



Ms Sarah O'Farrell
 Clerk
 Committee of Public Accounts
 Leinster House
 Dublin 2

31 October 2023

Ref: S1459 PAC33

Dear Ms O'Farrell,

I refer to your letter to Mr Brendan McDonagh dated 17 October 2023 and the Committee's requests therein which are copied and responded to in sequence below.

1. A breakdown, by percentage, of direct sales from NAMA to the Land Development Agency, approved housing bodies, and local authorities.

The following table shows the number of direct sales of residential units by NAMA debtors or receivers to the Land Development Agency, approved housing bodies, and local authorities. The table does not include:

- a) the 1,366 social housing units owned by NARPS, NAMA's social housing SPV,
- b) units leased by NAMA debtors or receivers to the LDA/AHBs/LAs,
- c) the sale of units with social housing tenants in situ to third parties, or
- d) social housing units delivered on NAMA-funded residential developments under Part V planning obligations.

Year sale was contracted	Land Development Agency	Approved Housing Bodies	Local Authorities	Total no. of units
2012		145	68	213
2013		202	18	220
2014		78	12	90
2015		269	19	288
2016		98	12	110
2017		37	28	65
2018		18		18
2019		106		106

2020		9		9
2021		71	2	73
2022		114		114
2023	95			95
Total	95	1,147	159	1,401
As % of social/affordable direct sales	7%	82%	11%	

2. A note detailing assets that had full planning at the time of NAMA acquiring them and on whether planning permissions were maintained.

The bank assets (loans secured mainly by property) acquired by NAMA from Participating Institutions in 2010 and 2011 were secured by over 47,000 acres of development land in Ireland. Table 1 sets out the development land by acreage at the time of acquisition (that is, in 2010 / 2011) and shows that 34% was in the then Dublin Metropolitan area with 32% in the rest of Leinster, 22% in Munster and 12% in the rest of Ireland.

Table 1 – Development land secured to NAMA by location

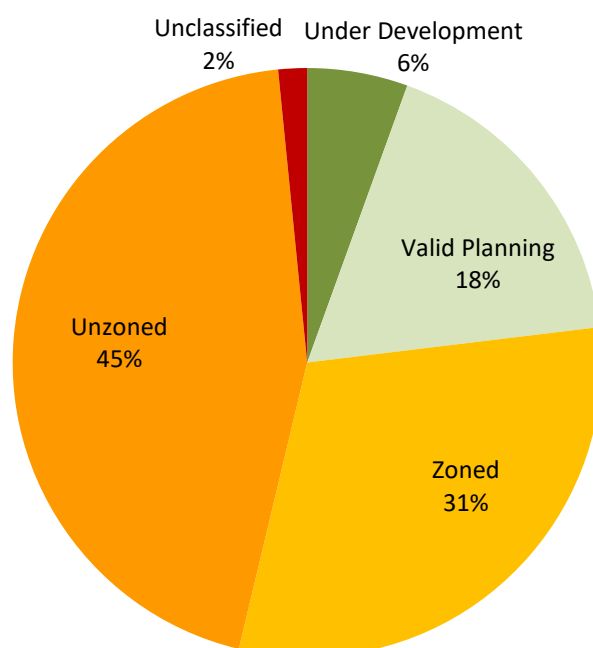
Location	Acreage
Dublin Centre	111
Dublin South	6,857
Dublin North	3,804
Dublin West	2,177
Rest of Dublin Metropolitan	3,020
Rest of Leinster	15,307
Munster	10,436
Connaught and Ulster (ROI)	5,536
Total	47,248

Figure 1 sets out the planning status of the development land secured to loans acquired by NAMA at the time of acquisition (that is, in 2010 / 2011). The secured development land comprised a variety of planning statuses. It is estimated that 45% of the development land was unzoned and 31% had a development zoning. **At the time of acquisition, 18% (c8,300 acres) of the development land secured to NAMA had planning permission.**

It should be noted that NAMA's portfolio is dynamic and this analysis is based on the information as at the time of acquisition. Since inception, NAMA has made significant progress in reducing

its loan portfolio through asset sales, loan sales and refinancing by NAMA debtors: loans and receivables balances, which stood at €22.8 billion at the end of 2012, had fallen to €0.5 billion by the end of June 2023.

Figure 1 - Development land secured to NAMA by planning status



NAMA's statutory commercial mandate, based on Section 10 (2) of the NAMA Act 2009, is to obtain the best achievable financial return for the State, having regard to the cost of acquiring and dealing with bank assets and its own cost of capital and other costs, and any other factor which NAMA considers relevant to the achievement of its purposes. In the context of this overarching statutory commercial mandate, NAMA's policy for managing development land secured to it has been to protect and enhance realisable value pending its development or disposal by NAMA debtors / receivers.

A key part of NAMA's activity in this regard has been to add value to its secured assets through the funding of planning applications and pre-planning feasibility assessments. This activity entailed ensuring that planning permissions were maintained where appropriate. This is an important part of NAMA's work as it enhances the value of secured assets, consistent with NAMA's commercial mandate. By way of example:

- i. In 2011, NAMA's in-house planning team, in consultation with debtors/receivers and their appointed planning consultants, commenced a comprehensive portfolio-wide

assessment of assets secured to NAMA. The purpose of the assessment was to identify those assets that had an extant planning permission and to assess them on a case-by-case basis to establish their relevance and whether an application to extend the duration or life of the permission could or should be made to the relevant planning authority. Where it was deemed appropriate to do so, an application to extend the duration or life of the permission was made to the relevant planning authority. A planning authority must grant the extension where certain criteria contained in the Planning and Development Act 2000 (as amended) are met and must refuse to grant where they are not met. At that time, these criteria included where there were conditions of a commercial or economic nature that prevented development. The judgement is for the planning authority and there is no opportunity to appeal that decision.

- ii. It should be noted that in the period following the financial crisis, there were some cases where the existing planning was no longer appropriate or viable due to commercial, economic and / or infrastructural challenges. In some cases, seeking a planning extension was not possible because new Development Plans and Ministerial Guidelines issued in subsequent years changed policies and standards around the construction of housing and superseded many of the planning permissions extant at the time NAMA acquired the relevant bank assets from the five participating institutions.
- iii. In 2014, a dedicated team tasked with facilitating and funding 4,500 residential unit was established in NAMA. At this stage, an assessment was carried out to establish the appropriateness of extant planning permissions and analyse all secured residential zoned land for future residential development potential. Certain extant planning consents had become commercially unviable to implement due to changing market conditions. Therefore, the key focus for the NAMA planning team was to prepare planning strategies for each site so that planning applications for suitable sites could be advanced as early as possible.
- iv. In November 2015, NAMA expanded its residential delivery programme and the Minister for Finance tasked NAMA with facilitating the delivery of 20,000 residential units. A detailed site-by-site analysis was conducted for the sites which were considered most likely to contribute towards meeting NAMA's 20,000-unit target. At the time, this analysis indicated that sites with the capacity for 13,200 units were commercially viable and that sites with the capacity for 6,800 units were not commercially viable.

- v. NAMA's focus has been on maintaining and/or securing new or improved planning permission for, and otherwise improving the viability of, development sites which secure its loans. Since 2016, NAMA debtors and receivers have submitted planning applications for over 23,600 residential units, some of which are currently in the planning system, and were successfully granted planning permission for 18,300 units to date. Through careful management, strategic assessment and selective funding, the overall success rate of NAMA-funded planning applications has been very high.

3. The minutes of the board meeting convened to sign off on the final sale of the €265,000 loan sale referred to in the Comptroller and Auditor General's report.

Minutes from the Board meeting of 19 November 2020 are appended to this letter (**Appendix 1**). Elements of the minutes have been redacted pursuant to NAMA's legal obligations under sections 99 and 202 of the NAMA Act 2009 to protect confidential debtor and other commercially sensitive information.

4. Any report given at that board meeting with regard to intimidation and the rationale for the sale price.

The credit request paper presented to the Board meeting of 19 November 2020 is appended to this letter (**Appendix 2**). Elements of the paper have been redacted pursuant to NAMA's legal obligations under sections 99 and 202 of the NAMA Act 2009 to protect confidential debtor and other commercially sensitive information.

5. Any reports relating to investigations by An Garda Síochána going back to 2012.

As stated by NAMA CEO at the PAC meeting of 28 September 2023, there was an attempt by the debtor in 2012 to intimidate two NAMA staff members who were dealing with the debtors at that time. The incident was referred by the NAMA CEO to the Head of Human Resources in the NTMA (the NTMA provides HR services for NAMA staff) who engaged with Gardaí in Pearse Street Garda Station. The Gardaí provided security advice to the two individuals involved.

Given the incident occurred 11 years ago, and as the relevant staff members have since left NAMA, NTMA HR does not currently hold any records relating to the event.

There have been no other reported incidents of the debtors attempting to intimidate NAMA staff.

6. The number of affordable homes that NAMA has delivered.

The legislative requirement for affordable housing is prescribed in the Affordable Housing Act 2021. This Act amended Part V of the Planning and Development Acts by increasing the social housing requirement from 10% to 20%, half of which may be “affordable purchase” and/or “cost rental”.

As all NAMA-funded residential developments had received final grant of planning permission prior to the enactment of the 2021 Act, the Part V requirements of those permissions remain at 10%, per the previous planning regulations. Accordingly, there are no legislative obligations on NAMA debtors or receivers to provide “affordable” housing beyond the 10% social housing provided under the previous Part V requirements.

Notwithstanding this, NAMA has recently facilitated the sale of 95 residential units to the Land Development Agency which we understand will be let by the LDA as “cost rental” homes. A further 72 units have been sold to Túath which we also understand will be let as “cost rental” homes.

I trust that you will bring this letter to the attention of the Committee and the information provided herein will be of assistance to them.

Yours faithfully,

Mary Lawlor

Senior Communications and Public Affairs Manager

National Asset Management Agency

11. [REDACTED] Connection - Credit Request

Matter for Board Approval**Board Papers:** [REDACTED] *Connection - Credit Request*

The Board noted the contents of the paper as presented. [REDACTED] [REDACTED] advised that these loans are secured by charges over 6 Donegal based assets. A receiver, [REDACTED] was appointed over these properties by NAMA in October 2018 and resigned his appointments in January and May 2020, having been unable to conclude sales of some of these properties to Donegal County Council ("DCC") and the fact that no sales agent would take on the role to market the properties.

[REDACTED] advised that the company looking to purchase the loans [REDACTED] [REDACTED] is a newly set-up entity understood, following enquiries with its solicitor over the days preceding the Board meeting, to be owned by [REDACTED] which is an update to what is circulated in the Board paper and circulated earlier to Credit Committee. However as noted in the paper, the promoter of the entity [REDACTED] a non-NAMA debtor and brother of [REDACTED]

[REDACTED] noted that whilst the request was unpalatable it is the only option to monetise the assets. The proposed sale price is in line with an open market valuation prepared by [REDACTED] in October 2020 of the assets described as Lot 1 in the paper. The remaining assets have been valued at nil by [REDACTED] again in October 2020. [REDACTED] reiterated the following points in support of the proposal as set out in the Board paper:

- (1) Expediency - NAMA will receive a lump sum payment of €265,000 by 31 March 2021;
- (2) Superior to Alternatives - The proposed loan sale matches the gross figure agreed with DCC for some of the secured properties (described as Lot 1 in the paper) of €265k but it exceeds the current projected net proceeds of €206k.
- (3) Value of other secured assets - Despite being in place for some years, the Receiver was unable to monetise the other assets (described as Lot 2 & 3 in the paper) prior to his resignation in January 2020 due to intimidation of sales agents and potential litigation involving these assets.
- (4) Costs of Litigation - The Debtor has threatened to commence litigation to frustrate the sale of the Donegal assets and any litigation could be prolonged and the potential cost to NAMA to defend could exceed the current net forecast for the remaining assets.

██████████ advised that approval of the proposed loan sale would be a key step in the close-out of this Connection as the Donegal properties are the final secured assets within the debtor connection. ██████████ noted that the management of this connection has been very challenging and has required significant staff time with intimidation and threats being pursued against NAMA previously. CEO noted that this intimidation and threats was reported to the Gardai.

Chairperson of Credit Committee ("CCC") noted that this was at Credit Committee on 11 November and the Committee acknowledged that, while the current proposal in relation to the remaining secured assets in this connection is unpalatable, it is the only viable commercial option at present to satisfy NAMA's Section 10 obligations, noting also that intimidation and threats have been pursued against NAMA and the Receiver. CCC advised that the

Committee is satisfied to recommend the requests as outlined to Board. CCC queried if there was any information available on ██████████

██████████ This confirmation came through from the ██████████ solicitor in the days prior to the Board Meeting. From CRO records, the same ██████████ is not currently listed as a director of any other companies registered in Ireland.


The Board acknowledged the points made by ██████████ in support of this proposed loan sale and agreed that it is the only viable option at present to satisfy NAMA's Section 10 obligations. ██████████

██████████ advised that a long standing and experienced receiver was in place for some years for this connection and was unable to monetise these assets. In addition to this, in December 2019, ██████████ advised that a debt purchaser that has been active in the market, ██████████ was approached to assess their appetite in acquiring the loans subject of this credit request. ██████████ had no interest which would also suggest that these loans would be very difficult to sell on the open market.




██████████ noted that NAMA has also made a claim in the bankruptcy of ██████████ where distributions will be owed to NAMA. The loan sale documentation will need to make it clear that such distributions will all flow to NAMA, none will be remitted to the new loan holder and the loan sale should be conditional on this. Chairman thanked ██████████ and ██████████ for their work on this and asked for appreciation to be passed onto the team in what has been a difficult number of years working on this connection.

Following due consideration and discussion, the Board resolved to approve the credit requests as outlined:

1. To accept a €265k offer from ██████████ to purchase the loans of ██████████ from NAMA. These loans total €10.4m PAR debt and €6.26m NAMA debt.
2. To sub-delegate to CEO and HoAM&R any non-material changes relating to this proposed loan sale.







**NAMA BOARD MEETING****Thursday 19th November 2020****AGENDA ITEM NO: 11****PRESENTER:** **FOR BOARD APPROVAL**

RECOMMENDATION – This item is for Board approval**It is recommended that the Board approves the following requests:**

1. NAMA AMR is seeking approval to accept a **€265k** offer from  to purchase the loans of  from NAMA. These loans total **€10.4m PAR debt and €6.26m NAMA debt**. This company is a newly set-up entity, promoted and understood to be owned by  (not a NAMA debtor) who is the brother of the 3 personal obligors of the loan facilities. One of these parties is now deceased; the others are both discharged bankrupts.
2. Approval is sought to sub-delegate to CEO & HoAMR any non-material changes relating to this proposed loan sale.

Background/Rationale

This SCR was presented to the Credit Committee on 11 November 2020.

These loans are secured by charges over 6 Donegal based assets owned . This includes 2 partially unfinished housing developments at  (26 units) and  (16 units) and 4 Donegal agricultural sites. A receiver, , was appointed over these properties by NAMA in October 2018. He resigned his appointments in January and May 2020, having been unable to conclude sales of some of these properties to Donegal CC and the fact that no sales agent would take on the role to market the properties. **In addition in December 2019 AMR approached a debt purchaser  to assess their appetite in acquiring the loans subject of this credit request.  had no interest which would also suggest that these loans would be very difficult to sell on the open market.**

The key Rationale for this recommendation is outlined on page 3 of the paper and can be summarised as follows:-

- **Expediency-** NAMA will receive a lump sum payment of €265,000 by 31 March 2021.
- **Superior to Alternatives-** The proposed loan sale matches the gross figure agreed with DCC for some of the secured properties of €265k but it exceeds the current projected net proceeds of €206k (after VAT & disposal costs).
- **Value of other secured assets-** the receiver was unable to monetise the other assets (not sale agreed to DCC) prior to his resignation in January 2020. This was supported by [REDACTED] advice that suggested that these assets were not marketable due to debtor intimidation of sales agents and potential litigation involving these assets.
- **Costs of Litigation-** the debtor has threatened to commence litigation to frustrate the sale of the Donegal assets. There is no certainty on how long litigation would take to resolve and the costs may be significant.
- **Status of Corporates-** both corporate debtors have significant negative net worth positions and both were previously struck off.
- **Connection close out-** the Donegal properties are the final secured assets within the debtor connection. The management of this connection has been very challenging and has required significant staff time with intimidation and threats being pursued against NAMA and the Receiver. The approval of the proposed loan sale would be a key step in facilitating the close out of the Connection.

The paper discussed at 11th November Credit Committee is attached.

Credit Committee Minutes Extract 11 November 2020 - attached below

Matter for Approval (and Recommendation to Board)
Committee Paper: Credit Request (Loan Sale)

The case was introduced by AMR and a thorough discussion followed on the credit requests included therein.

The Committee noted that the company looking to purchase the loans [REDACTED] is a newly set-up entity understood to be owned by [REDACTED] (not a NAMA debtor). [REDACTED] is the brother of the 3 personal obligors (all bankrupts) of the loan facilities and is funding the €265k payment from his own resources. The Committee further noted the following to support the loan sale as opposed to a piecemeal sale of the remaining connection assets:

- The Debtor has threatened to commence litigation to frustrate the sale of the Donegal assets and it is believed he has the means to fund this litigation. Any litigation could be prolonged and the potential cost to NAMA to defend could exceed the current net forecast for the remaining assets
- The approved sale of the "Lot 1" assets to Donegal County Council ("DCC") is not proceeding as DCC is not willing to complete the purchase in case the sale of these assets is affected by any litigation that might commence by the debtors in relation to the [REDACTED] asset.
- The Receiver was unable to monetise the other assets (Lot 2 & 3) prior to his resignation in January 2020 due to Debtor intimidation of sales agents and potential litigation involving these assets. The Receiver has also resigned.
- There are potentially serious health and safety issues associated with the unfinished houses which further adds to the difficulty of securing a purchaser.

The Committee stated that while the current proposal in relation to the remaining secured assets in this connection is unpalatable, it is the only viable option at present to satisfy NAMA's Section 10 obligations given the intimidation and threats being pursued against NAMA and the Receiver. Approval of the proposed loan sale would be a key step in facilitating the close out of the connection which has been very challenging to date and has required significant staff time. AMR are confident [REDACTED] has the ability to fund the €265k payment which is expected to be received by 31 March 2021.

Following a detailed discussion, the Committee agreed to **recommend to Board** the proposal as presented by AMR.

Assessment

Credit Proposal Form C	
Reference Number	
Date Received by NAMA	29/09/2020

Debtor Details			
Connection Name		Borrower Name	
Connection PAR Debt (€)		Borrower PAR Debt (€)	
Connection Gross NAMA Debt ex FV		Borrower NAMA Debt (€)	
Connection Gross NAMA Debt incl FV			
Connection Security (€)	265,000 EUR	Borrower Security (€)	265,000 EUR
Connection Credit Grade	3C	Borrower Legal Entity	Private Limited Company (Ltd)
		If other please specify	

Delegated Authority Type	Loan Disposals
Level of NAMA Delegated Authority	Board

Rationale for using Delegated Authority			
Request	Decision Type	Request Comment	DA Level
1.	L. Approval of Loan disposals: 	Based on gross sales proceeds <75% of NAMA Nov '09 valuation <u>OR</u> an exception to Loan Sale Policy: up to €50m. The November '09 valuations for the secured properties relating to the proposed loan sale total The proposed loan sale price of €265,000 represents of the November '09 valuation and it is also an exception to Policy as the loan sale will not be openly marketed.	CEO & HoAMR/DHoAMR
2	Sub-delegation to CEO & HoAMR/DHoAMR of any non-material changes.	n/a	CEO & HoAMR/DHoAMR

NAMA AMR is seeking approval to accept a €265k offer from to purchase the loans of from NAMA. These loans total €10.4m PAR debt and €6.26m NAMA debt. This company is a newly set-up entity, promoted and understood to be owned by (not a NAMA debtor) who is the brother of the 3 personal obligors of the loan facilities. One of these parties is now deceased; the others are both discharged bankrupts.

The requirements of the Loan Sale completion procedure and Loan Sale DNS Central Repository Filing Requirements Procedure are not applicable as these procedures relate to openly marketed multi connection portfolio loan sales.

Reference Number: [REDACTED]

Credit Proposal Type (Select multiple if applicable)		
<input type="checkbox"/> Appoint "Fixed Charge" Receiver	<input type="checkbox"/> Facility Amendment	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Appoint Corporate Receiver / Manager	<input type="checkbox"/> Facility Extension	<input type="checkbox"/> Other
<input type="checkbox"/> Appoint Other Insolvency Practitioner	<input type="checkbox"/> Lease	<input type="checkbox"/> Staple Finance
<input type="checkbox"/> Asset Sale	<input checked="" type="checkbox"/> Loan Sale	<input type="checkbox"/> Rent Abatement
<input type="checkbox"/> Debt Compromise	<input type="checkbox"/> New Money	<input type="checkbox"/> Mortgagee in Possession
<input type="checkbox"/> Enforcement	<input type="checkbox"/> New Money - Capex	<input type="checkbox"/> New Money Dev-Funding

Summary of Proposal

Credit Request 1

NAMA AMR is seeking approval to enter into a loan sale with an entity promoted and understood to be owned by [REDACTED] for the loans of corporate obligors [REDACTED]. The proposed loan sale price is €265,000 and is to be funded by [REDACTED] (who is not a NAMA debtor), a brother of [REDACTED] the principals behind [REDACTED]. The Par Debt obligations of [REDACTED] total €10.4m ([REDACTED]) and guarantee obligations total [REDACTED].

NAMA currently holds charges over 6 Donegal based assets owned by [REDACTED]. This includes 2 partially unfinished housing developments at [REDACTED] (26 units) and [REDACTED] (16 units) and 4 Donegal agricultural sites. A receiver, [REDACTED] was appointed over these properties by NAMA in October 2018. He resigned his appointments in January and May 2020, having been unable to conclude sales of some of these properties to Donegal CC and the fact that no sales agent would take on the role to market the properties. A breakdown of the asset holdings is set out in Table 2 on page 5 of this report. The properties are grouped into three lots. Details of the estimated value of these lots are detailed below:-

Lot 1- The EMV of this Lot is €265k which equates to a May 2019 offer made by Donegal County Council ("DCC") for these holdings. The receiver who was in situ at the time recommended acceptance of this offer. His recommendation was supported by a letter from [REDACTED] dated March 2019 (addressed to the Receiver & NAMA) recommending that the offer be accepted. An report from [REDACTED] dated 4th October 2020 valuing these assets at €265,000 has since been received. Notwithstanding that the assets have been sale agreed since May 2019 DCC has failed to conclude the sale. DCC was unwilling to proceed with the purchase citing concerns about potential threatened litigation by the debtors that may affect the title to the sites. The receiver resigned his appointment over these assets in May 2020 citing the fact that he could not get any sales agent to take on the role to sell the assets.

Lot 2 & 3- The remaining residual Donegal secured assets are deemed to be not marketable and hence to have a **nil value** in line with a [REDACTED] valuation report dated August 2019 (addressed to the receiver & NAMA). The rationale for this view was based on the following: threats and intimidation from the debtors (which meant no agent was prepared to take on the appointment of selling these assets); uncertainty over the costs involved in completing the unfinished houses; and the difficulty anticipated in securing vacant possession of both the completed housing units and sites. The receiver resigned his appointment over these assets in January 2020. An updated report from [REDACTED] dated 23rd October 2020 valuing these assets at nil value has since been received.

As no sales agent is prepared to take on the role of selling these assets NAMA AMR is firmly of the view that it is not possible to monetise these assets other than via the proposed loan sale set out under credit request 1. **In addition in December 2019 AMR approached a debt purchaser [REDACTED] to assess their appetite in acquiring the loans subject of this credit request. [REDACTED] had no interest which would also suggest that these loans would be very difficult to sell on the open market.**

Credit Request 2

AMR further requests sub-delegation to CEO & HoAMR/DHoAMR of any non material changes to any approved loan sale agreement including but not limited to a requirement for any possible extension of the timing to execute the agreement beyond the proposed date of 31/12/2020. It is intended that the agreement would be executed in advance of this date.

Any approved loan sale will be subject to all obligors within the Debtor Connection together with NAMA, NALM and all NAMA group entities to agree to a waiver of all legal claims against one another arising in any jurisdiction whether threatened or in being, the objective being to address all outstanding actual and threatened disputes.

NAMA AMR Rationale for Recommendation

- **Expediency**- NAMA will receive a lump sum payment of €265,000 by 31 March 2021.
- **Superior to Alternatives**- Donegal County Council ("DCC") has confirmed it is not willing to complete the purchase of the 18 [REDACTED] partially finished houses & 2 sites ("Lot 1") without satisfactory clarification of a potential dispute of which it has been made aware by the debtors between the debtors and NAMA. **The proposed loan sale matches the gross figure agreed with DCC for these properties of €265k but it exceeds the current projected net proceeds of €206k (after VAT & disposal costs).**
- **Value of other secured assets**- the receiver was unable to monetise the other assets (Lot 2 & 3) prior to his resignation in January 2020. This was supported by [REDACTED] advice that suggested that these assets were not marketable due to debtor intimidation of sales agents and potential litigation involving these assets.
- **Costs of Litigation**- the debtor has threatened to commence litigation to frustrate the sale of the Donegal assets. There is no certainty on how long litigation would take to resolve and the costs may exceed current net forecasts (€206k).
- **Status of Corporates**- both corporate debtors have significant negative net worth positions and both were previously struck off. There is no value outside of the secured charged assets (EMV of €265k). Their parent company and co-corporate guarantor [REDACTED] was previously liquidated and has PAR debt of [REDACTED] (all secured assets sold).
- **Connection close out**- the Donegal properties are the final secured assets within the debtor connection. The management of this connection has been very challenging and has required significant staff time with intimidation and threats being pursued against NAMA and the Receiver. The approval of the proposed loan sale would be a key step in facilitating the close out of the Connection. The only remaining item on this Connection is the monitoring of the bankruptcy claims submitted to the two appointed bankruptcy officials: [REDACTED]
[REDACTED]

New Money: Cumulative (since last review include current)	0 EUR
Gross Asset Sales Price	
Net Asset Sales Price	

Assessment of Proposal**BACKGROUND****Table 1: Connection Summary**

	Par Debt	Nama Debt	Guarantee	Par Debt	NAMA Debt	Guarantee
Acquisition Debt	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Current Debt	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Proposed Loan Sale Payment	245,000	245,000		20,000	20,000	

Source: PMS @ 2 November 2020

Please see Appendix 1 for details of the loans included in the proposed loan sale.

Overview

- [REDACTED]

Reference Number: [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] was appointed receiver over the Donegal assets (Lots 1, 2 and 3) on 16 October 2018.
- From the outset of this appointment, the receiver had difficulties in establishing the exact nature of the tenancies in relation to the occupied properties and securing rental income as the tenants viewed [REDACTED] as their landlord.
- The receiver was aware on his appointment that DCC was interested in acquiring Lot 1. His focus was therefore on progressing that sale and on securing a buyer for the remaining asset holdings (Lot 2 & 3). [REDACTED] however had great difficulty in obtaining any agent to value/act as sales agent for Lots 2 and 3. In total, the receiver approached 10 sales agents without success primarily due to the historic ownership of the site, concerns over lack of building and planning compliance certificates, the lack of vacant possession and the cost and likely litigation associated with attempting to secure vacant possession.

Litigation History

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED] We are of the view that these matters have largely already been raised and dismissed before various courts in the UK and Northern Ireland.

Background to Loan Sale Discussions

- In November 2019, the debtors commenced sending correspondence to both the receiver and DCC claiming that no receiver should have been appointed to [REDACTED] properties and alleging that the aforementioned apartments in [REDACTED] had been sold below market price. It was further claimed that if the [REDACTED] was sold at market price the full par debt would have been cleared leaving surplus funds to clear the debt relating to the Donegal assets and therefore there would have been no need to appoint a receiver. Furthermore, they suggested that any residual debt owing [REDACTED] could have been repaid and both would have avoided the bankruptcy processes.
- At the end of November 2019, the Debtors requested to meet the receiver to discuss the properties and specifically the [REDACTED] property. On legal advice the receiver declined this meeting and legal letters from the debtors' solicitors commenced with a significant number of queries relating to the [REDACTED] property.
- There has been correspondence between the Chief Legal Officer in NAMA, [REDACTED] and their solicitor since March 2020 on these points, following direct contact by [REDACTED]. Please see the NAMA Legal comment for more information on this line of correspondence.
- A meeting was proposed to take place between NAMA Legal/AMR and [REDACTED] at the end of March 2020 to discuss the

Reference Number: [REDACTED]

remaining properties in this connection (i.e Lots 1, 2 and 3), but this meeting was postponed due to Covid-19. This meeting took place on 29 June 2020 between the debtors and Chief Legal Officer and Head of Asset Management and Recovery. At the end of this meeting an offer was finally made by the debtors to settle all of the obligations of [REDACTED] to NAMA for €265,000 in return for NAMA releasing its security over the remaining properties located in Donegal (Lots 1, 2 and 3). (Their starting position had been to seek compensation of [REDACTED] for what they alleged was a sale at below value by the court appointed receiver of the [REDACTED] Property.) The payment was to be funded by [REDACTED]. Minutes of this meeting are attached at Appendix 2.

- Following a review of the corporate structure the Debtor's solicitor reverted in September 2020 to advise that the Debtor's preference was to settle with NAMA via the acquisition of [REDACTED] loans. It is now proposed that a newly incorporated company [REDACTED] and funded by [REDACTED] (a non NAMA Debtor), will purchase the loans secured on the Donegal properties (all remaining secured properties in NAMA) for €265,000. The loan sale option was deemed more viable [REDACTED] given [REDACTED] are dissolved companies i.e. neither of them remain on the register of companies.
- The Directors of [REDACTED] which was incorporated on [REDACTED] with an address in [REDACTED]. No shareholder details are yet available on the Companies Registration Office as no annual return as yet has been filed (given it is a newly incorporated company).
- NAMA's Chief Legal Officer and Head of Asset Management & Recovery have received confirmation from [REDACTED] solicitor that a Section 172 confirmation will be provided on behalf of [REDACTED].
- Finally, as mentioned earlier, in December 2019 AMR approached a debt purchaser [REDACTED] to assess their appetite in acquiring the loans subject of this credit request. [REDACTED] had no interest which would suggest that these loans would be very difficult to sell on the open market.

PROPERTY SECURED BY LOANS TO BE SOLD

Table 2: Property Schedule

Lot	Asset Description	Owner	EMV €	Basis for valuation
1*	18 vacant unfinished houses [REDACTED]	[REDACTED]	€253k	[REDACTED] valuation dated October 2020
	2.8 acre site [REDACTED]	[REDACTED]	€12k	[REDACTED] valuation dated October 2020
2	8 occupied units [REDACTED]	[REDACTED]	€0	[REDACTED] valuation dated October 2020
	16 units (6 tenanted/10 unfinished) [REDACTED] & 4 acre site	[REDACTED]	€0	[REDACTED] valuation dated October 2020
3	5 Acres at [REDACTED] - mixed land	[REDACTED]	€0	[REDACTED] valuation dated October 2020
	8 acres at [REDACTED] - agri land	[REDACTED]	€0	[REDACTED] valuation dated October 2020
	20 acres at [REDACTED] mixed land	[REDACTED]	€0	[REDACTED] valuation dated October 2020
	5.65 acres at [REDACTED] - agri land	[REDACTED]	€0	[REDACTED] valuation dated October 2020
	TOTAL		€265k	

*Lot 1 was sale agreed to Donegal County Council for €265k

Lot 1

- In May 2019, NAMA approved a receiver request to accept an offer from Donegal County Council of €265,500 (Inc. V.A.T.) in consideration for the assets listed in Lot 1 above including 18 unfinished vacant houses at [REDACTED]. This offer less total disposal costs of €59,564 was to result in minimum net proceeds of €205,936.
- The DCC offer was broken down between €169,000 for the 18 houses, €76.5k for the five acres [REDACTED] site and €20k for the 2.8 acre [REDACTED] site. The €169k was arrived at after attributing a figure of €120k and €100k to the 18 houses on the basis they were completed (totaling €1.9m) less the cost of completing the necessary works estimated at €1.73m. The DCC offer was reviewed by both [REDACTED] and quantity surveyors [REDACTED]. [REDACTED] were of the view that the proposed costs of €1.73m were not excessive and were based on 2017 costs which did not take into account any cost inflation. [REDACTED] in a desk top assessment prepared for the receiver (dated 21st March 2019) agreed with the values attributed to the assets by DCC and in summary concluded that the DCC offer "is representative of what would be achievable in the current market".

Reference Number: [REDACTED]

- Despite the best efforts of both the receiver and NAMA (AMR, Legal and InT), the sale to Donegal County Council did not conclude. It should be noted that the communications from the debtors alleging that NAMA has no right to enforce and appoint a receiver over these properties (Lots 1, 2 and 3) did not help efforts to complete this sale. The Receiver resigned over Lot 1 effective 15 May 2020. Any sale of Lot 1 would now require NAMA to step in as mortgagee.
- In October 2020 [REDACTED] prepared a valuation report of Lot 1 on behalf of NAMA which attributed a value of €265,000 inclusive of VAT to Lot 1. This valuation assigned a value of €191,500 to the 18 unfinished [REDACTED] houses, €61,500 to the 5 acre [REDACTED] site and €12,000 to the 2.8 acre [REDACTED] site.

Lot 2 & 3

- The receiver procured a valuation from [REDACTED] dated August 2019 (also addressed to NAMA) for Lots 2 and 3 which concluded that the assets were not marketable.
- Lot 2- The [REDACTED] report stated a **potential/likely market value** totaling €1.04m in respect to the 8 occupied [REDACTED] units (€320k or €40k per unit) and the 16 partially finished [REDACTED] units (€720k or €45k per unit).
- Lot 3- the report further assigned a **market value** totaling €300k for the 4 sites. This was based on the assessment that the subject sites were poor agriculture lands with considerable wetlands and poor drainage and attributed a value of €7,500 per acre (€300k for 40 acres).
- **Despite these potential market values, [REDACTED] recommended that the receiver (in place at the time) does not attempt to sell these assets as it is considered that they are not marketable assets.** The main reasons for this were due to the ongoing debtor threats and intimidation of tenants and local sales agents. They also referenced the likelihood of litigation, lack of vacant possession, the considerable work and costs required on the houses and the lack of Management Company in place which may result in considerable liabilities.
- The receiver resigned over Lots 2 and 3 effective 6th January 2020 having reached the view that there was no prospect of monetising these assets.
- In October 2020 [REDACTED] updated their August 2019 valuation on Lot 2 & 3 and attributed a nil value for these Lots on the basis that they remain unmarketable or unsaleable. In their assessment they state *"Residential values have not increased in the last 12 months in the local area and sales values are still below costs. All the part built estate houses need a lot of building works to bring to any suitable condition. There are no management companies in place and this prevents any house sales and this will be difficult to resolve. The additional legal costs to achieve vacant possession and establish management companies make these assets extremely unlikely to sell on the market. Litigation will certainly deter any purchaser and how long it will take to enforce and get vacant possession is a grey area. There has been intimidation which is known in the locality and has deterred both potential buyers and even property agents acting in the sale. We believe the costs of bringing the estates and the individual houses back to a reasonable condition has increased in the last 12 months as they have deteriorated further. Therefore, taking all the above into consideration, the value put against all these assets including all the lands at [REDACTED] remains at Nil"*.

FINANCIAL POSITION OF [REDACTED]

- Both [REDACTED] last accounts filed show significant negative net worth positions (-€7.9m at 12/2008 & -€5.23m at 09/2012). [REDACTED] were struck off/dissolved in 2014 & 2015 respectively. [REDACTED]
- [REDACTED]
- [REDACTED] were declared bankrupt and have now exited the process (i.e. been discharged).
- [REDACTED]
- [REDACTED] has been dissolved following liquidation in 2016 and has no net worth. [REDACTED]
- [REDACTED]
- Therefore, AMR are satisfied that there is no value within the corporate entities outside of the secured properties listed in Table 2.

Reference Number: [REDACTED]

RISK ASSESSMENT

KEY RISKS	MITIGANTS
The loan sale price is considered too low.	The proposed loan sale is in line with the current gross carrying value in AST. The security value is supported by [REDACTED] and [REDACTED] respective valuations of the Lots that were procured in October 2020.
Reputational risk for NAMA	Whilst the loan sale to a company understood to be owned by a family relative is not a preferred strategy it is deemed superior to the alternative litigation option which could be (a) extremely expensive relative to the value of the portfolio; and (b) time consuming, further delaying any monetisation.

OTHER UNIT COMMENTS**NAMA Legal****Background**

This proposal originated from contact made by [REDACTED] with the NAMA FOI unit in February 2020. Shortly following that initial contact, in which a meeting with NAMA had been requested, [REDACTED] died suddenly. Communication then took place with his brother, [REDACTED] who is not a NAMA debtor and it is that communication channel that ultimately led to the meeting on 29 June 2020 at which this proposal was made.

[REDACTED] Property Sale

[REDACTED] have consistently alleged that this secured asset, a large mixed use development near [REDACTED], was sold for less than its value by court appointed receivers. The asset was owned by an [REDACTED] as beneficial owners. It was sold for net proceeds of [REDACTED] 2014 to a [REDACTED] following extensive marketing via [REDACTED] and three bidding rounds. The same property was subsequently sold in 2015 or early 2016 for £58M, though this was following some remedial works to the buildings external cladding. The need for these works had been made known to bidders by the receiver during marketing and prior to the February 2014 sale.

While no specific evidence had been provided, despite repeated requests, and while it is difficult to see what party would have standing to bring such an action at this late stage, [REDACTED] have a track record of protracted litigation concerning this asset. This resulted in two separate High Court decisions (both ultimately in favour of the receiver) in [REDACTED] in 2013 and 2014.

At the 29 June 2020 meeting they again threatened to bring an action in the name of the beneficial owner of [REDACTED] company that owned the legal interest in the asset, but refused to identify that party when asked. They claim to have engaged a QC who has been advising on the matter and claim to be in the course of organising litigation funding for a negligence claim against the court appointed receivers for breaching their duty to obtain the best price reasonably achievable for the asset at the time of sale.

Donegal Assets

The challenges to date in dealing with these secured assets and advice on their value are covered in detail above. Future realisation is likely to be just as challenging for the following reasons:

- In order to deal with these assets in a practical way on day to day basis, a new receiver would need to be appointed. It is not clear who would be prepared to act in this capacity, given they are likely to become aware of the resignation of the previous receiver, who was himself a very experienced insolvency practitioner.
- Problems have been reported in the [REDACTED] site, which has not been fully completed, with contact made with NAMA during July 2020 by the HSE about a rodent problem and dangers of open drains on site. With no receiver appointed, it is not possible to take control of the site and address these issues in a comprehensive way.
- Even with an appointed receiver, NAMA would need to step in as mortgagee and pass title to the sites registered in the name of [REDACTED], as this company is struck off, which is not ideal given the type of practical problems reported, as mentioned above.

Reference Number: [REDACTED]

- The Donegal assets were originally provided as security for the [REDACTED] property, hence there is the potential for any sale of these assets to be affected by any litigation that might commence in relation to the [REDACTED] asset. Donegal County Council's solicitors wrote to NAMA in December 2019 indicating that their client had been informed of a potential dispute between the receiver and a third party and that their client required "satisfactory clarification" on the matter before it could proceed with its interest. Ultimately, this interest did not proceed.

Section 172(3) NAMA Act 2009

The above section does not apply to loan sales; even if that was not the case, it does not act to prohibit acquisitions by family relatives, provided they do not fall within specific categories of "associated debtor" for the purposes of Section 70(1) (b) of the NAMA Act 2009, as provided for in Section 172(3) of the NAMA Act 2009. These include persons acting as nominee or trustee for a debtor and body corporates owned or controlled by the debtor. NAMA has a policy concerning Section 172(3) NAMA Act 2009 which is extended to loan sales and this requires the obtaining of a written form of confirmation that the proposed purchaser of the loans is not a party that would be otherwise prohibited from the purchase by Section 172(3) NAMA Act 2009, if that section applied to loan sales. The solicitor for [REDACTED] has provided a signed letter, in the required form of confirmation, from a director of [REDACTED] and will be required to update this on completion of any loan sale, should approval be forthcoming.

Conclusions

Having regard to the above points and the rationales outlined in the AR recommendation above, NAMA Legal is in agreement with the recommendation made. Should approval be granted, NAMA Legal will prepare an appropriate form of loan sale agreement to be agreed with the [REDACTED], together with a full waiver of all actual or potential claims in order to bring finality to matters and draw a line under any threatened disputes.

Alan Stewart, Chief Legal Officer 27 October 2020

NAMA Insolvency

Insolvency Team supports ARM recommendation as this represents a better commercial outcome that could be achieved through a receivership. These residual assets remaining in Donegal are of poor quality and the two residential developments require significant remediation to complete. The primary reason for appointing [REDACTED] as receiver to these residual assets arose from an ongoing expression of interest from Donegal County Council (DCC) to purchase certain properties in the residential developments. As DCC has not completed these purchases the receiver has resigned as receiver over these assets. He had previously resigned as receiver on the residual land assets as he was unable to engage any sales agent willing to sell the lands on his behalf.

It should also be noted that the liquidator of another debtor entity, [REDACTED], has advised that having completed his work, he is in the process of making a request to the courts [REDACTED] for his release as liquidator.

Three of the debtors were made bankrupt. [REDACTED] and [REDACTED]. All three have been discharged from bankruptcy however the Official Assignee and Trustee in Bankruptcy respectively remain in office and continue to administer the bankrupts' estates.

2 November 2020

NAMA Tax (CFO)

Credit Request 1

Although Tax (CFO) does not have visibility over the tax affairs of the Debtors it is worth noting that, at a high level, a loan sale [REDACTED]

Tax (CFO) notes the commercial rationale outlined by AMR and understands from above that whilst a loan sale is not a preferred strategy it is deemed favorable in this instance.

Credit Request 2

No tax comment required.

[REDACTED] 2 November 2020

RECOMMENDATION

Whilst the request in this paper is NAMA AMR recommends that a DSA has set out in the paper is entered into with [REDACTED] for the reasons set out below:-

- **Expediency**- NAMA will receive a lump sum payment of €265,000 by 31 March 2021.
- **Superior to Alternatives**- Donegal County Council ("DCC") has confirmed it is not willing to complete the purchase of the 18 [REDACTED] partially finished houses & 2 sites ("Lot 1") without satisfactory clarification of a potential dispute of which it has been made aware between the debtors and NAMA. **The proposed loan sale matches the gross figure agreed with DCC for these properties of €265k but it exceeds the current projected net proceeds of €206k (after VAT & disposal costs).**
- **Value of other secured assets**- the receiver was unable to monetise the other assets (Lot 2 & 3) prior to his resignation in January 2020. This was supported by [REDACTED] advice that suggested that these assets were not marketable due to debtor intimidation of local agents and potential litigation involving these assets.
- **Costs of Litigation**- the debtor has threatened to commence litigation to frustrate the sale of the Donegal assets. There is no certainty on how long litigation would take to resolve and the costs may exceed current net forecasts (€206k).
- **Status of Corporates**- both corporate debtors have significant negative net worth positions and both were previously struck off. There is no value outside of the secured charged assets (EMV of €265k). Their parent company and co-corporate guarantor [REDACTED] was previously liquidated and has PAR debt of €35.2m (all secured assets sold).
- **Connection close out**- the Donegal properties are the final secured assets within the connection. The management of this connection has been very challenging and has required significant staff time. The approval of the proposed loan sale would be a key step in facilitating the close out of the Connection. The only remaining item on this Connection is the monitoring of the bankruptcy claims submitted to the two appointed bankruptcy officials: [REDACTED]

Appendices:**Appendix 1: Schedule of loans to be sold.****Appendix 2: Meeting Note dated 29 June 2020**

Key Risks	Mitigating Factors
Please see Risk Assessment above	
Policy Compliance	
Is Proposal in line with Policy?	No
If not, please specify reason	Loan Sale is not openly marketed, therefore this is an exception to NAMA policy.
Tax Compliance	
Has NAMA Tax (CFO) been notified of this transaction in accordance with the Aide Memoire?	Yes

Reference Number: [REDACTED]

If not, please specify reason	
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Recommendation	Approved
Recommendation Comments	
Recommended in line with AMR Rationale for Recommendation on page 3.	

Credit Request - Loan Sale	
Request No.	1 & 2
Delegated Authority Decision Type	Loan Disposals

Rationale for using Delegated Authority
Board- See Page:1 for Detail

Request Commentary
<p>Request 1: NAMA AMR is seeking approval to accept a €265k offer from a new company set up by [REDACTED] to purchase the loans of [REDACTED] from NAMA. These loans total €10.4m PAR debt and €6.26m NAMA debt.</p> <p>Request 2: AMR seek approval to sub-delegate any non-material changes to CEO & HoAMR.</p>

Value of Current Proposal	265,000 EUR
Net Asset Sales Price	265,000 EUR
AST Impairment Valuation	

Terms and Conditions Conditions Precedent	
Terms and Conditions of Sanction	Due Date
Loan sale payment of €265,000 to be received by 31/3/2021.	31/03/2021
NAMA Legal & Tax to review and confirm satisfaction with proposed Loan Sale Deed to be signed by the Debtor and returned to NAMA by 31/03/2021.	31/03/2021
The Loan Sale Deed to include a waiver of all claims against NALM/NAMA arising in any jurisdiction, whether threatened or in being, the objective being to address all outstanding actual and threatened disputes.	31/03/2021
To obtain details of the Subject Record, the Contract Record and the Recording Provider Code as part of the deed of assignment of Loan sales, and provide same to NAMA Ops.	31/03/2021

Conditions Subsequent	
Terms and Conditions of Sanction	Due Date
Unless otherwise stated in this Notification Form, this loan sale decision is valid until 15 April 2021, after which date it will expire.	15/04/2021

NAMA Delegated Authority

Decision

APPROVE

Case Management Declaration

I/We confirm that we have read and considered all information provided in relation to this request, including Form A and all other supporting documentation, and further confirm that these provide sufficient and adequate information to allow me/us to recommend approval/decline to NAMA DA on behalf of the Service Provider/NAMA Case Management.

	<i>Insert signature</i>		<i>Insert signature</i>
Name:		Name:	
Position/Title:		Position/Title:	
Date:		Date:	

Checklist

Completed Form A Credit Proposal signed by the Debtor

No. Internal strategy decision

Supporting Information

No

NAMA Delegated Authority

NAMA DA Declaration

For new money requests only, I/we confirm that where required under the Central Credit Register procedure, that a CCR Credit Report dated within the seven days prior to the credit decision approval date has been uploaded to the documents tab for each individual/entity included in the application.

I/We confirm that the information contained in the Form C is complete and adequate to allow me/us as the Delegated Authority(s) sign off and accept full responsibility for the approval on behalf of NAMA.

	<i>Insert signature</i>		<i>Insert signature</i>
Name:		Name:	
Position/Title:		Position/Title:	
Date:		Date:	

[illegible]

Reference Number: [REDACTED]

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