider.

### **Concluding remarks**

In conclusion, Chairman, my colleagues and I will be happy to address questions relating to this matter.

**Appendix 1: Contractual structure on Schools Bundle 5**



Represents company in liquidation