

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Déardaoin, 02 Bealtaine 2013

Thursday, 02 May 2013

The Committee met at 10.00 a.m.

MEMBERS PRESENT:

Deputy John Deasy	Deputy Mary Lou McDonald,
Deputy Paschal Donohoe,	Deputy Eoghan Murphy,
Deputy Robert Dowds,	Deputy Gerald Nash,
Deputy Simon Harris,	Deputy Derek Nolan.

DEPUTY JOHN MCGUINNESS IN THE CHAIR.

BUSINESS OF COMMITTEE

Mr. Seamus McCarthy (*An tÁrd Reachtaire Cuntas agus Ciste*) called and examined.

Business of Committee

Chairman: The first item on the agenda is the minutes of the meeting of 25 April. Are they agreed to? Agreed.

The following is the correspondence received since the meeting of 25 April. No. 3A is correspondence from Accounting Officers. No. 3A.1 is correspondence, dated 30 April 2013, from Mr. Michael O’Keeffe, chief executive, Broadcasting Authority of Ireland, providing information requested at the meeting of 18 April. The correspondence is to be noted and published.

No. 3B is individual correspondence. No. 3B.1 is correspondence, dated 22 March 2013, from an anonymous source regarding the abuse of the free travel pass scheme. The correspondence is to be noted and forwarded to the Department of Social Protection and the Department of Transport, Tourism and Sport for necessary follow-up action.

No. 3B.2 is correspondence, dated 25 March 2013, from Mr. Michael Brosnan, North Circular Road, Dublin 7, regarding cases involving Mr. Harry O’Reilly who is seeking certain information from the Property Registration Authority. The correspondence is to be noted. While this appears to be outside the remit of the committee, we will ask the Property Registration Authority to send us a note on the matter.

No. 3B.3 is correspondence, received on 25 April from an anonymous source, regarding the maintenance of rolling stock by Irish Rail. The correspondence is to be noted and forwarded to the Department of Transport, Tourism and Sport and the National Transport Authority for necessary follow-up action. Presumably, they will come back to us on the matter.

No. 3B.4 is correspondence, dated 24 April 2013, from Mr. Eugene Mitchell, Ballinasloe, County Galway, regarding flooding in Ballinasloe and the alleged waste of public money by Galway County Council. The correspondence is to be noted. While this is a matter primarily for the local authority, we will forward the correspondence to the Department of the Environment, Community and Local Government and ask it for its response.

No. 3C is documents relating to the committee meeting of 2 May. No. 3C.1 is correspondence, received on 30 April from Mr. John Tierney, chairman, Dublin Docklands Development Authority, regarding the opening statement. The correspondence is to be noted and published.

No. 3C.2 is correspondence, received on 1 May from Ms Geraldine Tallon, Department of the Environment, Community and Local Government, regarding the opening statement. The correspondence is to be noted and published.

Reports, statements and accounts received since the meeting of 25 April include those for the Athlone Institute of Technology and the Office of the Revenue Commissioners.

Our work programme is now on screen. On Monday the special report of the Comptroller and Auditor General on the administration of the national health and local authority levy fund was published. It is to be factored in to the work programme. I will ask the clerk to the committee to produce a briefing note for next week’s meeting on how we will continue the examination of this issue. I propose that we dispose of the report before the summer recess. This committee

COMMITTEE OF PUBLIC ACCOUNTS

and its predecessor have examined the issue. Perhaps we might find an early date to deal with it because it dates back to the last committee meeting.

Deputy Paschal Donohoe: What issue does it concern?

Chairman: The HSE SIPTU fund. I thought we might get in the appropriate witnesses to deal with it at an early date, if that is agreed to by members.

Deputy Derek Nolan: Who would be considered the appropriate witnesses?

Chairman: The Accounting Officer for the HSE, SIPTU and, presumably, the Department of Public Expenditure and Reform.

Clerk to the Committee: And possibly the Department of Health.

Chairman: Possibly. Was it the HSE or the Department which was investigating this matter prior to the Comptroller and Auditor General investigating it?

Deputy Derek Nolan: The HSE.

Chairman: There may be other witnesses members wish to ask about. There are two key individuals who ran the scheme. The question of whether they should be invited to attend can be discussed afterwards.

Deputy Derek Nolan: It would be worth considering.

Chairman: In order to consider it, the clerk to the committee would, presumably, have to write to and invite both individuals to attend.

Clerk to the Committee: Yes.

Chairman: Owing to the fact that they are now private individuals, it is up to them to attend without being compelled to do so.

Deputy Derek Nolan: I imagine their names will be mentioned a lot. If we are mentioning names, they should have a right of reply.

Chairman: The Deputy is right. They have already been mentioned in public dispatches.

Deputy Derek Nolan: And in the press.

Chairman: It is only appropriate that if the committee agrees to do this, we write to both individuals and ask them to attend the hearing and set an appropriate and early date for it.

Can we agree the agenda for the meeting on Thursday, 9 May, when we will convene at 10 a.m. to meet officials of the Office of the Revenue Commissioners? The agenda will be the 2011 annual report of the Comptroller and Auditor General, chapter 11 - VAT on intra-Community trade. Is that the only issue to be discussed?

Clerk to the Committee: That is the only issue. We have disposed of everything else, but that would not prevent a wider discussion on issues with Revenue.

Chairman: Is that agreed? Agreed.

Before calling the witnesses, Mr. Tierney is here as chairman of the Dublin Docklands De-

velopment Authority. We will be dealing with the issue of departmental oversight. I understand Mr. Tierney will make an opening statement, but he may have to leave early because he has another commitment. We can always come back to the issue.

Deputy Paschal Donohoe: At what time does he have to leave?

Clerk to the Committee: Probably shortly after the opening statement. He is taking over at Irish Water this week. The committee has already agreed that it will be bringing him back to consider the accounts of the Dublin Docklands Development Authority which will be the subject of a full meeting. The purpose of this meeting is primarily to deal with the issue of departmental oversight.

Deputy Paschal Donohoe: We discussed this issue at our last meeting. Can I double check whether Mr. Tierney is continuing in this role?

Chairman: He is winding down at the Dublin Docklands Development Authority. Is that correct?

Clerk to the Committee: Perhaps the Chairman might ask him that question after his presentation because we might give members an opportunity to question him as soon as he finishes his statement.

Deputy Paschal Donohoe: I would prefer if we heard all of the opening statements together. Each of us could then choose the areas we wanted to discuss. My understanding is that the Dublin Docklands Development Authority is moving to Dublin City Council and that, as the current city manager, he has had responsibility for that area. I would like to know whether, once he finishes at the council, he will continue to have a separate role in respect of the authority.

Chairman: I just want to clarify what is his position before he comes into the room.

Deputy Paschal Donohoe: Of course.

Chairman: The Deputy is saying his preference is to hear all of the opening statements first?

Deputy Paschal Donohoe: Yes.

Chairman: The Deputy might then direct his questions towards Mr. Tierney in order that we can structure his departure time from the meeting

Deputy Paschal Donohoe: I will be the first questioner and it is my intention to focus on the role of the Department of the Environment, Community and Local Government and its oversight mechanisms. After Mr. Tierney has given his testimony, the Chairman might ask him what his role will be in the future?

Chairman: Okay. If members want to ask questions, they can do so.

Special Report No. 77 of the Comptroller and Auditor General: Dublin Docklands Development Authority (Resumed)

Ms Geraldine Tallon (*Secretary General, Department of the Environment, Community and Local Government*) and **Mr. John Tierney** (*Chairman, Dublin Docklands Development Au-*

thority) called and examined.

Chairman: Before we begin, I ask members, witnesses and those in the Visitors Gallery to turn off their mobile phones which affect the sound quality and transmission of the meeting.

I advise witnesses that they are protected by absolute privilege in respect of the evidence they are to give to this committee. If they are directed by it to cease giving evidence on a particular matter and continue to do so, they are thereafter entitled to only qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a Member of either House, a person outside the Houses or an official by name or in such a way as to make him or her identifiable. Members are reminded of the provisions of Standing Order 163 that the committee should refrain from inquiring into the merits of a policy or policies of the Government or a Minister of the Government or the merits of the objectives of such policy or policies.

I welcome Ms Tallon, Secretary General of the Department of the Environment, Community and Local Government, and invite her to introduce her officials.

Ms Geraldine Tallon: I am accompanied by Mr. Maurice Coughlan, Mr. John McCarthy, Mr. David Walsh and Ms Mary Moylan.

Chairman: I welcome Mr. Tierney, chairman of the Dublin Docklands Development Authority, and ask him to introduce his officials.

Mr. John Tierney: I am here with Ms Eileen Quinlivan, acting CEO, and Mr. John Crawley, financial adviser.

Chairman: Who is present from the Department of Public Expenditure and Reform?

Ms Marie McLaughlin: I am from the division which deals with the environment Vote.

Chairman: I now invite Mr. Seamus McCarthy to introduce the report.

Mr. Seamus McCarthy: Given the elapse of time since the committee last considered this matter, I propose to outline briefly the background to and the key findings made in the report. On the basis that the Dublin Docklands Development Authority, DDDA, was a State body operating with a commercial mandate, the audit of the authority's financial statements was carried out by a commercial auditing firm up to and including 2009. The first financial audit of the authority by my office was carried out for the financial year ending 31 December 2010. In that context, the special report before the committee was prepared to give a full account of the overall financial position of the authority and significant events that had contributed to its difficulties.

The authority's financial statements for 2010 reported a deficit of almost €2 million for the year. At the end of 2010, the authority had current liabilities of €32 million, including a bank overdraft of €12 million. Its capacity to fund itself depended on the continuing availability of banking facilities until such time as it could liquidate its property assets and collect its debts. Because it had limited cash reserves, any failure to realise projected income or any requirement to advance the timing of payment liabilities would have required the identification of other sources of funding.

The authority reported a surplus of just over €1 million for 2011 and had liabilities at year

end of more than €26 million. The audit of the financial statements for 2012 has not yet commenced because draft financial statements have not been provided.

A key factor contributing to the authority's strained financial position was its participation in a joint venture with private developers to buy and develop the Irish Glass Bottle site. In October 2006 the authority and its partners in a joint venture company, Becbay Limited, agreed to bid €412 million for the Irish Glass Bottle site in Poolbeg. Other related expenses brought the total acquisition cost to €431 million, of which €291 million was borrowed. The authority provided equity and loan funding for the joint venture company and guaranteed the repayment of loans by Becbay Limited which were initially provided by the then Anglo Irish Bank. Subsequently, Becbay Limited's loans, which I understand by then were in excess of €345 million, were taken over by the National Asset Management Agency, NAMA. A settlement was agreed between the authority and NAMA in 2011 under which the authority agreed to transfer to NAMA a portfolio of property assets to settle sums due under the guarantee. Ultimately, the cost to the authority of its involvement in the Irish Glass Bottle site purchase was around €52 million.

The examination noted a number of concerns regarding the authority's decision to become involved in the Becbay Limited venture. In October 2006 the authority's management presented to the executive board an assessment of the level of investment, benefits and risks of the project, but there is no evidence that a detailed analysis of these factors, commensurate with the scale of the proposed investment, was carried out. Management advised the board that the property market was overheated, but it nevertheless recommended the investment for strategic reasons.

The authority did not obtain its own independent valuation when it was deciding on the bid that Becbay Limited should make for the site. After the bid had been lodged, Becbay Limited engaged professional valuers who confirmed, for bank borrowing purposes, that the value of the site as at 3 November 2006 was €412 million - the exact amount of the bid. The authority had to seek ministerial approval to increase its borrowing capacity up to the statutory limit of €127 million and engage in the joint venture. The information submitted to support the application stated the value of the site was approximately €220 million. It appears that the authority did not update the Department when it decided to bid almost double that amount. Consequently, consent by both the Minister for the Environment, Community and Local Government and the Minister for Public Expenditure and Reform for increased borrowing and the authority's participation in the joint venture was evidently given on the understanding an investment to the value of approximately €220 million was being contemplated.

The critical factor in the Departments' assessment of the application for approval of increased borrowing and participation in the joint venture was the authority's capacity to service the borrowing involved. The Department of the Environment, Community and Local Government received assurance from the authority that it had the capacity to service the borrowing without recourse to Exchequer resources. The audit found no evidence of a formal analysis by the Department in that regard, or any testing of the sensitivity of the authority's servicing capacity to different outturns for the joint venture. The Department has stated it would have undertaken a full assessment if Exchequer funds had been sought.

In the course of the examination my office reviewed the management by the executive board of conflicts of interest around the decision to invest in the joint venture. Clearly, there is a risk of conflicts of interest occurring in any situation where boards of State bodies include persons either with an interest in a business that is regulated by the body, or which provides services for the body. In the case of the decision to purchase the Irish Glass Bottle site, some board

members disclosed their connections as directors of banks that were providing project finance and these were handled as provided for in the authority's code of practice. The executive board minutes do not record disclosure of any other personal, professional or business interests of board members that could represent a conflict of interest in relation to the decision to acquire the Irish Glass Bottle site.

The examination looked at the response of the authority to the findings of the High Court in October 2008 in a case taken against the authority regarding a section 25 application, which is a form of planning permission. In response to the case the authority amended its section 25 application process in December 2008. Owing to the substantial reduction in the number and scale of planning applications received by the authority since the conclusion of the High Court case, there was limited scope for my office to examine the effectiveness of the revised procedures in the course of this examination.

Chairman: I thank Mr. McCarthy. I now invite Ms Tallon to give us her opening statement.

Ms Geraldine Tallon: As requested, I will keep my opening statement short.

The Department has an active agency rationalisation programme. There are now ten bodies, of varied scale and functions, under its aegis compared with over 20 five years ago. As the committee is aware, the Government decided in May 2012, following publication of the Comptroller and Auditor General's special report, to begin winding up the DDDA over an 18 month period.

Each agency has a statutory basis, with a board and an executive responsible for its operation. The Department is represented, as provided for in the relevant legislation, on the boards of a minority of these agencies. Each agency operates within the framework of the code of practice for the governance of State bodies which assigns to the board collective responsibility for the body's activities. Liaison with each agency, for example, on staffing, funding, where appropriate, ministerial sanctions and approvals, where appropriate, is maintained through the relevant business unit of the Department, with overall guidance on corporate governance matters now provided through the local government division.

Specifically with regard to the DDDA, the ministerial practice from its establishment was generally to appoint the assistant secretary heading the planning division as a member of the executive board. The legislation provided explicitly for an officer of the Minister to be appointed to the council of the authority and the standing practice was to appoint the principal officer from the relevant business unit in that regard. The key functions of the council are to arrange for the preparation of, adopt and monitor the implementation of a master plan for the docklands area. The Comptroller and Auditor General's report recognises that membership of the executive board by a civil servant, with line responsibilities relating to the authority's affairs, gave rise to a situation where there was potential for a conflict between that board member's fiduciary duties to the authority and the member's line responsibilities within the Department. Conscious of the potential for conflict, the Department's standing practice was that all matters related to the statutory ministerial approval of planning schemes prepared by the authority were handled by the Department independently of the board member.

The DDDA has been largely self-financing and its legislation provided wide powers, not subject to ministerial approval, to acquire, hold and manage land. In its first ten years, it was increasingly successful in the delivery of docklands regeneration. Its 2006 annual report and accounts indicated a net worth of some €149 million, an annual turnover of approximately €85

million and an operating surplus of over €42 million. Participation in the purchase of the Irish Glass Bottle site and the analysis necessary to support this were matters solely for the board and the management of the authority.

The Comptroller and Auditor General's report makes it clear that the reason for ministerial authorisations relating to the proposed purchase lay, first, in a statutory requirement on the authority to obtain ministerial sanction for borrowing and, second, a requirement under the 2001 code of practice for the governance of State agencies for approval prior to entering into a joint venture. The authority sought approval, by way of letters to the Department on 27 September, 2 October and 12 October 2006, to increase its borrowing to the statutory limit of €127 million and participate in a joint venture, advising the Department that "at a reasonable density of commercial and residential development the value of the site could be in excess of €200 million" and that the capital commitment by the authority and its development partner in the event of a bid for the site was "estimated to be in the region of €220 million." In the context of the time, the departmental consideration of the approval request was informed by the facts that Exchequer funds were not being sought; the authority was successful and held significant assets; the Minister and the Department had no role in approving land purchase and primary commercial expertise to inform any such purchase rested with the authority; the authority had incurred no borrowings to date and assured the Department that it had the capacity to service the borrowing it anticipated without recourse to the Exchequer.

The Department, in requesting the Minister's approval for the borrowing and the purchase of shares in a joint venture company, informed the Minister of the site value of about €220 million indicated in the authority's letter. The Minister was also informed that negotiations were ongoing, but it was proposed that the authority would acquire between 25% and 49% of the joint venture company and, depending on the equity acquired, this would entail an indicative borrowing requirement of between €55 million and €110 million. The Department was not aware of any higher valuation on the site during the period of confidential board discussions in October 2006. Accordingly, while the authority's understanding was that its overall exposure to the joint venture had been capped and the percentage shareholding in the joint venture and quantum of borrowing at the time remained at the lower level of the range indicated to the Minister, the authority's agreement on a final tender bid of €411 million was not conveyed to the Minister in the context of the approval processes. This should have been done. The letter of approval issued by the Department to allow for borrowing up to its statutory limit and enter the joint venture was received by the authority following a board meeting on 24 October 2006 which approved the tender bid.

The Comptroller and Auditor General also reviewed the administration of the planning function in the DDDA and noted that planning procedures were subject to detailed review in 2008 and 2009, in the light of the High Court judgment in the NQIL case and as part of the governance review requested by the Minister in August 2009.

It is acknowledged that the DDDA achieved very considerable progress in docklands regeneration. That said, very intensive action has been necessary and has been taken by the authority and the Department in the aftermath of the purchase of the Irish Glass Bottle site to address the property and planning legacy which was laid bare in the past five years. While a settlement was reached in 2011 between the National Asset Management Agency and the DDDA in respect of its exposure on the Irish Glass Bottle site, its financial position and operating environment were critical but have been reasonably stabilised. At the end of 2012 the Minister announced the designation of the North Lotts and Grand Canal Dock area of the docklands as a strategic

development zone, to continue fast-track planning and maintain the attractiveness of the docklands as a prime location for inward investment.

I wish to make a concluding point on the hearing of the committee this morning on the Department's oversight of the DDDA. I am sure the committee will appreciate the risks in reaching conclusions, even on this component of the committee's examination without hearing all relevant witnesses, as this could lead to potentially unbalanced and incomplete findings. This may be unfair to those witnesses who are attending in the earlier stages of the committee's process. Departmental officials are, of course, always available to the committee.

Chairman: Can we publish the statement?

Ms Geraldine Tallon: Yes.

Deputy Paschal Donohoe: Can we get a copy of it?

Chairman: Yes. I invite Mr. Tierney to make his presentation.

Mr. John Tierney: I am here in my capacity as chairman of the Dublin Docklands Development Authority. I was appointed by the Minister for the Environment, Community and Local Government to this position on 1 June 2012, with a new board. The remit of the new board was set out by the Minister in his statement of 31 May 2012. At the time the Minister envisaged that the authority would remain *in situ* for a transition period of 18 months and then be wound up. This transitional period was to allow the authority to progress elements of ongoing work and make the necessary preparations for the orderly winding up of the authority and migration to new arrangements to be decided by the Government. The board prepared a transition business plan to achieve the objectives requested by the Minister. I take the opportunity to highlight some of the key issues we are dealing with as part of the transition.

The context for our work was outlined by the Minister at the time of our appointment. The Minister's clear objectives were as follows: maintaining and enhancing the docklands brand and international marketability as an attractive and prime location for investment and high-value development; providing for an appropriate set of fast-track planning procedures; continuing to involve the local community and the business sector in the regeneration project; and facilitating job creation.

In the context of providing fast-track planning, the board considered the options available and agreed that the strategic development zone mechanism provided for in the Planning and Development Acts would be the most appropriate statutory vehicle to replace the authority's section 25 planning schemes. Designation as an SDZ would reflect the Government's intention that the docklands become one of the key strategic drivers of national economic recovery and an area of Dublin requiring continued economic and social regeneration. As the committee will know, when an SDZ is designated by Government, a planning scheme is put in place. The planning scheme follows a statutory procedure of public display and adoption by the elected representatives of the local authority and subsequent appeal, if any, to An Bord Pleanála. Once an SDZ planning scheme is adopted, there is no appeal to An Bord Pleanála on individual planning applications and planning decisions are issued within the eight-week statutory timeframe set out in the Planning and Development Acts. This gives the required fast-track planning process, and decision making is safeguarded by the other provisions of the Planning and Development Acts.

In early September 2012, Dublin City Council requested an SDZ designation for the area

covered at present by the DDDA North Lotts and Grand Canal Docks section 25 planning schemes. It also requested that it be designated as the development agency for the SDZ. The designation of the North Lotts and Grand Canal Dock strategic development zone was made by the Minister on 18 December 2012. Since requesting the designation, the city council and the DDDA have worked closely on the preparation of a draft planning scheme. A wide-ranging consultation process took place during the latter months of 2012 to ensure the views of all the stakeholders were taken on board in preparing the draft document.

The draft planning scheme was put on public display on 25 March and the dosing date for submissions is 10 May. It is hoped that the draft planning scheme will be adopted by Dublin City Council in early to mid-September this year, with a period afterwards for appeal, if any, to An Bord Pleanála.

The future of the regeneration project also involves considering the docklands masterplan which sets out the social and economic policy objectives for the wider docklands area. There is a parallel process under way with Dublin City Council to examine the masterplan and ensure its policies coincide fully with the city development plan.

With regard to the ongoing involvement of the local community and the business sector in the regeneration project, the board of the DDDA requested that a subgroup of the docklands council be formed to consider and recommend to it a representative structure that could be put in place to ensure the involvement of all elements of the local community - for example, residents, business and education - in the continued regeneration of the area. The sub-group is building on work commenced by the community liaison committee which, with agreement of the board, earlier in 2013 engaged in a process to reflect on its role and contribution to the regeneration process over the past 15 years. The work of the sub-group will conclude during May, at which stage the board hopes to recommend to the Minister appropriate representative structures.

Today the DDDA and the city council are jointly holding a conference on the theme of the sustainable regeneration of the docklands which I hope will identify issues and challenges for the future of the area and inform the various planning and consultative processes under way.

On the issue of maintaining and enhancing the docklands brand and international marketability as an attractive and prime location for investment and high-value development and facilitating job creation, one of the key elements of the SDZ planning scheme is economic development and the requirement to deliver, for example, the mix of floor-plate sizes needed to support the mix of industries and commercial activities - small, medium and large - which have located in the area. The successful adoption and implementation of the planning scheme will be essential in ensuring the continued investment in the docklands.

I envisage the city council, as development agency for the SDZ, will have a key role in the area of promotion and marketing. The committee will understand that this work is evolving and that as progress is made on the SDZ, the docklands masterplan analysis and the representative structures, the board will make recommendations to the Minister on the best way to approach the branding and marketing of the docklands into the future.

During our tenure to date, the board has also kept a clear focus on progressing elements of ongoing work and the orderly winding up of the authority. The committee will be aware that the authority brought the Donatex-McNamara action to a successful conclusion in having the action dismissed as against both plaintiffs, with costs in favour of the authority. It is unfortu-

nate that despite being awarded costs by the court against each of the plaintiffs, no costs will be recovered on behalf of the Irish taxpayer given the fact that one of the plaintiffs, Bernard McNamara, had himself been adjudged a bankrupt in the UK and his company, Donatex, the other plaintiff, is insolvent.

The Donatex-McNamara case arose out of the purchase of the Irish Glass Bottle site whereby the plaintiffs were claiming €100 million in damages against the authority and proceedings had been ongoing since September 2009. The authority at all times vigorously defended its position as it always believed the plaintiffs' case had no merit. The successful outcome of those proceedings is a significant milestone in the transition of the authority.

Turning to the financial status of the authority, the most recent published accounts to December 2011, as audited by the Comptroller and Auditor General, show that the authority had a net asset position of €3.5 million at that date. The authority is going through its annual audit process for the financial year 2012. The Comptroller and Auditor General will update the committee on where are with the accounts and the results will become publicly available in due course. The board is endeavouring to maximise value for money for the taxpayer in an orderly wind-up of its assets and liabilities. I am sure we will be back before the committee to discuss those accounts in due course.

Under the authority's duty of care to its staff and as part of the transition, arrangements have been put in place whereby staff have availed of the State's redeployment process. With the approval of the Department of Public Expenditure and Reform, a voluntary severance scheme has been made available to remaining staff.

I thank the committee for allowing me to give it an update in the early part of these proceedings.

Chairman: Can we publish your statement?

Mr. John Tierney: Absolutely.

Ms Mary Moylan: I thank the Chairman and members. I am very grateful for the opportunity to make a statement and relate the facts from my point of view in regard to the IGB site. I was the assistant secretary in the planning division of the then Department of the Environment, Heritage and Local Government from June 2000 to October 2007. I was appointed by the Minister to be a director on the board of the Dublin Docklands Development Authority for the same period. I had no executive functions as a member of the board.

The authority had been established under the Dublin Docklands Development Authority Act 1997 to secure the social and economic regeneration of the Dublin docklands area on a sustainable basis and had the power to acquire, hold and manage land for these purposes. The authority was self-financing with a commercial mandate.

In early October 2006, the executive of the authority recommended to the board that the authority should get involved with a development partner in the development of the IGB site to achieve its statutory objectives for the social and economic development of the whole docklands area and the objectives in the authority's 2003 masterplan.

The Poolbeg peninsula area was clearly underdeveloped. The authority had previous experience that where it owned land, it was better able to influence the delivery of the less commercial land uses such as social infrastructure. The authority's Grand Canal Dock development

was seen as very successful. I believed that acquisition of an interest in the IGB site fitted in with this policy and, therefore, was an appropriate objective for the authority and in line with the objective of the masterplan.

The CEO of the authority wrote to me in my capacity as assistant secretary on 2 October and 12 October seeking ministerial approval under the 1997 Act to borrow up to the statutory limit of €127 million and approval under the code of practice for the governance for State bodies to participate in a joint venture to acquire the IGB site. I referred the correspondence to the business section to consider the applications and consult the authority and the Department of Finance.

The Department wrote to the Department of Finance seeking the consent of the Minister for Finance. On 19 October 2006, the Department made a submission seeking the Minister's approval for the authority to incur borrowings up to the statutory limit provided for under the 1997 Act and purchase shares in a joint venture company. The submission noted that the IGB site was valued at about €220 million. The principal considerations for the Department were that the authority could afford to finance its borrowings and that there would be no recourse to the Exchequer. The commercial judgments were a matter for the authority. The submission to the Minister specifically noted the fact that the figures had not been finalised and that "while negotiations with the private developer are ongoing, it is proposed that the Authority would acquire between 25% and 49% of the joint venture company - depending on the equity acquired. This would entail an indicative borrowing requirement of between €55 million and €110 million."

I discussed the submission with the Minister on 19 October and he agreed in principle with the recommendations subject to the consent of the Minister for Finance. The executive board agreed on 24 October 2006 that the authority should enter into a joint venture arrangement with Mr. Bernard McNamara, with the authority taking a 26% stake in the joint venture company on the basis of a value of €375 million. The board accepted €375 million as a reasonable figure having regard to its assessment of the planning parameters, the development potential of the site and comparable land prices. The joint venture was to be financed on the basis of 30% equity and 70% borrowings secured against the site. The authority's total exposure including recourse finance was capped at €36 million. Subsequently a bid of €412 million was tendered by the joint venture partner on the basis that he was carrying sole liability for the amount over €375 million. The bid was accepted.

I supported the board decision to participate in the joint venture having given careful consideration to the proposal before the board. In particular, I was satisfied that entering a partnership to acquire the IGB site was an appropriate objective for the authority, in accordance with the statutory objectives and the 2003 master plan. The authority's stake of 26% in the joint venture was at the lower end of what had been considered by the Minister. The authority's overall investment was limited to €36 million. It had the capacity to service these borrowings from its own resources without recourse to the Exchequer and all documents were to be reviewed by the authority's professional advisers to ensure the authority's interests were protected.

I was satisfied that the actual price for the land was a matter for the authority's commercial judgment and the Minister's approval was not required for this. The agreement at the board meeting on 24 October to cap the authority's investment and the taking of a 26% stake in the joint venture were within the lower level of the range indicated to the Minister. For these reasons, I believed that I did not need to go back to the Minister of 24 October.

Looking back at it now, in the light of all that has happened since 2006, it would have been

better had the Minister been made aware of the final bid price even if his approval was not required in this regard. However, I would note that there was no formal protocol at the time to provide guidance in relation to such a situation involving a commercial transaction. A protocol to the Code of Governance for State Bodies was introduced in 2010 but only in relation to non-commercial bodies.

The failure of this project is a source of deep regret for me. I genuinely believed that the acquisition of the site was in the interests of the social and economic development of the docklands and its community. I hope this summary is of assistance to the committee. I am happy to answer any questions.

Chairman: Thank you Ms Moylan. Can we publish the statement?

Ms Mary Moylan: Yes.

Chairman: Will Mr. Tierney explain what his role will be from now on? Will he continue as chairman of that board in view of his new job?

Mr. John Tierney: At present we are approaching the wind down of the company, which is scheduled for November but that will depend on the SDZ designation process, which must be completed. The existing schemes must be extended to cover the period until that new scheme comes into place. I am continuing for the moment and I have not been advised otherwise. There is a definitive timescale in terms of the wind down.

Chairman: In the foreseeable future what is the position?

Mr. John Tierney: I understand that I am the chairman.

Deputy Paschal Donohoe: I thank the witnesses for attending.

Mr. John Tierney: May I be excused?

Chairman: As we stated earlier, Mr. Tierney must attend another meeting. Is it in order for Mr. Tierney to leave?

Deputy Paschal Donohoe: As long as we have an expectation, as he had indicated, that we may at some point in the future ask him back to discuss the current accounts and any issue to follow up from this discussion.

Mr. John Tierney: As I confirmed, we are very happy to do that.

The witness withdrew.

Deputy Paschal Donohoe: My questions will focus on the board meetings across October 2006, the preparation for those meeting and the engagement between the board and the then Department of the Environment, Heritage and Local Government.

Can Ms Moylan confirm that she was present at the three meetings that took place across that period?

Ms Mary Moylan: Yes, I was present at the three meetings.

Deputy Paschal Donohoe: Am I correct in stating that the three meetings refer to 3 October, 20 October and the final meeting on 24 October?

Ms Mary Moylan: That is correct.

Deputy Paschal Donohoe: Were there any other board meetings across the period that were pertaining to the decision on the Irish Glass Bottle site?

Ms Mary Moylan: No, there were no other board meetings.

Deputy Paschal Donohoe: At the first meeting on 3 October 2006, will Ms Moylan explain the reason that meeting was held in San Sebastian?

Ms Mary Moylan: The board had the practice of having an annual study visit to a relevant docklands or regeneration area development. On this occasion the board meeting coincided with the study visit in 2006 to San Sebastian.

Deputy Paschal Donohoe: Where is San Sebastian?

Ms Mary Moylan: San Sebastian is in northern Spain and there were two primary reasons for the study visit: first, San Sebastian was relocating its port areas from the city to a location further away from the city. At the time there was some discussion in various quarters about the advisability of moving Dublin Port from the South Docklands to another area in north Dublin or some where else. The second point of interest in San Sebastian was that it had a conference centre, which was very successful. We were interested to consider whether there were relevant lessons to be learned for the conference centre coming to the docklands.

Deputy Paschal Donohoe: The main reasons for the meeting being held in San Sebastian were in relation to the port area and the conference centre.

Ms Mary Moylan: That was for the study visit and then there was the full ordinary executive meeting there.

Deputy Paschal Donohoe: Why did the meeting take place at 4 p.m? What else happened across that day?

Ms Mary Moylan: People travelled that day and the meeting took place after arrival at 4 p.m. The general time for meetings of the authority in Dublin was 4 p.m. in any event

Deputy Paschal Donohoe: Did any other activity take place that day or the following day?

Ms Mary Moylan: The following day there was the study visit to meet the planning department of the city council, then to the port area and we met those involved in the movement of the port area and then I came back to the people who were involved in the running of the convention centre.

Deputy Paschal Donohoe: Did any other member of the board have any other reason as to why they were eager to hold the meeting in San Sebastian?

Ms Mary Moylan: Not that I am aware of.

Deputy Paschal Donohoe: I refer to the actual minutes of the board from that meeting, namely, document R909, and wish to focus on section 3.1, because this gives the main reference to the IGB site. It states: "The chief executive briefed the board on the confidential negotiations which he had undertaken with a developer who had indicated an intention to bid for that site". At that stage, who was the chief executive?

COMMITTEE OF PUBLIC ACCOUNTS

Ms Mary Moylan: The chief executive was Mr. Paul Moloney.

Deputy Paschal Donohoe: Did Mr. Moloney indicate that anybody else was involved in those negotiations?

Ms Mary Moylan: Not to my recollection.

Deputy Paschal Donohoe: In the meeting he indicated that he had been directly involved in negotiations with a developer-----

Ms Mary Moylan: Yes.

Deputy Paschal Donohoe: -----and he gave no indication as to whether anybody else was involved in those negotiations. I will be very specific in my question. I appreciate Ms Moylan is giving her best answer in respect of a meeting that happened more than six years ago. Did Mr. Moloney indicate whether any other members of the board were present at the meeting he had with that developer?

Ms Mary Moylan: No. To the best of my recollection, he said he had met the developer.

Deputy Paschal Donohoe: At that stage did he tell Ms Moylan who the developer was?

Ms Mary Moylan: He said the developer wished to maintain confidentiality so he did not name him but there were indications given as to who the developer was. He did not name the developer but I inferred it was a certain developer.

Deputy Paschal Donohoe: Did the board ask why that developer was involved in that discussion with Mr. Moloney?

Ms Mary Moylan: My recollection is that the chief executive said that this was a developer with whom the authority had a relationship in respect of developments in the area.

Deputy Paschal Donohoe: What kind of relationship?

Ms Mary Moylan: He was involved in planning for a development in the area as a joint venture with the authority.

Deputy Paschal Donohoe: Given the scale of the investment being proposed, did the board not ask why other developers did not have an opportunity to participate in these discussions and allow themselves to be selected for participation in this construction?

Ms Mary Moylan: The chief executive said he was having discussions with a particular developer but the board also noted in concluding that - I am trying to find the reference in the document - if the discussions with that developer did not proceed, the chief executive and the executive could permit the executive in appropriate circumstances to approach another developer if the preferred developer did not wish to proceed.

Deputy Paschal Donohoe: From which document does Ms Moylan source that information?

Ms Mary Moylan: This is a paper to the board concerning the meeting of 3 October.

Deputy Paschal Donohoe: I thank Ms Moylan for that. I quote from the minutes of the meeting, in section 3.2, which state: "The board agree the executive could open negotiations

with a potential tender partner with a view to formulating a joint bid". That was minuted within the meeting. Why did the board not ask the reason other developers had not been allowed to participate in a bidding process for this project?

Ms Mary Moylan: The question of procurement of a partner was raised and the executive was asked to get legal advice in regard to the procurement issue. It did take legal advice on it which was available for the next meeting.

Deputy Paschal Donohoe: At that meeting, however, it was decided to open negotiations with this particular developer.

Ms Mary Moylan: That was decided at that meeting but it was also decided that the executive should get legal advice from the authority's advisers on procurement and whether there were any issues arising in respect of procuring a developer.

Deputy Paschal Donohoe: I put it to Ms Moylan that such legal advice should have been sought first, before a decision was taken to begin a partnership with this developer.

Ms Mary Moylan: The board had decided that the chief executive could undertake these negotiations, but this was a preliminary approval and, as the minutes state, it was subject to being satisfied that the proposed involvement of the authority in the tender process and future development of the site would not breach public procurement rules. It was on that basis, as stated in the clause preceding the sentence the Deputy just quoted.

Deputy Paschal Donohoe: We will return to that because I believe there remains an open question as to why the question was not asked regarding what other bodies or developers could play a role in the process.

I wish to move on to the meeting of Friday, 20 October 2006, which continued discussions about the site and what would happen in its regard. The reason this is particularly significant is that this is the first minuted example we have of discussions regarding the cost. I refer to section or paragraph 1.3 of document R909, in which it is stated: "The executive recommended that the authority should make a joint bid with Mr. McNamara, developer, to acquire the site for a sum in the range of €275 million to €375 million". The first point is that here we have confirmation of a figure in respect of the site. We also have a letter which had been issued prior to that meeting, on 12 October, from Mr. Paul Moloney, found in correspondence 3A.1. In the minutes of the meeting the board agrees to acquire a site for a sum in a range from €275 million to €375 million, but in the letter from Mr. Moloney to Ms Moylan the figure is €220 million, a gap of between €55 million and €155 million. Why is there such a gap?

Ms Mary Moylan: Mr. Moloney wrote the letter to the Department and is probably in the best position to answer the question with regard to the figure he included in the letter.

Deputy Paschal Donohoe: Okay, we will come back to that point. The letter dated 12 October was to Ms Moylan, a member of the board, and included a figure of €220 million. Ms Moylan attended a meeting some eight days later and the discussion was on a figure ranging from €275 million to €375 million. Did she ask why there was such a variation?

Ms Mary Moylan: Yes. A number of issues arise. The Minister's approval was being sought for the increase in the borrowing limit and also for entering into the joint venture. The actual price to be paid for the land and the related commercial decision were matters for the authority. The Minister had no function in that regard.

With regard to the values discussed at the meeting on 20 October, they were discussed in the context of an explanation from the chief executive of the basis for the valuations. They were also discussed in the context of the authority taking a 26% share in the company and of what the total investment of the authority would be.

Deputy Paschal Donohoe: I understand those points, but, respectfully, that is different from the question I am asking. I have a letter from Mr. Moloney, chief executive of the board, to Ms Moylan, including a figure of €220 million. In the minutes of a board meeting, attended by Mr. Moloney, there is a figure ranging from €275 million to €375 million. There is a gigantic difference between them. Did Mr. Moloney not indicate this to Ms Moylan and the board? The issue is that he was seeking departmental consent for a different figure from the one the board was discussing. Why was there a difference and why did nobody quiz him on it? Specifically, why did Ms Moylan not raise the issue because the letter was sent to her?

Ms Mary Moylan: First, I refer the Deputy to paragraph 8.2 of the minutes of the board meeting of 24 October:

The Board noted that Ministerial sanction to increase borrowing and to the acquisition of shares in a company was expected to be received during the day. In relation to the book valuation of some €250 million [I think that is a typographical error] which had been included in the Authority's submission to the Minister, it was noted that this figure was based on a plot ratio of 2:1 and on the basis that the Authority would be acquiring some 49% of the shareholding in the company (as opposed to 26% in the current transaction).

Therefore, the value of the site had varied in relation to plot ratios and the commercial and residential mix being proposed. Also, I remind the Deputy that the Minister's sanction was not being sought for the actual purchase price.

Deputy Paschal Donohoe: Ms Moylan says the figure mentioned is a typographical error. What should it have been?

Ms Mary Moylan: It should have been €220 million, as in the letter.

Deputy Paschal Donohoe: Ms Moylan has said the figure varied. The letter including the figure of €220 million was dated 12 October. I will get to the minutes of the meeting of 24 October in a moment. The letter to the Department mentions a figure of €220 million, but the board discussed a figure as high as €375 million. The value did not vary by that much. There was no change in plot density and commercial value in the weeks from when the letter issued to the Department to when the discussion took place. Why was Mr. Moloney writing to Ms Moylan with a figure of €220 million when the board was discussing a figure of up to €375 million? Given that the letter had been sent to Ms Moylan, did she ask why there was such a discrepancy? The issue of ministerial consent is separate.

Ms Mary Moylan: The letter dated 12 October raised the value of €220 million. With regard to the discussion that took place on 20 October, at that stage valuations were fluid. There was a variety of valuations available to the authority, ranging from €240 million plus VAT in 2005, with a plot ratio of 2:1. There was a valuation in 2005 and 2006 of €264 million, based on a plot ratio of 2.5:1. Ultimately, the plot ratio agreed on 20 October and 24 October was 2.6:1, on the basis of it being 70% residential and 30% commercial. Therefore, there were variations in the value of the site as the discussions and negotiations continued.

Deputy Paschal Donohoe: Okay, but even if there were variations, the letter to the Depart-

ment stated a figure in the region of €220 million, yet there was a discussion based on a figure of up to €375 million. That is one hell of a variation.

Ms Mary Moylan: Yes, it is. The letter dated 12 October was on the basis of a valuation of €220 million. At the board meeting on 3 October it was recognised that a range of valuations was possible, depending on plot ratios and the development mix.

Deputy Paschal Donohoe: We have been around this issue and Ms Moylan is clear on my line of questioning. I accept that she has given me an answer, but I challenge it, as I still want to understand why there was such a difference. As she has pointed to the meeting of 24 October, I will move on to discuss what happened at that meeting. That meeting took place at 8 a.m. At this stage, we should remind everybody who was on the board, the chairman of which was Mr. Lar Bradshaw.

The following individuals were on the board at that stage: Ms Angela Cavendish, Mr. Donal Curtin, Mr. Seán FitzPatrick, Mr. Declan McCourt, Ms Mary Moylan, Ms Niamh O'Sullivan and Ms Joan O'Connor. In attendance were several other members as well. The meeting took place at 8 p.m. Am I correct in saying that the chairman of the board, Angela Cavendish, Donal Curtin, Seán FitzPatrick, Ms Moylan, Niamh O'Sullivan and Joan O'Connor participated via a telephone call? Is that correct?

Ms Mary Moylan: Yes, it was a teleconference.

Deputy Paschal Donohoe: Who was physically in the room when this was happening?

Ms Mary Moylan: The executive and Declan McCourt.

Deputy Paschal Donohoe: Incorporal meetings appear to have been in vogue in that period. This meeting took place with the majority of people taking part via telephone. I want to go on to the particular issue of declaration of interest. Paragraph 2.3 states: "members were concerned that to some people there might be a perception of conflict but following further discussion it was agreed that such perceived conflict, if it was ever alleged, would have to be dealt with by declaring the facts of the situation". How was that conflict dealt with at that meeting?

Ms Mary Moylan: The authority had a code of conduct which set out procedures to be followed when a board member had a material conflict of interest or a perceived conflict of interest. On 24 October, the chairman informed the meeting that Mr. McNamara was now seeking financing from Anglo Irish Bank and Bank of Ireland, and in accordance with the code of practice, he declared that he was a non-executive director of that bank. Another board member declared that he was the chairman of that bank and a further board member declared that he was a non-executive director of the Bank of Ireland.

Deputy Paschal Donohoe: If there was a conflict of interest at the meeting, why was there not a conflict of interest at the other two meetings?

Ms Mary Moylan: At the previous meeting, the understanding was that Mr. McNamara would be securing the borrowing for the joint venture from another bank, of which there were no directors on the board.

Deputy Paschal Donohoe: Mr. Curtin was one of the people who withdrew from the meeting. Is that correct?

Ms Mary Moylan: No.

Deputy Paschal Donohoe: Who was the individual who withdrew?

Ms Mary Moylan: Mr. Declan McCourt.

Deputy Paschal Donohoe: It was Mr. Declan McCourt. What bank was Mr. McCourt involved with at that stage?

Ms Mary Moylan: He was a non-executive director of Bank of Ireland.

Deputy Paschal Donohoe: Bank of Ireland and Anglo Irish Bank were two of the banks foremost in supplying investment to large property deals and large construction activities at that time. Did it not occur to anyone during the previous two meetings that their banks might have been involved in looking to secure funding for the deal if it was agreed by the board? It is not only a matter of an actual conflict of interest, it is also a potential conflict of interest.

Ms Mary Moylan: In accordance with the code of practice, it is a matter for a member who has a conflict of interest to declare it. In this case at the time, the three members declared that they had a conflict of interest at that stage. It was their responsibility to declare it and they did it in accordance with the code of practice. They also went on to say that they did not have any role in respect of the credit committees of the banks.

Deputy Paschal Donohoe: They were on the boards, though. They may have been shareholders.

Ms Mary Moylan: I suppose it is a matter for members to make their own declarations of interest. This was a board of experts. The people around the table had different expertise in different areas. It is likely that people might have had a conflict or a perception of a conflict in respect of individual transactions and that is why the code of practice had been adopted and was being followed.

Deputy Paschal Donohoe: It appears extraordinary to me that if a conflict of interest was identified in that meeting, the potential for a conflict of interest was not identified at other meetings. I want to focus on how this happened. All this took place over the telephone. When these people referred to a conflict of interest, what did they do? Did they hang up?

Ms Mary Moylan: No, the minutes of the meeting explain it. Let me find the relevant piece.

Chairman: While you are finding that, Mr. McCarthy wishes to come in.

Mr. Seamus McCarthy: I wish to intervene, if Deputy Donohoe and Ms Moylan do not mind. In the report, the references to withdrawal relate to the meeting of 3 November. For the meeting on 24 October they continued to participate having declared their interest. The withdrawals on 3 November related to proposals for funding, that is, a specific proposal of lending X amount at such a price or interest rate and so on. That was when members of the executive board withdrew from the meeting. They continued to participate in this meeting having declared their interest.

Deputy Paschal Donohoe: I thank Mr. McCarthy for that clarification. They stayed in the meeting. That is a helpful clarification. According to the minutes of the meeting at paragraph 2.1, the chairman drew attention to the fact that he and the chief executive had been advised by Mr. McNamara at 8.30 p.m. the previous night that Mr. McNamara had been in discussions with Bank of Ireland and Anglo Irish Bank to secure the acquisition funding. Those two banks

were named.

Ms Mary Moylan: Yes.

Deputy Paschal Donohoe: The individuals who were directors of those banks stayed for the entire meeting. Is that the case?

Ms Mary Moylan: Yes. They declared that they were non-executive directors of the banks. They said that they were not involved in any credit decisions relating to particular funding. That is stated at the end of paragraph 2.1. It is stated in paragraph 2.2: “in the course of full discussion on this and recognising the provisions of the code of conduct, the board concluded that no material conflict of interest existed in respect of the participation by the board members in the discussion and the decision on the proposed acquisition”. Subsequently, the board asked that the authority’s legal advisers examine the manner in which the board had looked at and dealt with these declarations of interest in light of the code of practice, and the legal advice that came back was that it had been handled correctly and in accordance with the code of practice.

Deputy Paschal Donohoe: That was the legal advice that came back despite the fact that the individuals in question were directors of the banks.

Ms Mary Moylan: Yes.

Deputy Paschal Donohoe: It was believed there was no conflict of interest.

Ms Mary Moylan: Given that they had declared that they were not involved in credit decisions in respect of particular funding, the board concluded that no material conflict of interest existed in respect of participation by the board members.

Deputy Paschal Donohoe: I am incredulous. I can only speculate but Mr. FitzPatrick and Mr. Bradshaw may well have been owners of shares in the bank. They may well have been in receipt of performance-related payments from the bank due to the roles they were performing. It is certainly feasible that they could have benefited indirectly from the go-ahead for this project. I am not saying that they did. I am being very careful about what I say. It is feasible that such a benefit could accrue to them. Did that occur to anybody?

Ms Mary Moylan: The individuals made declarations in accordance with the code of practice. The authority’s legal advisers reviewed that afterwards and said that the board had carried out its duties in accordance with the code of practice. It is really a matter for the individuals and perhaps the Deputy will have an opportunity to ask them directly about that.

Deputy Paschal Donohoe: I will conclude on that point in a moment. I am just asking questions, I am not drawing conclusions at this stage. Paragraph 2.4 states, “The Chief Executive confirmed that all of the negotiation and preparation of documentation by the Executive had been virtually completed before the issue arose”. Does that refer to the issue of potential conflict of interest?

Ms Mary Moylan: Yes, I believe it does.

Deputy Paschal Donohoe: To conclude on this document, on valuation, paragraph 5.1 states, “Assuming no liability for capital gains, the report concluded that the site value is in the region of €430 million”. What guidance was given to the chief executive on how high a figure the board could agree with Mr. McNamara?

COMMITTEE OF PUBLIC ACCOUNTS

Ms Mary Moylan: The board agreed that a valuation of €375 million was a reasonable figure in so far as the authority was concerned and the board was willing for a bid to be made in that sum.

Deputy Paschal Donohoe: At this point the figure of €375 million is confirmed which is now €155 million higher than the letter to the board from Mr. Maloney.

Ms Mary Moylan: Yes.

Deputy Paschal Donohoe: At any point was that figure communicated to the Department?

Ms Mary Moylan: Not that I am aware of, no.

Deputy Paschal Donohoe: Can anybody show me a letter sent from the Department of the Environment agreeing to the figure of €220 million?

Ms Mary Moylan: The letter from the Department is dated the 24th and refers to the borrowing-----

Deputy Paschal Donohoe: What letter is that?

Ms Mary Moylan: There is a letter from the Department dated 24 October.

Deputy Paschal Donohoe: We do not have that letter.

Ms Mary Moylan: You do not have that letter.

Deputy Paschal Donohoe: No. The only communication we have is from 12 October. Does Ms Moylan have a letter sent from the Department agreeing to the figure of €220 million?

Ms Mary Moylan: No. The letter from the Department of 24 October refers to the letter of 12 October and it gives the consent of the Minister for the Environment, Community and Local Government with the consent of the Minister for Finance, to borrowing up to the statutory limit of €127 million for the purpose of property acquisition in the Dublin docklands area and for the authority's taking a shareholding in a joint venture company.

Deputy Paschal Donohoe: Can we please get a copy of that letter?

Chairman: We have arranged for that.

Deputy Paschal Donohoe: Was that circulated to the committee?

Chairman: No.

Deputy Paschal Donohoe: Does that letter contain a figure of €220 million?

Ms Mary Moylan: It does not, no.

Deputy Paschal Donohoe: Okay.

Ms Mary Moylan: The purchase price was not a matter for the Department, as I said earlier.

Deputy Paschal Donohoe: I accept that but nonetheless we are at a point here where there is a figure in writing of €375 million against a figure of €220 million. What figure was finally agreed in the contract?

Ms Mary Moylan: The figure tendered by Mr. McNamara was €412 million and the authority had agreed that €375 million was a reasonable figure from the authority's assessment of the planning parameters, the development potential of the site and comparable land prices. Mr. McNamara, however, believed that a higher value was appropriate and the authority agreed that he could bid up to €412 million but on the basis that he would meet the difference between the €375 million, which the authority was satisfied was a reasonable value, and the tender of €412 million.

Deputy Paschal Donohoe: I am looking at this letter. There is no reference in it to the figure of €220 million, to Mr. Maloney.

Ms Mary Moylan: The letter refers back to the letter of 12 October seeking sanction and approval and it gives the sanction and approval. The sanction is for the borrowing and the approval is for entering a joint venture.

Deputy Paschal Donohoe: How did the Department find out that it was €411 million?

Ms Mary Moylan: When the tender bid by the joint venture company was accepted and was made known the Department was informed at that stage.

Deputy Paschal Donohoe: Was it informed at any point before that?

Ms Mary Moylan: No.

Deputy Paschal Donohoe: I wish to emphasise the huge variation between the €220 million figure here and the eventual figure of €411 million.

Ms Mary Moylan: In the paper of 3 October it did say that there could be a wide range of variations possible depending, as I said, on plot ratios and the mix of development.

Deputy Paschal Donohoe: I have read that but what I am stunned by is the fact that the figure and how high it could be was never communicated back to the Department. I understand the point about ministerial consent to borrowing and the point about planning but the key point here is that a contract was eventually signed for €411 million by an agency of the State, by the Department of the Environment, Community and Local Government, which in the only communication that we have to the agency cited a figure of €220 million.

Ms Mary Moylan: The contract that was signed was on the basis of the authority having a 26% shareholding in the joint venture, that the authority's investment of equity-----

Deputy Paschal Donohoe: Was capped.

Ms Mary Moylan: -----was capped and that the authority's interests were protected.

Deputy Paschal Donohoe: I understand that completely, and thank Ms Moylan for the manner in which she answered my questions. I understand there was a 26% stake and that the cap was in place. I also contend, as the figure increased exponentially, notwithstanding the presence of the cap, the Department should have been aware of that. The original figure was €220 million, a figure of €375 million was mentioned in a board meeting and the eventual figure was €411 million. Does Ms Moylan see my concerns?

Ms Mary Moylan: I understand the question the Deputy is raising. It comes down to the different roles between the authority, the Department and the Minister, the commercial nature

of what the authority was involved in and the fact the Minister and Department were not involved in the commercial part. It is a complex area.

Deputy Paschal Donohoe: It is and is not complicated. The simple point in all of this is that we have a figure of €375 million and a final figure of €411 million which differ massively to the only written communication I have to the Department. The Chairman has been very generous in terms of time with me.

In her concluding paragraph, Ms Tallon states: “I am sure the committee will appreciate the risks in reaching conclusions even in this component of the committee’s examination without hearing all relevant witnesses as this could lead to potentially unbalanced and incomplete findings.” What other relevant witnesses does she have in mind?

Ms Geraldine Tallon: It will be evident from the discussion so far that it was a complex transaction which involved the full board, the chairman of the board, the chief executive, the members of the executive and other parties to the transaction. The Department dealt with, in particular, the subsequent chairman, Professor Brennan. Obviously the Department had a role. Ultimately, Ministers and the Government had various roles, as far as the evolving situation was concerned.

Deputy Paschal Donohoe: I want to end with a point with which I began, namely, the selection of Mr. McNamara and his role. I want to quote from *The FitzPatrick Tapes* by Tom Lyons and Brian Carey, to which I have referred in other committee meetings. Mr. FitzPatrick said:

There was little discussion at board level about whether Mr. McNamara was the right man for the job as his reputation spoke for itself ... Bernard was an established builder and developer. He had done a lot of successful work. He had dealt with the docklands over the years and seemed to have a good relationship with them. No one thought he was a difficult man or anything like that.

It goes on to say he was doing civil engineering and development, and seemed to be doing everything.

Ms Moylan has answered all the questions I put to her as well as she can. In order to get a full view of what has happened here it is important for us to get a full assessment of what happened. I agree with Ms Tallon. We should invite Mr. Bradshaw, Mr. FitzPatrick, Mr. Moloney and other members of the board who were involved at the time under discussion to come before the committee. We owe it to the people who have contributed to the hearings to date to gain a full understanding of what happened in regard to the selection of a developer and how there were such huge variations in cost while the Department had only a single figure that was substantially lower.

Chairman: I thank Deputy Donohoe. I support that request, based on what we have heard so far. I ask members to agree with what was suggested in order that the clerk can make the appropriate arrangements to invite those mentioned to come before the committee.

Deputy Gerald Nash: Agreed.

Chairman: Before I call Deputy Nash, I have three points of clarification. Ms Moylan is the officer dealing with the DDDA and had regular contact with Mr. Moloney. Is there in existence a series of e-mails between Ms Moylan and Mr. Moloney relevant to the meetings we

have discussed or are there just copies of the paperwork we have before us?

Ms Mary Moylan: There is the letter. I do not recall any series of e-mails, other than one where I e-mailed him a link to the corporate code of governance regarding joint ventures.

Chairman: The second matter is the board sub-committee, which is referred to in paragraph 3.56.

Ms Mary Moylan: I have been reminded that there was correspondence and e-mails between the business section in the Department and the executive of the authority with which I was not involved.

Chairman: Are they available?

Ms Geraldine Tallon: We can make a set of papers available to the Chairman.

Chairman: I thank Ms Tallon. What representatives were on the sub-committee, which is referred to in paragraph 3.56? How many times did it meet? Was Ms Moylan a member?

Ms Mary Moylan: I do not know to what sub-committee the Chairman is referring.

Mr. Seamus McCarthy: The Chairman referred to a minute from a board sub-committee meeting on 5 October 2005. It was the only minute of the sub-committee we found in the authority's papers in the Dublin docklands. Those present at the meeting were Mr. Bradshaw, Mr. FitzPatrick and Ms Moylan, as well as the chief executive and secretary of the executive board. It was unusual in that it was the only minute of a meeting found and the impression was that there was a series of them, but there is no other document. We do not know what all the references in the minute were.

Chairman: I am trying to establish the membership of the sub-committee, how many times it met, if minutes and so on are available and whether such papers can be made available to us. We now know Ms Moylan was a member.

Ms Mary Moylan: I thank the Comptroller and Auditor General for that clarification. I was not aware to what was being referred. I attended one meeting in October 2005 with the chairman and members of the executive. There were no further meetings that I attended and I never saw a copy of the minutes of that meeting. The meeting arose in the context of the public discussion at that time about the dispute between Dublin Port Company and the Irish Glass Bottle Company site company regarding the ownership of the site. The meeting was in the context of this strategic site in the authority's area and whether there was anything the authority should be doing. There were no further meetings, as far as I am aware, but perhaps the executive or the chairman would be able to clarify that for the committee.

Chairman: As far as Ms Moylan is concerned, there was only one meeting but it is referred to as a sub-committee. We need to find out if there were other meetings. We need to see the minutes of any such meetings, and also the members who attended those meetings. We need to have clear information in this regard. We have contacted the authority.

My third question relates to the banks and these meetings attended by the various people associated with banks and on the boards. What is the figure for the drawdown arrangement fees? Were these fees discussed when making the arrangements with the banks? What was the level of fees?

Ms Mary Moylan: The fees were being negotiated by the finance director and by the executive with the joint venture. They were discussed. My understanding is that the fees were at the normal rates.

Chairman: A figure of €4.7 million was mentioned.

Ms Mary Moylan: I think it was 1% of-----

Chairman: Were concerns raised about that figure?

Ms Mary Moylan: To the best of my recollection, the understanding was that this was the normal rate.

Chairman: We can return to that matter. I refer to Ms Moylan's trip to San Sebastian. Were other trips made?

Ms Mary Moylan: As I said, the board had an annual study visit to relevant regeneration areas abroad.

Chairman: Can we be supplied with a list of those trips?

Ms Mary Moylan: I am sure we can get copies from the executive.

Chairman: Thank you.

Deputy Gerald Nash: I welcome Ms Moylan, Ms Tallon and their colleagues. I must admit I am on the same page as Ms Tallon with regard to completing this circle. I thank Ms Moylan for being as frank as she possibly can be, under the circumstances. We will not be able to complete the picture in the absence of evidence from other individuals named. At our previous effort to examine these issues, I had requested that Mr. Moloney, Mr. Bradshaw and Mr. FitzPatrick make themselves available to meet the committee in an effort to examine all the issues in as complete a way as possible. I welcome the decision of the committee to extend that invitation. To coin a phrase, there is no show without Punch. It is very important that those critical players in this process make themselves available to allow us to complete the picture in so far as we can.

I am particularly interested in the issue of ministerial sanction. I refer Ms Moylan to minute No. 8.2 of the meeting of 24 October. This was a critical meeting in the context of the issues under examination today. It is stated in the minutes that the board noted that ministerial sanction to increase borrowing and the acquisition of shares in the company was expected to be received during the day. Ms Moylan stated in her evidence and from our own examination of this issue that it was indeed a very fast-paced environment. I ask Ms Moylan to clarify whether the reference to ministerial sanction was made by her. How could the meeting have had the confidence that ministerial sanction would be received that day from the then Minister for the Environment, Heritage and Local Government and, as is required, from the Minister for Finance?

Ms Mary Moylan: As I mentioned in my opening statement, the Department had made a submission to the Minister on 19 October seeking his approval for the authority to incur borrowings up to the statutory limit provided under the 1997 Act and to purchase shares in the joint venture company. The submission to him mentioned the value of €220 million. It also stated that negotiations with the private developer were ongoing and that it was proposed that the authority would acquire between 25% and 49% of the joint venture company, depending on the equity acquired. This would entail an indicative borrowing requirement of between ap-

proximately €55 million and €110 million.

Deputy Gerald Nash: The final figure was €127 million, which is the statutory limit of what the authority could conceivably borrow.

Ms Mary Moylan: Yes. It had sought that. I discussed this submission with the Minister on 19 October. He agreed in principle with the recommendations that the authority be allowed to incur borrowings up to its statutory limit and to purchase shares in the venture company.

Deputy Gerald Nash: Who was the Minister at that time?

Ms Mary Moylan: Mr. Roche.

Deputy Gerald Nash: Ms Moylan and the Minister did not engage directly on 24 October.

Ms Mary Moylan: No, we did not on 24 October. I considered that the investment by the authority which was capped at €36 million and the investment of 26% in the shareholding of the company was within the terms that had been agreed in principle by the Minister on 19 October. Given that the Minister did not have a role in relation to the purchase price, there was no need for me to speak to the Minister about it on 24 October.

Deputy Gerald Nash: I ask Ms Moylan to correct me if I am mistaken but I believe she expressed regret in her statement that she had not been in direct discussions with the Minister on that particular occasion. Hindsight is 20-20 vision. Does Ms Moylan still regret that she did not have that discussion with the Minister, even though, as far as she is concerned, she was complying with the general approach taken to these matters in the context of the relationship with the Minister and her position in the Department?

Ms Mary Moylan: Yes, I was operating carefully. I was taking care in relation to my role as a board member and my role in the Department. In the circumstances of the time, I made the judgment that I made. As I look back now, it would have been better if the Minister had been told of the final bid price, even though his approval was not necessary. I agree that it would have been better if he had been told.

Deputy Gerald Nash: In circumstances like this, is there not a conflict between the fiduciary responsibilities of a company director, and the company director's responsibility to the shareholders and to the board, and the role of a public servant, particularly a public servant who has direct line of responsibility for the areas that are being considered by that company?

Ms Mary Moylan: I was in both positions. I was the assistant secretary in the Department with responsibility for planning, including the Dublin Docklands Development Authority, and in that role I was appointed to be a member of the board of the authority. It is a complex area and I had to manage that situation and take my duties to both of them-----

Deputy Gerald Nash: Did Ms Moylan ever feel conflicted?

Ms Mary Moylan: I did not feel conflicted on this occasion-----

Deputy Gerald Nash: Why not?

Ms Mary Moylan: -----because I felt the Minister's consent was being sought in relation to borrowings and in relation to entering into a joint venture and that the agreement on those and the exposure of the authority came within what was agreed, in principle, by the Minister, and

that the actual purchase price, as I said, was a commercial decision for the authority. I did not see in this particular circumstances that I had a conflict.

Deputy Gerald Nash: In regard to the tender bid and again I refer Ms Moylan to the minutes of the incorporeal meeting of 24 October, point 8.1 of which states: “However recognising the expertise and experience of Bernard McNamara and if he had some additional information which convinced him that the bid should increased, then the Board agreed that Mr. McNamara could be allowed to increase the bid as he saw fit to a maximum of €437 million”. Did that cause Ms Moylan any concern? We all respect and value the public service. We are in lucky in this country that we have a public service that delivers for the taxpayer and the citizen. There is a view that public servants, by their nature, tend to be risk averse and that they provide excellent advice and are very prudent and balanced in their dealings. With the way this situation evolved so rapidly over a period of two to three weeks, surely Ms Moylan’s best instincts caused her to put her hand up and say, “Hold on, that is an extraordinary statement to make”. This was extraordinary latitude to give one individual in the context of a situation like this. Has Ms Moylan any concerns about how this situation was evolving given her function as a civil servant of some repute and experience? Did a red light go on in her mind about giving Bernard McNamara or anybody this kind of latitude?

Ms Mary Moylan: This paragraph has to be understood in the context that the authority had agreed that a bid price of €375 million was a reasonable one having regard to the development potential of the site and other comparable land prices. The authority’s investment was linked to that amount of €375 million about which the authority was satisfied. In this paragraph it was noted earlier that Mr. McNamara believed that a higher bid should be made and he offered to fund a higher bid. The higher bid above €375 million was being funded by Mr. McNamara and the authority was not being exposed to that. That was the context of it.

Deputy Gerald Nash: In the context of Ms Moylan’s role in the Department as a member of its senior management team, she would have been aware of concerns about the property market and of the knowledge the Department would have had that the market was overheating. There are indications in the documentation we have to suggest that advice was offered to the board that the market was overheating. One would not need to be an expert to understand that this particular development and a bid of this nature would be particularly risky. Did Ms Moylan ever personally identify any of those risks? Did she ever express the view at a meeting, sub-committee meeting or board meeting about the need for more cautious?

Ms Mary Moylan: I participated fully in the board meetings and, yes, the executive did say to the board that the bid was being made in the context of an overheated market but the executive did go on to recommend that the authority should participate in the joint venture. What was important as the negotiations developed was that various measures were taken to protect the authority’s interests and these included, as I said, the valuation of €375 million being regarded by the authority as a reasonable valuation and the 26% shareholding. The venture was being financed by a 30% equity and 70% borrowing with the borrowing being secured against the site. We also were being advised by professional advisers and care was being taken to protect the authority’s interests. What was emerging was that the authority’s exposure was going to be limited to €36 million in terms of the equity and the recourse finance in relation to the borrowing. The authority had assets of €100 million at that stage, €30 million of which was in cash. The shareholders’ agreement between the authority and Mr. McNamara was to protect the authority’s interests and to make sure that they were protected.

Deputy Gerald Nash: I refer to the references to the declarations of interest in the minutes

of the meeting, which have been comprehensively covered by Deputy Donohoe. The position on that appears bizarre and incredulous. It is akin to Lannigan's Ball where Sean FitzPatrick and Lar Bradshaw stepped in and then stepped out, and Declan McCourt stepped out again. We identified that and discussed it at a previous meeting. I do not necessarily want to reflect on it, but did Ms Moylan feel uncomfortable with that level of interest? I accept what is contained in the minutes. That was the view of the board and its members have explained it in the context of the minutes, but did Ms Moylan personally feel uncomfortable with any potential conflict of interest that may have arisen?

Ms Mary Moylan: It is a matter for the individuals themselves to make their declarations of interest.

Deputy Gerald Nash: That is not the way we see it and how the public would see it. How does Ms Moylan feel about it?

Ms Mary Moylan: I understand there is a perception issue. All of us rely on our colleagues making the appropriate declarations. They were members of the board and, with hindsight, it probably would be better if they did not have these interests at the time but, as I said, it was a board of experts. They had been appointed for their expertise and in such cases it is difficult to avoid conflicts of interest in individual transactions.

Deputy Gerald Nash: We know now that they were not the entrepreneurial geniuses they led us to understand at the time but in any event, as Ms Moylan correctly pointed out, these are people who were considered to be experts in the area and their record spoke for itself. They were people with considerable experience and expertise and at that time had a long and considerably successful record in property development and banking. Given their level of experience and the perception that prevailed at the time with some people being of the view that some of these individuals should have been running the country, God forbid, did Ms Moylan ever feel bounced into making a decision with which she was uncomfortable given what she said, that these people were experts and they had huge expertise as far as she understood the position to be and as far as the board was concerned? Did she ever feel railroaded into making a decision with which she was uncomfortable, giving them the benefit of the doubt because they were considered to be the experts in the area?

Ms Mary Moylan: No, I did not. The board did its business on the basis of papers presented by the executive. We had professional advice available to us on issues as required and then, obviously, the discussion around the table was informed by people's expertise.

Deputy Gerald Nash: Would Ms Moylan say the staff of the Dublin Docklands Development Authority, and perhaps other board members, were somewhat in awe of some of the individuals such as Sean FitzPatrick, Lar Bradshaw and others because of their expertise - quote, unquote - in the area. Has Ms Moylan ever experienced that feeling with regard to those individuals or has she identified that feeling in the organisation? They seem to have been given a good deal of latitude?

Ms Mary Moylan: I certainly did not feel that. My view is that the board operated as a board of eight people and that all eight members contributed to the discussions and the decision-making.

Deputy Gerald Nash: Reference was made earlier to the 2010 code of practice for public servants on various boards, which is a governance structure, but is it correct to say that does not

apply to commercial semi-State organisations?

Ms Geraldine Tallon: For clarification, the protocol the Department of Finance promulgated in 2010 to the 2009 code of practice applied to non-commercial semi-State bodies. There was no protocol to apply to commercial semi-State bodies.

Deputy Gerald Nash: It is still the case that the protocol has not been updated to include commercial semi-State companies.

Ms Geraldine Tallon: It has not been updated to refer to commercial semi-State bodies. That is correct. That is an issue for the Department of Public Expenditure and Reform-----

Deputy Gerald Nash: Absolutely.

Ms Geraldine Tallon: -----and it is one I have raised with the Department.

Deputy Gerald Nash: That is very important.

We appreciate the witnesses' evidence today and the circumstances around that. It would be valuable if others would make themselves available to allow us complete that circle. The witnesses should not be disadvantaged by virtue of their public office, which requires them to appear here when others who are not required to attend can decide not to appear. I appreciate the circumstances in which they find themselves, and I appreciate also their frank replies. It would be valuable if that protocol was extended to give guidance to public servants because it is important that public servants represent Ministers and citizens in the public interest on such organisations. It is important also that they have the support to do so.

Deputy Simon Harris: I will start where Deputy Nash finished. I thank Ms Moylan for attending. We have all said on many occasions, and I am glad it has been agreed under the proposal from Deputy Donohoe and the Chairman, that the other key players, the missing in action, should be invited to come before this committee. The Secretary General was correct in her opening remarks when she said it is impossible to get a full picture until some of the key stakeholders appear before us.

To counter that, Ms Moylan has given evidence to this committee which was frank and honest but she highlighted that she herself was a key stakeholder. She was a fully participating member of the board that actively partook in the discussions and the decision-making process that resulted in the debacle that was the Irish Glass Bottle Company site.

Much of the detail has been covered by Deputy Donohoe but I want to go back on some of the points. I apologise if there is any repetition but I am not clear on some points, and they all originate from the Comptroller and Auditor General's report. The first one is the conclusion in section 3 on the case for investment. It states:

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

What I read from that is that Ms Moylan had staff in the authority advising, or at least cautioning, against this venture and presenting analysis to the board suggesting that this venture needed to be re-examined, reconsidered or possibly should not proceed. Ms Moylan was a

board member who partook in the decision to proceed. Can she explain to me what that environment was like? What sort of advice was she being given? Did the executive advise the board not to proceed or did they at least advise Ms Moylan that there was an overheated commercial property market?

Ms Mary Moylan: I thank the Deputy. Yes, the executive did advise that the tender was being made in the context of an overheated market but the executive went on, nevertheless, to recommend that the authority should get involved in the acquisition of the site. It is in the paper of 20 October. It is at the start of the paper in 1.3. The reference to the bid being made in the context of the overheated commercial market is at paragraph 13.2.2 but at 1.3, in the summary of the document, the executive does recommend that the authority should make a joint bid with Mr. McNamara to purchase the site.

Deputy Simon Harris: Ms Moylan might respond directly to the comment in the Comptroller and Auditor General's finding that a detailed analysis of those factors does not seem to have been carried out by the board. Does Ms Moylan accept or reject that finding?

Ms Mary Moylan: The board did consider the pros and cons set out in the paper before the authority. They considered the various valuations and were satisfied in relation to the plot ratio and previous land purchase prices. The board had advice from the executive regarding devaluation scenarios in the context of a devaluation of land, although obviously not to the extent to which devaluation ultimately took place. The authority's capacity to repay the borrowing was considered. All of that was considered and is part of an assessment of the risk.

There was a very tight timeframe regarding this because the site was being sold by tender and the tenders had to be submitted by 25 or 26 October. Yes, there was an assessment. There was advice but I think it likely that if a longer time period were available, a more detailed analysis would have been carried out.

Deputy Simon Harris: I am not being rude but I want to use my phone to read the Official Report of 4 November 2004. The late Tony Gregory, then Deputy Gregory, raised with the then Minister for the Environment, Dick Roche, the potential conflicts of interest on the part of members of the board of the Dublin Docklands Development Authority and that this would prevent them from making balanced planning decisions. The then Minister, Dick Roche, had a bit of a P. Flynn moment - "You should try it sometime". He said it is difficult in a relatively small city to select people with the talent and time who are willing to give service to the public through these boards. "Wow, thank you for their service," would be the view of many people.

Let me return to the issue of conflicts of interest. Ms Mary Moylan is a very senior public servant, an assistant secretary. Issues associated with conflicts of interest were raised with the Minister for the Environment, Community and Local Government during Question Time in the Dáil. Even at that time, there was a general concern and rumbling about some of the people in question, but not at the level that obtained afterwards. With regard to the meetings, the Comptroller and Auditor General clarified earlier that people said they wished to declare an interest, in respect of which the legal advice was that there was not a conflict of interest, meaning they could continue to participate in the decision-making process at the meetings. As a board member, did Ms Moylan genuinely believe they did not have a conflict of interest? With the benefit of hindsight, is that a decision she would revise?

Ms Mary Moylan: The people involved declared they had a "material interest" – I believe that is the phrase. They also declared they were not involved in the credit decisions. It is really

a matter for individuals to declare that. It was a question of accepting their word as I had no evidence available to me that their declarations were not correct.

Deputy Simon Harris: My question is not a smart one and is more for my own information. It demonstrates my lack of knowledge. What was Ms Moylan's role on the board? In my view, her appointment as a public servant to the board was, to some degree, in the public interest. Would she agree with that? As a senior civil servant from the Department of the Environment, Community and Local Government, would she have been appointed to carry out a public-interest role? Would she have viewed that her role was to keep an eye on things from the Department's perspective and from a public-interest perspective in addition to honouring her responsibilities as a member of the board?

Ms Mary Moylan: All board members had a duty to the board and to the authority to carry out their duties properly and to see that the statutory objectives of the authority were achieved. I was appointed to the board as an ordinary director. The Act did not provide for ministerial representation on the authority so my duty was to do the best I could in the interest of the docklands area and docklands community. I did have a public-interest duty along with every other board member.

Deputy Simon Harris: Mr. FitzPatrick and Mr. Bradshaw were not public servants; they were businessmen, I suppose. I am wondering whether Ms Moylan had an extra obligation in regard to keeping the Department and perhaps the Minister informed. Did she feel she discharged that? It would be useful to know whether, at any stage, she expressed concern to the Department and whether she had discussions with the Secretary General or Minister on developments in the authority. What was the level of interaction within the Department? It is important to know that. We already know the taxpayer was left extremely exposed. Ms Moylan told us very frankly that, with hindsight, she perhaps wishes she had had a conversation with the Minister, but I accept that she was not duty bound to have that conversation. What was the environment like in the Department? Was the Minister taking an active interest? Was Ms Moylan talking to the Secretary General and was she making reports? What were the formal and informal reporting structures?

Ms Mary Moylan: The reporting under the code of governance between a semi-State body and the Minister is primarily through the chairman, who is responsible for keeping the Minister informed. I suppose the main route of reporting between the authority and the Department and Minister was through the annual report. The Minister would have met the chairman from time to time. Aside from that, the sections dealing with the Docklands authority would have had regular dealings with the authority in relation to various matters, such as staffing. My role was not to report to the Minister on the activities of the board.

Chairman: Ms Tallon would like to comment on that.

Ms Geraldine Tallon: It would be fair to say in these circumstances that the Department, as well as the Comptroller and Auditor General, would recognise that my colleague was in a difficult position as a board member given the potential for conflict between the board member fiduciary duty and the line responsibilities in the Department. I was not there at the time but subsequently I introduced a clear delineation of responsibilities which separated board membership and departmental responsibility. Ms Moran did not have the luxury of being in that situation. There is the reality that, under the Docklands legislation, disclosure of confidential information as a member of the board or the council is an offence. That is quite explicitly stated in the legislation.

The 2001 code, which applied at the time, set out the collective responsibility and authority of the board to be safeguarded and at any time the Department is one member of that collective and the board has to take responsibility as a board. There were clear procedures set out in the code. Our understanding in so far as the Department was concerned was that they were being observed. Annual reports, for example, included a compliance statement. As Deputy Harris and Deputy Nash have identified, this is a bit of a grey area in the code, even in terms of the 2010 protocol that applied to non-commercial semi-State bodies. This is an area that we think needs to be the subject of live and active engagement by the Department of Public Expenditure and Reform.

Deputy Simon Harris: I have two final questions. One is the political element. Ms Moylan has alluded to the responsibility of the chairman to report to the Minister. That is generally the way the communication works between semi-State bodies and relevant Ministers. Have we an idea how many times the relevant Minister would have met the chairman of the board? To respond to Ms Tallon's request that we complete the circle – I do not wish to put words in her mouth – it is quite important that we look at that element as well. How many times would the chairman of the board of the authority have met the Minister in a typical year, specifically the year in question? I am sure all these matters are subject to a massive degree of confidentiality and off-the-record comment, but have we any idea as to what was discussed at the meetings and the outcomes?

Ms Geraldine Tallon: We had a look at the official record in terms of the Minister's diary at the time. There is no indication in 2006 of a meeting between the Minister and the chairman in the Minister's diary for that year.

Deputy Simon Harris: There is no indication of any meeting.

My second question relates to the point Ms Tallon is making, which I feel is extremely legitimate and important. I refer to the difficult position that Ms Moylan was put in. I do not want to personalise the matter because any civil servant in her position would have been put in that position. If one reads the letters going backwards and forwards, as I have done, one will note the circumstances were quite bizarre. Ms Moylan was a full member of the board, legitimately appointed to meet board responsibilities. I accept that. Despite this, the chief executive of the body of which Ms Moylan was a board member was writing to her in her other capacity about decisions made by the board and advancing them within the Department. It is quite crazy. Ms Tallon quite correctly stated Ms Moylan was put in a difficult position but we did not put her in that difficult position. Is Ms Tallon saying this could not happen again? The assistant secretary with responsibility for planning served on a board and attended meetings at which decisions were made and, when the board through its chief executive needed to communicate with the Department, it wrote to the same board member wearing her other hat and she wrote back. The paper trail is almost absurd as is the fact that someone could switch hats so quickly. It is not a personal criticism but rather an observation on the system. I would like to be provided with a view as to how it was decided that the best person to appoint to the board was Ms Moylan, given her role within the Department. I would also like Ms Tallon to reiterate the assurance that this could not happen again.

Ms Geraldine Tallon: I clarify that in July 2006 the Minister launched the DDDA annual report in the CHQ building. Whether that involved a meeting with the chairman of the board, I am not sure. However, I note what is reflected in the diary. Although the first board member was Mr. McCarthy, who is sitting to my left, after a year it became the general practice in the Department that the head of the planning division was appointed by the Minister to the board

of the DDDA.

Deputy Simon Harris: Who made that decision? Mr. McCarthy served on the board of the DDDA and a year later a decision was made by someone in the Department to appoint the head of the planning division.

Ms Geraldine Tallon: The Minister makes the appointments.

Deputy Simon Harris: The Minister decided that the representative of the Department on the board of the DDDA should be the head of planning within the Department.

Ms Geraldine Tallon: Yes. As Ms Moylan has set out, there is no explicit provision in the legislation for the position of an official of the Department or Minister on the executive board. There is an explicit provision for representation by an official of the Minister on the council of the authority.

Deputy Simon Harris: I want to probe this further. We have learned today that a criticism of the process is the difficult position in which Ms Moylan was put as evidenced by the letters and her need to switch caps. While I am sure she did so correctly and in an above-board manner, it was not a good way to do business. What was Mr. McCarthy's role on the board and can anyone set out the rationale behind the change?

Ms Geraldine Tallon: Before the Deputy moves to Mr. McCarthy, I clarify that the handling of the letter in the Department was performed by the business unit, not by Ms Moylan. The letter came to Ms Moylan on 12 October and arrived in the Department on 16 October having been annotated by her to the effect that it should be discussed urgently with the principal officer. The assessment and recommendation which followed came from the Department.

Deputy Simon Harris: However, the letter is signed by Ms Moylan and addressed to her.

Ms Geraldine Tallon: The letter which issued ultimately is signed by her.

Mr. John McCarthy: I can provide some rationale for my involvement at the outset of the establishment of the board. The authority was established on 1 May 1997 to take over from the preceding Custom House Docks Development Authority. A docklands area task force was established by the Government in 1996 to chart the transition from the Custom House Docks Development Authority, which had a narrow geographical remit, to a much broader docklands regeneration exercise. By virtue of my duties in the Department in the urban renewal area, I was the secretary to the task force. My understanding of the rationale for my appointment to the board of the DDDA by the Minister of the day was that I had knowledge and experience of the task-force work which was of benefit to the authority early in its work. I was appointed with effect from 1 May 1997 - at the very outset of the new authority - and resigned, to the best of my recollection, in December 2007 when I moved to other duties in the Department.

Deputy Simon Harris: I take it that Mr. McCarthy had a successor in his position in urban renewal who was never appointed to the board of the DDDA.

Mr. John McCarthy: That is correct. The head of the division which oversaw the urban renewal section took over. At the time, that was head of the planning division.

Deputy Eoghan Murphy: I thank the witnesses for attending today. The committee was discussing this matter previously but its discussions had to come to an end. As a result, further time has elapsed, which makes it difficult to get to some of the issues. I appreciate greatly that

Ms Moylan is only one of a number of serving board members who are now appearing before the committee. It is unfortunate if the full weight of our concerns are falling on one person, but it is good to have her before the committee to answer the questions members have.

Before I get into the detail of some of its activities, I want to touch on the culture in the board at the relevant time. As a committee, we often encounter systems failures in Departments which have led to financial mismanagement. There is also an issue of cultural failures in organisations which lead to financial mismanagement. This might be a very useful example of that. Deputy Nash also touched on this issue. Ms Moylan sat on the board from 2000 to 2007. When did she leave the board?

Ms Mary Moylan: I came off the board in October 2007.

Deputy Eoghan Murphy: How did Ms Moylan come to be on the board originally?

Ms Mary Moylan: I was appointed as assistant secretary in the planning division of the Department and, as Ms Tallon outlined, it was the practice for the head of the planning division to be appointed to the board of the authority. For the duration of my time in the planning division I was also a member of the DDDA.

Deputy Eoghan Murphy: Was the person who preceded Ms Moylan as head of the planning division also a member of the board?

Ms Mary Moylan: Yes.

Deputy Eoghan Murphy: We have spoken about the two hats Ms Moylan was wearing. There is often a difficulty with people understanding their responsibilities as board members. Usually, a board member's obligations are to the institution or company on the board of which he or she sits. However, Ms Moylan had a separate responsibility to the Department and the State. We have discussed potential and perceived conflicts of interest. Does Ms Moylan accept that she had a conflict of interest at the time?

Ms Mary Moylan: In which context?

Deputy Eoghan Murphy: I refer to the Irish Glass Bottle Company site and the need to provide advice to the Minister as to whether he should approve the increased borrowing at the same time as Ms Moylan was pursuing a commercial objective as a member of the board which was seen to be to the benefit of the authority.

Ms Mary Moylan: I was in the position that I was in. I was an assistant secretary in the Department and a board member. I had to manage those responsibilities properly and well at the time. I did that as carefully as I could.

Deputy Eoghan Murphy: Clearly Ms Moylan was conflicted at the time.

Ms Mary Moylan: I said that I believed that I was not conflicted at the time in the light of the decision that was taken by the authority, the fact that the analysis of the authority's request was carried out by the business unit in the Department, which made its recommendation through me to the Minister, and the ultimate decision that was taken in regard to the investment, which I believed was within the parameters agreed by the Minister. I did not consider that I had a conflict at the time.

Deputy Eoghan Murphy: Approaching the decision, Ms Moylan had to weigh up two

competing responsibilities. Is that correct?

Ms Mary Moylan: This is the position I was in. I did that as well as I could.

Deputy Eoghan Murphy: Do not competing responsibilities imply that there is a conflict? They are in competition with each other.

Ms Mary Moylan: Not necessarily. That is one definition but I worked in the Department in an area involving planning and heritage that was complicated and could be seen to have competing interests and it was my job to take decisions on those and make recommendations to advance the Department's objectives. Regarding the purchase of the Irish Glass Bottle site, as I said before, the board was responsible for the decision on the purchase. It was not a matter for the Department or the Minister, so there was not a conflict in that issue. Regarding the approvals the Department and the Minister had to give for the borrowing sanction and for the authority to enter into a joint venture, I was satisfied that the decision the board recommended was within the parameters that had been agreed by the Minister.

Deputy Eoghan Murphy: Ms Moylan speaks about the board as if it was a separate entity, but she was also a member of it.

Ms Mary Moylan: Yes, I was one of the eight board members.

Deputy Eoghan Murphy: Did Ms Moylan feel she could objectively step outside to tell the Minister that this is what the board wants and it should be approved?

Ms Mary Moylan: This is what I had to do at the time. That was my role of being a board member and having responsibility in the Department. I have also been a member of the board of the Heritage Council and the board of the Irish Heritage Trust and had responsibility in the Department for heritage matters. As Ms Tallon commented earlier, the position has changed now that these roles are separated. It was the practice at the time that people held both roles.

Deputy Eoghan Murphy: I think it goes back to a cultural thing as well and, perhaps, not a proper understanding of a conflict of interest. As Deputy Harris said, it was assumed that because Ireland was a small place, then it was okay.

Before and after a board meeting, would Ms Moylan brief anyone on what was discussed in the Department?

Ms Mary Moylan: No. I was there as a member of the board to take collective decisions. I had no reporting relationship back to the Department on the board's activities. If there were issues that concerned, say, housing policy, which were going to come up at a meeting, before going to it I would be brief myself in advance to be sure I was aware of the Department's position.

Deputy Eoghan Murphy: On that point, when Ms Moylan went to a board meeting and gave the Department's position, did she state she was expressing the Department's concerns or that she knew what the Department's concerns were?

Ms Mary Moylan: I was doing it from the point of view of informing myself of what the current policy was in particular issues which would be relevant to the board.

Deputy Eoghan Murphy: To what end?

Ms Mary Moylan: I suppose to the end of ensuring the board was informed of what policy

was.

Deputy Eoghan Murphy: Is it the case then that the board would be able to use that information?

Ms Mary Moylan: Yes.

Deputy Eoghan Murphy: I see that as a conflict of interest because Ms Moylan is taking information from the Department that the board would not have, giving it to it and then it can use that in the best interest of the authority which may not be in the Department's interest.

Ms Mary Moylan: I was actually referring to published policy rather than any confidential information in the Department.

Deputy Eoghan Murphy: Given Ms Moylan's position in the Department, this is a good example where a conflict does arise. Would Ms Moylan take notes at the meetings? Did she type them up afterwards?

Ms Mary Moylan: I did not type up notes afterwards. I relied on the minutes of the board meetings as my main record.

Deputy Eoghan Murphy: When she was preparing for today's meeting, did she have to go back to the minutes and recall from best memory?

Ms Mary Moylan: I went back through all of the board's papers and minutes to prepare for this meeting.

Deputy Eoghan Murphy: Did she speak to any of the other members of the board at the time before coming to the meeting?

Ms Mary Moylan: No.

Deputy Eoghan Murphy: Not even to check if she could not remember what happened on a certain date?

Ms Mary Moylan: No.

Deputy Eoghan Murphy: Did she have any outside preparation or assistance in preparing for this meeting today?

Ms Mary Moylan: Yes, I had assistance in preparing for this meeting.

Deputy Eoghan Murphy: Could she detail it?

Ms Mary Moylan: Obviously, I prepared within the Department for this meeting. I got all the files and papers on this matter and I also had some legal advice.

Deputy Eoghan Murphy: Legal advice. Was there any professional help in preparing answers? Was that the legal advice?

Ms Mary Moylan: I did prepare for this meeting. On various occasions I have had training on presenting. I refreshed myself on this before coming to the meeting.

Deputy Eoghan Murphy: Who would have paid for that?

Ms Mary Moylan: I paid for it.

Deputy Eoghan Murphy: Would it come from Department funding?

Ms Mary Moylan: The legal advice has been paid for by the Department and I paid for the training.

Deputy Eoghan Murphy: At several board meetings, board members absented themselves because they felt there was a conflict or a perception of a conflict of interest. At a meeting on 2 November 2006, for example, the chair leaves with another board member but then the replacement chair has to leave too because of a conflict of interest. From the minutes, it is quite common for people to leave board meetings due to conflicts. It did not just happen with the Irish Glass Bottle site either but at other meetings dealing with other issues. Did it strike Ms Moylan as odd that board members would leave because they had, or a company for which they worked had, an investment in the project under discussion?

Ms Mary Moylan: People did declare conflicts of interest, the majority of which related to professionals on the board such as architects and engineers who had professional relationships regarding specific transactions. As I said previously, the people appointed to the board were professionals and it would not be unusual that they would have conflicts of interest with particular transactions. Professor Brennan noted that fact when she appeared before the committee previously.

Deputy Eoghan Murphy: Was the Department responsible for appointing people to the board?

Ms Mary Moylan: The Minister appointed people to the board.

Deputy Eoghan Murphy: Was it the Minister and the Department of the Environment, Heritage and Local Government, as it was then?

Ms Mary Moylan: Yes.

Deputy Eoghan Murphy: On what basis were they appointed? Was it just a ministerial decision and a political gift?

Ms Mary Moylan: They were appointed by the Minister in the way all ministerial appointments were made at the time.

Deputy Eoghan Murphy: I was not here at the time. How were they made at the time?

Ms Geraldine Tallon: The Act is silent on the process. It simply states the Minister will appoint seven ordinary members to the board. There is no process laid out on a statutory basis.

Deputy Eoghan Murphy: I thank Ms Tallon for that clarification. I just find it odd that so many people on the board seemed to have so many professional interests in the work the authority was doing at the time. I also find it odd when we discuss conflicts of interest that it is just seen as a perception issue, a perceived conflict of interest rather than actual conflict of interest. That is still the language being used concerning the reason why the chairman might leave when discussing the Irish Glass Bottle site and also the replacement chairman because of his perceived conflicts of interests.

During Ms Moylan's time on the board, after the deal went through in 2005 and was signed

in early 2006, I could not see any other mention of it in the minutes from board meetings relating to the Irish Glass Bottle site throughout 2007 until the very end when a financial problem appears to raise its head in respect of the remediation works on the site. Does it strike her as odd that a project of this magnitude, which was a new thing for the authority, would not be referred to again in any detail at board meetings once the documents were signed? Did she ever raise it?

Ms Mary Moylan: It was raised at a number of meetings after that. It was a topic on the agenda for a number of meetings.

Deputy Eoghan Murphy: Of the main board?

Ms Mary Moylan: Yes.

Deputy Eoghan Murphy: I could not find that in the notes I was looking at. In January 2008, there was a problem with ongoing funding and in April that meant looking for further loans but Ms Moylan was not on the board at that time.

Ms Mary Moylan: No.

Deputy Eoghan Murphy: I will not pursue that point. In May 2007, a complaint was made against the board to the Standards in Public Office, SIPO, Commission. Does Ms Moylan remember what that complaint was about?

Ms Mary Moylan: No, I do not.

Deputy Eoghan Murphy: The complaint was made by Mr. Michael Smith and was addressed at the meeting on 11 June 2007 in which board members were circulated and informed of a letter sent on 9 June to SIPO in response to the allegations made by Mr. Smith. Does Ms Moylan recall what that was about?

Ms Mary Moylan: In preparing for this meeting, I read the papers relating to the Irish Glass Bottle site. I do not recall reading the minutes in respect of that particular meeting.

Deputy Eoghan Murphy: It would be interesting to try to find out what those complaints were about.

Chairman: Does Mr. McCarthy wish to respond?

Mr. Seamus McCarthy: I do not have the detail of that but my recollection is that it was a complaint in respect of conflicts of interest.

Deputy Eoghan Murphy: That sounds very relevant to what we are discussing today so if we could get that detailed information, it would be very relevant to our next meeting.

Mr. Seamus McCarthy: I will look into that and report back to the Deputy.

Deputy Eoghan Murphy: I thank Mr. McCarthy. Deputy Donohoe has already discussed some elements of the process but I have some additional questions. Did Mr. McNamara approach the authority or did Mr. Moloney approach him?

Ms Mary Moylan: I do not quite know. At the meeting on 3 October, the chief executive briefed the board that he had undertaken confidential negotiations with a developer. The board agreed that he should carry on those negotiations and if they were not successful, he could have discussions with other developers. The chief executive approached a developer in respect of

the paper for 3 October. However, I believe that developer may not have been Mr. McNamara.

Deputy Eoghan Murphy: So Mr. Moloney took the initiative. Was he mandated to do by the board in advance? Was there a previous meeting where he was asked to look for people to enter into a joint bid with for this site?

Ms Mary Moylan: No, the board discussed this for the first time on 3 October but the council of the authority had discussed it in July.

Deputy Eoghan Murphy: Who sits on the council?

Ms Mary Moylan: The council of the authority is made up of representatives of organisations that are set out in the Act. They represent the community, the city council and various other professional organisations. There was one member from the Department of the Environment.

Deputy Eoghan Murphy: I can see the interest from the commercial, private side because if one goes in with a joint bid with the Dublin Docklands Development Authority for a site under its remit, one's bidding partner can fast-track planning so I can see the benefit from that side. I cannot see the benefit of getting involved like this from the authority's perspective. Was that issue discussed at the board meeting on 3 October?

Ms Mary Moylan: It was discussed. As I said in my opening statement, the authority was involved in trying to deliver the regeneration of the area and improvements in infrastructure and achieving the social and economic development of the area. It did this partly through its planning function but the authority's experience was that it was much better at delivering less commercially viable development where it had ownership of land.

Deputy Eoghan Murphy: The authority was concerned about other people coming in and land banking this site - buying it and then not developing it - which would be of no use to the authority and what it was trying to achieve in the area.

Ms Mary Moylan: Yes, that is one instance. The authority had been the underbidder for the adjoining site back in 1999 and it still had not been developed.

Deputy Eoghan Murphy: When did Mr. Moloney tell the board that Donatex had started talking to Anglo Irish Bank and Bank of Ireland. I think it was at the meeting of-----

Ms Mary Moylan: 24 October.

Deputy Eoghan Murphy: Yes, 24 October. There had been a meeting the night before on 23 October. Item 2.1 of the minutes of 24 October states that, "Opening the meeting, the Chairman drew attention to the fact that he and the Chief Executive had been advised by Mr. McNamara at 8.30pm the previous night that Mr. McNamara was in discussions with Bank of Ireland and Anglo Irish Banks in order to secure the acquisition funding". Item 2.4 states that, "The Chief Executive confirmed that all of the negotiation and preparation of documentation by the Executive had been virtually completed before the issue arose. He had understood that Mr. McNamara had been in discussion with the Bank of Scotland but was only advised of the Bank of Ireland/Anglo Irish involvement in the same meeting as the Chairman". I take it that the meeting to which the Chairman was drawing attention at the beginning of the board meeting was the meeting of 23 October at 8.30 p.m.

Ms Mary Moylan: Yes, it was.

Deputy Eoghan Murphy: So we have a situation where those who felt conflicted by the deal met the night before the board meeting where the board was informed to discuss that.

Ms Mary Moylan: My understanding is that the chairman and chief executive met Mr. McNamara or at least had been in discussions with him the previous night.

Deputy Eoghan Murphy: Did that concern Ms Moylan?

Ms Mary Moylan: I would have expected the chief executive to be involved in preparing for the meeting. The board had agreed in principle on 20 October to participate in the joint venture so I would anticipate that there would have been discussions with Mr. McNamara.

Deputy Eoghan Murphy: However, not from the point of view of financing. This is the change. They thought Bank of Scotland was involved and then there was a change and discussions were being held with Bank of Ireland and Anglo Irish Bank. Mr. McNamara only told the chairman that the night before the board meeting. Was Ms Moylan concerned that the people with this interest, who could not stay in the room when it was discussed or decided upon, had a meeting before the board meeting? At the time did it concern Ms Moylan that the protagonists had met beforehand to discuss this issue?

Ms Mary Moylan: It did not concern me. I understood they had met to discuss the detail of the joint venture and that this emerged. The arrangement was that the joint venture company and Mr. Bernard McNamara would secure the financing for the joint venture and I assume the discussion was in that context. The people who were at the meeting would have to answer that.

Deputy Eoghan Murphy: Three members of the board, including its chairman, very often had to leave around the discussion of this project. Did that strike Ms Moylan as odd at the time?

Ms Mary Moylan: As the Comptroller and Auditor General has pointed out, they left the meeting on 2 November, having declared an interest, and this was the procedure in accordance with the code of practice.

Deputy Eoghan Murphy: Did it not strike Ms Moylan as odd at the time that three out of seven members of the board had such an interest in such an important deal?

Ms Mary Moylan: It was the nature of the make-up of the membership of the board.

Deputy Eoghan Murphy: It goes back to cultural issues at the time, and I am not entirely sure it is not relevant to the way board members were selected. I want to look into the detail as the board came to value the site. A report from the Comptroller and Auditor General from February 2012 states that the board was trying to establish a valuation for the site and:

[I]n June 2005 the authority had obtained an independent valuation of the property which placed a value of €240 million (exclusive of VAT) on the site. It was reported to the board on 20 October 2006 as being based on an assumed plot ratio of 2:1. Two internal appraisals were carried out by the authority in 2005 and 2006, which valued the site at €303 million (based on a plot ratio of 3:1) and €264 million (based on a ratio of 2.5:1) respectively. However, the authority did not obtain any further independent valuations of the site prior to the bid being placed by the joint venture company in October 2006.

Did Ms Moylan ever query the changes in plot ratios proposed, which were driving up the price?

Ms Mary Moylan: I did query the changes in plot ratio because I was concerned to ensure they were in accordance with proper planning policy. The executive assured the board that the plot ratios and development mix were in accordance with authorities and policies of Dublin City Council.

Deputy Eoghan Murphy: Did Ms Moylan see any plans or drawings that were demonstrating the plot ratio, how it would fit on the site and what the spread of commercial development versus residential versus other would look like?

Ms Mary Moylan: No, there were no drawings at that stage.

Deputy Eoghan Murphy: So Ms Moylan never got an idea as to how the value of the site could be maximised from a commercial point of view after buying the site?

Ms Mary Moylan: I am sorry, I did not quite get the question.

Deputy Eoghan Murphy: The board came at a price for the site based on different plot ratios that were changing, but from what I see there was no formal business case as to how that money would be realised post-acquisition.

Ms Mary Moylan: That may be a matter for the executive.

Deputy Eoghan Murphy: But the board would have said that this was a lot of money and queried how it would make it back.

Ms Mary Moylan: In terms of the board making it back, there was a discussion at the board meeting and various figures were brought forward which showed what the product would be in terms of floor area and number of residential units and what the price of those units would be. That was discussed at the board and it accorded with the valuation.

Deputy Eoghan Murphy: But that was discussed at the board only after it had agreed the bid.

Ms Mary Moylan: No, it was discussed beforehand.

Deputy Eoghan Murphy: The February 2012 report states:

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

In terms of the higher valuations placed on the site by Donatex of up to €430 million, these are based on a plot ratio of 2.6:1, but the report states:

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

I see justifications for valuations coming in after a decision to bid has been made.

Ms Mary Moylan: There was a formal valuation after the bid was made and that is the one to which the Deputy is referring. The executive had other valuations of the site, which related

the plot ratio to the number of units per hectare and what that development opportunity would realise. The executive was in consultation with professional advisers and the chief executive advised the meeting on 20 October 2006 on the value of the site, which is when the board agreed that the value of €375 million was a reasonable value having regard to the information the chief executive had presented about plot ratio and the development mix. There was a discussion on the number of units that would be realised by that type of plot ratio.

Mr. Seamus McCarthy: In this area it might be useful to distinguish between an valuation which is based on a professional exercise carried out by a valuer and an exercise of analysis and business interpretation, which would be aimed at trying to identify a price. There is a distinction between a valuation, which is one particular price arrived at in particular circumstances and based on particular assumptions, and then speculative exercises that would be undertaken asking what would happen if one changed one of the assumptions, say, regarding plot ratio or commercial mix. That would be the normal exercise one would expect to see undertaken in an investment decision. It is a useful tool to have that kind of information. Deputy Harris asked earlier about the point we made in the report about detailed analysis not having been carried out. One would expect for a proposed investment of approximately €400 million to see quite detailed business and cashflow analysis being done. There is an element of apples and oranges here, in that sometimes what is quoted is a price based on a business-type analysis, and in other cases it is a valuation based on an exercise carried out by professional valuers. I hope that is not over-complicating it.

Deputy Eoghan Murphy: I am completely confused now. I thank Mr. McCarthy for that clarification. I am trying to get at the executive examining the business case and what can possibly be done with this site. Judging by the minutes and the notes I have seen, the board did not get a full business case or the kind of details one would like to know when making a purchase of this scale. From where did the executive gets its information? Who did its work for it?

Ms Mary Moylan: The staff of the executive included architects and surveyors. My understanding is that the executive also used professional advisers, lawyers, financial advisers and valuers to prepare its assessments.

Deputy Eoghan Murphy: When the Department approves an acquisition of the authority, does the former conduct a value for money analysis?

Ms Mary Moylan: No. As noted in the report, the Department's analysis was based on the authority's capacity to repay borrowings.

Deputy Eoghan Murphy: Not on anything else.

Ms Mary Moylan: No.

Deputy Eoghan Murphy: I wish to discuss the exposure under the loan agreements. The authority's intended liability was capped, but that cap was later removed.

Ms Mary Moylan: It was agreed on 24 October that the cap would be €36 million, comprising an equity investment of €29 million and recourse financing of €7 million. In November, it emerged that the banks were seeking a greater level of recourse. Under that proposal, the authority's share in the recourse financing would increase to €26 million. This proposal was laid before the authority's November board meeting, at which the board instructed the executive to seek to have that level of recourse reduced, if possible. In the event, it did not prove possible.

Deputy Eoghan Murphy: In November 2006, there was an understanding that the liability was capped, but then it exceeded that amount.

Ms Mary Moylan: Yes.

Deputy Eoghan Murphy: How did that happen?

Ms Mary Moylan: As regards the November part, I can explain the change in the recourse financing required by the banks. The authority's legal advisers were asked to ensure that the agreement between the authority and its partners was drafted in such a way that protected the authority's interests. The negotiations with the banks were to be done in the same way, particularly with a view to ensuring that the authority's exposure was capped and that there would be no cross guarantees, that is, the authority would not be liable if its business partners did not meet their obligations. As to the details of what happened after I left the board, that is probably a matter with which the executive can help the Deputy.

Deputy Eoghan Murphy: The authority eventually provided guarantees that covered Becbay in its entirety, 26% of all interest due and 26% of all cost overruns on the site's remediation. These financial problems were known to the board in 2008, when Ms Moylan left. It strikes me as odd that, if the authority sought legal advice to protect itself, it then covered the borrowings of the joint venture in its entirety as well as 26% of all interest due and 26% of all cost overruns on the site's remediation, a decision that led to increased exposure and liability. Does Ms Moylan assert that this information only came to light after she left the board? As far as she was concerned in November 2006, there was a limited liability.

Ms Mary Moylan: I believed that there was a capped exposure.

Deputy Eoghan Murphy: Does Ms Moylan believe that the board might have been misled by the executive?

Ms Mary Moylan: I do not know, as the documentation on the cap that was agreed in the shareholders' agreement between the docklands authority and Donatex Limited, the company involved, is complicated. I do not know whether that cap was carried forward into the agreement with the banks. I do not have access to the documents to enable an assessment.

Ms Geraldine Tallon: My colleague, Mr. John McCarthy, had many dealings with the finances subsequently in his role as the departmental handler of docklands issues. It might be helpful if I asked him to explain-----

Mr. John McCarthy: I will try anyway.

(Interruptions).

Ms Geraldine Tallon: -----some of the issues around how the guarantee, etc., evolved.

Mr. John McCarthy: I will try. For the purpose of assisting the Comptroller and Auditor General in preparing his report, given the way the situation has developed in recent years and in preparation for today, the analysis has been built over time. I would refer to it as being "pulled together" and it is offered in that vein.

As Ms Moylan stated, a clear decision was made at the 24 October board meeting to limit

the authority's liability to €29 million in shareholders' loans and equity, plus €7 million in recourse finance, totalling €36 million. On 9 November and as Ms Moylan indicated, the banks raised the issue of a further guarantee of borrowings by the shareholders. In effect, the banks were seeking shareholder guarantees to cover €100 million of the debt financing. As a 26% shareholder, the authority would have taken on €26 million of the overall guarantee. The intention was to cover that amount, plus a *pro rata* share of interest for a period of two years, and that the total liability should not exceed €35 million. This was in the shareholders' agreement between the Dublin Docklands Development Authority, DDDA, Donatex Limited and Mempal Limited as the three shareholders. The actual guarantee into which the authority entered with the bank provided for a €26 million capital guarantee and a guarantee on 26% of the interest, but there does not seem to have been a reference to the overall €35 million cap on liability, as there had been in the shareholders' agreement. Obviously, the bank was not a party to the shareholders' agreement and was not bound by it. The conclusion of the Comptroller and Auditor General's report seems to outline how the exposure increased before ultimately settling on foot of the engagement with NAMA.

Deputy Eoghan Murphy: The authority did not honour its agreement with the shareholders when entering into the agreement with the banks. Is that what Mr. McCarthy is saying?

Mr. John McCarthy: No, what I am saying is that the shareholder's agreement that was entered into between the DDDA and the other two shareholders seemed to have greater protection built into it than the guarantee entered into between the authority and the bank.

Deputy Eoghan Murphy: Did the DDDA have representatives on the board?

Mr. John McCarthy: Yes.

Deputy Eoghan Murphy: I have spent more than enough time on the point. I thank Ms Moylan for her very helpful answers. I hope that when we get to speak to the other board members, they will be as helpful as she has been in helping us to discover more about what was happening at the time on the acquisition of the site.

Chairman: I thank Deputy Murphy. That concludes our-----

Deputy Paschal Donohoe: If I could, I wish to speak further on the matter. On the latter point, could Mr. McCarthy go through the answer again that he gave to Deputy Murphy on the change in the cap and the change in liability to the State?

Mr. John McCarthy: I certainly will. This is my understanding. What I say is offered on that basis.

Deputy Paschal Donohoe: It is taken in that way. It appears highly relevant to understanding the ultimate exposure of the State.

Mr. John McCarthy: The net point is that in the shareholder's agreement between the DDDA, Donatex and Mempal - the three parties to Becbay-----

Deputy Paschal Donohoe: If I could interrupt, in order to be clear, when Mr. McCarthy is talking about shareholders, does he mean the consortium that agreed to go ahead and purchase the site for €411 million? Is that what Mr. McCarthy is referring to?

Mr. John McCarthy: Yes, the agreement between the parties as to what they undertook to do for each other as part of that-----

Deputy Paschal Donohoe: And then the liabilities to each other as well.

Mr. John McCarthy: Indeed. Within that there seems to have been built in an overall €35 million cap on liability on the part of the DDDA.

Deputy Paschal Donohoe: Okay.

Mr. John McCarthy: Separately, the authority had to enter into a guarantee with the banks, and that guarantee provided for covering €26 million of capital plus 26% of interest, but there does not seem to have been a cap of €35 million.

Deputy Paschal Donohoe: Why was there a difference?

Mr. John McCarthy: I honestly cannot answer the question.

Mr. Seamus McCarthy: I might just come in on that point. As the assistant secretary has said, the set of related documents is extremely complicated. Again, to try to help with an understanding of it, we need to distinguish between the shareholder's loans and equity element, which the DDDA was putting upfront, and the guarantee figures and the percentages. One of the difficulties is that the numbers are similar but one is not necessarily talking about the same thing. We must be careful in going through the issue, as we set out in the report.

At the meeting of 24 October 2006, there was a reference to the exposure of the authority being approximately €29 million in shareholder's loans and equity, with an additional €7 million in recourse finance. That comes to a figure of approximately €36 million, but it is mostly the money the DDDA had to put up. In the outturn, what it ended up putting in by way of shareholder's equity and loans was approximately €33 million.

Deputy Paschal Donohoe: Was that less than the projected amount?

Mr. Seamus McCarthy: No, the figure that was originally mentioned was €29 million in shareholder's loans and equity, but the outturn was approximately €33 million.

Deputy Paschal Donohoe: Was it more than anticipated?

Mr. Seamus McCarthy: It was slightly more. Part of the reason for the increase was the remediation of the site, which occurred in 2007. Additional funding had to be borrowed at that stage and that is one of the reasons refinancing was required. They had to put up a further tranche of cash, which explains the difference in that regard. If one goes back to the €7 million in recourse finance that was originally mentioned, it is not clear in the documentation what that was referring to. It could either have been interest or that this was the extent to which there might be a further guarantee or a further exposure. The guarantee relates to a commitment given and agreed with the shareholders on how the overall project was to be funded by Becbay. There was €291 million in lending from Anglo Irish Bank, in the first instance, €100 million of which was to be covered by guarantees.

Deputy Paschal Donohoe: By whom?

Mr. Seamus McCarthy: By the shareholders in proportion to their shareholding.

Deputy Paschal Donohoe: Just so that I can be clear, is it the case that there was €291 million from Anglo Irish Bank and the shareholders were providing a guarantee in proportion to their share of the guarantee?

Mr. Seamus McCarthy: They were providing a guarantee on €100 million of the €291 million.

Deputy Paschal Donohoe: So it was not the total amount. It was for €100 million.

Mr. Seamus McCarthy: Exactly. The balance of the lending - €191 million - was secured against the site. The undertaking that was entered into with the lenders by the DDDA was 26% of €100 million, therefore €26 million, and 26% of interest accruing for a period of two years, which was the term of the lending at the time. At that time the liability was capped. I think that was in the first agreement. Subsequently, two more guarantees were negotiated, replacing the original. In the replacement of the guarantee at a later stage, the two-year cap on the interest was lifted.

Deputy Paschal Donohoe: What did that mean when the cap was lifted? Did it then increase the liability of the DDDA for any potential loss?

Mr. Seamus McCarthy: It removed the time limit on it.

Deputy Paschal Donohoe: Did that increase the DDDA's liability to a potential loss?

Mr. Seamus McCarthy: Yes, it did.

Deputy Paschal Donohoe: Why did that happen? If the cap had stayed in place, the State would be dealing with a smaller loss than is the case to date.

Deputy Eoghan Murphy: I am sorry, but I wish to clarify the position. Did the change in the guarantee happen in 2008 after there were already problems with the remediation costs which had gone over budget? The financial downturn was already beginning.

Deputy Paschal Donohoe: I wish to zone in on a point amid all the complexity. The cap, which was key in terms of minimising the exposure of the State to the project if something went wrong, was removed.

Mr. Seamus McCarthy: Only part of it was removed.

Deputy Paschal Donohoe: What part of it was removed?

Mr. Seamus McCarthy: The part of it that limited the exposure to interest to two years.

Deputy Paschal Donohoe: How much money did that end up costing the State?

Mr. Seamus McCarthy: It would have extended until the loans were repaid.

Deputy Paschal Donohoe: But are we talking about several millions?

Mr. Seamus McCarthy: We are talking some millions. It did not lift the cap on the 26%. That was still in place.

Deputy Paschal Donohoe: So the cap in regard to the 26% remained unchanged. I assume the cap would have been covering a larger amount of money than the cap on the interest.

Mr. John McCarthy: No, it was still 26% of the €100 million so it was still €26 million. The difference related to the extent to which the interest could accrue theoretically over a longer period if the borrowings were not repaid.

Deputy Paschal Donohoe: How much money are we talking about if the borrowings were not repaid?

Mr. John McCarthy: On the basis of the conclusions of the Comptroller and Auditor General, the accrued interest over the two-year period of 2009 and 2010 would have been approximately €8.5 million.

Deputy Paschal Donohoe: The additional exposure to the State by the removal of the cap was €8.5 million.

Mr. John McCarthy: Yes, and it concluded at that stage by virtue of the resolution with NAMA in 2011.

Deputy Paschal Donohoe: That book-ended it.

Mr. John McCarthy: Yes.

Deputy Paschal Donohoe: We have an additional exposure to the State of €8.5 million due to the removal of the cap. Is that correct?

Mr. John McCarthy: Yes.

Deputy Paschal Donohoe: Why was that cap removed?

Mr. John McCarthy: I cannot answer that question. It was something that the authority ---

Deputy Paschal Donohoe: Fine. Ms Moylan was not on the board when that happened. Is that correct?

Ms Mary Moylan: Yes.

Deputy Paschal Donohoe: That is clearly a question that must be answered.

Chairman: Yes, it is another question to which we must get an answer.

Deputy Paschal Donohoe: Regarding the council of the Dublin Docklands Development Authority, did the board get any information on the discussions that took place within the council? Just to refresh everyone's memory, the council of the DDDA was different to the board. It consisted of community representatives, some local councillors and some members of the board. Did the board get an account of what took place at council meetings? Were the minutes supplied to the board, for example?

Ms Mary Moylan: I am trying to remember but I cannot actually recall for definite. We certainly would have been updated on what was happening at council, particularly with regard to the master plan and various planning schemes. However, I cannot recall if we actually got the minutes of those meetings. The chairman of the board also chaired the meetings of the council.

Deputy Paschal Donohoe: The chairman at that point would have been Mr. Bradshaw, is that correct?

Ms Mary Moylan: Yes.

Deputy Paschal Donohoe: Does Ms Moylan have any recollection of any disquiet being expressed at those meetings? To be more specific, was Ms Moylan aware of any members of

the council of the DDDA expressing disquiet regarding a potential conflict of interest?

Ms Mary Moylan: No.

Deputy Paschal Donohoe: The only council meeting minutes we have received relate to the 68th meeting, which took place in July 2006, which is many months before the decisions were made regarding this site. I ask that the committee be furnished with minutes for the period when this decision was made and in the immediate aftermath. I wish to see minutes of any meetings held in October that contain references to the Irish Glass Bottle site purchase.

I thank Ms Moylan for her testimony today. In the absence of others being willing to discuss what happened, she has had to take all of the burden of questioning alone. I thank her for the way in which she has responded to this committee and as the Chairman has said, this committee will do its best to ensure that it can make inquiries of a broader number of people regarding what happened. I thank her for the way she has contributed to this discussion.

Chairman: We have a list of potential witnesses, as suggested by Deputy Donohoe. I will ask the clerk to the committee to write to them this week. We will send them a transcript of this meeting, invite them to appear before us and try to determine the dates on which they will be available to attend. A number of questions were raised previously and the DDDA has come back to the committee with certain additional information in response to members' questions. Members will be given that information as soon as possible.

I join with my colleagues in thanking Ms Moylan for the information she supplied to us this morning. She was extremely well prepared and did not hesitate in trying to answer, to the best of her ability, all of the questions that were put to her. She is to be commended for that. I hope that the other witnesses we are interested in speaking to will be equally as well prepared as Ms Moylan.

We will not dispose of the report because we have a number of other meetings to be arranged arising from this one. The meeting now stands adjourned.

The witnesses withdrew.

The committee adjourned at 1.35 p.m. until 10 a.m. on Thursday, 9 May 2013.