



Mr. Martin Hughes  
Clerk to the Committee  
Committee of Public Accounts,  
Leinster House,  
Dublin 2.

**Your Ref: S1072 PAC33**

9 December 2022

Dear Mr. Hughes,

I refer to your letter of the 21 November 2022 requesting the following information in advance of the OPW's scheduled appearance at the PAC on 15<sup>th</sup> December.

I attach a briefing document setting out:

- a response to areas of particular interest is set out in Appendix I.
- an update on the recommendation from the matters previously examined is set out in Appendix II.

The names and mobile phone numbers of the attendees are as follows:

Participating attendees	Mobile number
Maurice Buckley	087 989 4022
Ciaran O'Connor	086 827 9010
Jim Casey	086 836 7105
Martin Bourke	087 917 5928
Mick Long	087 618 2061
Rosemary Collier	087 352 8328
Additional attendees	Mobile number
Collette Davis	087 203 0949
Edel Collins	086 385 7131
Pat Fitzsimons	087 419 5253
Patrick Moore	087 451 2054
Valerie Dunne	087 769 6986
Edel McArdle	086 853 8262



As requested a copy of my opening statement will be provided the day before the meeting.

I trust this answers the Committees request and I am available to clarify further, if required.

Yours sincerely,

A handwritten signature in black ink that reads "Maurice Buckley".

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Maurice Buckley  
Chairman



## Appendix I - Response to areas of particular interest

The Committee has requested additional information on the following:

1. Non-compliant procurement in excess of €5 million,
2. Continuing operation of a maintenance contract where the expenditure incurred is significantly greater than envisaged when the contract was put in place (S1063 PAC33 refers), and
3. Failure to implement payment reduction re performance shortfall, resulting in payment in excess of contract terms.

### 1. Non-compliant procurement in excess of €5 million

In 2021, the Office complied with the procurement guidelines with the exception of 85 instances totalling €20.778 million which are set out in OPW's annual Statement of Internal Financial Control (SIFC) published in the Office's Appropriation Account 2021.

The non-compliant expenditure related mainly to certain Property Maintenance Works amounting to €18.0 million.

Outside of the Dublin area, the OPW operated a procurement process whereby building contractors apply for inclusion on the "Approved List of Building Contractors" via the OPW website. From this list, construction works were competitively tendered to SMEs registered on the OPW approved list. However, admission to the "Approved List of Building Contractors" was not advertised through eTenders and therefore did not fully comply with EU procurement rules.

The sum of €18.0 million related to payments in 2021 to 63 works contracts where the contract value was in excess of the relevant threshold. These contracts were awarded by way of competitive tenders from maintenance works contractor lists operated by the OPW for certain works outside of the Dublin region.

Significant progress in phasing out this method of procurement has been made, while still maintaining the provision of essential service to our clients in this small construction sector. Engagement with the Office of Government Procurement has facilitated a partnership arrangement with the **Local Government Operational Procurement Centre (LGOPC)** to allow access to an existing framework arrangement and input from the OPW to the design of new frameworks in conjunction with the OGP and LGOPC.

The OPW has also established a number of other framework agreements that are fully EU compliant.

Procurement compliance has increased in 2022 and will continue to grow as contracts are awarded under new OPW frameworks and the use of LGOPC centralised arrangements



increases.

However, it should be noted that certain payments in respect of older contracts placed under the “Approved List” system will continue to arise until these revised framework arrangements are fully operational.

## **2. Continuing operation of a maintenance contract**

When conducting any procurement exercise the OPW estimates future contract values based on known requirements and with certain assumptions for future trends. In the vast majority of the contracts advertised by the OPW, the estimated value of these contracts are closely aligned with the tenders received.

In the case of the Measured Term Maintenance Contract (MTMC), the unique circumstances of the emergence of Brexit, significantly and dramatically changed the pressure on that contract.

The 2018 MTMC, was utilised to deliver urgent Brexit infrastructure to include additional infrastructure for Customs, Sanitary and Phytosanitary checks, health checks and controls required at Dublin Port, Rosslare Europort and Dublin Airport. The works approved by Government were essential to ensure that Ireland effectively managed the new requirements for checks and controls on imports from the UK. Work commenced on developing this urgent infrastructure in 2018 and expenditure under the contract has amounted to €71 million with the overall expenditure expected to amount to €128 million. The MTMC was the only available contractual option to deliver the Brexit infrastructure within the Government’s timeframe. The MTMC provided access to a compliantly procured service, with a detailed schedule for rates, which covered some 3,000 construction items. The use of this contract was to ensure the necessary infrastructure was in place within the required timeframe and the delivery of the infrastructure could not be the subject of prolongation, extension, protraction in procurement or contractual terms.

The Measured Term Maintenance Contract (MTMC) referred to is now closed for any new works and no further work orders are placed under this contract.

During 2021, the MTMC was re-tendered as a framework consisting of two separate contracts to broaden the OPW’s supplier base for maintenance services and minor works within the Dublin region. This framework commenced on 3 May 2022. The estimated value of this framework is €40 million over its four year term. Procedures are now in place to limit this contract for use on maintenance and minor capital works only. Alternative procurement frameworks are now in place to deliver more significant capital work contracts. This will ensure that the overall contract value remains within the estimation.



**3. Failure to implement payment reduction re performance shortfall, resulting in payment in excess of contract terms.**

The Convention Centre Dublin has sought a full forgiveness of all deductions for the period during the pandemic when the centre was precluded from operating to its normal business model due directly to Government restrictions relating to international travel, mass gatherings and social distancing. The CCD has also sought some reduced ICD targets for some subsequent years.

This is a complex issue that has required ongoing commercial and legal discussions with the CCD over a period of time, and that has necessitated careful monitoring as the Government's Covid restrictions have gradually lifted.

In considering whether to apply the relevant financial deductions to the payments due under the Project Agreement, it has been necessary for the OPW to date, to seek submissions from CCD, to engage with its legal advisors, consult with the NDFA who are the Operations Monitor for the Project, and consult with the sponsoring Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media. These discussions are ongoing.

In any considerations on the issue of possible deductions, the impact of the hosting by the CCD of the Houses of the Oireachtas for an extended period during the Covid 19 Pandemic to enable the Dail and Seanad to conduct their business needs, also must be considered. This gesture had an important "public interest" benefit for the State.

The OPW is now required to seek further advice from the CSO/Eurorstat, via the NDFA, on the range of options that might be considered including potential implications for the "balance sheet" treatment of the project, before making a definitive decision on the matter.



## **Appendix II - Update on the recommendation from the matters previously examined**

### **Issue 1 – On-going issues with the Miesian Plaza Lease**

#### **Recommendation 1:**

*The Committee recommends that the Office of Public Works takes all necessary steps to prevent the forecasted loss of approximately €10 million and that the OPW ensures it has appropriately qualified staff to manage its property transactions on behalf of the State. The Committee also requests that it is provided with quarterly updates in relation to this matter.*

#### **OPW update:**

In relation to the application of measurement standard used as a basis for calculation of the rent lengthy, complex and intensive engagement between the OPW and the Landlord of Miesian Plaza has now been finalised.

The parties have agreed to extend the lease of Miesian Plaza by a period of 9 months at a nominal rent of €10 per annum and a Deed of Variation has been put in place to give effect to this agreement.

The OPW considers that this agreement is the best possible outcome achievable for the taxpayer in all the circumstances, in particular as the rent being paid for Miesian Plaza has at all times been in accordance with the terms of the Lease.

The OPW has updated the Public Accounts Committee in relation to these matters on a quarterly basis as agreed. The most recent update issued on the 30th September 2022.

### **Issue 2 - Delays on Flood Relief Projects**

#### **Recommendation 2:**

*The Committee recommends that:*

- *The OPW ensures that project progress updates are available to communities for scrutiny throughout flood relief projects and that where there is under or overspending in budget/contracts that the reasons for the same are published on the OPW's website on an annual basis;*
- *the OPW assesses where project planning may be expedited and some aspects of the processes run in parallel, or overlap where possible, to reduce delays in commencing flood relief schemes;*



- *where there has been a significant delay in the physical commencement of a flood relief scheme that the project is reassessed from the viewpoint of community benefits, innovative strategies, and environmental impacts; and*
- *the OPW provide up-to-date information on its public website in relation to flood relief schemes.*

#### **OPW update:**

The project management for a flood relief scheme includes a strong communication focus during its design and construction. This includes a dedicated project website that provides key project information, including programme updates. Over the past two years, the OPW has provided a link to all dedicated project websites through the OPW's flood website at [www.floodinfo.ie](http://www.floodinfo.ie). This interactive website also provides valuable information to other agencies, including emergency response agencies and the public on flood risk and how to report a flood event.

The OPW in partnership with Local Authorities is leading the largest delivery of flood relief schemes undertaken by the State. The 2018 Flood Risk Management Plans, the output from the OPW's Catchment Flood Risk Assessment and Management (CFRAM) Programme, provide the evidence for the Government's €1.3bn investment in some 150 additional flood relief schemes, under the National Development Plan to 2030, as part of Project Ireland 2040.

Designing flood relief schemes is complex, and requires input from a highly specialised and limited pool of professional engineers. This specialism means that a phased approach to the national programme of some 150 flood relief schemes is required and has been adopted.

This prioritised approach and investment has allowed the OPW to treble the number of schemes at design and construction to 90. The approach to prioritising schemes means that together with the 51 schemes completed, work is underway or complete to protect 80% of at risk properties.

There are five stages to completing a flood relief scheme:

- Stage 1: Option Assessment, Scheme Development and Design
- Stage 2: Planning / Development Consent Stage
- Stage 3: Detailed Design & Works Tender
- Stage 4: Construction
- Stage 5: Handover



Designing and delivering flood relief schemes involves assessing the potential risk and impact to an area from various flooding events; considering a range of options, including environmental options, to manage that risk; considering and assessing the impact of options on the environment; ensuring the scheme can be adapted to future climate change scenarios; and assessing the economic viability for investing in a scheme and within that assessment the opportunities for public realm. Scheme design also has to ensure that by solving the flood risk in one area it does not create a risk elsewhere.

The stages and rigor adopted by the OPW to completing a scheme takes by its nature some years to bring a scheme through development, planning, detailed design, procurement and construction. Careful management of the project risks can reduce the extension of the programmed time and associated costs.

While the five scheme stages are sequential, with limited opportunity to expedite work in parallel across stages, the OPW's project management approach on flood projects does bring efficiencies and facilitate some stage overlap, and reduces the period of construction, for example:

- work on Stage 3, detailed design is progressed in parallel with Stage 2 when a planning application for a scheme is under review,
- opportunities for early and advance works are identified and actioned, where appropriate, such as removal of invasive species, and
- liaising with public utility organisations to ensure synergies and efficiencies are achieved with our respective planning and delivery of major capital works in a community.

This project management approach helps reduce the scope of works for a flood relief scheme and minimises the overall disruption to a community.

Since the publication of the Public Spending Code in 2019, the OPW has updated its governance for investing in a flood relief scheme through all four decision gates. At each decision gate the business case for a scheme and its economic viability are assessed. The environmental opportunities as part of a scheme's design and construction, and the impact of a scheme on the environment, are also fully assessed to inform a preferred option and decision on whether to proceed with a scheme.

In parallel, the OPW's Minor Flood Mitigation Works and Coastal Protection Scheme provides funding to local authorities to undertake minor flood mitigation works or studies, costing up to €0.75 million each, to address localised flooding and coastal protection problems within their





administrative areas. For those communities, identified in the Flood Risk Management Plans, where work to design a major flood relief scheme has not yet begun, the OPW proactively promotes this scheme with local authorities to help mitigate flood risk.

A flood relief scheme is often critical for the sustainability of a community. Designing such schemes requires local knowledge and input from the local community to both inform the source, extent and impact of flooding, and the community opinions and preferences are critical to inform viable options to manage the community's flood risk.

There is typically a strong local interest in a flood relief scheme. The programme for designing such a scheme includes at least three series of public information and consultation days. These are advertised using national, local and social media. These public events are held in each local community at which members from the flood project design team will be present to explain to, discuss with and listen to members of the community and public. During COVID-19 restrictions, these public events did continue through virtual online consultations. These consultations provide a wide and diverse range of views that help to inform the scheme options.

Public consultation also involves reaching agreement with landowners for use of private lands on which schemes are sometimes built.

As part of OPW's ongoing review and enhancing of its communications on flood projects, over the past two years, the OPW has updated its website on its approach to managing, designing and constructing a flood relief scheme, together with budgeting and expenditure on flood relief schemes.

### **Issue 3 – Issues Identified with a Maintenance Contract**

#### **Recommendation 3:**

*The Committee recommends that:*

- *the OPW reviews its tender specifications for maintenance contracts to ensure that its forecasted expenditure is accurate and to prevent the State from being exposed to unexpected costs; and*
- *the OPW ensures that works carried out under its maintenance contracts do not breach financial limits specified in those contracts. Previous failures to prevent such breaches represents poor contract management*



#### **OPW update:**

Following the Comptroller & Auditor General's report on 'Expenditure under a maintenance contract' the OPW retendered the 2022 MTMC into two separate contracts to broaden the supplier base for maintenance services and minor works to the OPW. This MTM Framework commenced on 3 May 2022. The estimated value of this Framework is €10 million per annum with a cumulative estimated value of €40 million over four years.

The OPW appointed an external Contract Administrator (CA) with quantity surveying expertise to ensure the accuracy of cost estimates. The CA carries out various tasks including:

- Evaluation, categorisation and prioritisation of requests for services,
- Monitoring and valuation of works in line with the Schedule of Rates,
- Carrying out site visits to ensure accuracy of measurements and value of works.

In addition, the OPW has developed and implemented a number of new rapid response alternatives for project delivery. They include two further separate frameworks, the Dublin Fit-Out and Refurbishment Framework, and an Integrated Services Project Delivery Framework, which is a nationwide delivery option available since 2021. These alternative contract arrangements substantially reduce the reliance on the MTM Framework for the delivery of works going forward, thereby ensuring the accuracy of the contract estimates.

#### **Issue 4 – The Development of a Garda Complex at Military Road, Dublin 8**

##### **Recommendation 4**

*The Committee recommends that the OPW develops a detailed contingency plan to accommodate the staff in Harcourt Square if the Military Road development is not completed on time. The Committee requests a copy of this plan upon its completion.*

*The Committee further recommends that the OPW keeps all its projects in the planning stages under review to ensure that any changes, such as staff increases or operational change, are incorporated into the plans and that construction does not commence until all parties are satisfied that the project will meet the needs of the client Department, both at the time and into the future. This will help ensure that public funds expended on capital projects provide long-term value-for-money for the State and the taxpayer. Failure to proactively manage capital projects in this way can result in additional expenditure.*

#### **OPW update:**

As recommended, the OPW in collaboration with An Garda Síochána developed a detailed contingency plan to accommodate the staff in Harcourt Square if the Military Road development is not completed on time. The contingency plan had a number of options and included the temporary refurbishment of the garage in Garda HQ, leased buildings and state owned buildings. The Military Road development has been completed on time and handed over to An Garda



Síochána. The relocation of An Garda Síochána personnel to the Military Road development is nearly completed. The vacation of Harcourt Square is well progressed and is on track to be completed before the end of 2022.

The contingency plan is commercially and security sensitive and cannot be shared with the committee before the move from Harcourt Square is completed.

The OPW does not progress a project beyond the planning stage until the brief and scheme is agreed with the client to ensure that any changes, such as staff increases anticipated at the time or operational change, are incorporated into the scheme. A key approval project gateway is planning permission approval after which the size of the physical building cannot be changed. Before proceeding, the Approving Authority and the OPW must be satisfied that projects meet the current and expansion needs of the client.

## **Issue 5 – Vacant Garda Property**

### **Recommendation 5**

- *the OPW actively works to ensure that the timelines provided to the Committee for the disposal of vacant Garda stations are met;*
- *any other vacant Garda property, such as former Garda residences, are reviewed and that timelines for use or disposal of these properties are developed; and*
- *That decision are made before the end of 2021 for stations under consideration for other State uses. If Garda stations under consideration for additional State use are not concluded by the end of 2021, the properties should be re-evaluated to determine whether any State or community uses are possible.*

### **OPW update:**

#### **1. Overview**

The Office of Public Works (OPW) manages a property portfolio in excess of 2,500 properties ranging from heritage buildings, commercial office blocks, green field sites, warehouses, Coast Guard Stations and Garda Stations. As would be the norm in such a large portfolio, at any given time, there will be a number of properties being refurbished or vacant. The State will always retain a number of vacant properties for future use. As a matter of policy, no property or site is disposed of until there is absolute certainty that there is no alternative State use for that property.

The OPW continues to manage the disposal of its surplus properties in line with its disposal policy and with the relevant DPER circulars.



## 2. Former Garda stations

In relation to the 139 Garda stations that were closed arising from An Garda Síochána's Rationalisation Programme, 2012/2013, a breakdown of the status of the 139 properties is as follows:

<b>Table 1: Summary - 139 Closed Garda Stations</b>	<b>Number</b>
Disposed	55
Being prepared for disposal or alternative use – <i>see Table 2 below</i>	<b>31</b>
Properties occupied by serving/retired members of An Garda Síochána	10
Under Consideration / required by An Garda Síochána	10
Retained for alternative State use	10
Former Garda stations where Lease has been surrendered	9
Assigned for community use	8
To be reopened as a Garda station as part of review	6
<b>Total</b>	<b>139</b>

At present, a total of 31 former Garda stations being prepared for disposal or alternative use. The current status of the remaining 31 properties is categorised as follows:

<b>Table 2: Status of remaining Garda stations (31)</b>	<b>Number</b>
Being prepared for disposal in Q1 2023	5
Being prepared for disposal in Q2 to Q4 2023	13
Intra-State transfer to Local Authorities (D/PER Circular: 11/15)	4
Alternative State use being examined	4
Being progressed by way of 20-year leases to Local Authorities for community use	3
Licences being considered with community groups	2
<b>Total</b>	<b>31</b>

## 3. General information relating to surplus properties – working with other State bodies

In terms of potential alternative State uses, including for former Garda stations, the OPW notifies all relevant stakeholders of any vacant, surplus properties that may be considered for housing or other State use. This includes notifying the Land Development Agency and the relevant local authorities or other State bodies.

### 3.1 Housing

While the provision of social/affordable and emergency residential accommodation is a function of the Local Authorities and the Department of Housing, Planning and Local Government, the OPW has, in recent years, provided:



- eight residential units in Dublin City Centre to the Peter McVerry Trust,
- five former Garda residences in Templemore to Tipperary County Council for social housing,
- two former Garda station properties at Goleen and Adrigole to Cork County Council for social housing,
- one building in Crumlin, Dublin to Dublin City Council for use as a Family Hub.

In addition, there are a number of properties that are in the process of being transferred to local authorities and the Land Development Agency, as follows:

- seven buildings and a site that are in the process of transferring to Cork County Council for social housing,
- two former Garda residences that are transferring to Tipperary County Council for social housing,
- the former Central Mental Hospital, Dundrum which will be transferring to the Land Development Agency for housing purposes,
- a property at Carrigrohane, Cork City that is in the process of being leased to Cork City Council for housing purposes,
- the former Garda station at Inagh that is to be used as a local housing office by Inagh Housing Association following its transfer to Clare County Council.

It should be noted that buildings owned or managed by the OPW are primarily commercial offices, Garda stations, warehouses or others that are not suited to residential use. However, the OPW has actively engaged with the Department of Housing, Planning and Local Government in providing information on any non-operational, vacant buildings owned. The Department/Local Authority then assesses those buildings in terms of what might be suitable for residential use.

### **3.2 Accommodation for Ukrainian Refugees**

The OPW has been asked by Government to develop the programme of rapid build modular homes, on behalf of the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) which is the lead Government Department for the emergency humanitarian response. The OPW is the Sponsoring Agency for the purposes of rolling out the programme, with the Department of Housing, Local Government and Heritage (DHLGH) in identifying sites that might be suitable.

Those sites are then assessed by the Department (DCEDIY) in terms of location, access to local facilities, with the OPW undertaking the necessary technical site assessments. When sites are



identified as suitable, the OPW will be responsible for site preparation and the acquisition and installation of the homes onto the sites. Thereafter, the DCEDIY will take over the management of the sites and the housing units.

In that regard, the OPW is contributing three of its sites for development – at Cavan, Thurles and Claremorris. These sites are included in an initial phase of site development on State owned lands around the country to achieve a target of an initial 500 housing units by February 2023. Other sites in the first phase are in Cork and Sligo (owned by the Local Authorities), with a number of other sites currently being assessed for further phases over the coming months, in order to reach the target number of homes. In addition, the OPW has made a large property in Shannon available to DCEDIY, which is currently being adapted for emergency accommodation.

The OPW has provided a list of its vacant properties, including former Garda stations, to DCEDIY, DHLGH and the relevant local authorities so that they can assess them for suitability for social or humanitarian housing purposes. The OPW continues to engage with other State bodies on a regular basis in this regard.