

Review of Planning Structure & Functions

REPORT

April 2010

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& Company Ltd**

CHARTERED PLANNING CONSULTANTS

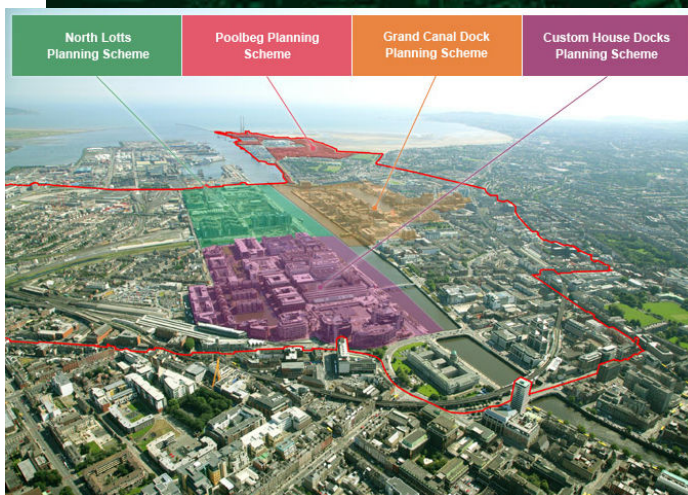
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Review of DDDA Planning Structure and Functions

Prepared on behalf of

The Board of the
Dublin Docklands
Development Authority



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EXECUTIVE SUMMARY

The Board of the Dublin Docklands Development Authority (DDDA) has commissioned Declan Brassil & Co., Planning Consultants, to undertake a review of the Authority's planning structure and functions to include its plan making and adjudicative functions, and the organisation, structure and procedures in place to facilitate the carrying out of its statutory powers, functions and duties.

The exercise of planning functions is not an exact science. It involves finding the right balance between often competing interests. This challenge can be amplified in an Authority such as the DDDA which has both a strong statute based development remit and parallel adjudicative functions. It is essential that the structures and procedures of such an Authority accommodate and ensure consistency, equity, fairness, certainty, transparency and accountability in decision making. They must ensure a balance between public good and the private interests of both the developer and third parties and they must ensure impartiality and transparency in the resolution of real and potential conflicts of interest. These are considered to represent best practice principles against which forward planning and development control functions should be measured and go to the heart of the Finlay Geoghegan Judgement.

Having regard to the Terms of Reference, the foregoing principles and best planning practice, the purpose of this review is to assess and evaluate the structures, procedures and functions of the Authority to:

- Identify potential or perceived structural issues relating to the organisation and management of the planning functions of the Authority and procedures employed for the preparation of Masterplans, Planning Schemes and adjudicating on Section 25 applications, and
- To make recommendations for consideration by the Board to address identified issues.

In October 2008 a High Court Judgement delivered by Finlay Geoghegan J, found against the DDDA for its handling of a Section 25 application. The key elements of the challenge were that the DDDA procedures were unfair in not providing an opportunity for third parties to make representations prior to a Section 25 decision being reached, and that in reaching its Section 25 decision the DDDA had departed from the terms of the Planning Scheme and was therefore acting *ultra vires*. The High Court also found that there was an apprehension of bias in the DDDA's decision making on the basis of an agreement with the applicant.

As a result of the Judgement, a review of the Section 25 application process was undertaken by Grant Thornton Consultants in association with Tom Philip & Associates, Planning Consultants. The recommendations arising from this review were adopted by the Board of the Authority in February 2009. This Report includes an assessment of these procedures which generally have been found to have achieved their stated objectives.

This review is based on a detailed evidence base supplemented by the insight gained from discussion with key actors in the management and decision making processes of the DDDA. It is believed that this provides a sound basis for commenting on the planning structure and judging the performance of the planning function and in particular the Section 25 adjudication procedure. It also provides a sound basis to inform the framing of recommendations to ensure that identified structural and procedural issues are adequately addressed to reinforce stakeholder confidence in the Authority, to ensure that internal roles and responsibilities are clearly defined and unambiguous and to improve the performance of the Authority with regard to its statutory objectives.

The creation of a new living and working community in Dublin Docklands represents a considerable achievement which stands comparison with other major waterfront regeneration projects in Europe. This has been

acknowledged in international awards and interest from study groups around the world. That much of this change coincided with a strong period of growth in the Irish economy in which Dublin played a key role is no accident. The momentum which the Docklands helped to provide in the creation of a knowledge based, service economy was considerable. However, this was linked to a speculative development boom which resulted in an overheated property market and unsustainable land values. This sets an important context for much of what has happened in relation to planning in recent years. The Report acknowledges the many achievements of the Authority in the delivery of its economic and social regeneration objectives. These are relevant considerations in the review of its planning functions and in the framing of recommendations to restore public, stakeholder and investor confidence in the Authority.

The DoEHLG has certain oversight responsibilities set out in the 1997 Act and the State's Code of Corporate Governance. There has been a 'light touch' approach by the Department with respect to the DDDA both in relation to its wider sponsorship of the Authority and its planning responsibilities. There is a greater need now for the Department to have a more 'hands on' strategic management role. It is recommended that the DoEHLG establish more rigorous annual reporting requirements including an agreed set of key indicators, and that it institutes a formal review process on a regular basis.

The review of forward planning functions has generally found that the plan making procedures are relatively robust and that the Council's role and public participation have been effective, transparent and meaningful, particularly in the Masterplan preparation process, and provide an adequate level of confidence that subject to the relatively minor recommended amendments to the processes, they can be considered to be equitable.

Notwithstanding, an issue has been identified in the review which may potentially affect the perception that the plan making process associated with the proposed North Lotts Planning Scheme Amendment (No. 2) may not have been carried out in a manner which fully meets the tests of transparency, fairness and equity. The context for these concerns is grounded in part in the status afforded by the Finlay Geoghegan Judgement to the Authority's forward planning documents as community/democratic contracts. This status creates a legitimate expectation that such documents will be prepared and adopted, and subsequently interpreted and implemented, in a transparent and equitable manner.

There is considered to be a reasonable apprehension that the existence of the Agreement with NQIL in May 2007 and matters related to the proposed amendment referred to in that Agreement had the potential to influence the Executive, and possibly the Board insofar as it was aware of the detail of the Agreement¹, in advancing the statutory approval processes provided for under the Act. This process includes stakeholder consultations, reporting on public consultation, consultation with the DDDA Council, preparation of the EIS, approval of the scheme for submission to the Minister, and consideration of the Scheme by the Minister having regard to the submissions of Dublin City Council.

Accordingly, while stakeholder consultation is appropriate in principle at the plan making stage of a Planning Scheme, there may be a legitimate concern that the actions of the Authority, and particularly the Executive, may have pre-determined certain matters and may have been pre-empting due process. While the plan making process by its nature must allow for some matters to be pre-determined, it is considered that an Agreement of the

¹ The existence of the Agreement and the clause therein to cede land to the Authority was referred to in the Board Minutes of 11 June 2007. All current Board members have confirmed that they were not aware of any further detail relating to the Agreement at that time.

nature entered into had the potential to be perceived as compromising the requirements of transparency, accountability and fairness in the plan making process.

This also raises a potential issue around the demarcation of the functions of the Authority. The plan making and general development objectives of the Authority have been noted by the Finlay Geoghegan Judgement to be separate and distinct from the adjudicative function. The detail of the Agreement suggests that the adjudicative function may not have been adequately insulated from the plan making function. As a result, the adjudicative function could be perceived to have been inappropriately subordinated to or otherwise have been subsumed within the facilitating or enabling functions of the Authority with regard to its development powers and objectives.

This concern is further substantiated by the review of a representative sample of Section 25 files undertaken. The review concluded that a reasonably substantial number of Certificates issued can be considered to be strictly compliant with the provisions of the Planning Schemes.

A substantial number of Certificates could also be considered to be non-compliant within the meaning of a reasonable interpretation of the Planning Schemes. However, a substantial proportion of these potentially 'non-compliant' Certificates have been adjudicated by the Authority to be considered compliant on the basis of the Authority's interpretation of the Planning Scheme and its relevant standards, having regard to the perceived inconsistencies and latitude interpreted in some development standards.

The wide discretion the Authority understood it had prior to the Judgement to attach conditions to a non-compliant development proposal to make it compliant with the Scheme, as interpreted, was also a factor in the decision making processes identified.

The review concludes that the findings of the Finlay Geoghan judgement were not unique to that particular case. The assessment strongly suggests that the adjudicative planning function appears to have been significantly influenced by the Authority's development remit and was not afforded the degree of separation from the development function required by the Judgement. The planning function appears to have operated to some extent in a facilitating or enabling role rather than regulatory role with the evidence suggesting that the adjudicative process appears on the face of the Planning Reports at least to have been liberally and inconsistently interpreted with the effect, whether intended or not, of 'shoehorning' proposals into compliance with the Planning Scheme. This apparent trend is supported by a review of approval rates between September 2004 and September 2007 which reveals a very high approval rate, particularly from September 2005.

In this regard, the examination of the internal structure and functioning of planning within the Authority also indicates that its regulatory planning function, which as the Finlay Geoghegan Judgement reveals requires the strict interpretation of compliance with Planning Schemes, has been subordinated to the Authority's development function. While the lack of clarity regarding the precise scope of the Authority's planning powers in conjunction with the weak processes and procedures undoubtedly contributed to this flawed approach, the Finlay Geoghegan Judgement and results of this review and other reviews provide a sound basis for the proposition that rebuilding public confidence in the DDDA is already underway.

One of the key recommendations of this Report is that the planning functions covering both adjudication and forward planning and plan monitoring should operate as a separate team with a direct reporting line to a Chief Executive. This will help achieve the necessary separation from the Authority's property and development role. A dedicated Senior Planner on the adjudication team should be delegated responsibility for protecting the integrity of that function on the basis of a bi-annual monitoring and reporting procedure.

It is also recommended that the legal function of the Authority is separated from the property function to ensure that the planning team is able to access legal advice on the proper application of its planning powers in the light of the Finlay Geoghegan Judgement and any changes in legislation or regulation which may be required. The function of Secretary should also be separated from the property function. The appointment of a dedicated Secretary or Administrative Officer should be considered for the purpose of reporting between the Executive and Board and to support the Board in the carrying out of its functions.

This Report includes recommendations across all aspects of the Authority's structures and functions. The drafting of these recommendations for consideration by the Board has at all times been informed by the requirements to provide procedures which are transparent, accountable, fair and effective and are perceived as such by stakeholders, the community and investors. At the same time, these procedures must protect the integrity of the separate development and adjudicative functions but must not erode the competitive advantage of the 'fast-track' adjudicative powers assigned to the Authority to aid in the achievement of its economic and social regenerations objectives. The Report concludes that given the significant rights issues associated with the plan making and adjudicative functions, and to insulate the Authority from potential future legal challenges, consideration must be afforded to the introduction of a Statutory Instrument to provide a legislative basis for some of the procedures recommended in this Report.

1.0 INTRODUCTION

The Board of the Dublin Docklands Development Authority (DDDA) has commissioned Declan Brassil & Co., Planning Consultants, to undertake a review of the Authority's planning structure and functions to include its plan making and adjudicative functions, and the organisation, structure and procedures in place to facilitate the carrying out of its statutory powers, functions and duties.²

The context for this review is established in significant part by the recent High Court Judgment by Finlay Geoghegan, J in *North Wall Property Holding Company Limited v. Dublin Docklands Development Authority* (2008) (I.E.H.C. 305). The Judgement provided the first settled case law on the *Dublin Docklands Development Authority Act 1997* (referred to hereafter as '1997 Act') and provided clarification in respect of principles which apply to the adjudicative function of the Authority in respect of the issuing of certificates under Section 25. The Judgement also made recommendations regarding proposed amendments both to legislation and the internal function of the DDDA. The detail of the Judgement has informed the preparation of this Report and recommendations made in respect of not only the Authority's adjudicative function under Section 25 but its plan-making functions and the structures and procedures in place to carry out these functions.

The exercise of planning functions is not an exact science. It often involves finding the right balance between competing interests. This challenge can be amplified in an Authority such as the DDDA which has both a strong statute based development remit and parallel adjudicative functions. It is essential that the structures and procedures of such an Authority accommodate and ensure consistency, equity, fairness, certainty, transparency and accountability in decision making. The importance of a balanced approach between public good and the private interests of both the developer and third parties to ensure impartiality and transparency in the resolution of real and potential conflicts of interest is of paramount importance. These are considered to represent best practice principles against which forward planning and development control functions should be measured and go to the heart of the Finlay Geoghegan Judgement.

Having regard to the Terms of Reference, the foregoing principles and best planning practice, the purpose of this review is to assess and evaluate the structures, procedures and functions of the Authority to:

- Identify potential or perceived structural issues relating to the organisation and management of the planning functions of the Authority and procedures employed for the preparation of Masterplans, Planning Schemes and adjudicating on Section 25 applications; and
- To make recommendations for consideration by the Board to address identified issues.

1.1 Context

1.1.1 Legislative Background

The DDDA was established by the Dublin Docklands Development Authority Act 1997 to deliver:

- The social and economic regeneration of the Dublin Docklands Area, on a sustainable basis;
- Improvements in the physical environment of the Dublin Docklands Area; and

² A copy of the DDDA's Brief and correspondence from the DoEHLG commissioning the Review are attached as Appendix A.

- The continued development in the Custom House Docks Area of services of, for, in support of, or ancillary to, the financial sector of the economy.

A key element of the DDDA's powers relate to its ability to offer landowners and developers an expedited planning consent procedure capable of delivering greater certainty and speed than through the standard Section 34 planning application process provided for under the Planning and Development Act 2000 as amended (the 2000 Act). This has been achieved through granting decision making powers to the Authority, which is not subject to the same level of public participation or local democratic involvement as provided for under the 2000 Act. The planning regime which operates within the framework of national planning policy has the following key elements:

- The preparation of a Masterplan for the 520 hectares covered by the DDDA. This sets out the broad vision and strategic planning framework for the area, and identifies priority areas for action. The Masterplan is updated on a periodic basis to take account of changing circumstances. Preparation and approval typically takes 12 to 18 months. This allows for consultation with statutory bodies and other stakeholders. The current Masterplan is dated 2008 and reflects ambitions of the Authority at the tail end of the development boom.
- The preparation of 'Planning Schemes' setting out detailed and key parameters for the development of a specific area including:
 - The nature and extent of the proposed development,
 - The proposed distribution and location of uses,
 - Proposals in relation to the overall design of the proposed development, including the maximum heights and the external finishes of structures,
 - Proposals relating to transportation, including the roads layout, the provision of parking places and traffic management, and
 - Proposals relating to the development of amenities and the conservation of the architectural heritage or other features.

The DDDA is required to consult with the Dublin City Council and other key interests in the preparation of a Planning Scheme which is submitted to Central Government (Department of Environment, Heritage and Local Government - DoEHLG) for a decision subject to consultation with the Minister for Finance and representations from Dublin City Council. Once the Planning Scheme is approved it effectively sets the basis on which DDDA is empowered to in effect grant planning permission.

The expedited grant of planning permission by the DDDA is by way of a Section 25 procedure in which an applicant seeks a Certificate of Exemption (Certificate) consent for development in accordance with an approved 'Planning Scheme'. Historically Certificates have been granted under this procedure in a period which can vary between little over a week to several months. This has been achieved through the certainty provided by the 'Planning Scheme' and the limited requirement for consultation. Since its inception the DDDA has dealt with hundreds of Section 25 applications. These vary enormously in scale and complexity from simple advertising or change of use to large scale development proposals.

In October 2008 a High Court Judgement delivered by Finlay Geoghegan J, found against the DDDA for its handling of a Section 25 application. The key elements of the challenge were that the DDDA procedures were unfair in not providing an opportunity for third parties to make representations prior to a Section 25 decision being reached, and that in reaching its Section 25 decision the DDDA had departed from the terms of the 'Planning Scheme' and was therefore acting *ultra vires*. The High Court also found that there was an apprehension of bias in the DDDA's decision making on the basis of an agreement with the applicant.

As a result of the Judgement, a review of the Section 25 application process was undertaken by Grant Thornton Consultants in association with Tom Philip & Associates, Planning Consultants. The recommendations arising from this review were adopted by the Board of the Authority in February 2009. This Report includes a review of these procedures.

1.1.2 Regeneration Context

Over the past quarter of a century Dublin's Docklands has undergone a dramatic transformation. Most of the port related activities which characterised the area have been replaced by new forms of employment focused around financial and business services employing thousands of workers competing on a global basis. Tourism, arts and cultural uses now help to enliven a part of the city which previously was considered a 'no go' area. The physical and economic changes which started at Custom House Quay with the creation of IFSC have now spread further east and onto the south bank of the river.

The scale and nature of change has inevitably impacted on traditional docklands communities who had suffered from the decline in unskilled employment. Strenuous efforts have been made to ensure that as far as possible local people benefit from and are part of the regeneration process. New community facilities, education and training programmes have been provided as a result of the development and investment which has been attracted to the area. The population of Docklands and the social and demographic composition of the area are changing as a result of new development, including social and affordable housing provision.

The creation of a new living and working community in Dublin Docklands represents a considerable achievement which compares with other major waterfront regeneration projects in Europe. This has been acknowledged in international awards and interest from study groups around the world. That much of this change coincided with a strong period of growth in the Irish economy, in which Dublin played a key role, is no accident. The momentum which the Docklands helped to provide in the creation of a knowledge based, service economy was considerable. However this was linked to a speculative development boom which resulted in an overheated property market and unsustainable land values. This sets an important context for much of what has happened in relation to planning in recent years.

1.2 The DDDA Brief

The detailed brief for the audit of the DDDA's planning function is set out below:

- a) **Legislative Review** of the planning powers of the Authority as provided for in the dedicated Docklands Act and as amended. This review should consider the efficacy of the introduction of planning regulations, which would regulate the planning powers of the Authority.
- b) **Planning Structure and Function Review.**

Planning Structure (and the separation of powers):

- A review of planning structure to include the internal and external relationships of the Planning team, for example the relationship between the adjudicative role of the planning team and the preparation of Planning Schemes and the relationship between the planning team and the development remit of the Authority.
- The administrative function in terms of document management and planning procedure administration and the role of this function within the planning team.

- The relationship between the finance team and the planning team in terms of contribution levy calculation and collection.
- The relationship between the legal team and the planning team and the demarcation of legal and planning issues.
- Relationship between the DOE and the Authority and the relationship between Dublin City Council (DCC) and the Authority.

Planning Function:

- A review of the Masterplan and Planning Scheme preparation.
- Implementation of the Planning Scheme; A review of the Section 25 adjudicative function of the Authority.
- Equity in the preparation and implementation of the Planning Schemes and Masterplan for all participants, for example Section 25 applicants and equitable outcomes.
- The position of IT in the operation of the planning function and a review of the existing planning IT system.

c) Section 25 Decisions Review

- Planning outcomes over the last 10 years reviewed in light of the Finlay Geoghegan Judgement, (Section 25 Certifications).
- The decision making process on Section 25 applications including the role of precedent in arriving at a positive recommendation.
- Reporting relationships.
- The vires of conditions attached to Section 25 certificates.
- Timescales for Section 25 adjudication.
- Stakeholders and third party input in Planning Scheme preparation and Section 25 applications.
- Interview all planning staff past and present to ascertain their views and concerns.
- Review of Grant Thornton procedures document.

1.3 Approach to the Review

The results set out in this Report are the results of work undertaken since 1st October 2009. The approach adopted to this review has involved the following considerations:

- The objectives which have been set for the DDDA as a State Body and the legislative powers under which it is required to operate, particularly in relation to its planning functions;
- The development, market and policy context within which the DDDA has operated;
- Best practice principles against which forward planning and development control functions should be measured; and
- The results which have been achieved in Dublin Docklands in terms of physical, environmental, social and economic outcomes.

The work was undertaken by a team with knowledge and experience of Irish and International planning and regeneration practice. The key team members were as follows:

Declan Brassil - Chartered Town Planner and Principal in the Practice of Declan Brassil & Co.

Christopher Balch - Chartered Town Planner and Chartered Surveyor and Independent Chair of Basildon Renaissance Partnership.

Hennie Kallmeyer - Qualified Town Planner and Land Economist with experience in Ireland, Cape Town, London and Sydney.

Olivier Gilles Durand - Chartered Spatial Planner and Urban Project Manager with experience in Ireland, Marseille and Lyon.

Áine Ryan - Qualified Urban and Regional Spatial Planner with experience in Ireland and Sydney.

A key component of the approach has been to focus on specific examples of planning activities in particular the preparation and revision of forward planning documents and a sample of Section 25 applications. This has involved:

- An examination of forward planning documents and reports prepared by the DDDA. This has involved reviewing both case files and relevant minutes of Board and Council meetings and documents prepared by the Executive and presented at those meetings;
- Interviews with current Directors and past and present key staff members of the DDDA;
- Interviews with a number of Board and Council members; and
- Interviews with officials of the DoEHLG.

A list of those consulted as part of the review is provided as Appendix B

The findings of the review are therefore based on a detailed evidence base supplemented by the insight gained from discussion with key players in the management and decision processes of the DDDA. It is believed that this provides a sound basis for commenting on the planning structure and judging the performance of the planning function and in particular the Section 25 adjudication procedure. It also provides a sound basis to inform the framing of recommendations to ensure that identified structural and procedural issues are adequately addressed to reinforce stakeholder confidence in the Authority, to ensure that internal roles and responsibilities are clearly defined and unambiguous and to improve the performance of the Authority with regard to its statutory objectives.

However, the report does not intend, explicitly or implicitly, to raise or identify concerns relating to any specific facts insofar as it is within the competence of Town Planning Consultants to do so. No inference or speculation is made or intended in respect of any motives relating to any structure, procedure or decision made with regard to any individual or case file. This review is not intended, empowered nor legally constituted to undertake such investigations.

1.4 Plan Preparation and Adjudicative Functions - Best Practice Principles

Planning is not an exact science. One of its principal challenges is finding the right balance between often competing interests. This challenge can be amplified in an Authority with a strong development remit and parallel adjudicative functions, such as the DDDA. The following best practice principles should be observed in the carrying out of the Authority's planning functions and duties:

Consistency, clarity and certainty in decision making. In forward planning terms this should be in relation to wider policy framework and previous plans. Planning should be about setting the long term direction for landowners, investors and stakeholders. In the case of the Section 25 adjudication process there should be a

high degree of compliance with the Planning Scheme and that there must be a legitimate expectation that the outcome should be reconciled with what was intended for the Planning Scheme. Divergence from the scheme should not be dealt with via Section 25 adjudication but by the normal planning process through Dublin City Council.

Transparency and accountability. There need to be clear lines of reporting and responsibility for dealing with the decision making process in forward planning and the Section 25 decision making process. Clear recommendations should be recorded and if they are overturned it should be apparent what additional factors have been taken into account. In essence this is about having strong processes and an audit trail.

Balance of public good versus private interest (of both promoter and third parties). A developer or landowner will almost invariably seek to promote their commercial interest. The role of planning is to arbitrate between private property rights and the public interest as expressed through forward planning policy and past decisions. This also applies when taking into account third party interests and objections.

Fairness, impartiality and managing conflicts of interest. This goes to the point of the Finlay Geoghegan Judgement. If there is evidence that a planning adjudicator was taking other non-planning factors into account there may be a perception or apprehension that a decision was biased.

Equity. The recurring principle through all of the above is equity. Stakeholders have a right to expect that all of the foregoing principles will be observed in the plan and decision making processes.

1.5 Structure of the Report

The report is structured as follows:

- **Section 2:** sets out the review of the current legislative powers under which the DDDA operates and considers in detail the implications of the Finlay Geoghegan Judgement.
- **Section 3:** examines the structure of planning within the DDDA. This is set in the context of the overall management of the DDDA.
- **Section 4:** considers the planning functions of the DDDA focusing in particular on its forward planning responsibilities as evidenced by the recent Masterplan and Planning Scheme amendments.
- **Section 5:** provides an assessment of the Section 25 adjudication process based on a detailed assessment of a representative sample of decisions taken by the Authority since 2003.
- **Section 6:** provides an assessment of the Authority's IT systems and procedures supporting the Section 25 certification process
- **Section 7:** provides an overview of the recommendations and conclusions drawn from this report.

2.0 LEGISLATIVE REVIEW

2.1 History of DDDA

The DDDA was established on the 1st May 1997 by the Minister for the Environment under the Dublin Docklands Development Authority Act 1997. Under this Act the Authority subsumed the functions of the Custom House Docks Development Authority, which has been set up in November 1986 under the Urban Renewal Act 1986 with a brief to secure the redevelopment of the Custom House Docks Area (CHDDA). A specific objective of the CHDDA was to support the development of the International Financial Services Centre (IFSC) for which relief from rates, enhanced capital allowances and tax incentives were made available. The principal tools available to CHDDA were powers:

- To acquire (compulsorily if necessary), hold and dispose of land, particularly former publicly owned sites in need of regeneration; and
- To operate a 'fast track' planning regime in accordance with specific legislative and administrative arrangements.

In addition to these powers the CHDDA was endowed with publically owned land which it was able to use to create partnerships with the private sector to attract investment and generate development gains which could be recycled to maintain the regeneration process.

Following the initial success of CHDDA in establishing IFSC 1, this was the model which was carried forward from 1997 by the DDDA over a substantially enlarged area covering former dock and industrial lands on either side of the river as well as established communities. The objectives of the DDDA were widened by Section 18 (1) (a) of the 1997 Act, to secure:

- The social and economic regeneration of the Dublin Docklands Area, on a sustainable basis;
- Improvements in the physical environment of the Dublin Docklands Area; and
- The continued development in the Custom House Docks Area of services of, for, in support of, or ancillary to, the financial sector of the economy.

The 1997 Act sets out the powers and functions of the Authority which are assigned to the Executive Board. Section 18 (1) (b) provides that the Authority's functions are twofold, namely:

1. Preparation of Plans:

- Prepare a Masterplan for the regeneration of that Area and promote its implementation;
- Prepare, where appropriate, Planning Schemes in accordance with Section 25 of the 1997 Act; and
- Prepare detailed proposals/plans for development/redevelopment/renewal or conservation of lands within the Authority area and acquire, hold and manage such lands.

2. Development/Renewal/Conservation:

- To develop, redevelop, renew or conserve, or secure the development, redevelopment, renewal or conservation of, any land in that Area or otherwise to secure the best use of any such land;
- To dispose of land on completion of its development/redevelopment/renewal or conservation; to secure its development/redevelopment/conservation or to secure its best use;

- To provide infrastructure and carry out amenity/environmental improvement works required to encourage the use of facilities by the resident/working population of the Docklands;
- To promote the co-ordination of investment by statutory and private bodies in the area;
- To promote the co-ordination and co-operation between programmes and activities of statutory bodies and other stakeholders within the area;
- To promote, in particular as regards persons residing in that Area, the provision of education and training opportunities, and the development of a wide range of employment in that area; and
- To promote the development of existing and new residential communities in that Area, including the development of a mix of housing for people of different social backgrounds to aid social integration and inclusiveness.

1997 Act provides wide powers to the Authority in the carrying out of its functions. Section 18 (2) of 1997 Act provides that the Authority may *'carry on any activity which appears to it to be requisite, advantageous or incidental to, or which appears to it to facilitate, the performance by it of any of its functions under this Act.'* Section 18 (6) of 1997 Act provides a wide remit to the Authority to: *'do all such things as arise out of or are consequential on or are necessary or expedient for the purposes of the functions assigned to it by or under this Act, or for the purposes incidental to those purposes'*.

The fundamental powers and tools given to the Authority are those of a development agency with special planning powers. It should be noted that while the 1997 Act enabled grant support to be given to the Authority which was also allowed to borrow, subject to certain safeguards, the DDDA has received minimal Government financial support, largely through the transfer of state land. The Authority has funded its activities, including its social regeneration programmes principally from the receipts of its development and property related activities. Thus while being a State Body reporting to the Minister of Environment, Heritage and Local Government who has powers to appoint and remove the Chairman and members of the Executive Board, the Authority has adopted a business orientated approach to its task. This has been reflected in the composition of the Board who until recently, with the exception of a Senior Civil Servant from the DoEHLG, were drawn from business and the professions.

2.2 Planning Powers

Sections 24 and 25 of the 1997 Act (as amended) provide for the preparation and adoption of a Masterplan and Planning Schemes for the DDDA area.

2.2.1 The Masterplan

Section 24 of 1997 Act provides for the preparation and adoption of a Masterplan for the DDDA administrative area, which comprises of a written statement (including objectives for social and economic regeneration and continued development of the Customs House Docks area) and a plan. Consultation procedures relating to the making of a Masterplan are outlined in Section 24(3) which has been amended by the European Communities (Dublin Docklands Development Authority Act, 1997) (Amendment) Regulations 2007.

The role of Dublin City Council and the relevant statutory scheme (Development Plan/Local Area Plans etc.) is also underpinned by Section 24(5), whereby the Local Authority, *'as soon as may be'* after the adoption of a masterplan, shall *'consider'* the making of:

- A Development Plan in accordance with the current Planning and Development Acts for that part of the Local Authority area within the Dublin Docklands Area, to ensure consistency with the Masterplan; or

- Such variations of the City Development Plan as may be desirable to secure consistency between that plan and the Masterplan.

The City Council and An Bord Pleanála are directed to consider the provisions of the Masterplan in deciding any application for permission or subsequent appeal under the provisions of the Planning and Development Act and Regulations.

Section 24(2)(a) sets out the identified objectives of such a plan in terms of social and economic regeneration, improvements to the physical environment and continued development. Section 24(2)(b) identifies planning issues that need to be addressed within the Masterplan, including:

- The identification of lands for which detailed proposals and plans will be prepared, areas that are subject to a Planning Scheme (under Section 25);
- Urban design and conservation guidelines;
- General layout and building patterns;
- Housing provision;
- A programme of development / redevelopment and transportation initiatives;
- Cost estimates for the implementation of the Masterplan; and
- Projected / estimated impacts on employment, training and education, etc.

The duties assigned to the Authority in the preparation and adoption of the Masterplan, and a review of the procedures and processes employed in the 2003 and 2008 Masterplans is detailed in Section 4.

2.2.2 Planning Schemes

A Planning Scheme is prescribed, in accordance with Section 25(2), to consist of a written statement and plan: *'indicating the manner in which the Authority considers that the area to which the Planning Scheme applies should be redeveloped and in particular:*

- *'The nature and extent of the proposed development;*
- *The proposed distribution and location of uses;*
- *Proposals in relation to the overall design of the proposed development, including the maximum heights and the external finishes of structures;*
- *Proposals relating to transportation, including the roads layout, the provision of parking places and traffic management; and*
- *Proposals relating to the development of amenities and the conservation of the architectural heritage or other features.'*

Sub-Section 25 (3) further directs the DDDA to comply with any general directive that may be given to it by the Minister (in accordance with Section 45); have regard to the provisions of the Masterplan and consult with statutory bodies as prescribed (and plans made by such bodies); and receive and consider submissions by interested persons made in relation to the Planning Scheme. Sub-sections 25 (4 to 6) provide details for the submission of the draft Planning Scheme for approval to the Minister and the notification of the making of a Planning Scheme.

Sub-Section 25 (7) provides that the DDDA may issue certificates of exemption in respect of the following:

- In an area in respect of which a Planning Scheme has been prepared and approved under this section, the carrying out by the Authority of any development in the area which is consistent with that Planning Scheme; and
- In an area in respect of which a Planning Scheme has been prepared and approved under this section, the carrying out of any development in the area by a person other than the Authority which is certified by the Authority to be consistent with that Planning Scheme; provided that a certificate under this Paragraph may contain such conditions in relation to the carrying out of the development as the Authority considers appropriate.

The statutory provisions under which certificates are issued are not clearly established in 1997 Act.

Section 25 (7)(c) of 1997 Act, as amended, provides that a Certificate may include the following conditions:

- *In the case of a development wholly or partly for the provision of housing, a condition requiring that a percentage, not being more than 20 per cent, specified in the certificate, of houses being provided for in the development to which the certificate relates shall be provided for social or affordable housing;*
- *A condition requiring the payment of a contribution towards any expenditure that has been, is being, or is intended to be incurred, by or on behalf of-*
 - *Dublin City Council, in respect of the provision of public infrastructure and facilities that benefit or facilitate development in the area to which the Planning Scheme concerned relates; or*
 - *The Authority, in respect of the provision of public infrastructure and facilities in accordance with its functions under section 18 or to give effect to the Masterplan or the Planning Scheme concerned;*
- *A condition relating to any matter which the Authority considers is in furtherance of the Masterplan or a Planning Scheme.*

A detailed review of the Planning Scheme approval process is provided in Section 4 below and a review of adjudicative process associated with the determination of applications for certificates of compliance with the Planning Scheme is provided in Section 5.

2.3 Amendments to Section 25 and 26 of the 1997 Act

The *European Communities (Dublin Docklands Development Authority Act, 1997) (Amendment) Regulations 2007*, which give effect to provisions contained within Directive 2003/35/EC, provides for enhanced public participation in the production of plans and programmes relating to the environment and access to justice (Council Directives 85/337/EC and 96/61/EC). The following amendments are of relevance to the Planning Scheme provisions of the 1997 Act.

2.3.1 Amendment of Section 25(3)

This amendment provides for the insertion of sub-Section 25 (3) (a – b) which details enhanced public notification and participation in the making of a Planning Scheme through the publication in one or more newspapers circulating in the Dublin Docklands Area and on the DDDA website a notice stating:

- That a Planning Scheme is being prepared and will be considered for submission to the Minister for approval,
- Whether development proposed in the draft Planning Scheme is subject to an environmental impact assessment pursuant to section 26(1),

- The title and nature of any reports relied upon by the Authority for the purposes of preparing the draft Planning Scheme,
- The times at which, the period during which (not less than one month), and the place where a copy of the draft Planning Scheme, any relevant report, and any relevant environmental impact statement prepared pursuant to section 26(1), may be inspected,
- That the draft Planning Scheme and any relevant environmental impact statement prepared pursuant to section 26(1), is accessible on the Authority's website (the address of which shall be specified);
- Where a copy of the Draft Planning Scheme, any relevant report and any relevant environmental impact statement prepared pursuant to section 26(1), or extracts, may be obtained and specifying the fee (if any) fixed by the Authority (which shall not be more than the reasonable cost of making the copy or copies concerned),
- That submissions, comments or questions may be made in writing to the Authority in relation to the Draft Planning Scheme before a specified date (which shall be not less than one month after the end of the period for inspection);
- Where copies of any submissions or comments may be obtained and specifying the fee (if any) fixed by the Authority (which shall not be more than the reasonable cost of making the copy or copies concerned); and
- That any submissions or comments received and not withdrawn will be considered by the Authority and that the Draft Planning Scheme may be amended or modified to take account of such submissions before it is submitted to the Minister for approval, that the Minister may approve the ensuing Planning Scheme with or without modifications.

The Authority (or Minister upon request), shall also make a copy of the draft Planning Scheme, any relevant report and any relevant environmental impact statement prepared pursuant to section 26(1), or extracts, and any other information which is relevant to the decision (including any submissions, comments or questions received by the Authority) available for inspection or for purchase by members of the public on the terms specified in the notice published in accordance with Paragraph (a).

Section 22 of the *Housing (Miscellaneous Provisions) Act 2002* amends Section 25 of the 1997 Act, whereby Certificates issued are required to incorporate the provisions for social and affordable housing provision within developments wholly or partly for the provision of housing (20% allocation or payment of contribution on behalf of Dublin City Council or the Authority in respect of public infrastructure and facilities).

2.3.2 Amendment of section 26 of 1997 Act

Subsection 26(3) of the 1997 Act, relating to requirements for Environmental Impact Assessment of certain developments, is repealed and the following amendments to the 1997 Act are provided for.

Section 26(4) is substituted to direct the DDDA to have regard to any Environmental Impact Statement (EIS) prepared and any views submitted by Dublin City Council and interested persons in relation to the Draft Planning Scheme or environmental impacts prior to the submission of a Planning Scheme to the Minister, for approval. Section 26(5) is amended to direct the DDDA to provide a copy of any such EIS, or views submitted by Dublin City Council and interested persons to the Minister when submitting a Planning Scheme for approval. Section 26(6) directs the Minister to have regard to such documents.

Procedures relating to Judicial Review are addressed through amendments pertaining to Sections 26A and 26B.

In 2008, for the first time since its inception in 1997, the Authority was the subject of a High Court challenge which led to a detailed examination of both its powers and practices in relation to the granting of Section 25 certificates. The substance and implications of the resulting judgment are reviewed in the remainder of this section.

2.4 Review of the Finlay Geoghegan Judgment

The judgement by Finlay Geoghegan J in *North Wall Property Holding Company Limited v. Dublin Docklands Development Authority* (2008) (I.E.H.C. 305) provides useful clarification in respect of the principles which apply to the adjudicative function of the Authority in respect of Section 25 certificates. The judgement also makes recommendations regarding proposed amendments both to legislation and the internal function of the DDDA. This review does not purport to be a legal interpretation of the complex issues of administrative law contained in the judgement. Its purpose is to identify principles and procedures which are relevant to the review of the structure and function of the Authority and which can inform recommendations in respect of the same.

By way of summary background, the applicants in the proceeding had contractual rights in a property in North Wall Quay, Dublin adjacent to the lands of a Notice Party to the proceedings, North Quay Investments Limited (“NQIL”). NQIL’s property received a Section 25 certificate in respect of a proposed development on part of a site bounded by North Wall Quay, New Wapping Street, Mayor Street and Castleforbes Street, Dublin 1. The Certificate, (Reg. Ref. DD457), was dated the 13th July 2007.

The Planning Scheme for the relevant area is the North Lotts Area Planning Scheme which was originally adopted in 2002 and amended in 2005 and approved by the Minister on the 26th June 2006. The 2003 Masterplan was in force at the time.

The Judgement addresses issues relating the nature of the certificate and the exercise of the certificate procedures; the standard of review applicable to the adjudicative function of the Authority in determining consistency with a Planning Scheme; and the issue of actual or apprehension of bias in the adjudicative process. The key principles and findings emerging from the Judgement are set out below under these headings.

Nature of the Section 25 Certificate Decision and the DDDA’s Certificate Procedure.

The Judgement states that it is regrettable that the legislation does not make express reference to the issuing of certificates of compliance with a Planning Scheme and further that the 1997 Act is silent on how the Authority should exercise the implicit function to issue certificates. The Judgement states that *‘the absence of any specific provisions as to how this function should be exercised is all the more surprising, having regard to the express entitlement of the respondent to include conditions in a certificate, as authorised by Section 25 (7)(a)(ii) and (c)’*. [para. 23].

With regard to the nature of s.25 certificate decisions, the Judgement states:

‘It appears to me important to note that the function of issuing a certificate of consistency with a Planning Scheme for the purposes of s. 25(7)(a)(ii) was not considered by the Oireachtas to be a function which should expressly be assigned to the respondent in s. 18(1)(b) for the purpose of the development duties assigned to the respondent under section 18(1)(a). The absence of any reference to the granting of certificates of consistency in s. 18(1)(b) appears to underline that this is an adjudicative function which is distinct from the general development functions of the respondent.’ (Emphasis added)

This principle is restated in Paragraph 91 of the Judgement: *'As already stated, the adjudicative function is not one expressed to be for the purpose of securing development or regeneration of the Dublin Docklands Area.'*

The stated principle that the adjudicative function of the Authority is a separate and distinct duty and power from the development function and remit of the Authority is central to the consideration of the functions, structure and procedures of the Authority.

With regard to the procedures followed by the Authority in the determination of the application for a Section 25 Certificate, the following findings of the Judgement are relevant.

Fair Procedures -Third Party Rights to Participate

The Judgement states that on the basis of the implied power given to the Authority to impose conditions and because the Planning Scheme provided considerable discretion to the Authority in the interpretation and application of the Planning Scheme, landowners ought to be given the opportunity to make submissions for consideration by the Authority. To do otherwise was found to be in breach of fair procedures. The Judgement states at Paragraph 60:

'It is common case that, in accordance with well established judicial principles in relation to the construction of functions conferred by statute, that the implied decision making process of the respondent must be discharged in accordance with the principles of constitutional justice. This requires that the decision be taken in accordance with fair procedures which would appear to require that persons who have property rights that could be affected by the decisions taken be given an opportunity of making submissions and have those submissions considered...'

The following procedure was recommended:

"I think I should make clear that the procedure which the respondent requires to have in place is not necessarily identical to that under the Planning Acts, but at least a procedure whereby interested persons such as landowners in the relevant area of the Planning Scheme, can ascertain that an application for a Section 25 certificate has been made, such as from a public register maintained by the respondent, and is then given a short period of time in which to make submissions. Such submissions would also have to be made available to the applicant for the certificate with a right to reply again within a short period." (Emphasis added)

Procedures consistent with these recommendations have been implemented on foot of the Grant Thornton Report. A review of these procedures is undertaken in Section 5 of this Report.

DDDA Certification Procedures

As noted above, the Judgement noted that it is regrettable that the legislation does not make express legislative reference to the issuing of certificate and does not set out procedures relating to how the Authority should exercise the implicit function to issue certificates. Notwithstanding the absence of statutory procedures regulating these matters, the Judgement takes issue with certain of the procedures implemented by the Authority. In particular, the Judgement takes issue with the manner in which amendments are made to the Planning Officer's Report and in the second instance how amendments are recorded. Paragraph 46 states:

"Mr. Keaney, the senior planner, prepared a Planning Report, which is dated 4th July, 2007. Some considerable confusion arose in the course of the proceedings in relation to various versions of Mr. Keaney's

report. I wish to make clear that nothing turns on this for the issues which I have to determine. Mr. Keaney's practice appears to have been, when he prepared his Planning Report, to discuss it with Mr. McLoughlin, who is his superior, and to make changes pursuant to those discussions, but yet retain the same date on the report. Further, Mr. Keaney then both attended the Planning Sub-Committee of the Board and made further notes, and after the Board meeting of 13th June, 2007, at which the decision, in principle was made, he held further discussions, in particular in relation to one of the conditions which he proposed (which is not relevant to these proceedings) and again made further changes, whilst all the time retaining the initial date on the Planning Report. This appears an undesirable and inappropriate way of recording changes to a Planning Report. There is nothing wrong in Mr. Keaney incorporating changes to his report as a result of discussions or meetings. However, for good order, it appears to me that where a person, such as Mr. Keaney, revises a report by reason of discussions, then he should clearly indicate that the subsequent version is a revised report and date it as of the date the revisions occur." [Emphasis added]

This procedure presented difficulties for the Court in identifying the relevant Planning Report on which the certificate was ultimately granted. It is noted that the High Court did not take issue with incorporating changes to draft Reports but noted that on the basis that conditions attached to certificates can affect adjoining landowners, it is important that the relevant planning document can be identified.

Another significant procedural issue raised in the Judgement relates to the status and timing of decisions made by the Authority. It appears that the initial decision to grant of the certificate, taken on the 13th July 2007, was "a decision in principle". The certificate issued to the applicant on 29th August 2007 but remained dated the 13th July, 2007. The Authority stated that the certificate had been sealed for that period and that no decision was made after the 13th July 2007. The Judgement noted that whilst nothing turned on this discrepancy in this instance, it was not considered good practice.

Standards to be Applied in Determining the Certificate

With regard to the standard by which the Court should review the decision of the Authority that the development is consistent with the Planning Scheme, Finlay Geoghegan stated:

'It also appears to me to have some of the hallmarks of the type of environmental contract referred to by McCarthy J. in the Attorney General (McGarry) v. Sligo County Council [1991] 1 I.R. 99. It is in the nature of a contract between the respondent and if not the public at large, at least the property owners within the area to which the Planning Scheme applies. Those property owners are entitled to rely on the fact that any development undertaken by the respondent in that area, without applying for planning permission, will be consistent with the Planning Scheme, and that the respondent will only grant a certificate to any other person pursuant to Section 25 if such development is consistent with the Planning Scheme. Each property owner is entitled to rely on the fact that any other property owner within the area will be only able to carry out development in accordance with this fast track method if it is consistent with the Planning Scheme'. [para. 65]

With regard to the proper approach to the construction of the planning documents relating to the certificate procedures, the Judgement endorses the following principles referred to the Judgment of McCarthy J. in the Supreme Court *In re. X.J.S. Investments Ltd.* [1986] I.R. 750, as appropriate in construing the North Lotts Planning Scheme:

'Certain principles may be stated in respect of the true construction of planning documents:-

a) To state the obvious, they are not Acts of the Oireachtas or subordinate legislation emanating from skilled draftsmen and inviting the accepted canons of construction applicable to such material.

b) They are to be construed in their ordinary meaning as it would be understood by members of the public without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning . .

These principles are material and relevant to all aspects of the consideration of the certification process by the Authority.

These principles are of particular relevance to the judgement in respect of the consideration of issues relating to the *vires* of Conditions and bias on the part of the Authority. These matters are addressed below.

Status of Conditions

The Judgement clearly establishes that a certificate can only be issued if the development is determined to be consistent with the Planning Scheme. Conditions which are intended to amend an application which is determined to be inconsistent with the scheme to ensure it is consistent are *ultra vires*. The Judgement states:

'I have concluded, as a matter of probability, that the applicants' submissions are correct that s. 25(7)(a)(ii) and (c) cannot be construed as giving to the respondent a power to certify, as consistent with the Planning Scheme, a development, subject to the notice party carrying out modifications to the design to ensure compliance with the Planning Scheme, and requiring subsequent agreement with the respondent of the revised designs.' [para. 88]

'It [the Authority] has no jurisdiction to grant a certificate where the carrying out of the development would be in the interest of the Planning Scheme. It is confined to granting a certificate adjudicating the development to be consistent with the Planning Scheme.' [para. 90]

In this regard, the certificate included conditions which required *inter alia* compliance with the land use mix over the entire area controlled by the applicant notwithstanding that the Phase 1 area did not comply with the mix and there was no application before the authority for Phase 2 (Condition 2); the requirement for revised drawings 'to ensure compliance' with the Planning Scheme which required amendments to the height, elevations and separation distances between buildings (Condition 14).

The Judgment limits the extent of this finding when it states:

"I wish to make clear the limits of this conclusion. It is ultra vires for the respondent to grant a Section 25 certificate in respect of a development which, as proposed in the application, is inconsistent with the relevant Planning Scheme, even with a condition the purpose of which is to render the carrying out of the development in accordance with a condition consistent with the Planning Scheme. However, this must be distinguished from the situation where the carrying out of the proposed development the subject of the application, is determined to be consistent and the respondent considers it desirable in the furtherance of the Planning Scheme or Masterplan that the development be carried out with certain variations (obviously consistent with the Planning Scheme). The respondent has wide powers to impose such conditions in a certificate under s. 25(7)(a)(ii) and (c). This could arise in practice in relation to the North Lotts Planning Scheme, for example, in relation to matters where it is not prescriptive such as location of routes and open spaces." (Emphasis added)

In essence, a compliant scheme can be further amended by condition in a manner consistent with the Planning Scheme but a non-compliant scheme cannot be amended.

A significant issue identified in the Judgment in this regard is the practice of 'transferring' the requirements of the Planning Scheme from a scheme which does not meet the requirements of the Scheme and is therefore inconsistent to a subsequent phase of the proposed development which is not before the Authority as an application for a certificate. Condition No. 2 of the Certificate stated:

"2. The development relates to Phase 1 of the site consisting of buildings 1, 2 and 3. The development of Phase 2 of the site shall be the subject of a separate Section 25 application. The provision and distribution of 40% residential use and 60% commercial uses shall be consistent with the terms of the Planning Scheme over the entire landholding (i.e. Phase 1 and Phase 2)'

The Judgement held that this approach is not consistent with the Planning Scheme.

Bias

A substantive issue arising in the proceedings related to a confidential agreement between the Authority and NQIL which related to the transfer of an area of land to the Authority. Condition 22 of the certificate identified and made express provision for the transfer of the land:

'The strip of land located on the northern quadrant of the site (indicated in yellow on the attached map) shall be ceded to the Authority by deed of transfer to the Authority within 4 weeks of the date of issue of this Section 25 Certificate.'

The legal principles applied to deciding whether the Authority had acted in a biased manner were derived from *Spin Communications Limited v. Independent Radio and Television Commission* [2001] 4 I.R. 4111. Murray, J. stated at page 431:

"The test to be applied in determining what may be regarded as constituting objective bias on the part of an adjudicator (and I use the term in order to incorporate judicial proceedings and administrative or quasi judicial proceedings before a tribunal or other administrative bodies) has been considered in a good number of cases in recent years before the High Court and in particular before this court. I think the law in this question is now clear and it is that as expressed by Keane, C.J. in his judgment in Orange Communications Limited v. Director of Telecoms (No. 2) [2000] 4 I.R. 159. In his judgment, with which the majority of the court expressly agreed, the Chief Justice stated at page 186 that there is:

'No room for doubt as to the applicable test in this country: It is, that the decision will be set aside on the ground of objective bias where there is a reasonable apprehension or suspicion that the decision maker might have been biased i.e. where he has found that, although there was not actual bias, there is an appearance of bias.'

The Finlay Geoghegan Judgement went on to note that for objective bias to be established it must be shown that there existed some external factor extraneous to the decision making process which could give rise to a reasonable apprehension that the decision maker might have been biased. The Judgement held that the confidential agreement which formed the basis of Condition 22 was such an extraneous or external factor. The Judgement found the following terms to be material in determining that there was an apprehension of bias on the part of the Authority:

- (D) *The authority has identified the part of the site more particularly shown on the plan attached hereto and initialled by the parties as being appropriate for public open space. The authority requires a portion of the site fronting Mayor Street to facilitate those public works.*
- (E) *The current NLPS would not permit a development of the nature intended by NQIL.*
- (F) *NQIL is desirous of proceeding with the first phase of its proposed development as soon as it is practicable.*
- (G) *The authority is desirous in facilitating NQIL in this regard subject to the terms and conditions set out below.”*

Clause no. 6 stated:

“In consideration of the authority granting the Section 25 certificate to be applied for under clauses 1, 2 and 3 above NQIL will transfer free of cost to the authority good and marketable title to that portion of the Site more particularly identified in the plan attached hereto and shown in hatched green (“the strip”) in order to facilitate the authorities long term plans were made for public space in the North Lotts Area subject to ...”

The Judgement held that the transfer of the lands would benefit the Authority in that it facilitated its future plans, and there was a direct relationship between the granting of the certificate and the lands being transferred. The agreement also established that the proposed development was not consistent with Planning Scheme and it would appear that the Executive had committed the Authority to a particular decision before the decision on the certificate was made. Paragraph 112 of the Judgement states:

“By reason of its development function and obligations, the respondents may not present the appearance of a strict impartiality required, for example, by a court administering justice in determining an application for a Section 25 certificate. It might be considered to have a predisposition towards granting certificates. However, this being so, the principle set out so clearly by Keane, J. (as he then was) in Radio Limerick One Limited v. Independent Radio and Television Commission apply, and the respondent is under an obligation to take practical steps to free itself in taking a decision on an application from a Section 25 certificate, not merely from actual bias, but the apprehension of bias in the minds of reasonable people. This appears to include having a procedure under which no commitment is given, not just by a member of the Board itself, but by the executives (who can only be or be perceived to be acting on behalf of the respondent), to any person as to the view to be taken (or recommendation for review) on an application for Section 25 certificate prior to the determination of the application by the Board. It further appears to me to require that the respondent does not permit any arrangements to be put in place in carrying out its development functions which would create a impression that the respondent would be obtaining a benefit in the sense of something that it wishes to have or achieve for the purposes of its development functions if it grants a Section 25 certificate.’ (Emphasis added)

‘The practical working of the Act of 1997, having regard to the development function and the provisions of Section 25 certificates, appears to require for its effective working some pre-application discussions and therefore must be considered as contemplated by the Oireachtas. However, it is important that the executives at all times make clear that they are not in a position either to commit themselves or the Board to a particular course of action, and nor should they seek any benefit (in the very general sense of the word) from the respondent in the event of the grant of a certificate... What is permissible falls short of what was done in this instance.’ [para 113.] (Emphasis added)

The Judgement establishes that for the effective operation of the Authority pre-application discussions can and should take place, but that discussions must take place in a particular framework. No commitment of guarantees can be given in relation to the granting or otherwise of a certificate and no member or employee of the authority can provide such commitments in return for some form of gain for the Authority.

Principles Established

The following principles are established by the Finlay Geoghegan Judgment and inform the review of legislative powers and the Authority's structure and functions.

- The adjudicative function of the Authority is a separate and distinct duty and power from its development function and remit. (Agreements which benefit the 'development' function of the Authority are not material considerations in the adjudicative function of the Authority.);
- In accordance with the principles of fair procedures, adjoining landowners should have a right to participate in the adjudicative process;
- The interpretation of the Planning Scheme and related documentation must apply the following principles:
 - They are not Acts or subordinate legislation and are not subject to the accepted canons of construction applicable to such material.
 - They are to be construed in their ordinary meaning as it would be understood by members of the public without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning.
- The Planning Scheme can be considered to constitute an 'environmental contract' in the same sense as statutory Development Plan. As such, there must be a legitimate expectation on the part of adjoining landowners (and one might argue the community) that certificates will only be granted where the proposed development has been adjudged to be compliant with the approved Scheme;
- A certificate can only be issued if the development is determined to be consistent with the Planning Scheme. Conditions which are intended to amend an application which is determined to be inconsistent with the scheme to make it consistent are ultra vires;
- A compliant scheme can be further amended by condition in a manner consistent with the Planning Scheme;
- Amendments to Planning Officer's Reports, arising out of internal discussions with the Executive, the Sub-Committee or the Board should be recorded on amended drafts; and
- Pre-application discussions can and should take place, but that discussions must take place in a particular framework. No commitment of guarantees can be given in relation to the granting or otherwise of certificate and no member or employee of the authority can provide such commitments in return for some form of gain for the Authority.

2.5 Key Issues Arising

Recommendations regarding the legislative framework under which the Authority operates are provided in the following sections in respect of the relevant issues identified. However it is clear that the Finlay Geoghegan Judgment raises fundamental questions about the nature of the planning powers exercised by the Authority. These are as follows:

- Is it appropriate for the Authority, which has been established as a development agency to deliver the social, economic and physical regeneration of Docklands, to have powers both with respect to forward planning and adjudication?
- Given the uncertainty over the exercise of these powers which has been revealed by the Finlay Geoghegan Judgement is there a need to put in place specific regulations covering the Section 25 adjudication process to deal with the silence in 1997 Act.
- Are the powers of the Authority in relation to adjudication too restricted to deal with changing market conditions? Is there a need for a separate 'material contravention' procedure to deal with potentially non compliant applications or should this continue to be dealt with by way of application to Dublin City Council?
- Should the Authority be granted powers to apply conditions to Section 25 applications to render them compliant with the relevant Planning Scheme? Is it appropriate that responsibility for the enforcement of planning conditions lies with Dublin City Council?
- In the event that Section 25 certificates have been issued on a flawed basis is there a need to introduce some retrospective power to ensure their soundness in law?
- Are there other areas where decision making by the Authority could be open to legal challenge and if so what needs to be done to provide certainty to landowners, occupiers, investors and other stakeholders?

These issues are addressed in the following sections of the Report.

3.0 PLANNING STRUCTURE

3.1 Introduction

This section of the report reviews the planning structure within the DDDA. This is placed in the wider context of the management and organisational structure of the Authority as a whole. The plan making³ and adjudicative functions of the Authority are considered in Sections 4 and 5, respectively.

The key issues raised by the brief in relation to planning structure are set out below:

- i. A review of planning structure to include the internal and external relationships of the Planning team, for example the relationship between the adjudicative role of the planning team and the preparation of Planning Schemes and the relationship between the planning team and the development remit of the Authority.
- ii. The administrative function in terms of document management and planning procedure administration and the role of this function within the planning team.
- iii. The relationship between the finance team and the planning team in terms of contribution levy calculation and collection.
- iv. The relationship between the legal team and the planning team and the demarcation of legal and planning issues.
- v. Relationship between the DOE and the Authority and the relationship between DCC and the Authority.

3.2 External Relationships

3.2.1 Role of the Minister and DoEHLG

In order to properly understand the structure and function of planning within the DDDA it is important to consider the way in which the Authority is constituted and has been organised.

The ultimate responsibility for the DDDA lies with the Minister of Environment, Heritage and Local Government under the powers provided by the 1997 Act.

The Authority is required to submit an Annual Report and Accounts to the Minister no later than the 30th June each year setting out progress towards its objectives. This report is a public document which is laid before the Houses of the Oireachtas. Procedures are also in place for the Minister to sanction the financial plans of the Authority, subject to the approval of the Minister of Finance. The Minister can request further information at any time. Alongside these formal procedures a senior Departmental official sits as a member of the Executive Board and informal contacts are maintained between the Department and the Authority at a number of levels. An official of the Department also sits on the Council of the Authority.

- Although there do not appear to be formal targets and measures in place, the following appear to be the principal indicators of the success of the DDDA as included in Annual Monitoring Reports: Growth in population and changes in household and social composition of the area;
- Employment creation;
- Participation of Docklands residents in the local and wider city labour market;

³ Masterplan and Planning Scheme preparation are referred to as 'plan making' functions.

- Educational attainment levels of local residents;
- Provision of social and affordable housing for local residents;
- Number and mix of new residential units created;
- Area of commercial floorspace created; and
- Provision of amenity space and community facilities.

Discussions with the Department confirm that the relationship between the DOE and the Authority operates at a number of levels:

- Ministerial – the Minister is the effective sponsor of the DDDA with responsibility under the 1997 Act for appointing the Council, Chairperson and Members of the Executive Board. The Minister also has oversight through the Annual Reporting process and for procedures in place for approving financial support (subject to the approval of the Minister of Finance). The Minister is also responsible for approving any Planning Schemes (and amendments to these) taking into account representations which it may receive from Dublin City Council
- Departmental – a senior official of the Department sits on the Executive Board as a Director of the Authority. This should ensure that the Department has a good understanding of the general business of the Authority and is important to the oversight function of the Department. An official of the Department also sits on the Council.
- A senior planning officer of the Department advises the Minister in respect of his responsibilities in relation to the Masterplan and Planning Schemes. While regular informal contact is maintained with the DDDA's professional team, care is taken to ensure that the Minister's ability to take an independent and objective decision in relation to the approval of plans is not compromised.

It is understood that in the initial years after the inception of the Authority, the Department's representatives on the Board were heavily involved in the functioning of the Authority. As the Authority became well established and resourced and achieved a high level of success, the Department appears to have taken a relatively 'light touch' approach to the strategic management of DDDA. This reflects the significant progress that has been made towards its social, economic and physical development objectives and the apparent effectiveness of the management arrangements.

It is surprising however that over a period of 10 years the Department has not considered it necessary to undertake its own independent review of the operation of the Authority as both development agency and planning authority but relied upon the Annual Reports and Monitoring Reports produced by the Authority. Best practice in the UK for instance suggests that public bodies such as DDDA should be the subject to an independent review of performance at least every five years⁴. That this was not undertaken and underscores the perception that the Authority has done a 'good job' and that the management arrangements put in place under the 1997 Act were working effectively. This perception has been challenged by the Finlay Geoghegan Judgement.

⁴ For instance, the operation of the three Development Corporations is subject to review every 5 years. This is undertaken as a matter of practice rather than on the basis of a statutory requirement. (London Thames Gateway Development Corporation, Northamptonshire Development Corporation, Thurrock Development Corporation)

3.2.2 Dublin City Council and the Authority

The designated DDDA area falls within the administrative area of Dublin City Council (DCC). The Dublin City Development Plan is the statutory land use Development Plan for the area. The DDDA is given statutory plan making and adjudicative functions in respect of those areas designated for Planning Schemes and for which schemes have been approved. 1997 Act provides a 'default' option for any proposed development which is not compliant with a Planning Scheme that an application can be made to DCC under the Planning and Development Acts.

Enforcement functions in respect of compliance with conditions and the carrying out of development in accordance with approved plans remain vested in DCC, which is also the statutory authority responsible for delivery and maintenance of services and roads infrastructure within the DDDA area. Financial contributions are levied on certified developments by the DDDA in accordance with the approved DCC Section 48 and 49 Contributions Schemes.

An overview of the planning functions and duties assigned to DCC within the DDDA area under 1997 Act are set out below.

3.2.2.1 Plan-Making Process

The 1997 Act provides the following status to DCC in the plan making processes:

Masterplan

Section 24 (3) (b) of the 1997 Act provides that in preparing the draft Masterplan, the Authority must consult with Dublin City Council. The foreword to the 2008 Masterplan states that the Masterplan should '*reflect relevant policies of Dublin City Council*'.

Dublin City Council is also required under 1997 Act, '*as soon as may be*' after the adoption of a masterplan, to '*consider*' the making of:

- A Development Plan in accordance with the current Planning and Development Acts for that part of the Local Authority area within the Dublin Docklands Area, to ensure consistency with the Masterplan; or
- Such variations of the City Development Plan as may be desirable to secure consistency between that plan and the Masterplan.

It is understood that the DDDA Masterplan is not generally afforded the same status in the decision making process by DCC as a 'statutory' plan such as the Dublin City Development plan or a Local Area Plan. This issue is addressed in more detail in Section 4.

Planning Scheme

Section 24 (3 to 6) of the 1997 Act states that the Authority, in preparing and adopting Planning Schemes, should '*(c) consult with Dublin Corporation and with such statutory bodies as appear to the Authority to have an interest in the area to which the Planning Scheme relates, (d) have regard to the development plan made by Dublin Corporation*'.

Section 24 (4) further states that ‘a Planning Scheme under this section shall be submitted by the Authority to the Minister for approval and a copy thereof shall be sent to Dublin Corporation at the same time’.

Section 25 (5) states that ‘Where a Planning Scheme under this section is submitted to the Minister by the Authority, the Minister shall consult with the Minister for Finance and shall consider any objections that may within one month of the sending of the copy to Dublin Corporation be made to the Planning Scheme by the said Corporation and may modify the Planning Scheme in such manner and to such extent as the Minister thinks proper and may approve the Planning Scheme or the Planning Scheme as so modified’.

Section 25 Adjudication Process

As noted above, DCC is the Planning Authority for the majority of the Dublin Docklands area, while the DDDA has adjudication powers (Section 25 Exemption Certificates) within the Planning Scheme areas. The City Council and An Bord Pleanála are directed to consider the provisions of the Masterplan in deciding any application for permission or subsequent appeal under the provisions of the Planning and Development Act and Regulations. The Authority may be consulted by Dublin City Council with regard to applications made to DCC and pertaining to sites located within the Docklands area. From the review of documents issued by the DDDA, it appears that observations were systematically made by the Authority on such applications.

The 1997 Act does not provide any procedure for the Section 25 Adjudication process and as such no statutory provision is made for consultation with DCC. It is considered appropriate that substantial applications are referred to DCC given that the City Council has responsibility for roads, services and social and affordable housing. DCC is consulted by the Authority on Section 25 Applications, notwithstanding that such consultations have no regulatory basis and are not formalised. As a result, submissions made by DCC are not generally consistent in terms of timeframe or content and were sometimes received after the decision was made to issue the certificate.

The review of Section 25 files (see Section 5 of this report) established it was general practice for Dublin City Council (Planning Department, Roads & Services Department, Housing Department), when consulted, to make detailed submissions which included a comprehensive assessment of the compliance of the proposal with the provisions of the Masterplan and the Planning Scheme on Section 25 applications made to the DDDA.

It is also noted that the conditions attached to Certificates issued by the DDDA, refer to DCC for the items that relate to the Council’s exclusive responsibilities in the Docklands area. These conditions are either standard conditions or directly informed by the submission made by the Roads Department, the Services Department or the Housing Department of DCC.

Regarding levies, Section 25 (7)(c) (ii) of 1997 Act states that ‘for the avoidance of doubt a certificate issued under Paragraph (a)(ii) may include a condition requiring the payment of a contribution towards any expenditure that has been, or is being, or is intended to be incurred by or on behalf of (l) Dublin City Council, in respect of the provision of public infrastructure and facilities that benefit of facilitate development in the area to which the Planning Scheme relates’.

Enforcement powers under the Planning Acts remain the exclusive responsibility of Dublin City Council in the Docklands area. This has the potential to have a significant impact on the ‘planning’ interface between the Dublin Docklands Development Authority and DCC, with particular regard to conditions attached to Section 25 Certificates.

It appears that the relationship between the organisations is not well understood by all DCC planners and there are divergent views on the relevance of planning submissions made on applications. Communication between the authorities has tended to be informal at a senior management level. There is a case for structured interaction between planning and management within the respective organisations (e.g. representative steering committee for preparation of Planning Schemes/ Masterplan).

3.3 Internal Management Structure

3.3.1 The Council

Section 16 of the 1997 Act gives power to the Minister to appoint of a Council of up to 25 individuals drawn from local community, City Council, and other public sector organisations and stakeholders. The function of the Council is to take ownership of the vision and strategic plans of the Authority as expressed in the Masterplan which it adopts, and to monitor progress with the implementation of the Masterplan which has to be updated and approved every 5 years. The Council has to meet a minimum of four times a year. It's clear remit is to take responsibility for the strategic direction of the Authority, and ensure the effective engagement of key interests.

Discussions with a number of Council members indicate that there is active input from the Council to the Masterplan preparation process. For example the 2008 Masterplan was the subject of a line-by-line review and the Council receives presentations from the Executive on new and amended Planning Scheme proposals.

The strength of the Council lies in its interest in the social regeneration agenda and the ensuring that the local community benefit as much as possible from the changes taking place within Docklands in terms of employment, education and training and community facilities. This role has been reinforced by the creation of a Community Liaison Group underlining the fact that the Council is focused on the 'softer' elements of regeneration. .

The Council has powers under the 1997 Act to monitor the progress and make recommendations to the Executive Board and if appropriate the Minister of Environment, Heritage and Local Government, or to any other Minister of the Government, in relation to the functions of the Authority and its financing, the assignment to the Authority of additional functions, or any other matter which, in the opinion of the Council, is relevant to the effective performance by the Authority of its functions.

This does not appear to have happened. Generally, there appears to have been a consensus that the DDDA has performed well in relation to its plan making and social regeneration agenda which has been the primary focus of the Council. There appears to have been very little opportunity for the Council to hold the Executive Board to account as the level and quality of information contained within the Annual Monitoring Reports has been limited, particularly in relation to the Authority's development and planning functions.

3.3.2 Chairperson and Executive Board

Under the 1997 Act the only person who is formally a member of both the Council and the Executive Board is the Chairperson who is appointed for a period of five years. It is the duty of the Chairperson to ensure the efficient discharge of the business of the Authority. This is conducted through the Executive Board which has the power to perform all the functions assigned to the Authority under the 1997 Act having regard to any recommendations made to it by the Council. Appointments to the Executive Board are made by the Minister. While members of the Executive Board have the right to be informed about and attend Council meetings they are not, with the exception of the Chairperson, entitled to vote.

The Executive Board therefore has the responsibility for the day to day running of the Authority although in practice much of this is delegated to full time employees. Clear levels of delegated authority for financial decisions are now in place. However, there do not appear to have been procedures in place to cover decision making in relation to the Authority's planning functions, in particular the finalisation and issuing of Section 25 certificates. Ultimately this responsibility lies with the Executive Board. In reality the Executive Board has relied to a large degree on the recommendations of its professional staff in the execution of its duties.

3.4 Staffing Structure

Staff numbers and structure have evolved since the DDDA was established in 1997 with a number of employees having transferred from the Custom House Quay Development Authority. The most senior manager within the Authority is the Chief Executive Officer who has typically been a property professional reflecting the role of the DDDA as a development agency. Until relatively recently some six Director level posts reported to the Chief Executive covering Finance, Property, Architecture and Technical Services, Social Regeneration, Marketing, and Legal/Secretary.

The planning team, which was headed by a Planning Director reporting directly to the Chief Executive until 2004 now reports through the Director of Architecture and Technical Services, who has responsibility for design, particularly in relation to the public realm, project management, including co-ordination with Dublin City Council who are responsible for the provision of infrastructure and services, and planning.

The planning team is led by a Senior Planner supported by a Senior Executive Planner, and Executive Planner and an Assistant Planner. All are professionally qualified. From time to time staff have been seconded from other public bodies to assist with a workload which escalated at the height of the development boom.

3.5 Planning Requirements

As previously noted, the planning powers available to the DDDA represent a key tool to enable it to meet its objectives of delivering the social, economic and physical regeneration of the Dublin Docklands Area. Essentially this requires a capability to:

- Prepare and monitor the implementation of strategic planning policies as expressed through the Masterplan;
- Prepare and, as necessary, modify detailed Planning Schemes setting out clear policies with which development is required to comply if it is to be certified as 'exempt';
- Process and assess Section 25 applications and advise whether or not they are in compliance with an approved Planning Scheme; and
- Determine the levy payable by developers in receipt of a Section 25 certificate.

This capability encompasses both forward planning and development control functions ranging from large scale mixed use development schemes to minor changes of use and advertisement.

While the skills required to perform these functions are typically those of the professional town planner, the context within these powers are applied are significantly different from those which apply in the normal local government environment, particularly following the clarification provided by the Finlay Geoghegan Judgement. Specifically:

- The objectives of the DDDA and its role as a development agency create pressures for planning to operate more as an 'enabling' than a 'regulatory' process. In essence the planning regime in the Dublin Docklands area sits in 'competition' with the normal planning process across the rest of the City. Established as a system to deliver certainty and quick decisions there would appear to be a strong presumption in favour of development.
- The absence until recently of opportunities for third party participation in the S25 adjudication process has reduced the pressure for transparency in the processing of applications. Whereas local government planning decisions are subject to local democratic input, the decisions taken by DDDA are made by an Executive Board. In addition, the absence of a right of appeal to An Bord Pleanála introduces a further limit on scrutiny.
- Unlike the development plan and planning application process where there is significant leeway for interpretation of proposals 'on their merits' and specific provision for accommodating a 'material contravention', the Section 25 process requires the DDDA to adjudicate on whether or not an application is in compliance with the Planning Scheme. In this regard, once a Section 25 application is made there is not the scope for negotiation to achieve a better result through amendment or the use of conditions; rather a judgement has to be reached on whether the application can be issued with a certificate.

While the context for planning within DDDA is about active engagement with the market to maintain and encourage private sector investment in land and property in order to create development value from which infrastructure, amenities and social regeneration can be funded, the powers available under Section 25 of the 1997 Act offer provide less flexibility to negotiate and condition a planning consent.

While in theory the planning team has been separated from the land and property team reporting through the Director of Architecture, it is apparent that it has found itself under pressure to accommodate the needs of the market and to make recommendations which were very difficult to justify in terms of the strict but reasonable interpretation of the Planning Schemes (see Section 5). In this regard, the adjudicative planning functions of the Authority have been both implicitly and explicitly influenced by the culture of the organisation which could be characterised as 'can do' being disproportionately favoured over 'should do' with regard to Section 25 adjudication. The development remit has been the dominant influence to which planning has had to bend. It appears that this pressure intensified as the development boom came to an end and landowners and developers sought to maximise the value of sites acquired at the top of the market.

While the planning team have had some input to the preparation of the Masterplan and Planning Schemes examination of the files indicates that this work has been led by the Director of Architecture, coordinated by the project management team and substantially resourced by external consultants. A Senior Executive Planner was dedicated to forward planning functions as required. Given the uneven nature of the forward planning workload this seems entirely sensible. However, good practice would suggest that it is important that forward planning policy is informed by the practical experience of judging the compliance of Section 25 applications and that these judgments are reached based on a clear understanding of the intention of policy. For this reason local authority planning teams typically comprise separate forward planning and development control teams with the former responsible for the preparation and monitoring of development plans and the latter responsible for dealing with development control.

Going forward a key challenge for the DDDA's will be to ensure that the forward plans and policies of the Authority strike a proper balance between the development interests of landowners (including the Authority) and urban design aspirations taking into account the national, regional and city planning framework and the views of key stakeholders. This is particularly critical given that the Planning Schemes in particular provide the basis for a

'fast track' decision process in which there has been no right to third party representation (this has now been introduced to a limited extent as a result of the Finlay Geoghegan judgement); and no recourse to appeal.

Indeed the Planning Schemes prepared by the Authority and approved, subject to amendment, by the Minister, are intended to provide a clear basis against which the Executive Board, guided by the advice of its professional planners, can judge whether a Section 25 certificate should be issued to exempt the proposed development from planning control. In theory, this judgement should be relatively straightforward by reference to the mix of uses proposed, plot ratio and building height and other principal parameters determined by the Planning Scheme. As previously noted the adjudicative planning function appears to have been significantly influenced by the Authority's development remit. This perception is fortified by the following table which reveals the very high approval rate, particularly from September 2005.

Table 3.1: Section 25 approval rates September 2004 to September 2007

Period	No. of Applications	No. of Approvals	% Approval Rate
Sept 04/Sept 05	50	36	72%
Sept 05/Sept 06	51	50	98%
Sept 06/Sept 07	68	63	93%
Source: DDDA Annual Monitoring Report			

Given the lay nature of the Executive Board⁵ it is clear that considerable reliance needed to be placed upon the Planner's Report and recommendations in respect of individual Section 25 applications.

3.6 Planning Sub – Committee

To assist the Executive Board in dealing with the large volumes of Section 25 applications, a sub-committee was established. The purpose of this sub-committee was to review applications (with planning officers) prior to the full Executive Board meeting to examine proposals and to present recommendations to the Board. Initially the sub-committee met immediately prior to the Executive Board meeting but from 2005/06 when the number of applications increased significantly it met a week in advance. Generally decisions were made by the Executive Board in accordance with the sub-committee's recommendation.

3.7 Recent Changes in Procedures

Following the Finlay Geoghegan judgement and the subsequent work undertaken for the Authority by Grant Thornton, much clearer procedures have been put in place around the Section 25 adjudication processes⁶. This has now been divided into 4 distinct stages covering:

⁵ The term 'lay' is used in this instance to reflect the composition of the Board, which, throughout the period reviewed, was comprised primarily of persons who had no qualifications or experience as planners, architects, engineers or associated design/property/construction professionals.

⁶ A Procedural Manual for processing Section 25 cases was in place since 2005.

- Pre-application discussions. These now have to be held under controlled conditions to avoid any suggestion that officers of the Authority are in a position to pre-commit the Executive Board in its adjudicative decision making. This is achieved by a fixed agenda and the preparation of a minute of pre-application meetings to be signed by both parties.
- Receipt to registration of application. This covers the process for both advertising the fact that an application has been made to allow third parties to make representations and ensuring that the proper information is provided to enable the Authority to reach its adjudication.
- Planning Report stage including consideration of any third party submissions. Procedures are now in place for ensuring that all competent submissions are taken into account in preparing the planner's report for submission to the sub-committee and for incorporating and noting any recommendations made by the sub-committee.
- Board presentation and decision including follow up actions which are required to be taken.

There is now a planning administrator to ensure that these processes are followed and fully documented. This should help to ensure that there is a clear and consistent basis for decision making by the Executive Board in accordance with the provisions of the relevant Planning Scheme.

3.8 Calculation of Development Levies

Based on discussions with the Finance Team it is clear that responsibility for the overall rate of development levy chargeable by DDDA lies with the Finance team. This is determined by dividing the costs likely to be incurred by DDDA by the amount of development (residential units and sq m of commercial floorspace) anticipated. This produces a contribution rate for DDDA which is added to the rate required by DCC. The Finance team then benchmark this with rates prevailing in Dublin City and the Greater Dublin region and adjust accordingly. In essence a view is reached on what the market will bear for being part of a fast track planning regime. The revenue which DDDA derives from levies is treated as general income and is not specifically earmarked for expenditure related to specific works or schemes to be undertaken by the Authority.

New procedures recommended by Grant Thornton are now being followed whereby the planning technician measures the area subject to a Section 25 approval and this is checked off to prevent errors which have occurred in the past.

On the issuing of a Section 25 certificate a copy is sent to DCC who will invoice their proportion of the levy when development commences. DDDA invoice its own proportion and maintain a register of invoices raised and sums collected.

A recent review of Development Levy process has been undertaken by PWC, as part of the 2008 DDDA Internal Audit Plan. This review has identified a number of issues with regard to the processes and controls surrounding the Levy System, principally instances of the incorrect calculation of levies payable at the certification stage; no statutory basis available to the Authority to charge interest in the instances of delay in payment of levies (where a developer has failed to notify the Authority of commencement); no process for sign-off to confirm correct levies applied to Certificate; lack of comprehensive documentation regarding the policies and procedures relating to the levy process; instances where levies billed are not received in a timely manner; lack of transparency over levy calculation evident in Certificate; and a number of issues with regard to IT procedures.

The Price Waterhouse Coopers report identifies a number of further recommendations which are found to be appropriate to address the above issues and provide clarity and consistency in the approach to the development levy process. Recommendations include:

- Inclusion of additional information in the Levy Scheme Checklist to confirm area calculations and appropriate sign off, to ensure correct calculation of levies payable at Certification stage;
- Improved procedures to ensure timely raising of invoices on commencement of development;
- Implementation of process to ensure recalculation of levy (where required) to reflect changes in an original application, by manner of a checklist and appropriate sign-off;
- Documentation of all policies and procedures relating to the levy scheme, with assigned responsibility for updating;
- Improved procedures to ensure timely collection of levies billed through a review of the practice of Local Authorities in this matter;
- Provision of transparency with regard to levy calculation through the attachment of an explanation of levy calculations to a Section 25 Certificate; and
- Procedures to strengthen the IT System including use of PDF formats and security reviews.

3.9 Legal Advice

Responsibility for legal advice has rested with the Secretary to the Authority who has a legal background. However, in recent years this post holder was also the Director of Property. As a result the legal function appears to have been geared to supporting the property and development functions rather than the planning and administrative functions of the Authority.

Discussions with the Secretary reinforces the view that the primary purpose of the Authority has been seen as delivering development and that planning has been used as a tool to secure that end. It is the view of the Secretary that the planning powers given to CHDDA and subsequently DDDA were not intended to be regulatory and that fast track planning is an essential part of the DDDA's armoury. It was the stated view of the Secretary that the vagueness in the powers in the 1997 Act was a deliberate act by the legislature to give the Authority flexibility to help deliver development.

The Section 25 adjudication process is seen as one which necessarily involves the balancing of competing objectives such as urban design, development, tenant requirements, and at times public procurement. Decision making was driven by the Executive team who were a small tight knit group who each had their input and who operated in a multi-disciplinary way. The final decision was taken by the Executive Board which included people that were chosen for their business, rather than planning knowledge. It was considered by the Secretary that it was inevitable that this might lead to questionable decisions from time to time.

Having been through the scrutiny of the High Court hearing it was acknowledged that the picture which emerged of the adjudication process was the generality rather than the exception. The approach was to seek to maximise development within the context of the Planning Schemes, as it was from development value that public benefits came.

The use of conditions to render Section 25 applications compliant was considered by the Secretary to be common practice. It was confirmed that there are also other agreements in place with developers to secure strips of land to deliver infrastructure and public amenities.

Concern was expressed that post Finlay Geoghegan judgement the approach is moving to a position where planning is over regulatory. It is considered that this will undermine the effectiveness of the organisation which needs to be quicker and better than Dublin City Council in delivering planning consents.

3.10 Conclusions and Recommendations

The principal conclusions to emerge from the review of planning structure are identified as follows:

There has been a 'light touch' approach by the Department of Environment, Heritage and Local Government with respect to the DDDA both in relation to its wider sponsorship of the Authority and its planning responsibilities. There is a greater need now for the Department to have a more 'hands on' strategic management role.

R1	The DoEHLG should establish more rigorous annual reporting requirements including an agreed set of key indicators, and that it institutes a formal review process on a regular basis.
R2	A written protocol should be prepared to clearly define the Department's roles and responsibilities in respect of the administration of the Authority.
R3	A written protocol should be prepared to clearly define the roles and responsibilities of the Department's Representative on the Board and to ensure absolute clarity around reporting procedures between the Board and the Department.
R4	It may also be appropriate for the Minister in making appointments to the Board to consider the skills mix appropriate to the statutory functions required of the Board.
R5	It is recommended that a formal procedure be instituted to ensure that DCC is presented with an opportunity to comment on Section 25 applications and that these comments are taken into account by the Executive Board in adjudicating on such applications.
R6	It is further recommended that there should be formal liaison meetings between DDDA and DCC planning teams to ensure effective management of areas of shared responsibility such as development levies and enforcement.
R7	It is recommended that the planning functions covering both adjudication and forward planning and plan monitoring should operate as a separate Planning Team within the Authority with a direct reporting line to the Chief Executive. This will help achieve the necessary separation from the Authority's property and development role. ⁷
R7(a)	Within the Planning Team a dedicated Senior Planner should be delegated responsibility for protecting the integrity of the adjudicative function on the basis of a bi-annual monitoring and reporting procedure.
R8	It is recommended that consideration be given to the creation of a Director of Planning role dedicated to the planning functions of this Authority. This position should be filled by a qualified planner with management experience and with extensive experience of managing the regulatory function within a local authority.
R9	It is recommended that the legal function of the Authority is separated from the property function to ensure that the planning team is able to access legal advice on the proper application of its planning

⁷ The current and proposed structures of the Planning Team are set out in Appendix C

powers in the light of the Finlay Geoghegan Judgement and any changes in legislation or regulation which may be required.

- R10** The function of Secretary should be separated from the property function. The appointment of a dedicated Secretary or Administrative Officer should be considered to report between the Executive and Board and to support the Board in the carrying out of its functions.

Weaknesses have been identified both in relation to the administration and document management of the planning team and the calculation of development levies. The former were highlighted by the High Court judgement and by the subsequent Grant Thornton review. The latter came to light in the work undertaken by Grant Thornton and more recently by Price Waterhouse Coopers. Nothing which has come to light during the course of this review contradicts these findings.

Progress has been made in putting in place new procedures to address these weaknesses including the appointment of a planning administrator.

- R11** It is recommended that the role of planning administrator is maintained until such time as an IT based system is in place to support the processing of Section 25 applications, and that a quality and risk management culture is embedded in the leadership and day to day operations of the planning team.

- R12** Enforcement powers under the Planning Acts should remain the exclusive responsibility of Dublin City Council in the Docklands area.

There is no strong case for the duplication of these functions with attendant resource implications. Recommendations made in Section 5 in respect of file management, compliance issues etc. will assist both authorities in the discharging of monitoring and compliance functions.

A more detailed assessment of some of the issues identified above is provided in Sections 4 and 5 and appropriate recommendations are included at the end of these sections.

4.0 FORWARD PLANNING FUNCTIONS

4.1 Introduction and Overview

Section 18 of 1997 Act sets out the objectives of the DDDA relating to the social and economic regeneration of the area and improvement of the physical environment. To fulfil these objectives, Section 18(1)(b) of 1997 Act assigns the DDDA the following forward planning functions:

- i. *‘to prepare a Masterplan for the regeneration of that Area in accordance with section 24, and to promote the implementation of the Masterplan;*
- ii. *to prepare, where appropriate, Planning Schemes in accordance with Section 25;*
- iii. *to prepare detailed proposals and plans for the development, redevelopment, renewal or conservation of land in that Area...’*

The Masterplan establishes the broad strategic planning and policy context for the DDDA area and provides a planning framework for the Section 25 Planning Schemes which are more detailed, prescriptive and relate to defined geographical areas within the Masterplan area which have been identified as appropriate for the Section 25 certification process.

The Masterplan also identifies a number of land parcels within the Docklands area where Action Area Plans are appropriate in order to guide their future development. Four Area Action Plans have been prepared by the Authority to provide general planning and development guidance in areas outside of the Planning Scheme Areas. These plans are non-statutory and are not subject to formal preparation and approval processes. While their value to the coherent and proper planning of the respective areas is acknowledged, they are considered only in summary at the end of this section as they are not considered to be as vital to the effective implementation of the functions of the Authority as the Masterplan and Planning Schemes. An overview of the AAPs is provided in Appendix D.

The preparation and adoption processes associated with these forward planning functions, referred to hereafter as the ‘plan making’ processes, are broadly set out in 1997 Act. It is notable that the Finlay Geoghegan judgement identified that the Planning Scheme had some of the ‘hallmarks’ of a contract between the implementing authority, landowners and the local community in the same sense as a statutory development plan prepared under the Planning Acts.

Given the way that the planning process has been structured in 1997 Act with public consultation concentrated at the forward planning stage of the planning process, coupled with the prescriptive nature of the Section 25 Planning Scheme which can be considered to be tantamount to a planning permission under Section 34 of the 2000 Act, it is critical that the plan making processes are, and are seen to be, equitable, inclusive, transparent and subject to appropriate scrutiny and consultation by the Board, the Council, the Community, the Minister, and any interested parties, as provided for in 1997 Act.

This section provides a review of the principal provisions relating to the preparation, consultation and approval procedures for the Masterplan and Planning Schemes, respectively. The review has been informed by the minutes of Council and Board meetings, relevant papers provided by the DDDA including documentation furnished to the respective bodies by the Executive, submissions made during the statutory consultation periods, and discussions with the Board, Council, Executive and Community, and with the DoEHLG in the case of Planning Scheme preparation.

This review has generally found that the plan making procedures are relatively robust and that the Council's role and public participation have been effective, transparent and meaningful, particularly in the Masterplan preparation process, and provide an adequate level of confidence that subject to the relatively minor recommended amendments to the processes they can be considered to be equitable.

It is noted that the preparation and implementation of the Planning Schemes has followed closely the plot ratio and height standards set out in the Dublin City Development Plan notwithstanding that the DCC Plan has provided explicit criteria for departures from its standards. Given that these density and height provisions are the principal determinants of the quantum and value of development which can be achieved, and that they were consistently applied in the North Lotts and Grand Canal Dock Planning Schemes in particular, the opportunities for significantly enhanced development quanta on a site specific basis was not generally achievable through the Planning Scheme adoption process. As such, the management and balancing of development pressures and third party interests were not seen to be pronounced in the preparation of those schemes.

As national and regional policy and legislation has placed increased emphasis on sustainable development, achieved in part through maximisation of integration of land use with public transportation and infrastructure investment and provision, the case for increased density of development at appropriate locations is consistent with the national policy agenda. The North Lotts area is considered to be suitable in principle for the consideration of enhanced density, subject to appropriate controls, given its planning context and the planned provision of Luas and the interconnector through the heart of the area. In 2005 Board authorised the Executive to consider the preparation of an Amendment (No. 2) to the Planning Scheme which would address *inter alia* increased density of development. The balancing of the development pressures arising from the opportunity for increased development quanta in the North Lotts area in a rising and falling development market with third party rights and due process including public participation, provided the most recent plan making opportunity to undertake a detailed assessment of the plan making process.

Issues have arisen in this review which may potentially affect the perception that the Scheme making process may not have been carried out in a manner which fully meets the tests of transparency and equity. The evidential basis for these concerns is set out below. The context for these concerns is grounded in part in the status afforded by the Finlay Geoghegan Judgement to the Authority's forward planning documents as community/democratic contracts. This status creates a legitimate expectation that such documents will be prepared and adopted, and subsequently interpreted and implemented, in a transparent and equitable manner.

This section provides a review of the principal provisions and processes relating to the preparation, consultation and approval procedures for the Masterplan and Planning Schemes, respectively. A detailed assessment of the Planning Schemes was undertaken for the purposes of the review of the plan making and adjudicative functions. Given the particular attention afforded to the North Lotts proposed Amendment to the Planning Scheme for the reasons set out above, the overview of the North Lotts Planning Scheme 2002 and Amendment No.1 adopted in 2006 is included in this section. The principal provisions of the Grand Canal Dock and Customs House Dock Planning Schemes are set out in Appendix E and F respectively.

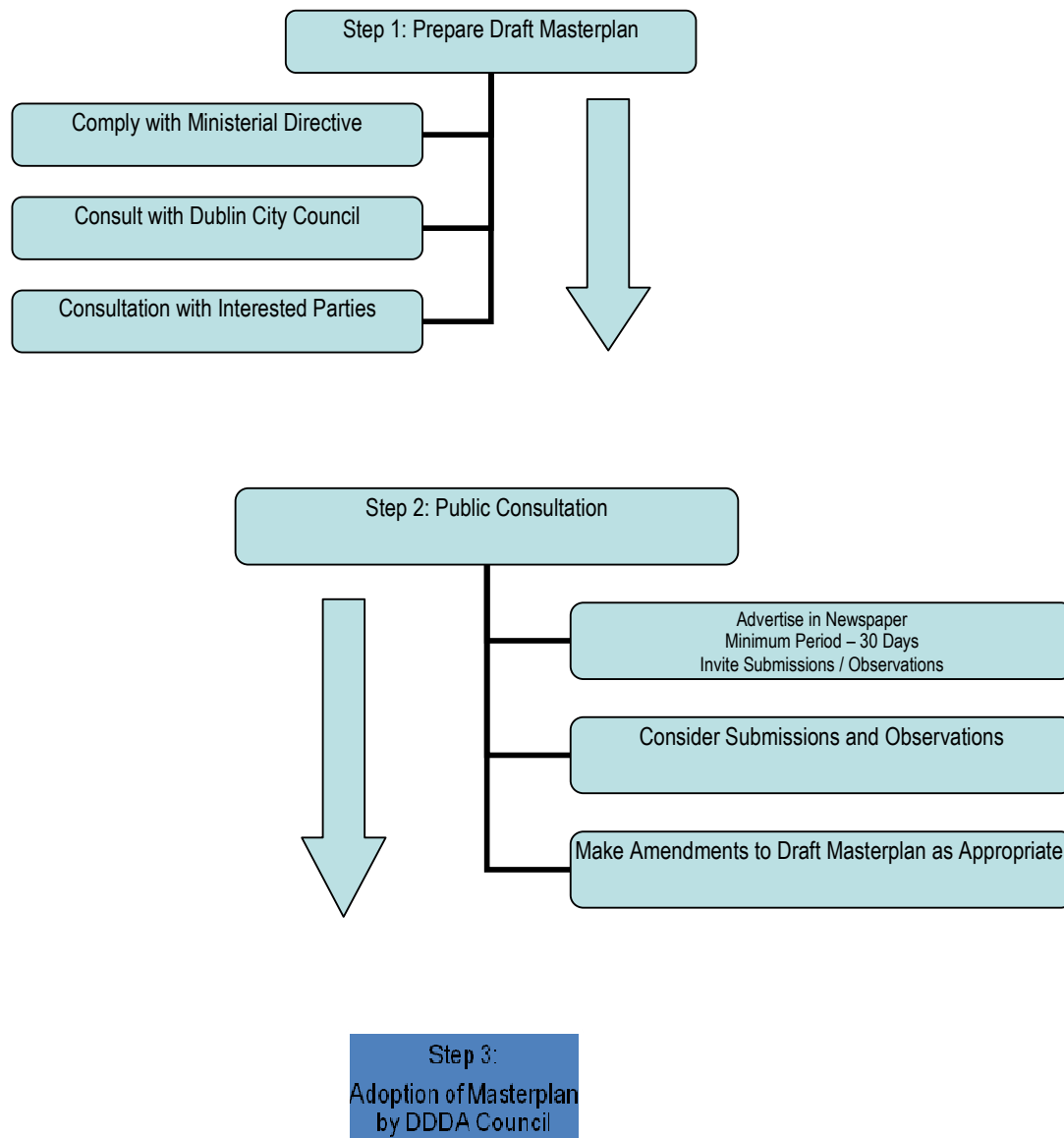
4.2 The DDDA Masterplan

Section 24 of 1997 Act sets out the DDDAs responsibilities in terms of the preparation, implementation and monitoring of the Masterplan. It sets out the identified objectives of the plan in terms of social and economic generation, improvements to the physical environment and continued development, and identifies planning issues that need to be addressed within the Masterplan, including the identification of lands for which detailed proposals and plans will be prepared, areas that are subject to a Planning Scheme (under Section 25), urban design and

conservation guidelines, general layout and building patterns, housing provision and a programme of development / redevelopment and transportation initiatives, cost estimates for the implementation of the Masterplan and projected / estimated impacts on employment, training and education, etc.

Section 24(3) provides that in preparing the draft masterplan, the Authority must comply with any directives issued to it under s45 by the DoEHLG, must consult with Dublin Corporation, and *'make arrangements for consultation with interested persons in relation to the Masterplan.'*

Section 24(4) sets out the preparation, consultation and adoption procedure which is illustrated diagrammatically below.



The Masterplan is the statutory framework for articulating the DDDA's policy in fulfillment of its remit as defined in the 1997 Act. As the foreword to the 2008 Masterplan states:

“The Authority’s statutory remit requires that it constantly interrogates monitors and appraises the assumptions and context underpinning all policies and objectives. This requires that it reflect new EU, national and regional policies, relevant policies of Dublin City Council and the substance of consultation from stakeholders as well as research commissioned to evaluate past performance and frame future policies”. (Page 3)

The Masterplan is intended to guide the development of Docklands over a 5 year period and beyond, embracing social regeneration, infrastructure, urban design, arts, tourism, culture, leisure and implementation. In respect of the latter section 24 (2)(b)(iii) requires the Masterplan has to identify those parts of the Docklands areas where Planning Schemes under Section 25 would be appropriate.

Importantly the Masterplan also provides the vehicle for consultation with community, business, statutory and landowners over the vision and strategic direction for the area. Specifically under Section 24(2)(b) the Masterplan:

- i. Sets out the economic, social and other issues relevant to the regeneration of the Area, and proposals to address those issues;
- ii. Identifies those parts of the Area where detailed proposals and plans for development, redevelopment, renewal or conservation of land in that Area are appropriate;
- iii. Identifies those parts of the Area where Planning Schemes under Section 25 would be appropriate;
- iv. Sets out urban design guidelines for the Area, including guidelines relating to urban and building conservation, street furniture and landscaping;
- v. Includes proposals for appropriate renewal, preservation, conservation, restoration development and redevelopment of the streetscape layout and building pattern of appropriate parts of the Area;
- vi. Includes proposals for the development of existing and new residential communities in the Area, including the development of housing for people of different social backgrounds;
- vii. Includes proposals for a programme of development or redevelopment of derelict sites and vacant sites in the Area;
- viii. Includes proposals relating to the conservation of the architectural heritage of the Area;
- ix. Includes proposals consistent with the Department of Transport Investment Programme –Transport 21, which updated and revised ‘A Platform for Change –Strategy 2000- 2016’ and the original Dublin Transport Initiative (DTI) Strategy;
- x. Includes estimates of the costs of the implementation of the Masterplan and an indication of possible funding options;
- xi. Estimates the implication for employment, training and education in the Area and for employment, training and education of Area residents, of measures proposed in the Plan.

4.2.1 The Dublin Docklands Masterplan, 2003

The DDDA notified interested parties of its intention to review the 1997 Masterplan and invited observations. Over 30 submissions were received in response to this initial round of consultation (pre-draft) and a report on these submissions were prepared and presented to the Authority’s Council in mid-2002.

In a paper to the Board (considered at its meeting on the 24th September 2002) the Executive set out headline issues that need to be addressed in a review of the 1997 Masterplan. These issues highlighted are as follows:

- i. Housing was identified as the most significant issue that needs to be addressed in particular issues surrounding housing need and affordability together with a strong sense amongst constituents that residential development should be accelerated relative to other land uses.

- ii. Traffic and transportation was identified as the second most significant issue. The roll out of high density development is questioned in light of uncertainty of heavy rail projects such as the metro and interconnector with over reliance on bus services and the Luas only.
- iii. The provision of good quality open spaces and public amenity areas (including playgrounds/pitches) was identified as an important consideration.
- iv. Community development was identified as a big issue with a particular focus on education.
- v. Business communities indicated a strong desire to create excellence in terms of achieving a unique sense of place supported by linkages to the City and landmark projects, such as the National Conference Centre.

The Board agreed that the Executive commence re-writing of the relevant sections of the Masterplan by addressing the issues set out above.

At a Board meeting on the 10th October 2002, a total of 11 issues were considered in going forward with the review of the Masterplan. These issues can be summarised as follows:

- i. How can the DDDA increase the quantity and speed of housing delivery beyond its 'natural' market share of the Dublin housing market?
- ii. Matching finance to deliver social and affordable housing due to the challenges arising from private sector delivery and the potential for uncontrolled / unprogrammed demands on state funding.
- iii. The degree of preference that can be afforded to Docklands residents in delivering social and affordable housing?
- iv. Confusion in the public mind in relation to the role of the Authority and that of DCC as Housing Authority needs to be clarified.
- v. Many private developers and professional bodies argue that densities are too low, whilst community groups take an opposing view. It was considered that proposed densities strike the right balance and that any reduction would be contrary to national guidance.
- vi. Peppering of social housing units has become a big issue from a cost perspective and management difficulties for the housing association, albeit desirable from a social integration point of view.
- vii. Rezoning of industrial lands for commercial and residential uses arise as an issue, and begs the question whether marginal industrial areas should be offered protection or whether such areas should be rezoned to encourage more residential use.
- viii. It is unclear what the real demand for social and affordable housing is and that issues over the level of provision should be teased out.
- ix. The need for the purchase of sites for affordable / social housing delivery was questioned in light of a requirement on the private sector to provide 20% as part of redevelopment proposals.
- x. The need to deliver specialist housing options for the elderly was identified as an issue in the Docklands.
- xi. Non-requirement to deliver social and affordable housing on small sites (under 0.2ha), which is likely to be below the 50 unit threshold was identified as an issue.

Having regard to these issues the Executive prepared policy additions and amendments for the consideration of the Board. A document was presented to the Council at its meeting on the 27th November 2002 for the purposes of seeking comments and recommendations from the Council.

At a Board meeting on the 5th December 2002 the Director of Planning and Technical Services made a presentation to the Board detailing the proposed revisions to the objectives and policies of the Masterplan. The Board agreed to these subject to a number of minor amendments.

In a paper to the Board dated the 8th May 2003 the Executive confirmed that a draft of the Masterplan and the accompanying Strategic Environmental Assessment have been completed and is ready to go on public display. The draft Plan was advertised in the newspapers and by focused postal drops and exhibited at the DDDA offices from the 3rd June 2003 to the 3rd July 2003 for comment. In order to facilitate increased public participation the Draft Plan was also displayed at community venues over week-ends where members of staff were in attendance to offer assistance and address any queries raised. Upon request a series of presentations on the Draft Masterplan was also given at the North Wall Women's Centre.

A total of 43 written submission were received in response to the draft Masterplan consultation stage. The main issues raised, were:

- i. Zoning issues for additional residential lands in Poolbeg and the lack of supporting infrastructure.
- ii. Provision of public open space and recreational facilities.
- iii. Conflicting views were expressed over density levels – either too low or too high.
- iv. Extension to the North Lotts Planning Scheme area to the north of Sheriff Street was sought.
- v. DCC sought an extension to the City Centre zoning eastwards.

At a Board meeting on the 4th September 2003, Members considered modification proposals from the Executive to the Draft Masterplan in response to the consultation issues raised and agreed a number of alterations and recommended that the modifications and alterations should be recommended to the Council for adoption. The Council of the Authority at its meeting on the 10th September 2003 adopted the Masterplan in accordance with the relevant statutory provisions of Section 24 of the 1997 Act.

4.2.1.1 Planning Framework Established by the 2003 Masterplan

The principal tools to guide land use within the Docklands Area were the Zoning Objectives Map which identifies 14 different zones, and a Specific Objectives Map showing mainly transportation infrastructure improvements / objectives for the area. The Masterplan provided a strong focus on encouraging and facilitating the continued development of the International Financial Services Centre (IFSC), particularly within the Custom House Docks area and the Docklands North Lotts area. The Masterplan also contained pro-active policy objectives to expand the residential base of the Docklands area through the promotion of mixed use development and by allowing residential use in all parts of the area save those areas where residential would be incompatible with other uses.

In terms of Development Standards and Controls the Masterplan provides that it is the purpose of Planning Schemes to contain this level of detail to regulate and control development within the area. The following residential policies are of note:

- Planning Schemes should identify 'family areas' where the maximum proportion of single bed units shall be 25%. In other areas it shall be 35% and in larger residential schemes (50 units or more) a minimum provision of at least 25% family sized units shall be provided (minimum of 80sq.m floorspace).
- 20% of all residential units shall be provided as Social and Affordable housing.

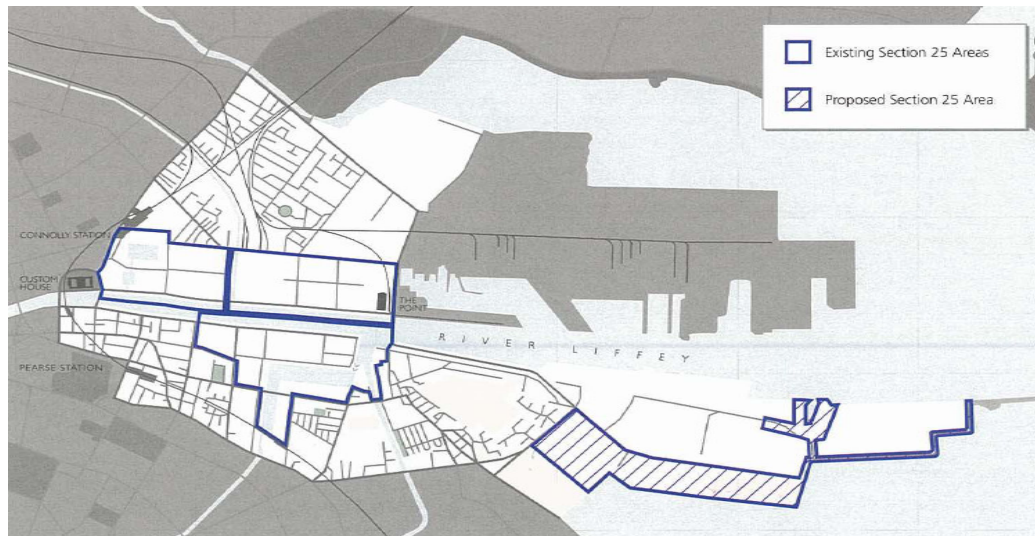
The Masterplan identified a specific objective to develop a new district level retail centre at the Point Village.

The Masterplan also promoted the integration of land use and public transport provisions and encouraged sustainable transport and the delivery of a range of public transportation improvements.

The Masterplan identified an Urban and Civic Design Framework, which establishes the broad guiding principles for future development in terms of context, movement strategies, open spaces, conservation, etc. and left over detailed planning guidance in terms of detailed development standards as building heights and plot ratios to the relevant Planning Schemes.

The Masterplan identifies three existing Section 25 Areas, namely Grand Canal Dock, Custom House and North Lotts and proposed a new Section 25 Area at Poolbeg, as shown in the figure below.

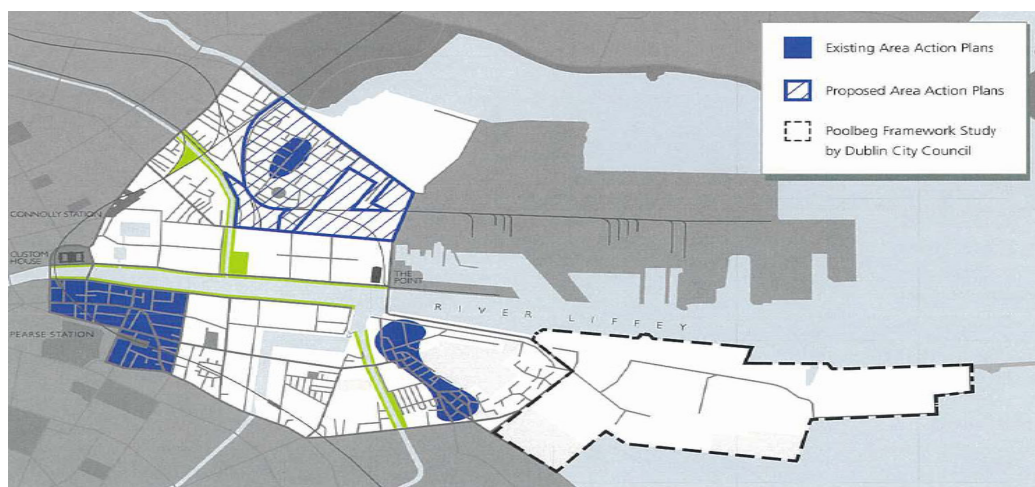
Figure 4.1 Existing and proposed Section 25 Areas



Source: DDDA Masterplan 2003

The Masterplan also acknowledged the requirement under Section 24(2)(b)(ii) to prepare detailed plan and proposals for specific areas and identified the need to prepare an Area Action Plan for the North Wall / East Wall Area in addition to the three established Areas Action Plans, as shown in the figure below.

Figure 4.2 Existing and Proposed Area Action Plans



Source: DDDA Masterplan 2003

Monitoring Progress

Section 7.3.2 acknowledges the requirement under 1997 Act to monitor progress on the Masterplan on an annual basis through the publishing of a monitoring report. The principal objectives of the report are to monitor the policies of the Plan and to establish if development has been meeting the targets set in the Plan. The monitoring carried out will also inform the preparation of subsequent Masterplans (every 5 years). In this regard, the Authority has published annual monitoring reports for the years 2004 to 2007 in the lead-up to the preparation of the 2008 Masterplan. The structure of the Monitoring Report mirrors that of the Masterplan and examines each section in the Plan to assess how the issues and problems are being addressed and to report on the progress of projects undertaken in the year following the adoption of the 2003 Masterplan.

4.2.1.2 Dublin Docklands Masterplan 2008

The review of the 2003 Masterplan commenced in November 2007 and initial meetings were held with the Executive Board, The Council and Docklands' Community Representatives. The Masterplan review process included pre-draft consultations with the following stakeholders:

- The Community Liaison Committee
- Local Business Stakeholders
- Dublin City Council
- Environmental Protection Agency
- Dublin Port
- Dublin Transportation Office
- Other Statutory Bodies
- Consultation with over 200 community representatives at the Docklands Social Regeneration Conference in Killarney, January 2008.

The Draft Masterplan 2008 was put on public display in late June until early September 2008. More than 120 submissions were received in response to this consultation period. Throughout the pre-draft stages, consultation and draft Masterplan consultation stages the Community Liaison Committee were appraised of progress and responses to submissions received.

Submissions were received from a broad cross section of interested parties such as state bodies, private individuals, community groups and landowners. The main issues raised related to the following topics:

- Transport infrastructure provision;
- Environment Issues;
- Social Regeneration;
- Height, scale, density of development together with land use mix; and
- Expansion of existing Planning Scheme areas.

A series of clarification meetings took place between the Authority and a number of parties who had made substantial or complex submissions to ensure a full understanding of the issues raised. Following this, the consultant team prepared a report on observations and submissions received with draft recommendations for amendments to the Draft Masterplan. The Council reviewed these at its meetings on the 15th October and 10th November 2008. On this basis an Executive Report was prepared which provided guidance on how submissions and observations to the Draft Masterplan, 2008 were considered by the DDDA. Appended to the Executive

Report is a substantial list of proposed changes to the Draft Masterplan covering all chapters of the Plan. The overwhelming majority of the proposed changes relate to minor modifications of text.

At the meeting on the 10th November 2008 a review of the work to the Draft Masterplan was considered and the Chairman noted that there were three issues that remained of concern to the Council members. These issues were identified as follows:

- i) Intervention into the Liffey at North Wall Quay – appropriate wording need to be agreed to provide comfort to the Council that in agreeing to change the zoning in the Masterplan would not imply that it could be interpreted as policy. It was agreed that the Authority should consider innovative development proposals for the Campshires and the river, provided they were consistent with amenity and conservation.

It was subsequently agreed that the area identified in the diagram on Page 195 be amended to ensure that this proposal is not implicit in the Masterplan and that proposals will be debated in the proposed amendment to the North Lotts Planning Scheme.

- ii) National College of Ireland – that the Masterplan should specifically promote policies to support and help sustain the National College in delivering educational needs in the Docklands.

Subsequently the wording of Policy SR40 has been strengthened to overcome the above concerns.

- iii) Graving Docks/Plot 8 Joint Venture with Waterways – to recognise potential community benefits from this development, particularly in relation to provision of a community centre and workshop.

Subsequently the Council has agreed an action plan for this project.

The Authority amended and modified the Draft Masterplan in accordance with the proposed changes set out in the Executive Report and amended consultant's Report on Observations. The Executive recommended that Council adopt the proposed Docklands Masterplan. Having considered all of the documentation and a presentation from the Executive and the external consultants, the Council, in accordance with the provisions of Section 20(1)(a)(i) unanimously adopted the Masterplan 2008.

Concurrently with the adoption of the Masterplan in November 2008 a Strategic Environmental Assessment (SEA) was prepared. Consultations on the SEA and the Environmental Report that accompanied the Masterplan were carried out in March 2009 and included consultations with the following bodies:

- DCC;
- Department of Communications, Marine and Natural Resources;
- Environmental Protection Agency;
- Department of Agriculture and Fisheries; and the
- Department of the Environment, Heritage and Local Government.

The 2008 Masterplan has seen a dramatic change in emphasis with the concept and objectives of 'sustainability' at the heart of the plan. The Masterplan remains the appropriate framework for implementing Section 25 Planning Schemes. However, it is identified that a toolkit will be developed specifically for Planning Scheme Areas in accordance with the principles of sustainable development and aims of a range of international standards including the principles of the 'One Planet Living Programme'.

The 2008 zoning map and land use designations are consistent with the 2003 Masterplan, apart from the following two major changes:

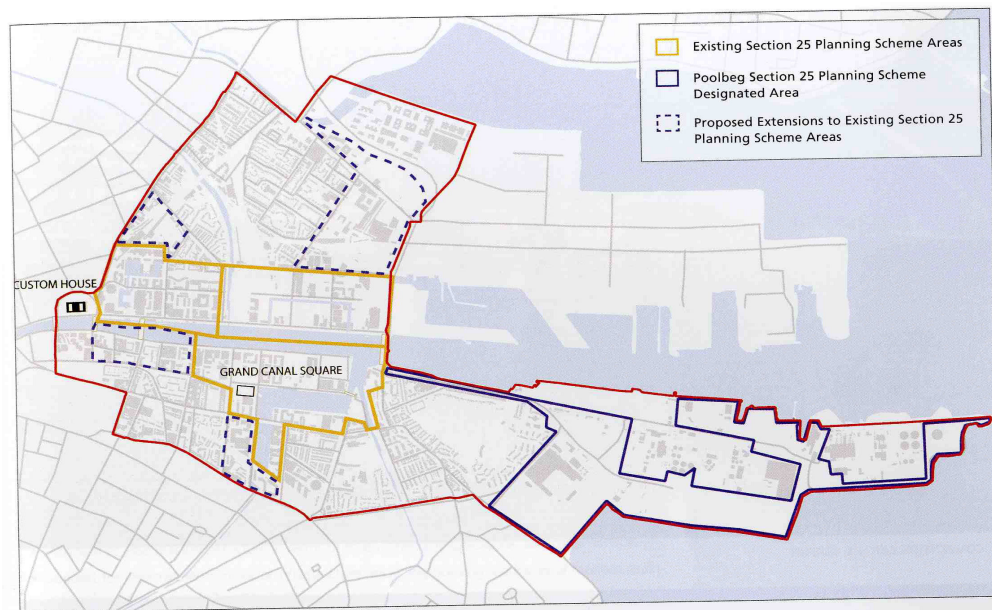
- i. The designation of larger areas of Zone 14 (mixed use, of which residential should be the predominant use) lands, including lands within the Poolbeg area.
- ii. Allocation of an additional land use designation – Zone 15 for institutional and community uses. These lands were identified in the 2003 Masterplan for such purposes but did not benefit of a separate or distinct zoning objective.

The most significant changes to the 2008 Masterplan relate to the review, extension and amendment of Section 25 Planning Schemes.

Figure 8.1 of the 2008 Masterplan indicates the following proposed extensions to the Planning Scheme areas:

- Grand Canal Dock Planning Scheme Area (to the south and west of the established area);
- Poolbeg Planning Scheme Area;
- North Lotts Planning Scheme Area (to the north and south of the Port Tunnel but to the east of East Road);
- Custom House Docks Planning Scheme Area (lands to the north including Connolly Station and environs).

Figure 4.3 Existing and proposed extensions to Section 25 Planning Scheme Areas



Source: DDDA Masterplan, 2008

The Authority also sets out its intention in the 2008 Masterplan to review and make amendments to the North Lotts Planning Scheme 2002 (as amended in 2006). The stated purpose of the proposed amendment is to improve the urban structure and allow for high-quality, high-density, mixed-use development facilitated by the provision of the rail interconnector, to provide key civic attractions and enhanced amenities for the city.

It is also proposed to amend the Custom House Docks Planning Scheme during the period of the 2008 Masterplan to facilitate the development of a new cultural facility and the improvement of amenities in the area.

4.3 Dublin Docklands Planning Schemes

Section 25 of 1997 Act sets out the DDDAs responsibilities in terms of the preparation of Planning Schemes.

Section 25(2)(a) sets out the structure, scope and content to be contained within Planning Schemes, as follows:

'A Planning Scheme under this section shall consist of a written statement and a plan indicating the manner in which the Authority considers that the area to which the Planning Scheme applies should be redeveloped and in particular—

- (a) the nature and extent of the proposed development,*
- (b) the proposed distribution and location of uses,*
- (c) proposals in relation to the overall design of the proposed development, including the maximum heights and the external finishes of structures,*
- (d) proposals relating to transportation, including the roads layout, the provision of parking places and traffic management, and*
- (e) proposals relating to the development of amenities and the conservation of the architectural heritage or other features.'*

Section 25(3 to 6) sets out compliance and procedural aspects to be followed by the Authority in preparing and adopting Planning Schemes, as follows:

- 3) 'In preparing a Planning Scheme under this section the Authority shall—*
 - (a) comply with any general directive that may be given to it under section 45,*
 - (b) have regard to the Masterplan under section 24,*
 - (c) consult with Dublin Corporation and with such statutory bodies as appear to the Authority to have an interest in the area to which the Planning Scheme relates,*
 - (d) have regard to the development plan made by Dublin Corporation,*
 - (e) make arrangements for the making of submissions by interested persons in relation to the Planning Scheme and the consideration by the Authority of any such submissions.*
- 4) A Planning Scheme under this section shall be submitted by the Authority to the Minister for approval and a copy thereof shall be sent to Dublin Corporation at the same time.*
- 5) Where a Planning Scheme under this section is submitted to the Minister by the Authority, the Minister shall consult with the Minister for Finance and shall consider any objections that may within one month of the sending of the copy to Dublin Corporation be made to the Planning Scheme by the said Corporation and may modify the Planning Scheme in such manner and to such extent as the Minister thinks proper and may approve the Planning Scheme or the Planning Scheme as so modified.*
- 6) Notice of approval by the Minister of a Planning Scheme under this section shall be published in the Iris Oifigiúil and in at least one daily newspaper published in the State.'*

Statutory Instrument No. 865/2007 – 'European Communities (Dublin Docklands Development Authority Act 1997)(Amendment) Regulations 2007' amended the preparation process of a draft Planning Scheme whereby a

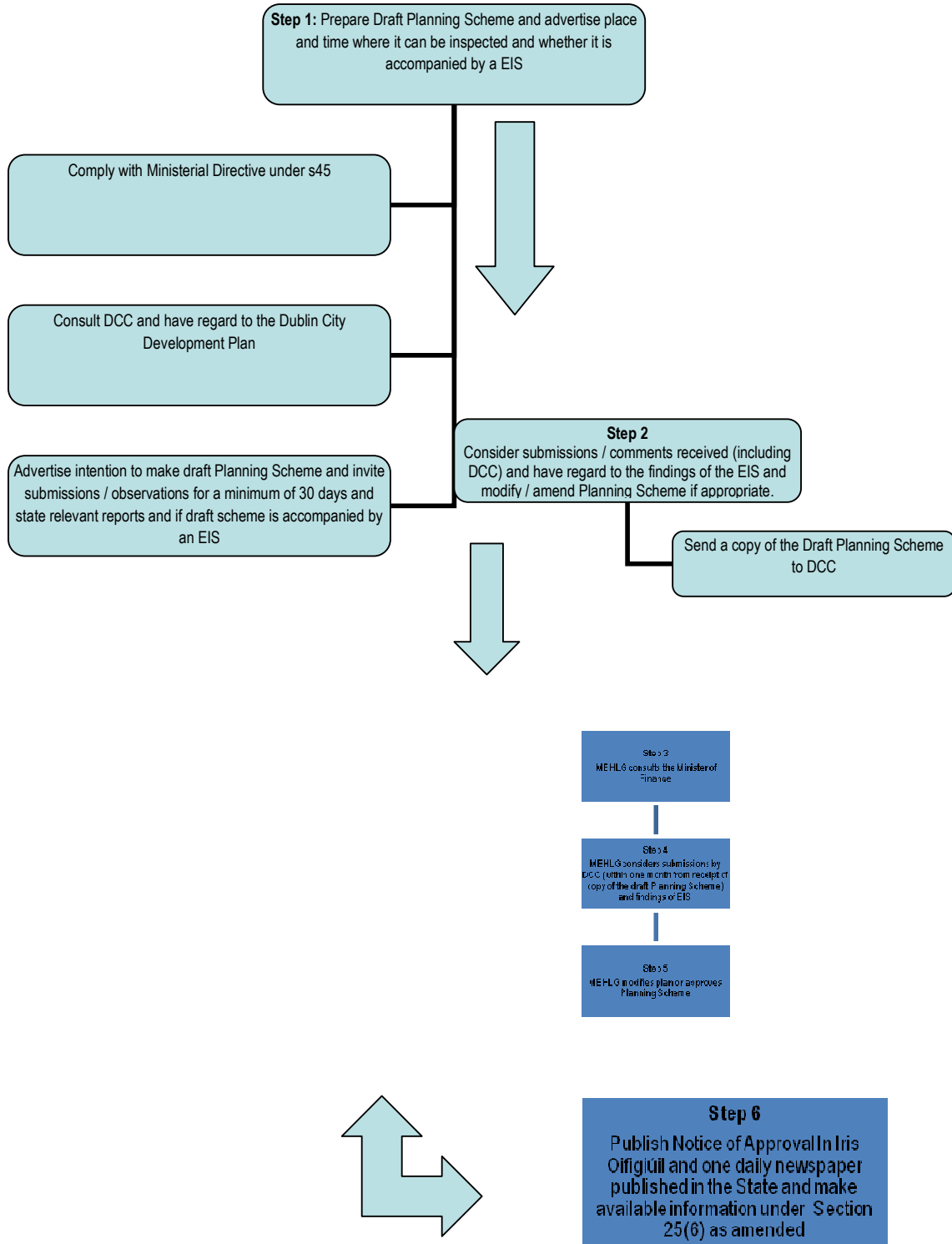
statutory 30 day public consultation period is required whereby the Authority's intention to prepare a Planning Scheme is advertised and the opportunity is provided for public consultation. The Authority is required to take into account submissions / observations received in the preparation of the draft Planning Scheme by making modifications / amendments prior to the scheme being issued to the Minister.

Furthermore, the Minister is also now required under Section 25(6) as amended to make available upon request a copy of the approved scheme and provide information on any modifications made to the Planning Scheme and reasoned justification for doing so, including information on public consultation.

The Planning Scheme preparation and adoption process is shown diagrammatically below.

The consultation, review and adoption process is considered to be reasonably robust, transparent and equitable, providing for public and stakeholder participation, review and comment by Dublin City Council, and review, modification and approval by the Minister who is adequately advised and independent of the Authority to carry out these functions in an informed, equitable and transparent manner.

As noted above, an overview of the preparation and adoption procedures followed in the adoption of the extant Planning Schemes is set out in Appendix G. This review facilitated the preparation of a checklist of the requirements prescribed in Section 25 of 1997 Act with regard to content, objectives and procedural matters. A copy of this checklist is attached at Appendix H.



4.3.1 North Lotts Planning Scheme

The North Lotts area comprises a regular shaped parcel of land measuring some 32.7ha that is situated on the northern bank of the River Liffey bounded by the Campshires on North Wall Liffey Quay, East Wall Road, Sheriff Street Upper/Lower and Guild Street and extends to the centre line of the river.

Lands within this area are subject to a predominantly Zone 14 zoning objective, the purpose of which is *'to seek the social, economic and physical development or rejuvenation of an area with mixed use of which residential and Zone 6 (enterprise and employment creation) would be the predominant land uses'*. The eastern-most quarter of the area is subject to a Zone 4 zoning designation, which seeks to provide for and improve mixed services facilities.

The quayside frontage of this area is designated as a Conservation Area and includes a linear zone of Archaeological Interest. Other specific objectives relate to the improvement of east-west and north-south pedestrian and cycle routes through the area.

With regard to the preparation and approval of the Planning Scheme, the Board directed on the 11th January 2001 that the draft 'Extended Customs House Docks' Planning Scheme be put on public display. It was agreed at this meeting that an appropriate height marker for a landmark building at the Point Village would be 100m above ground level.

At a Board meeting on the 8th February 2001, the Chief Executive reported to the Board on various briefings on the Draft Planning Scheme, including An Taoiseach, local political representatives, local communities and the press at the launch of the exhibition of the Draft Planning Scheme.

At the Board Meeting on the 12th April 2001 the response to the public consultation (February 2001) on the Draft Planning Scheme was discussed. Forty (40) submissions were received in response to the public display of the Draft Planning Scheme. At this meeting it was confirmed that the Executive will continue to review the submissions and prepare recommendations in response to these submissions for consideration by the Board.

On the 21st May 2001 the Board considered at an Executive Board Meeting the submissions and responses to the public consultation carried out on the Draft Planning Scheme. The main changes that would have a direct bearing on the nature and extent of future development in response to the submissions received and the recommendations by the Director of Planning and Technical Services that the Board agreed to are as follows:

- 1) To adopt a uniform plot ratio across the entire area of 2.5 to 3.0:1 for the following reasons:
 - Give a degree of certainty to the property market.
 - Ensure good levels of daylight and sunlight.
 - Ensure adequate provision of amenity open space.
 - Provide a coherent urban design framework.
 - Ensure a proper setting for protected structures in the area.
- 2) In order to ensure that adequate public and private open space can be provided a net density of 247 dwellings per hectare may be not be exceeded, apart for the Point Village area and Station Square where a density standard of 325 units per hectare may be permitted. In these areas a higher plot ratio in the range of 3.0 to 4.0:1 may be achieved.

- 3) A land use mix of 40% commercial and 60% residential will be promoted throughout the area. The residential category of land use relates primarily to the provision of dwellings, however, community and youth facilities and local shopping will be encouraged and cultural and hotel uses will be open for consideration within this residential category.
- 4) A variation to this land use ratio may be considered, subject to an absolute minimum of 40% residential, 30% commercial and 30% variable development in the following instances where a development:
 - Contributes to the enhancement of the Area through the provision of public open space; or
 - Provides social and affordable housing in excess of minimum requirement; or
 - Provides other elements which can be clearly demonstrated to advance the social and economic and physical policies of the Masterplan.
- 5) Small sites (below 0.2 hectares) may be exclusively devoted to a single use, provided the ground floor enlivens the street.
- 6) Larger scale residential development (50 or more units) shall provide a minimum of 25% family sized accommodation (minimum of 80sq.m floorspace) and in smaller schemes this requirement will be applied on a pro rata basis.

At the Board meeting dated the 7th June 2001 it was recommended that the Board make the Planning Scheme and forward it to the Council for submission to the Minister, subject to some minor amendments as detailed in a paper to the Board by the Chief Executive, which includes amongst other changes the following:

- Reference to densities at Station Square and the Point Square may achieve densities in excess of 3.0:1.
- Building heights will not in any case exceed the maximum stated for adjacent main or primary streets – with reference to Diagram 17 of the Plan.

A series of meetings occurred after the above Board meeting with Community representatives and local community groups. The Planning Scheme was made by the DDDA on the 19th July 2001 and submitted to the Minister on the 2nd August 2001. The scheme was approved on the 5th June 2002 by the Minister subject to 14 modifications.

4.3.2 North Lotts Planning Scheme 2002 (Amendment No. 1)

On the 8th December 2005 the DDDA made an amended Planning Scheme, which was referred to the Minister on the 19th January 2006. On the 26th June 2006 the MEHLG approved the Scheme, subject to No. 5 modifications.

The amendment relates to the area described as the Point Village, which comprises the eastern most quadrant of the Planning Scheme area and is described as Zone 7 in the 2002 Planning Scheme.

The stated purpose of the Planning Scheme Amendment is:

- To review the height of the landmark building from the permitted 60m to 100m, as originally proposed to the Minister in the 2002 Planning Scheme;
- To facilitate the future development and operation of the Point Depot as a cultural facility;
- To consider the future accommodation of LUAS;
- To provide for social infrastructure; and

- To improve the urban design guidelines for retail development.

The draft Amended Planning Scheme was adopted by the Board in May 2005 with the intention of proceeding to public consultation following a presentation to the Docklands Council on the 16th May 2005.

On the 18th July the draft Planning Scheme (and EIS) was put on public display until the 24th August 2005.

At a Board meeting on the 8th September 2005 the Board considered submissions (24 in total) on the draft Amended Planning Scheme. Despite strong pressures to revise (increase) densities and plot ratios across the remainder of the North Lotts Planning Scheme Area, it was recommended that the provisions of the 2002 Scheme should stand.

On the basis of commercial viability residential use at the eastern end of the Point Village was included as an 'open for consideration' use within Zones 1 and 3 and provided that any application for residential development along East Wall Road shall include noise insulation measures.

On the 10th November 2005, the Board agreed the recommendations of the Planning Sub-Committee and to forward the Planning Scheme to the Council for its consideration prior to submission to the Minister.

At this meeting the Director for Architecture presented various conceptual changes that could be made to the North Lotts Planning Scheme Area, which included drawings and models prepared by architect Adriaan Gueze of West8 Amsterdam. This meeting initiated a proposed amendment process relating to the entire North Lotts Planning Scheme Area.

Following the consideration of EIS submissions on the 5th December 2005 by the Council, the Board considered the final amended Planning Scheme on the 8th December 2005 and agreed to submit the Planning Scheme to the Minister, subject to the adoption of two minor changes.

On the 19th January 2006 the Minister approved the Amended Planning Scheme, subject to No. 5 modifications.

The principal amendments to the Scheme are summarised as follows:

- The western parcel of the Point Village precinct is identified for residential development together with a potential reduction in amenity space standards provided it can be demonstrated that there is sufficient public open space in the area.
- The north-eastern part of the precinct is identified to accommodate a new district centre retail development with ancillary uses. The Amended Planning Scheme seeks the provision of approximately 18,000sq.m of net comparison retail floorspace and 7,000sq.m of net convenience retail floorspace.
- The Point Depot is identified as an important cultural use of citywide significance and the DDDA will seek to ensure its future viability as such a venue. The Authority will also seek the provision of public leisure centre / swimming pool, crèche, medical centre and library in the area. A place of public worship will also be encouraged.
- The 700-space public car park should be located underground or alternatively any multi-storey car park above ground should not front onto the square, the quays or the north/south street along the western boundary.

- The Amended Planning Scheme also sets clear internal noise limits for sensitive premises and noise breakout limits for the Point Depot.
- Detailed guidance is provided on permissible building heights in Diagram 5. The most significant changes relate to the height of the Landmark building – to be 100m above street level in a point block integrated form and the maximum height of the roof structure at the Point Depot upon redevelopment shall be 28m above ground level.
- Section 3.3 of the Amended Planning Scheme provides detailed guidance on the provision of amenity space in the form of the new Point Village Square and its dimensions together with detailed guiding principles for the future development of the Point Depot.

4.3.3 North Lotts Planning Scheme 2002 (Amendment No. 2)

As noted above, at the Board meeting of 10 November 2005, the Director of Architecture made a presentation which invited the Board to consider a fundamental review of the layout and envisaged pattern of development for the Planning Scheme area. Following a discussion and consideration of all aspects of how a change in the Planning Scheme might be interpreted and its consequences for landowners, etc. the Board agreed that further work should be undertaken on the concept. It was agreed that the Executive should *'move forward to have a positive and constructive discussion with landowners on the changes proposed'* and to test further concepts and undertake a feasibility study which would detail timescales for such a proposal and how the guiding principles of the existing Planning Scheme could be delivered.

4.3.3.1 Review of Minutes of the Executive Board of the DDDA

Following the Board's initial instructions regarding the investigation of an amendment Planning Scheme in November 2005⁸, the Executive commissioned West 8 Urban Designers from Rotterdam to develop a study based on the following principles:

- More open space
- More variety in urban form and street pattern
- More culture and facilities
- Accommodating Families
- Optimise development potential
- Create more value in the area

⁸ It is noted that the minutes of the Executive Board meeting of 10 November 2005 refers to a presentation by the Director of Architecture outlining conceptual changes to the North Lotts Planning Scheme Area, which included drawings and models prepared by West 8. The presentation set out options including increased height and density, increased family orientated dwellings, increased open space and amenity and additional financial contributions and/or community gain. The option not to amend the scheme and 'leave as is' was also presented. A Memo prepared by the Chief Planner dated 4 November 2005 was also circulated. The Memo advised against a review of the North Lotts Scheme on the grounds that: there had been no material change in policy since the Scheme was adopted in 2002 to justify an amendment; it would introduce uncertainty as developers would be likely to defer development until the process was completed; all existing certificates which had not been substantially commenced would cease to be valid, including the National Conference Centre; it may prejudice the amendment for the Point Village which had been initiated; services infrastructure had been designed for the current North Lotts Scheme and would require redesign which would delay development; and, concerns were expressed regarding workload commitments for the planning section. The Minutes of the Executive Board meeting record that the Memo was circulated and considered.

A Paper presented to the Board by the Executive at its meeting on 2 November 2006 notes that West 8 presented draft sketch proposals of a Planning Scheme to the Board in September 2006, which was well received. Following this presentation the Executive engaged in consultations with DCC Planning Department and two major landowners (Zoe Group and Spencer Dock Development Company) (SDDC) in the area to test the feasibility of the proposals. This Paper also sought Board authorisation to explore with Dublin City Council the possibility of extending the Planning Scheme area into eastern East Wall and Spencer Dock north.

The Zoe Group indicated that they are in negotiations with a number of corporate clients and have secured two major corporate clients for part of the Brookes Thomas site and would not wish to delay development on the relevant sites. In response, West 8 adjusted their proposals to accommodate the Zoe Group. The Paper reported that SDDC advised that it had been reviewing its site strategy to take account of the proposed interconnector and that their professional advisors were of the opinion that the area would be suitable for significant retail development in the future.

In October 2006 the West 8 concept Masterplan was presented to the DDDA, which was followed by a formal presentation to the Board at its meeting dated the 2nd November 2006. Following this presentation work continued on the revisions of the Planning Scheme with various briefings held with interested parties. The principal elements of the concept proposals were based on 6 character areas which included:

- North Campus which provided for a continuation of commenced development and a possible extension of retail and mixed use development along the proposed linear park and East Wall area.
- North Lotts Housing with an emphasis on family units.
- South Campus a gateway to the North Lotts with retail, grand plaza and mixed use.
- The Liffey Island a new canal would define the northern, eastern and southern edges with high density high rise buildings including 'skewed towers' pushing out into the Liffey.
- Point Village 'skyline' development with small footprints addressing the water.
- Eastern East Wall varied development along parklands.

A review of the Board's minutes indicates that the proposed amendment was not raised again at Board level until its meeting of 11 June 2007. A presentation was made by the Executive and the Board instructed that work should continue with a view to commencing the statutory process without delay.⁹

It is noted that the Minutes of this Board meeting also record under the heading 'North Wall Quay Development':

'The Board noted that an agreement had been entered into with North Wall Quay Investments Ltd (a company owned by Mr Liam Carroll) whereby they would cede, free of charge, to the Authority land necessary to provide amenity space in the North Lotts area'.

The detail of the Agreement was not referred to in the Minutes.¹⁰

⁹ The National Building Agency was appointed by the DDDA as the Lead Planning Consultant on 26 June 2007 following a tendering process. The role as Lead Consultant was to 'Manage and Coordinate the Project' and to 'Prepare the Draft Planning Scheme Report'. The role of the Lead Planning Consultant was subsequently extended to embrace the project management of other consultants including the EIS team sub-consultants. Section 4.2 of the Project Programme, contained within the Invitation to Tender, provided target dates for the preparation of the Draft Planning Scheme. It outlined a 12 week period in which to 'Refine Urban Design Framework/EIS Preparation/Prepare Draft Planning Scheme Application'.

The proposed amendment was discussed at the Board meetings of 6th and 7th September 2007. The canal concept was explained to the Board by the Director of Architecture. The loss in development land would be offset by building out from the edge of the quay into the river. This would create waterfront locations for buildings and break the continuous line of the quays in an interesting way. Following discussion of the presentation, the Board advised that further consideration was required in respect of the impact on the river and proposals for a floating hotel, the Gormley sculpture and U2 tower, whether the provision of a canal was more desirable than usable open space, the need for family units, and the need for visuals to assist the Board in determining Section 25 applications.

A detailed presentation was made to the Board at its meeting of 22 November 2007. The Chief Executive noted that consultations had been undertaken with DCC, Dublin Port, the Council, the Community Liaison Committee and the landowners who will be affected by the amendment. Issues relating to a canal rather than a park and the rationale for jutting into the river were again discussed. The Board also expressed concern *'that building heights should generally be 6 storeys punctuated by towers of 16/17 storeys'* and the Board requested that further studies be undertaken to determine the impact and desirability of these proposals. The Board also expressed concern that the ambition for architectural excellence could only be achieved by very stringent guidelines and the concept of a design review panel to review these was to be explored. The Board approved the completion of the drafting of the amendment and commencement of the statutory process.

At the Board meeting of 18th February 2008 the Chief Executive advised the Board that the proposed amendment scheme was positively received by community representatives, particularly proposals in relation to height and density. Presentations on work in progress were made at this meeting and the Board meeting of 6th March 2008.

West 8 made a presentation to the Board on 25th March 2008 on the update urban design framework. 'Notable proposals' listed in the minutes include *inter alia*:

- The island and surrounding canal would be either navigable or a non-navigable storm water basin.
- A base height of 20 m was proposed with points up to 45 m and other individual points up to 75 m, *'depending on the architectural quality for such buildings'*.
- The minimum quantum of development achieved would equal that permitted under the 2002 Scheme with the maximum representing an increase of 73% on the 2002 Scheme. The ratio of residential commercial achieved would change from 60:40 to 42:58. However, the relevant quantum of residential development would increase from 158,000 sq m under the 2002 Scheme to 191,000 sq m.

The following points were raised in discussion following the presentation:

- The Scheme should be responsive to market trends and should include flexibility on building heights and use mix ratios.
- A quality review panel should be put in place to assess architectural merit.
- The Planning Scheme is still work in progress and is not ready for public consultation.

¹⁰ The existence of the Agreement and the clause therein to cede land to the Authority was referred to in the Board Minutes of 11 June 2007. All current Board members have confirmed that they were not aware of any further detail relating to the Agreement at that time.

The DDDA Senior Architect presented slides to the Board which were to be presented to the local community (North Port Dwellers' Residents Association) that evening. The presentation included visual interpretations of how development would look on the ground.

The Board meeting of 10th and 11th April 2008 was informed that local community consultations were going well. The Authority had met with the North Lotts Dwellers' Residents Association and the Ringsend local community and had arranged to meet the East Wall Residents.

A Board meeting on 24 April 2008 included discussion on *inter alia* the following issues:

- The issue of height and how applications can manage the Section 25 process.
- The Board requested options and scenarios on heights addressing the river.
- Communications with stakeholders is critical.
- Consultations with DCC to ensure consistency in approach in dealing with Section 25 applications and planning applications to DCC.
- Requirement for an appropriate day-light model to be carried out.

Following the Finlay Geoghegan Judgement on the 9th October 2008 the Board considered the potential impact of the Judgement on the proposed Amendment at the Board meeting on the 23rd October 2008. The minutes state:

'In order to eliminate any apprehension of bias in respect of the preparation of the North Lotts Amended Planning Scheme, the lawyers were suggesting that the Authority should offer in Court (as part of the Spencer Dock litigation) to recommence work at an agreed date prior to the NQIL agreement being in contemplation. Some of the members were concerned at the loss of valuable work which had already been undertaken and queried if there had been any chance that same could be isolated from any allegation of bias and continued to be used by the Authority.'

The Board decided *'that, if necessary, the Authority should agree to re-start the North Lotts Planning Scheme Amendment work from an appropriate date to avoid the perception of bias'*.

In a Paper presented to the Board meeting on the 2nd April 2009, it is stated in respect of the separate proceedings brought by SDDC essentially duplicating the Mountbrook action and also alleging that the Draft Amending Planning Scheme was also biased in favour of NQIL, that:

'Accepting the possibility of there being a reasonable apprehension of bias in relation to the Carroll certificate, the Authority proposed to the court that the work undertaken since April 2007 be put aside and that the embryonic scheme that existed at that time be reviewed. The proposal was accepted by SDDC and the case was settled in December 2008 on that basis.'

The Paper then recited a detailed process for review and stakeholder engagement to progress the Amendment from its February 2007 status, as agreed at the Board meeting of 16th December 2008. A programme is proposed at the end of the Paper which envisages a draft urban framework being presented in July/August and if approved by the Board could proceed to EIS and Scheme preparation with a view to begin in a position to publish a Draft Scheme by the end of 2009.¹¹

¹¹ It is noted that the proposed amendment has not been on the Board's agenda since the Board meeting of the 2nd April 2009

4.3.3.2 Assessment of Potential Issues Arising

The above review allows the following broad conclusions:

- The proposed amendment included significant and material changes to the quantum of development, height, and use mix from those contained in 2002 Scheme. The amendment also proposed radical urban design interventions with regard to the canal and the Liffey Island and Wharf. [The Draft Scheme dated December 2008 proposes 18 building plots on the island. Nine towers will rise to 75-100 m above street level. Three of the blocks along North Wall Quay are identified as having potential for up to 100m maximum.]
- The preparation and review process included substantial consultation and a robust iterative process in the interrogation and consideration of these material and relevant planning considerations between the Executive and the Board.
- The local community representatives were engaged and informed on the proposals being considered for the Amendment.
- The statutory process of consultation and modification/approval by the Minister as provided for under the 1997 Act had not commenced.

The observation of these iterative, review and approval processes are essential if a Planning Scheme and Section 25 certification process are to be transparent, equitable and enjoy the confidence of the local community and all stakeholders in the area. Having regard to the Finlay Geoghegan Judgement, the Board's minutes of 23rd October 2008 acknowledge the potential for an apprehension of bias regarding the preparation of the Amendment and decided that the preparation of the scheme revert to the stage of preparation prior to the contemplation of the NQIL Agreement. The decision of the Board is considered to be appropriate having regard to the following considerations:

- The Agreement dated 31st May 2007 pre-dated a substantial element of the Board's consideration of the Draft Amendment and from the Minutes appears to have pre-dated any structured community consultation.
- The Judgement, which concerned itself primarily with those elements of the Agreement which related to the Section 25 determination process, states: *...it appears to me that the existence of the agreement of the 31st May 2007, gives rise to the reasonable apprehension that the respondent might have been biased*'. The stated reasons in the Judgement for reaching this conclusion are summarised as follows:
 - Clause 6 makes it clear that the area to be transferred has been identified by the Authority is *'desirable to facilitate the respondent's long term plans...'*. The Judgement goes on to state *'the Agreement indicates that the acquisition by the respondent of this land is perceived by it as being something which will facilitate its plans for the development of the North Lotts Area and in that sense its transfer will create a benefit for the respondent'*.
 - Clause 6 establishes *'a direct relationship between the decision to grant the Section 25 certificate and the obtaining by the respondent of the lands and the benefit in the sense that I have described'*.
 - Clause 3 commits the 'Executive', which is not a legal body and does not make the decision, *'...to a particular viewpoint and it appears to me that there must be a reasonable apprehension that the executives, having done so, that the Board will, in the absence of some special factor, follow the recommendation of the executives.'*
- The Agreement also makes express reference to the North Lotts Planning Scheme:

- Recital E states: *'The current NLPS would not permit a development of the nature intended by NQIL.'*
- Clause 4 states: *'The Authority will continue to implement the necessary procedures pursuant to 1997 Act to adopt a modified Planning Scheme for the North Lotts area which scheme once adopted would enable NQIL to apply for, and obtain, a Section 25 Certificate or Certificates for an increased quantum of development, predominantly commercial, on the site within 12 months of the date of this agreement.....'*
- Clause 7 states: *'The executive of the Authority will use best endeavours to provide in the revised draft Planning Scheme for the North Lotts area the key NQIL development issues/aspirations for the Site as more particularly set out in the Schedule to this Agreement. NQIL acknowledges and recognises that the adoption of a revised Planning Scheme is a statutory process.'*
- The Schedule referred to in Clause 7 identifies the *'Key Development Objectives'* as follows:
 - *'Quantum of Development: 108,000 sq m'*. [Note: The certificate issued under DD457 related to a quantum of development of 51,228 sq m.]
 - *'Use: Predominantly Commercial'*. [Note: The 2002 Planning Scheme required a use mix ratio of 60:40 residential to commercial on sites over 0.2 ha.]
 - *'Building Heights: 16 storeys'*. [Note: The 2002 Planning Scheme allows a maximum of 7 storeys with one set back storey.]

Having regard to the foregoing, there is considered to be a reasonable apprehension that the existence of the Agreement in May 2007 had the potential to influence the Executive, and possibly the Board insofar as it was aware of the detail of the Agreement¹², in advancing the statutory approval process provided for under the 1997 Act. This process includes stakeholder consultations, reporting on public consultation, consultation with the DDDA Council, preparation of the EIS, approval of the scheme for submission to the Minister, and consideration of the Scheme by the Minister having regard to the submissions of Dublin City Council. Accordingly, while stakeholder consultation is appropriate in principle at the plan making stage of a Planning Scheme, there may be a legitimate concern that the actions of the Authority, and particularly the Executive, as outlined above, may have to some extent pre-determined certain matters, could be perceived to have been pre-empting due process, and had the potential to be perceived as compromising the requirements of transparency, fairness and equity in the plan making process.

While the plan making process by its nature will involve pre-determination of certain matters and this cannot be avoided, it is recommended that Agreements of the nature of that entered into should be avoided and greater transparency should be provided for at an earlier stage of the plan making process. Recommendations are made in this regard below which are proposed for the purposes of reducing the potential for the perception that certain matters may have been pre-determined at an early stage of the consultation and approval process.

The above review also raises a potential issue around demarcation of the functions of the Authority. The plan making and general development objectives of the Authority have been noted by the Finlay Geoghegan Judgement to be separate and distinct from the adjudicative function. The detail of the Agreement suggests that

¹² The existence of the Agreement and the clause therein to cede land to the Authority was referred to in the Board Minutes of 11 June 2007. All current Board members have confirmed that they were not aware of any further detail relating to the Agreement at that time.

the adjudicative function may not have been adequately insulated from the plan making function. As a result, the adjudicative function could be perceived to have been inappropriately subordinated to or otherwise have been subsumed within the facilitating or enabling functions of the Authority with regard to its development powers and objectives.

4.4 Recommendations

The principal issues arising from the review of the forward planning functions relate to ensuring that appropriate checks and balances are in place to protect the integrity of the plan making process by ensuring that it conforms to the highest standards of transparency, fairness, accountability, equity and probity and enjoys the confidence of stakeholders and investors. A number of recommendations are made in this regard relation to the Masterplan and the Planning Scheme preparation processes.

4.4.1 Masterplan Recommendations

The Masterplan making and monitoring process, characterised by an active iterative process between the stakeholders, is considered to be robust, inclusive and transparent. While not considered strictly necessary, the Board may wish to consider provision for public participation in advance of the commencement of the drafting of a Masterplan Review.

In this regard, public participation in the planning process in Ireland is afforded a pre-eminent role within the planning and related legislation, and is extensively provided for at the plan preparation stage in particular and also at the development control (adjudicative) stage. Where fast track procedures have been provided for under the 1997 Act or for instance in relation to Strategic Development Zones under the 2000 Act, public participation has been concentrated at the plan making stage which is generally more prescriptive than plans made under the 2000 Act, and is significantly more restricted at the adjudicative stage. The Masterplan is most readily comparable to a Local Area Plan (LAP) under the Planning Acts with regard to purpose, content and extent of geographical area.

The timeline and provisions for public consultation under the Section 24 process contrasts with plan making procedures contained in the Planning and Development Act, 2000 (as amended) for Development Plans and Local Area Plans. Plan making procedures under the Planning Acts facilitates comparatively more and longer periods of public consultation and is more transparent with regard to the assessment of submissions through prescribed reporting and adoption procedures.

R13 As such, it is recommended that a formal 'pre-draft' Masterplan consultation is provided for, similar to what many local authorities undertake for Development Plan and though not statutory, Local Area Plan preparation. Submissions in this regard should only be considered where they relate to strategic issues which are generic to the strategic direction of the Masterplan.

R14 A formal procedure should also be adopted for reporting on submissions to the Council and Board. A report setting out the principal issues identified in submissions and the Executive's recommendations on how those issues are addressed in the draft Masterplan, should be prepared for formal consideration by the Council in advance of a draft Masterplan going on public display.

R15 It is also recommended that in the event of a review of the 1997 Act and parallel planning legislation, consideration is afforded to enhancing the status of the both the Masterplan and Planning Schemes as

documents to which DCC and An Bord Pleanála must have regard in the event of an application or appeal to those respective authorities.

The 1997 Act provides that these authorities '*consider the relevant provisions of the Masterplan*'. It is considered appropriate that to protect the integrity of the Masterplan and Planning Schemes, these authorities should be required by the legislation to at least have regard to these documents and where a decision to grant permission represents a material departure from these documents that a reasoned justification is provided on the Notification of a Decision or the Board's Order, as appropriate, for this departure.

4.4.2 Planning Scheme Recommendations

While at all times being cognisant of the requirement that the planning process in the DDDA area are streamlined and expeditious it is considered appropriate that participation by all of the major stakeholders is provided for at an early stage of the process. It is recommended that the following protocols and/or formal procedures are introduced to the Planning Scheme processes.

4.4.2.1 Design Brief

It is therefore recommended that the DoEHLG establish more rigorous annual reporting requirements including an agreed set of key indicators, and that it institutes a formal review process on a regular basis.

R16	Introduction of a Design Brief stage to the Planning Scheme Process. The procedure around the Design Brief could be undertaken as a protocol or under Statutory Instrument with the following steps:
R16(a)	The preparation of a new Planning Scheme or an amendment to an existing scheme is approved by the Board.
R16(b)	A draft Design Brief is prepared which clearly sets out the following: the strategic planning, urban design, architectural and infrastructural reasons for the proposed scheme/amendment; a statement of appropriate objectives relating to the foregoing reasons; the broad parameters around urban form, density, height, public space, and architecture; options and alternatives available in respect of the urban form criteria which are relevant to meeting the stated objectives.
R16(c)	The Design Brief is considered by the Council. Recommendations by the Council and the Executive Response to those recommendations are set out in a Report which is furnished to the Board.
R16(d)	The Board must have regard to the recommendations of the Council.
R16(e)	The Board directs the Executive to amend/complete the Design Brief as considered appropriate.
R16(f)	The approved Design Brief is furnished to the Minister. The Minister can modify the Design Brief and give mandatory instructions to the Authority.
R16(g)	The Design Brief is placed on public display and recommendations and the Executive's response are furnished to the Board.
R16(h)	Following consideration of the Executive's Report and amendment/approval of the Design Brief, the Board instructs the Executive to proceed to drafting the Scheme/Amendment.

4.4.2.2 Steering Group

It is recommended that a representative Steering Group is set up at the commencement of the scheme/amendment making process.

R17	<p>It is recommended that a representative Steering Group is set up at the commencement of the scheme/amendment making process. The Steering Group would include representatives from the following:</p> <ul style="list-style-type: none"> - DDDA Executive - DDDA Council - Dublin City Council Planning Department - Dublin City Council Infrastructure Department - Dublin Transportation Authority - Dublin Regional Authority
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4.4.2.3 'Material Departure' Provisions

A Planning Scheme cannot anticipate all circumstances that may arise in respect of any site at any given time. The decision to initiate an amendment process is a significant decision insofar as an approved amendment has the effect of voiding extant certificates on which development had not commenced within the area to which the amendment relates. Furthermore, an amendment may not represent an expeditious or resource efficient means of achieving the Authority's objectives on a specific site where some exceptional circumstances have been determined to have arisen.

R18	<p>The Authority may wish to consider as part of amending legislation some provision for granting a certificate which is not compliant with the development control standards set out in the Planning Scheme but by reason of some exceptional circumstance not envisaged at the time of the preparation of the Scheme is otherwise compliant with the overall objectives of the scheme, the objectives of the Authority and the proper planning and sustainable development of the area.</p>
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This process would also present an alternative to making an application to Dublin City Council for a non-compliant development which would further protect the integrity of the Scheme.

Such a provision, which would be similar to the material contravention procedure provided for under the Planning Acts, must be subject to strict control and it is considered that on balance the existence of such a procedure should not facilitate the lodgement of an application for certification which is non-compliant with the Scheme.

R18(a)	<p>It is recommended that the decision to proceed to consideration of such an application be made by the Board in advance of the lodgement of the application.</p>
R18(b)	<p>Specified criteria relating to exceptional circumstances would be set out in Regulations which the Board must be satisfied are met in advance of lodgement of an application.</p>

- R18(c)** Proposals would be presented to the Executive in pre-planning meetings in sufficient detail to allow the Executive to prepare an informed recommendation to the Board as to whether to proceed to further consideration of the lodgement of an application. This decision would rest with the Board.
- R18(d)** In the event that the Board agreed to consider an application, this decision would be notified to the prospective applicant subject to the qualification that it is strictly without prejudice to any decision the Board may subsequently make on an application.
- R18(e)** Upon lodgement of an application, the Executive would make a recommendation to the Board.
- R18(f)** Should the Board decide to refuse to issue a certificate, this decision and the reasons therefore would be notified to the applicant.
- R18(g)** If the Board decided in principle to issue a certificate, it would send notification of this effect to the Minister and Dublin City Council.
- R18(h)** In parallel it would publish a notice in a national daily newspaper indicating its decision in principle and inviting submissions from third parties.
- R18(i)** Having considered all submissions the Board would issue its final decision.

5.0 SECTION 25 ADJUDICATIVE FUNCTION

This section focuses on the decisions made by the Authority in relation to Section 25 applications. It seeks to address the following matters raised by the Brief:

- i. Planning outcomes over the last 10 years reviewed in light of the Judgement, (Section 25 Certifications);
- i. The decision making process on Section 25 applications including the role of precedence in arriving at a positive recommendation;
- ii. Reporting relationships;
- iii. The vires of conditions attached to Section 25 certificates;
- iv. Timescales for Section 25 adjudication;
- v. Stakeholders and third party input in Planning Scheme preparation and Section 25 applications;
- vi. Interview all planning staff past and present and ascertain their views and concerns; and
- vii. Review of Grant Thornton procedures document.

5.1 Methodology

A total of 398 Section 25 planning applications were received during the period January 2003 to October 2009 according to information provided by the Planning Administrator. The table below provides an overview and breakdown of the status of these applications.

Table 5.1. Status of Section 25 Planning Applications (Since 2003)

Description of Applications	Total No. of Applications
Applications Cancelled	2
Applications Withdrawn	33
Applications Granted	349
Applications Rejected	10
Live Applications at 02/10/2009	4
Total	398

Source: DBCL

A representative sample of Section 25 applications were identified and reviewed for the purpose of assessing the adjudicative function of the Authority as required by the Brief.

A desktop review of all Section 25 applications was undertaken and a database of all Section 25 applications for the period 2003 to 2009 was compiled. This database was then refined to identify all applications by Planning Scheme Area, namely North Lotts, Grand Canal Dock and Custom House.

Applications of a minor nature, such as applications for advertisement consent or signage applications and minor change of use applications where the proposed use is considered unlikely to have a material impact in planning terms were eliminated. This reduced the total number of 'material' applications to a total of 213.

The following criteria were applied in selecting a sample of applications for review from the 213 cases:

- A sample size of at least 10% - i.e. a minimum of 21 application files;
- A representative sample (10%) within each of the Planning Scheme Areas;
- Include applications under both the previous Masterplan (2003 – 2008) period and the period of the current Masterplan (2008 – 2013);
- Include a range of application types, such as:
 - Predominantly Commercial schemes;
 - Predominantly Residential schemes;
 - Mixed Use schemes;
 - Minor proposals such as ‘change of use’ applications where there is potential for material planning impacts; and
 - A range of applications in terms of their scale and nature – i.e. strategic and non-strategic applications.
- Include both applications that were approved and Section 25 Certificates Granted, and applications that were refused a Certificate.

In applying the above criteria, a total of 39 application files were selected and reviewed. This represents 18% of the overall number of ‘significant’ applications (213) received by the DDDA for the period 2003 to 2009, and 11% of the overall number of applications (398) received by the DDDA for the period 2003 to 2009.

The mix of files includes those that pre-date and post-date the recommendations of the Grant Thornton Report:

- Pre-dating Grant Thornton Report - 33 files
- Post -dating Grant Thornton Report - 6 files

With regard to the procedures followed by the Authority in the determination of the above applications for a Section 25 certificate, the issues raised in the Finlay Geoghegan Judgement relating to the Section 25 adjudicative function have informed the assessment.

As detailed below, that the majority of issues identified in those files which pre-date the Judgement, have been comprehensively addressed through the Authority’s implementation of recommended Grant Thornton procedures.

The key statistics regarding the files selected and reviewed are outlined in the table below:

Table 5.2 Key Statistics of Applications Reviewed

	<i>Grand Canal Dock</i>	<i>North Lotts</i>	<i>Custom House</i>	<i>Total</i>
No. of Applications reviewed	23	11	5	39
No. of Applications certified	20	10	5	35 (90%)
No. of Certificates refused	1	1	0	2 (5%)
No of Applications for which no decisions has been made (pending decision or application possibly withdrawn)	2	0	0	2 (5%)
No. of Significant Applications in scale	11	7	1	19 (49%)
No. of Applications for significant modifications	7	4	4	15 (38%)
No. of Minor Applications	5	0	0	5 (13%)
Source: DBCL				

A standardised template was prepared to enable a systematic, consistent and comprehensive approach in the assessment of these files whereby issues associated with the relevant phases of a Section 25 application from pre-application stage to determination were identified. A copy of this checklist is attached at Appendix H. The checklist identifies the following key items to be addressed:

- General information regarding the Application, the Applicant, and the nature and timeframe of the decision;
- A description of the proposed development as per the Certificate issued by the Authority and Planner's Report (including key statistics, planning history, etc.) and, where necessary, additional information based on the file review (review of drawings, schedule of areas, etc.);
- A detailed review of how the application was dealt with at each stage of the Section 25 Adjudication Procedure (pre-application, application, validation, public consultation, additional information, and decision) and an assessment of all relevant information on file;
- A detailed review of the Planning Documentation submitted at Planning and/or Further Information stage;
- A detailed review of the Planner's assessment and Report, including recommendations;
- An assessment of the proposal against the provisions of the Planning Scheme; and
- A detailed review of all Minutes of Planning Sub-Committee meetings (including recommendations) and Board meetings (including directions). The minutes were not on file but have been issued separately by the DDDA.

A review of these no. 39 case files was undertaken at the DDDA offices in October 2009 and was based on the documentation provided by the Authority.

5.2 Findings of Section 25 File Review

Set out below is a summary of significant findings from the review which inform the recommendations made in Section 5.3. The approach has been to focus on the high level results of the review rather than on the specific details of individual cases.

5.2.1 Procedural Review

The procedural element of the review addresses the following aspects of the adjudication process: the pre-application stage, lodgement of application and registration, statutory bodies/third party submissions, and preparation of the Planning Report and presentation to the Boar, and Board determination.

The review of procedures has sub-divided the planning files into those determined prior to and subsequent to the commencement of the Grant Thornton procedures.

5.2.1.1 Pre Grant Thornton - Report Procedure Analysis

It was generally found that applications submitted during this period were processed in a manner consistent with the procedures outlined in Section 6 of the Grant Thornton Report titled 'Section 25 – Previous Process Assessment', included as Appendix I. The comments below focus on procedural issues identified in the review files only.

Content of Application Documentation Submitted:

There were no evident coherent or consistent standards applied to the content and quality of documentation required to accompany a Section 25 application:

- Content and quality of Application Documentation: the majority of files reviewed were inconsistent in the level of information submitted in respect of the following which had the potential to impact on an assessment: unclear schedule of areas (e.g. no details provided, no GFA stated for residential development which affects calculation of plot ratio); no report addressing the compliance of the proposal with the Planning Scheme; no Architectural report (urban analysis, building design); no Landscaping or Shadow/Daylight studies which are a specified requirement of the Planning Scheme under certain circumstances; varied quality of Drawing standards (including use of appropriate scales, drawings not clearly identifying the modifications made to parent permission etc.).
- Systematic validation and compliance checking of Planning documentation: There was no evident system of compliance checking on a majority of files reviewed. The Grant Thornton Report notes that the 'as is' procedures include for validation: *'The process of validation consists of comparing the documents submitted as part of the application with a checklist which describes the requirements of an application. Validation means that the documentation relating to each requirement has been supplied as part of the application. Validation does not make any judgement on the quality or technical merit of the documentation, merely that the documentation has been submitted per the application requirements.'* The file review supports this conclusion. Validation of development description and the quality of submitted application data would considerably aid the efficient adjudication of each submitted application.
- Use of a generic development description: this relates to a majority of files reviewed. The majority of application forms and subsequent Planning Reports reviewed present generic development descriptions (which are subsequently reiterated on Planning Reports and issued Certificates). Key information including building height, floorspace, proposed uses and number of units is not transferred onto the Certificate which presents difficulties identifying the extent of development works certified, comparison of subsequent amendment applications against that originally Certified and any amendments thereto, and in assessment of applicable levies. Furthermore, in the event of Further Information modifying significantly a proposal in terms of quantum of development, building heights or use mix, the generic

development description in all documents issued by the Authority (Certificate, Planner's Report, reports to Sub-Committee and Board) remains the same.

The Planning Report:

The Planning Report prepared by the Executive is a critical document for the determination of a Section 25 application by the Board. A number of procedural issues arise with regard to the administrative process and the content of Planning Reports.

- Timeframe for completion of Planning Report: A significant number of Planner's Reports were drafted and completed within a relatively short timeframe following receipt of the Planning Application and prior to receipt of information from Statutory Consultees (as requested by the Authority).
- Evidence of a standardised reporting structure: Planning Reports are generally not structured in accordance with a standardised reporting template which should reasonably include a detailed proposal description, relevant planning history and assessment of compliance with each of the requirements of the applicable Planning Scheme. A considerable number of Planning Reports contain undated and/or unnumbered pages which creates difficulties in ascertaining if a report is the final or the most up to date copy upon which the decision of the Board was based. Planning Reports are generally not countersigned by a more senior planner or the Director to demonstrate that a system of review and quality control is in place. Appropriately dated and stamped copies of minutes and/or memos pertaining to the recommendation of the Sub-committee or Board are generally not included on file.
- Level of reliance on information as submitted by applicant: It is evident, in a small number of the files reviewed, that there was an over-reliance on the information as submitted by the applicant with little evidence of independent checking of stated 'compliance' with relevant Planning Scheme standards. This results in the reproduction in Planning Reports of inaccuracies which occur in submitted application forms and reports, where such errors are in turn compounded by a lack of appropriate validation processing.
- Level of information to facilitate an informed assessment and decision: It is considered that the majority of Planning Reports do not provide an adequate level of information to allow an informed review of the assessment of compliance against all relevant aspects of a Planning Scheme (e.g. assessment of Planning Scheme standards including plot ratio, car parking etc.). This includes absence of references to the provisions of the Planning Scheme with which the proposal is required to comply. In a small number of cases significant inaccuracies were identified when some provisions of the Planning Scheme are referred to (e.g. incorrect use mix or incorrect definition of family sized units). References were also noted in respect of documents/protocols regarding plot ratio calculation (site area, public realm to be included or not, etc.) or building height measurement (definition of street levels) with no further detail provided as to the source or status of these documents or protocols. Inaccuracies were also identified with regard to area measurements (a significant issue in amendment applications, particularly with regard to permitted and proposed floorspace areas and the consequent method of levy calculation), and an absence of detail regarding the wider area or development plot when the assessment is carried out on a 'cumulative' basis.
- Level of detail in Planner's Report regarding submissions received from statutory bodies (DCC, Dublin Port, etc.) and reference to consideration of Additional Information received: A majority of the submissions made by Dublin City Council contained relevant information regarding the compliance of the proposed development with the Planning Scheme and raised significant issues to be addressed. The Planner's Reports rarely referred to the issues raised in these submissions and how they were

addressed. Also, the consideration of Further Information received is of crucial importance as the Further Information stage may significantly modify the proposal in terms of building height, use mix, density. However, the description of the amended proposal is not changed as appropriate on the Certificate.

- Statement of Compliance with Planning Scheme: In a majority of files reviewed, the Planner's Report does not provide a concluding statement as to whether the proposed development is considered to be compliant with the requirements of the relevant Planning Scheme. While a recommendation is made for instance to issue a certificate, conditions may be attached rendering a non-compliant application compliant. Accordingly, it is not always evident on the face of the Report whether the proposal was considered compliant.
- Consideration of Further Information submitted: Where additional information was submitted by an applicant, it was not possible, in a small number of cases, to determine what consideration was afforded to the information submitted by reference to the analysis provided in the Planning Report.
- Demonstrated Method of Levy Calculation: The basis upon which such levies are calculated and applied is not apparent in the majority of review files. This difficulty was exacerbated on some files by the inadequacies of information submitted and the general absence of a checking procedure (i.e. no countersigning of levy calculation sheets by senior officers of the Authority). (These issues have been generally addressed in new procedures and following the PWC Report.)

File Management:

The ordered management of files is essential to ensure that all information submitted by the applicant and Statutory Bodies and the reporting procedures of the Authority are appropriately recorded and taken account of in the determination of each application. A number of procedural issues arise with regard to general file management.

- System of document identification: There was no standard system of report identification (e.g. stamping and dating of 'Draft' and 'Final' reports, Board Minutes, Sub-Committee Memos, Additional Information and Compliance Submissions). Similarly, with regard to drawings there was no clear or consistent system of recording information, including registered DD file number, resulting in uncertainty with regard to the final approved drawings, those drawings submitted as part of an additional information response or superseded etc.
- Document referencing: Certificates issued did not make specific reference to approved drawings which proves problematic in the determination of compliance issues and presents difficulties in assessing subsequent modification applications. Furthermore, amendments or modifications to parent and subsequent certificates were not referenced to extant Certificates which creates difficulty in ascertaining the complete file history required to inform the decision making process.
- Correspondence filing: In a minor number of files, full details of all correspondence between the applicant and DDDA (which will have informed the decision making process) was not available on file.
- Compliance Recording: A substantial number of files contained information on compliance with conditions, as attached to a Certificate. However, in the absence of any formal compliance checks and/or procedure evident on the files it is difficult to determine from the documents provided on file whether compliance issues have been appropriately discharged or complied with.

5.2.1.2 Post Grant Thornton Procedures - Report Procedure Analysis

Due to the relatively recent implementation of the new procedure, only 6 of the 39 files reviewed date from this period. The review of these files establishes that the implementation of the procedures recommended by the Grand Thornton report has effectively addressed a majority of the issues identified in Section 5.2.1.1. An overview of relevant procedural issues identified is provided below.

Pre-Application Stage:

The majority of planning files recorded pre-application discussions and public notification in compliance with the new procedures. The only application which did not invoke the procedures related to amendments to a previously certified scheme where it was generally considered that pre-application discussions and/or formal consultation on such applications were unnecessary.

Content of Application:

- The standard of applications submitted for determination has improved significantly. A specified standard setting out validation requirements for plans / drawings and supporting documentation is required in order to regularise validation practices and to avoid unnecessary requests for further information.
- The submission of a compliant version of a certified development prior to the lodgement of a new application (relating to the same development site) has not been undertaken in a minor number of review files. Consequently, potential issues remain in the identification of compliance and consideration of new applications.
- Where files included amendments or modifications to parent applications, this was generally insufficiently identified in the development description.

The Planning Report:

- A minor number of files continue to demonstrate that full consideration is not provided to all requirements of the Planning Scheme (e.g. the requirement for daylight studies).
- It seems standard practice that applications for modifications / amendments to previously certified schemes are assessed within Planner's Reports on an incremental basis whereby substantial weight is afforded to precedent – i.e. the previously certified scheme. In many instances such amendments are significant changes in terms of Planning Scheme standards, such as increases in building height or amendments to land use mix and the significance of such applications are not appropriately reflected in the assessment.

File Maintenance issues:

- A minor number of files did not provide minutes of Board meetings setting out the decision rationale/considerations of the Board in determining an application.

Timeframe for Determination:

Prior to the Grant Thornton procedures the average timeframe from lodgement of an application to Certification (where applicable) was 6.8 weeks. Those files examined which were adjudicated following the implementation of the Grant Thornton procedures were determined within an average timeframe of 14.6 weeks.

This average represents more than a doubling of the timeframe for determination. While this is considered to represent a shorter period than the average on a similar planning application in terms of nature and extent of development under the 2000 Act, it is a significant increase. The role of the Design Review Panel may be a contributor to this more protracted period and its role in the process needs to be reconsidered particularly in a context when the expertise required to assess the relevant planning and architectural merits of an application are available within the organisation. While it has the potential to add value in terms of architectural quality its use should be confined to large and complex applications and those including landmark elements.

The issue of the competitive advantage available to the Authority under its fast track consent procedures also arises. It is critical to the ongoing success of the regeneration of the area that procedures do not paralyse the adjudicative process or delay it to such an extent that it undermines the perceived advantage of the Section 25 process and the attractiveness of investing in the Docklands area.

5.2.2 Review of Assessment & Decisions on Section 25 Applications

The assessment of the sample of case files for compliance with the Planning Scheme has afforded due regard to the following findings of Finlay Geoghan Judgement:

- With regard to the nature of Section 25 certificate decisions, the Judgement states:

'It appears to me important to note that the function of issuing a certificate of consistency with a Planning Scheme for the purposes of s. 25(7)(a)(ii) was not considered by the Oireachtas to be a function which should expressly be assigned to the respondent in s. 18(1)(b) for the purpose of the development duties assigned to the respondent under section 18(1)(a). The absence of any reference to the granting of certificates of consistency in s. 18(1)(b) appears to underline that this is an adjudicative function which is distinct from the general development functions of the respondent.'

This principle is restated in Paragraph 91: *'As already stated, the adjudicative function is not one expressed to be for the purpose of securing development or regeneration of the Dublin Docklands Area.'*

- With regard to applying appropriate standards in assessing applications to demonstrate compliance / consistency with the Planning Scheme, the Judgement stated:

'It also appears to me to have some of the hallmarks of the type of environmental contract referred to by McCarthy J. in the Attorney General (McGarry) v. Sligo County Council [1991] 1 I.R. 99. It is in the nature of a contract between the respondent and if not the public at large, at least the property owners within the area to which the Planning Scheme applies. Those property owners are entitled to rely on the fact that any development undertaken by the respondent in that area, without applying for planning permission, will be consistent with the Planning Scheme, and that the respondent will only grant a certificate to any other person pursuant to s. 25 if such development is consistent with the Planning Scheme. Each property owner is entitled to rely on the fact that any other property owner within the area will be only able to carry out development in accordance with this fast track method if it is consistent with the Planning Scheme'. [para. 65]

With regard to the proper approach to the construction of the planning documents relating to the certificate procedures, the Judgement endorses the following principles referred to the judgment of McCarthy J. in the Supreme Court in re. X.J.S. Investments Ltd. [1986] I.R. 750, as appropriate in construing the North Lotts Planning Scheme:

'Certain principles may be stated in respect of the true construction of planning documents:-

'(a) To state the obvious, they are not Acts of the Oireachtas or subordinate legislation emanating from skilled draftsmen and inviting the accepted canons of construction applicable to such material.

'(b) They are to be construed in their ordinary meaning as it would be understood by members of the public without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning . . ."

It is acknowledged that there are some ambiguities within the Planning Scheme(s) in respect of certain material provisions. For the purposes of this assessment the relevant provisions have been interpreted and applied in accordance with a reasonable interpretation of what is intended on the face of the document and informed by experience of accepted practice in the interpretation and application of those provisions. In particular, substantial weight has been afforded to the Glossary of Terms contained in the Planning Schemes for the North Lotts and Grand Canal Dock Planning Scheme Areas as determinant factors in the appropriate interpretation and application of standards such as Plot Ratio. It is noted that these definitions are identical for these two Schemes.

The interpretation and application of Plot Ratio as a development standard has been identified as a consistently contentious issue throughout the file review with attendant implications in terms of building heights due to the direct correlation between the two standards.

In this regard the findings set out below are made in the context of what is considered to be an appropriate and 'reasonable' interpretation of Plot Ratio, applying the tests advocated in the Judgement. This interpretation is set out as follows.

Interpretation of Plot Ratio and Site Area

A reasonable interpretation of Plot Ratio must have regard to the Planning Scheme as a whole. In this regard it is reasonable to state that a 'Plot Ratio' of 3.0:1 is a maximum standard, as the Planning Scheme provides specific exceptions and provisional qualification criteria for Plot Ratios in excess of 3.0 in particular circumstances. These are expressly stated for the North Lotts area as follows:

'...has decided to adopt a uniform range of 2.5 to 3.0:1 for the entire area....'

'...that the actual net plot ratio on built land in the vicinity of the public transport nodes at Station Square and the Point Square may achieve densities in excess of 3.0:1.0' [NLPS 2002. pg 21¹³]

Accordingly, it is reasonably interpreted from these provisions that '*net plot ratio on built land*', which is interpreted to mean the red line boundary of an application which would exclude public realm, roads, etc., may be exceeded at specified locations. Accordingly, it is inferred that the standard cannot be exceeded at all other locations.

The Glossary of Terms appended to the Planning Scheme defines Plot Ratio as the expression of the relationship between the '*area of a site*' and the total gross floor area of the building(s) by using a mathematical equation whereby the gross floor area of a building is divided by the site area to determine the numerical plot ratio value.

¹³ This extract from the NLPS is set out in full on the following page.

'Site Area' is defined in the Glossary as follows:

'Includes land that lies within the curtilage of the related buildings.'

'Curtilage' is defined in the Glossary as follows:

'Curtilage means the area of a site attaching to a proposal or building in which the applicant for a Section 25 Certificate has sufficient interest to make the application. It does not apply to public roads, public pavements or existing waterbodies such as rivers, canals or harbours'. [Emphasis added.]

These definitions support the interpretation that plot ratio is appropriately calculated on the basis of 'actual net plot ratio on built land' as referred to on page 21 of the North Lotts Planning Scheme 2002. A review of the files confirms that this was the interpretation generally used¹⁴.

However, an inconsistency arises in the Planning Scheme where in it states at page 21:

'The Authority considers that it is possible and desirable to achieve an average plot ratio of 2.5 to 3.0:1 over the entire Area, even taking into account the areas required for the development of necessary roads infrastructure and the incorporation of the required public amenity areas. The latter includes the Campshires, the reinstatement of Spencer Dock, the creation of a linear park at Spencer Dock and Royal Canal, the National Conference Centre/public park at the confluence of Spencer Dock and the River Liffey and the small urban spaces located throughout the area. In achieving this overall density, the Planning Scheme recognises that the actual net plot ratio on built land in the vicinity of public transport nodes at Station Square and the Point Square may achieve densities in excess of 3.0:1.0.'

The first underlined sentence above implies that roads and amenity areas can be used in the calculation of plot ratio to achieve the 'desirable' plot ratio 'over the entire Area'. It is considered that the meaning of the sentence must be interpreted from the totality of the Paragraph and in this regard the second underlined sentence specifies where exceptions provided for under the first sentence can be accommodated. The effect of these exceptions will be to contribute to achieving the desired plot ratio over the entire Scheme area which includes those public spaces and roads listed in the Paragraph. In this regard, it is further noted that the Glossary of Terms in its definition of 'Curtilage' provides the following specific exception:

'The Authority may consider the inclusion of the waterbody comprising Spencer Dock as site area in the context of the full restoration of the dock as part of an application for a Section 25 Certificate.'

This specific qualification in the Glossary is considered to further support the interpretation presented above.

The issue arising in the reviews has generally centred on a reliance on the first underlined sentence to permit a plot ratio which may otherwise not comply with the calculation of plot ratio on the basis of what is considered to be the reasonable interpretation.

¹⁴ The former Director of Planning and Technical Services has confirmed that this is consistent with the manner in which the standard was applied during his tenure with the Authority.

Land Use Mix and Mix of Residential Dwellings

The interpretation of the guidance provided for in the Planning Scheme(s) constitutes a reasonable prescriptive interpretation of the literal meaning of the word with noted exceptions and qualification criteria for deviation from the prescribed objective to achieve a land use mix of 60% residential use and 40% commercial use on a site by site basis, unless the Planning Scheme(s) specifically indicate otherwise.

In this regard, it is noted that the North Lotts Planning Scheme, 2002 states:

'There is a prior assumption that this ratio will be met on all sites above 0.2 hectares. Variations on the ratio may be considered subject to an absolute minimum of 40% residential and 30% commercial with 30% variable...' and goes on to list the qualification criteria. [Para 4.1]

Similar provisions are included in the Grand Canal Docks Planning Scheme.

As with plot ratio, the application of this standard has been interpreted to be applied on an individual application site basis. This interpretation is considered to be reasonable and appropriate having regard to the specified exception of sites under 0.2 ha.

Building Heights

As in the case with Plot Ratio, it is considered that a reasonable interpretation of the guidance provided in the Planning Scheme(s) is a prescriptive interpretation of building heights with reference to relevant text and diagrams throughout the Planning Scheme(s). Exceptions to these building heights have been construed within the reasonable interpretation of the literal meaning of the word or relevant phrase(s) as provided for in the Planning Scheme(s).

In the context of the foregoing, and having regard to be the reasonable interpretation of planning standards provided for in the Planning Scheme(s) (which does not represent an all inclusive list), the remainder of this section provides a summary of the main findings arising from the assessment and decision making process in respect of the S25 Case File review undertaken. The findings are set out below and grouped under the following headings:

- Planning Documentation & Submissions made by Applicants;
- Assessment of Section 25 Applications / Proposals by the Authority;
- Conditions attached to Certificates; and
- Compliance of Proposals with the Provisions of Planning Scheme.

5.2.2.1 Planning Documentation & Submission made by Applicants

The submission of planning documentation which has been prepared in a manner consistent with best practice standards is essential for the purposes of ensuring consistency, transparency and fairness in the decision making process. In a small but significant number of cases practices were identified in relation to application documentation submitted which were not considered to be consistent with conventional or accepted best practice. The review also suggests that in the majority of the files reviewed, the Planner's assessment was reliant on the information provided by the applicants with limited evidence of checking the accuracy of the information submitted.

The following specific issues have been identified:

Application and Consideration of Site Area:

- A considerable number of files suggest the inclusion of significant and disproportionate areas of public amenity space and or land within perceived separate ownership for the purposes of calculating site area, which in turn informed the calculation of plot ratio.
- In some instances, land ceded to the Authority by Agreement, for the purpose of providing public amenity space, have been excluded from the calculated site area, with the effect of reducing the 'site area' to below 0.2ha.
- A minor (albeit significant) number of files suggest discrepancy with regard to the inclusion of public areas between buildings for the purposes of plot ratio calculation which is indicative of 'double counting'.
- A significant number of files suggest that larger landholdings appear to have been split into smaller parcels to facilitate development at sub-threshold levels (identified within the Planning Scheme) for the purposes of achieving stand alone Certification, albeit part of a larger scheme.

5.2.2.2 Assessment of Applications by the Authority

The basis of the review of the Authority's assessment of applications has been to focus on the content of Planning Reports contained within the application files, together with relevant recommendations following the consideration of the Planner's recommendations to the Board and its Sub-Committee. The following relevant issues were identified:

Consistent application of planning development standards:

- A considerable number of Planning Reports suggest that a comprehensive assessment of the proposal against all relevant planning development standards was not undertaken.
- A large number of files demonstrate an inconsistent application and interpretation of some of the material provisions of the Planning Schemes. This may have resulted from apparently ambiguous statements relating to plot ratio as set out above.
- This practice led to 'cherry picking', whereby some standards were assessed on a cumulative basis where it forms part of a larger comprehensive redevelopment proposal, and other standards on the basis of the 'site area' only.
- A considerable number of files demonstrate what is considered to be an overly-liberal interpretation of height provisions within the relevant Planning Schemes with regard to the interpretation of what could reasonably constitute an architectural feature to warrant an increase in height.
- Similarly, an overly flexible interpretation of 'corner elements' within the relevant Planning Scheme(s) have been applied to justify increases in height on corner locations that are not specifically provided for or identified within the Planning Schemes.
- A significant number of files do not contain supporting information in the form of Sunlight/Daylight/Shadow analysis as required by the relevant Planning Schemes in justifying increases in building height where it deviates from the relevant building height diagrams.

- In a minor number of cases (albeit a significant issue) a significant departure from the intended urban form established by the relevant diagrammatic illustrations of the Planning Schemes has been allowed. In particular, building heights have been allowed which are in excess of the maximum illustrated.
- A large number of inconsistencies have been identified in terms of compliance with the prescribed land use mix provisions within the Planning Schemes. In some instances, it relates to ambiguous provisions in terms of specific land use requirements (such as large office floorplates), in comparison to permissible plot ratio.
- In a minor number of files, the space provided at basement level (i.e. parking or ancillary facilities) was considered as commercial space with the effect of facilitating compliance with the use mix ratio; this represents a departure from standard practice employed by the Authority.

Weight attached to precedent decisions:

- In a moderate number of cases, schemes which may be determined to be non-compliant with regard to reasonable interpretation of the requirements of the Planning Schemes have been justified and recommended for Certification on the basis of a precedent created by an implemented development exceeding the relevant development standards.

5.2.2.3 Conditions Attached to Certificates

The attachment by the Authority of certain conditions to Certificates was held to be *ultra vires* by the Finlay Geoghegan Judgement. A review of the incidence of the occurrence of these conditions was undertaken and is presented below. The file review has established that the attaching of such conditions is common practice and is not unique to the Judgement case.

The review has highlighted the following issues:

- A significant number of certificates were found to have conditions attached which could reasonably be interpreted as having the effect of rendering a non-compliant proposal to be compliant with the requirements of the relevant Planning Scheme. Such conditions covered issues such as building heights, residential amenity (unit sizes, dual aspect requirements etc.), use mix (including social housing), slenderness ratio and car parking provisions.
- A considerable number of files contained conditions which transfer the compliance requirements of an otherwise non-compliant proposal onto a future phase of development or a separate certificate. Such conditions primarily relate to residential amenity requirements, use mix and plot ratio standards.
- A minor number of files contained conditions resulting from an initial agreement between the Authority and the Applicant. The majority of such conditions relate to the transfer of land to the Authority or transfer of commercial space, residential units or car parking spaces.

5.2.2.4 Concluding Assessment of the Compliance of Certified Applications

On the basis of the foregoing review, it is concluded that a reasonably substantial number of Certificates issued can be considered to be strictly compliant with the provisions of the Planning Scheme.

A substantial number of Certificates could be considered to be non-compliant within the meaning of a reasonable interpretation of the Planning Scheme. However, a substantial proportion of these potentially 'non-compliant'

Certificates have been adjudicated by the Authority to be considered compliant on the basis of the Authority's interpretation of the Planning Scheme and its relevant standards, having regard to the perceived inconsistencies and latitude interpreted in some development standards.

The wide discretion the Authority understood it had prior to the Judgement to attach conditions to a non-compliant development proposal to make it compliant with the Scheme, as interpreted, was also a factor in the decision making processes identified.

It is concluded that the findings of the Finlay Geoghan judgement were not unique to that particular case. The assessment strongly suggests that the adjudicative planning function appears to have been significantly influenced by the Authority's development remit and was not afforded the degree of separation from the development function required by the Judgement. The planning function appears to have operated to some extent in a facilitating or enabling role rather than regulatory role with the evidence suggesting that the adjudicative process appears on the face of the Planning Reports at least to have been liberally and inconsistently interpreted with the effect, whether intended or not, of 'shoehorning' proposals into compliance with the Planning Scheme. This apparent trend is supported by the following table which reveals a very high approval rate, particularly from September 2005.

Table 5.3: Section 25 approval rates September 2004 to September 2007

Period	No. of Applications	No. of Approvals	% Approval Rate
Sept 04/Sept 05	50	36	72%
Sept 05/Sept 06	51	50	98%
Sept 06/Sept 07	68	63	93%

Source: DDDA Annual Monitoring Report

5.3 Recommendations

The issues highlighted in the preceding sections identified consistent procedural, management and decision making weaknesses in relation to Section 25 applications, which were particularly prevalent in the pre-Grant Thornton procedures.

For the purposes of this report and having regard to the recommendations of the Grant Thornton Report a distinction has been made between procedural issues and assessment issues arising from the adjudicative role of the Authority. Recommendations are made under these respective headings to address these issues in parallel to the recommendations of the Grant Thornton Report.

5.3.1 Procedural Recommendations

Application Documentation:

R19	Review of procedure associated with application documentation:
R19(a)	The description of development to be checked by the validating officer to ensure that a detailed and accurate description of the proposed development is provided stating the height of buildings (number of

storeys), the overall floorspace proposed, and a breakdown of the proposed uses and residential units, if applicable.

- R19(b)** Upon confirmation of the description of development, which will coincide with the issue of a DD reference number, and after preliminary checks have been carried out, the applicant will erect a site notice reflecting the final and correct wording of the description of development.
- R19(c)** In instances where an application for a minor amendment to a previously certified development is submitted, the description of development shall clearly state the relevant DD reference number of the certificate to be amended, the description of the development as previously certified, and clearly state that the application is for an amendment whereby the proposed amendment is described in detail (see also recommendation in terms of amendment applications).
- R19(d)** All drawings received should be date stamped together with a stamped DD reference number unique to each application.
- R19(e)** Should the original or subsequently submitted drawings be amended in any way, a fresh set of application drawings shall be submitted and clearly stamped 'Amended' together with a date stamp and a stamp showing the unique DD case reference number. One full set of the originally submitted drawings shall be retained on file and stamped 'Superseded'.
- R19(f)** Upon the issue of a Section 25 certificate, one full set of approved drawings shall be retained on file and be clearly stamped 'Approved' together with the corresponding date that the certificate was issued.
- R19(g)** For similar reasons, Section 25 Certificates as issued should clearly reference the list of approved drawings accompanying the certificate.

Standard of Application Documentation:

- R20** That the Authority has regard to the attached guidance note on validating applications attached at Appendix J.

Additional Information:

- R21** Review of procedures associated with the submission of Additional Information:
- R21(a)** Having regard to the objectives of the Section 25 process to expedite decision making and to certify compliant proposals, the Grant Thornton recommendation is endorsed that Additional or Further Information requests should not be entertained by the Authority where a proposal is clearly non-compliant with the relevant Planning Scheme.
- R21(b)** Non-compliant proposals should be returned with a letter stating the reasons of non-compliance and inviting the applicant to withdraw the application and submit a fresh application addressing the deemed reasons for non-compliance. In the event that the applicant refuses to withdraw the application (by confirmation in writing), the application shall be registered and processed in an identical manner to other applications as suggested by Grant Thornton, resulting in non-certification following consideration by the Board. However, such applications should be fast tracked to enable an early Board determination in

order to avoid time delays resulting from applicant's seeking to amend schemes subsequent to their confirmation of non-withdrawal of a proposal.

R21(c) The Board is recommended to consider extending delegated powers to the Executive officers to confirm non-certification to the applicant without formal consideration by the Board; provided that a delegated report by the Planning Officer is signed off by the relevant manager and director; prior to the issue of a notification of decision not to certify the proposed development and stating the reasons for same. Such applications together with delegated reports should be subsequently circulated to the Board for information purposes.

Planner's Reports:

R22 Review of procedures associated with Planning Reports:

R22(a) Planner's Reports should be prepared according to a standardised template, which includes the following:

- Heading stating whether it is a 'Delegated Report', a report to the Sub-Committee and relevant date of the Committee meeting, or a Report to the Board and the date of the Board meeting where the report will be considered.
- Reports, whether delegated, sub-committee or for the Board's consideration should be checked and signed by the relevant line manager with final sign-off required by the Director. Copies of signed reports shall then be included and circulated to members of the sub-committee and Board prior to relevant meetings.
- Layout of a standard report template should provide for a detailed description of development in table format stating proposed floorspace areas against each use proposed together with a column of the applicable levy rates and calculations.
- Standard report templates should provide for a summary of relevant Planning Scheme standards applicable to the proposal and a section setting out relevant planning history where the subject application relates to a wider / comprehensive redevelopment proposal.

Consultation Procedures:

The Grant Thornton report recommends a 10 day consultation period and it is noted that applications processed under the 'new procedures' complied with this requirement. It is considered that this time period is too short to allow proper consideration of the proposal and sufficient time to respond in writing, especially considering the implications of holiday periods and the complexity of issues arising from some applications.

R22(b) In order to allow feedback from third party consultees to be properly considered by the Board, as reflected in Planner's Reports, it is suggested that the current 10 day consultation period be extended to 21 days. The 21 day period should commence upon the date of erection of the site notice, which should coincide with formal letters of consultation being sent to other consultees, such as DCC. No formal consideration of a proposal shall either be undertaken by the sub-committee or the Board prior to the expiration of the 21 day consultation period.

Decision Making Process:

From an assessment carried out from the DDDA's applications data base it is clear that a significant proportion of applications received during the period 2003 to 2009 were of a minor and /or non-contentious nature, including applications for signage and minor changes of use. In this regard we concur with the recommendation of Grant Thornton that the Board should consider delegating powers to the sub-committee of the Board or Senior Executive Officers to make decisions on such applications.

R23 Support for the recommendation of Grant Thornton that the Board should consider delegating powers to the sub-committee of the Board or Senior Executive Officers to make decision on such applications which are of a minor and/or non-contentious nature, including applications for signage and minor changes of use.

Amendment Applications:

R24 Procedures relating to applications for amendments to previously permitted development:

R24(a) The Board adopts criteria whereby an application is determined as an amendment application. Such applications should genuinely be of a minor nature, which would not require consultation and would not materially alter the previously certified scheme. Such applications could typically be amendments to the design and appearance of a building – for example a change in fenestration pattern or materials / finishes or pedestrian access arrangements.

R24(b) Any application which seeks to increase the volume or height of a previously certified scheme should be subjected to full scrutiny against the provisions of the Planning Scheme and be subjected to full consultation procedures. Such applications should also include change of use applications where the proposed change of use relates to a floorspace in excess of 100sq.m.

R24(c) Applications for amendment that would result in a volumetric increase in building envelope or a change of use of floorspace in excess of 100sq.m shall not be described in the description of development as an 'amendment application' but shall be described and considered as a fresh Section 25 application.

R24(d) Applications for 'minor amendments', as described above, shall make reference to the DD reference number of the parent certificate and shall provide a detailed description of the proposed amendment along with the description of the certified development.

R24(e) Plans / Drawings submitted for amendment applications shall include a copy of the final certified drawings of the scheme they seek to amend with the proposed changes clearly marked / indicated on the new plans/drawings for ease of comparison.

R24(f) The Board might consider extending delegated powers to the Executive to deal with such applications for minor amendment meeting the suggested criteria above in order to fast-track decision making.

Compliance Issues:

In the majority of cases reviewed it was not possible to determine from the inspected files whether all relevant conditions, which require further consideration and agreement with DDDA other bodies, such as DCC have been complied with. The following recommendations are proposed:

- R25** Procedures relating to compliance issues:
- R25(a)** That a separate procedure is adopted whereby applications for compliance are treated as standalone applications through the allocation of a unique reference number that will link the compliance application with the relevant certificate and condition for compliance. Example - compliance with Condition 13 attached to Certificate Reference DD167 be allocated a unique reference number CDD167.C13.
- R25(b)** That a separate, parallel compliance register be established and linked to the planning register file.
- R25(c)** Upon compliance of all relevant conditions that the applicant applies for a compliance certificate to the DDDA requesting confirmation of compliance with all relevant conditions.
- R25(d)** That the DDDA issue such a Compliance Certificate only in the event that it is satisfied that all relevant conditions have been complied with and that a copy of the compliance certificate is put on file and distributed to the applicant and other relevant bodies, such as DCC in the same manner as a Section 25 Certificate.
- R25(e)** In the case that the DDDA is not satisfied that compliance with all conditions has been achieved it shall issue a letter stating the reasons for non-compliance and withholding a Certificate of Compliance together with an invitation to the applicant to submit outstanding items by listing any outstanding conditions. A copy of this letter shall also be put on file and provided to the applicant.
- R25(f)** That the Board extend delegated powers to the Executive to determine applications for compliance at sub-committee level.

Procedures at Sub-Committee and Board Meetings:

- R26** Procedures relating to Sub-Committee and Board meeting requirements:
- R26(a)** Minutes of Board and Sub-Committee meetings should be placed on the planning file.
- R26(b)** The number of applications to be considered at any one meeting should be regulated / capped in order to focus efforts. Minor applications could be delegated for decision making, as set out above to ease workload.
- R26(c)** Members of relevant Committee / Board carry out site visits on large/complex applications prior to meeting – at least the Chair of the Planning Sub-committee and two other members, which can be on a rota basis..
- R26(d)** Presenting Planning Officer should provide a 3-5 minute presentation on each agenda item prior to discussion, which will inform discussion and decision making.
- R26(e)** Relevant Planning Scheme policies should be highlighted and included in presentation and reports.

Requirement for a Statutory Basis for Section 25 Procedures

Given the public rights issues arising in the adjudicative process and the potential for legal challenge of procedures which are not provided with a legislative basis, it is considered appropriate that certain procedures

are provided with a legislative basis. A Statutory Instrument may be the appropriate basis to do so and should be considered by the Board for recommendation to the Minister¹⁵.

In this regard such Regulations could specifically address procedures and timeframes for the following:

- Validation of Section 25 applications;
- Further information and additional information requests;
- Public consultation and consultation with statutory consultees;
- Reporting procedures to the Board and its Sub-Committee;
- Certification; and
- Post-certification compliance.

R27 A Statutory Instrument by which certain procedures are provided with a legislative basis should be considered by the Board for recommendation to the Minister. Regulations could specifically address procedures and timeframes for validation of Section 25 applications; further information and additional information requests; public consultation and consultation with statutory consultees; reporting procedures to the Board and its Sub-Committee; certification; and post-certification compliance.

5.3.2 Adjudicative Recommendations

R28 A Section 25 Certificate should make explicit reference to the plans/ drawings numbers certified and refer to the date of the Board meeting where the decision was made to certify a development.

R29 A Section 25 Certificate should expressly state that the scheme as proposed and considered by the Board is compliant with the relevant Planning Scheme in operation at the date of making the decision.

R30 That protocol be agreed to ensure the consistent and reasonable interpretation of Planning Schemes which avoids inconsistent and/or overly liberal interpretations of ambiguous references within the Planning Scheme. The Board should endorse a more prescriptive interpretation of Planning Scheme standards and provisions in terms of permissible building heights, plot ratios, land use mix, residential mix, social and affordable housing, car parking provision, etc.

R31 That the Board considers a review of Planning Schemes whereby potentially ambiguous provisions within Planning Schemes are identified (for example plot ratio calculation, references to building heights, land use mix, etc.) and are formally reviewed and subjected to Ministerial approval. Such a review could provide an appropriate opportunity to revisit issues of planning importance and the overall strategy and future direction for the Planning Scheme areas against progress to date. For instance, the issue on land use mix (60/40 ratio) and appropriate plot ratios might be revisited in light of implemented schemes and a survey of floorspace and ratio's achieved to date.

R32 That the Board reviews the practice whereby planning conditions are attached to Certificates to either:
- seek to render a non-compliant scheme, compliant with the Planning Scheme; and/or,

¹⁵ Section 7 of the 1997 Act makes provision for the Minister to make Regulations in respect of the carrying out of functions prescribed in the Act.

- seek to transfer or link compliance of one or more elements of a scheme onto a subsequent phase of development for which a formal application had not been lodged; and
- seek compliance with the Planning Scheme in a manner whereby individual sites are linked together that does not form part of the same planning unit, albeit that such sites are in the same ownership.

R33 The role of the Design Review Panel should be limited to large and complex applications or sites which include landmark buildings.

6.0 IT SYSTEMS AND PROCEDURES

6.1 Introduction

The Section provides an overview of the Authority's IT systems, procedures and functionality and identifies potential issues to be addressed. This assessment is informed by the requirement for such systems and procedures to aid in the transparency of the Authority's decision making process, the level of information shared and readily accessible to the public / interested third parties and the IT conclusions of the recent review of the development levy process undertaken by PWC, as part of the 2008 DDDA Internal Audit Plan.

The two main tools currently used by the Authority are:

- i. Its custom designed and purpose built Section 25 database programme that is used to support the Section 25 application and certification process; and
- viii. Web based information pages.

The existing software used by the Authority allows for web based interactivity. However, the level of information sharing from the Authority's database onto the website is limited with regards to Section 25 applications. This functionality provides an opportunity to enhance transparency and participation to the planning process. Consequently, this section identifies measures to maximise the efficiency and accuracy of these systems and also focuses on measures for increased interactivity and information sharing between these two systems in order to maximise openness and transparency through increased information sharing and interactivity.

6.2 Methodology

The assessment of the Authority's IT system and procedures is informed by a desk based review of information provided by the Authority at the time of writing the report, testing and usage of its relevant web pages and a discussion and a practical demonstration session of the planning software used by the Authority, by the Planning Administrator at the Authority's offices.

6.3 Section 25 Application Software and Database

It is understood that the currently used Section 25 IT system and programme is an upgraded system that was purposely developed for the Authority's needs. The main upgrade from the original system is that it now allows for multiple users whilst it was originally designed for a single password protected user. It is understood that the Planning Administrator is in the process of identifying glitches in the system and is preparing a report with suggested changes / upgrades to the system on foot of the recommendations flowing from the Grant Thornton report.

The system as currently used allows the following key areas of functionality:

- **Application Processing:**
 - The registration, deletion and withdrawal of applications.
 - The linking of relevant applications on the database.
 - Identifying consultees.

- Generating correspondence in the form of letters, acknowledgement of receipt, consultation letters, etc.
 - Registering and logging requests for additional information and responses.
 - Formulation and storing of Planners Reports; and
 - Application searches.
- **Certificate Processing:**
 - Creating standard or customised conditions to be attached to certificates including 'trigger events' for such conditions; registering contributory conditions and /or levy conditions.
 - Levy calculation based on residential and commercial components of a scheme at pre-determined rates with CPI (Consumer Price Index) matrix which allows the user to alter the index inflation for the selected year, based on a base year of 2000.
 - Creation and storage of planner's reports and linking the set conditions to the planner's report.
 - Creating Section 25 certificates and allowing date amendments to authorised staff together with automatic storage into document storage when printed.
 - **Compliance and Accounts Processing:**
 - Notification procedure linked to the relevant 'triggers' set by conditions.
 - Notification on levy conditions are linked to 'billing' – the commencement date is linked directly to the CPI matrix for calculating the CPI value of the levy.
 - Creating invoices and registering payments received.
 - Accounts / Billing management tool showing all invoices and receipts to the account and any amounts outstanding.
 - **Web Content Management:**
 - The system provides a FTP setup area, which regulates the content of the Planning Application section shared on the website through a Web Content Management page that could be manually manipulated to add or delete documents for online publishing.

6.4 Planning Software Problems and Recommendations

Some of the shortcomings of the existing software programme are:

- The ability to automatically link the relevant planning history / certificates to a new application. Whilst functionality exists on the programme in the form of an input field, it overly relies on specialist knowledge of a site and human input, which could result in relevant certificates being missed.

R34 Develop a GIS database of applications, that would aid in identifying relevant certificates and planning histories for a site, and that could potentially be linked to DCC's database.

- Third Party Consultations – The deadline for third party submissions are calculated manually and inputted on the system which is subject to human error.

R35 Undertake an upgrade to the system which would allow the calculation of the consultation period automatically, which could also provide a prompt to planner's at key stages to chase comments from consultees prior to the finalisation of Planning Reports.

- Levy calculation sheets do not provide for certain levies to be automatically calculated (such as parking levies).

R36 Undertake an upgrade to the system to make provision for the automatic calculation of the full range of levies applicable within the Docklands, without the need for manual manipulation.

- Currently the systems lacks interactivity with the Accounts software to keep accurate records of billing, invoices and payments made, which results in disputes and additional workload to clarify issues arising.

R37 Investigate the possibility of upgrading the planning software to allow interactive information sharing between accounts information and planning, which would enhance certainty over correct levy calculations and collection at the appropriate phases of development.

- One of the more significant shortcomings of the system is the lack of an electronic decision making trail between the publishing of the Planner's Report, the sub-committee meeting and the final decision by the Board.

R38 Undertake an upgrade to the system to allow functionality to create and save electronic advisory memorandums following consideration by the sub-committee and Board meetings. Such a function should also make provision for prompts when a final Certificate is generated on the system to act as a reminder for conditions to be added, amended or deleted prior to the signing and sealing of the final Certificate.

- Currently the software does not allow planners to save draft reports on the system once a planning condition is selected to a report, which forces planners to work 'offline' in word format and upload finalised versions of the report at a later date, which sometimes results in uploading problems whereby reports are corrupted.

R39 Undertake an upgrade to the system to allow various stages of the planner's report to be saved on the system at key stages. The system should ideally be set up to make a distinction between reports to the sub-committee and reports to the Board and final versions of a report (in accordance with recommendations from the Board) whereby information contained on advisory memo's are incorporated when prompted to do so and in order to generate a Certificate for signing and sealing.

These reports should have distinct titles such as 'Planning Report to the Sub-Committee' with the relevant date of the meeting. Following a sub-committee meeting no further changes should be able to be made to such a report but that the sub-committee version could be imported into a new screen for 'Board level reports' in order to be amended in accordance with the sub-committee meeting's findings before the amended report goes to the Board for consideration. Similarly a report after the Board meeting can only be amended by importing it into the 'final report screen' in order to edit the report in accordance with the Board's recommendations, as electronically noted / minuted in the systems advisory memo page.

6.5 Web Based Information System

The assessment of the Council's web based information system comprised a practical desk based session whereby the Authority's Planning web pages were accessed.

There is a significant amount of planning information available on the Authority's website, which can be summarised as follows:

6.5.1 Forward Planning

Information is readily available on the current Masterplan and annual monitoring reports of the Masterplan. Furthermore, information on all Planning Schemes and amended / draft Planning Schemes plus associated reports relied on in preparing Planning Schemes are readily available. Information of consultation procedures on draft Planning Schemes can also be obtained.

While the level of information provided on the website is generally of a good standard to inform interested parties, it generally lacks interactive features to allow effective consultation and feedback on Planning Schemes / Masterplan. In this regard it is considered that an interactive feature that would allow interested parties to make online submissions to the preparation of plans / Planning Schemes would enhance user friendliness and public participation / consultation in general.

While the information on the existing Masterplan and existing / emerging Planning Schemes are good, it fails to provide an overview of the planning process and how the Authority arrived at the plan / scheme in question. In this regard it would be useful if relevant reports on submissions received together with responses and recommendations to the Board could be published together with the formal consideration and responses of the Board and Ministerial guidance setting out required modifications. Such information would significantly enhance the transparency of the plan making functions of the Authority.

6.5.2 Development Control

Information on Section 25 applications can be obtained by accessing the 'Planning Register' online. Further information and guidance on making a planning application and a third party submission is also available from the online menu.

In terms of the information available on applications, the online database is actually quite limiting and is divided between 'live applications' and 'determined applications'. By selecting these options further options can be found whereby the planning applications database is further refined into sub-categories, such as granted applications, rejected applications, additional information, etc and whereby a list of applications is generated from which a specific application can be selected.

Upon selection of an application a standardised summary page is displayed whereby information is provided on the application such as the DD reference number, type of application, description of development, site address, details of applicant, details of agent, registered date, status of decision and the date of the relevant decision. On 'live' applications the date for submission of third party submissions is also listed together with a date for the applicant's response to such third party observations. On determined applications (granted), a copy of the Section 25 Certificate can also be downloaded. In the case of 'rejected' applications, no details or reasons for rejection are provided apart from the decision date.

This level of information and scope for interactivity compares poorly with standard adopted practise by the majority of planning authorities across the Country. It would seem that the existing planning database and software together with the recommended submission of planning application packages in 'soft' copy would allow for increased interactivity whereby full details of an application is published on the website and whereby provision is made for electronic submission of third party submissions.

6.6 Web Based Recommendations

Having regard to the above, it is recommended that the following are adopted as standard practise in order to enhance the transparency of the plan making and development control functions of the Authority and to enhance public participation and consultation strategies.

- | | |
|--------|---|
| R40 | The adoption of standard practices in order to enhance the transparency of the plan making and development control functions of the Authority and to enhance public participation and consultation strategies. |
| R40(a) | To allow electronically submitted third party submissions at the various public consultation phases of the plan making process. |
| R40(b) | To publish a list of third party observations received, together with a Planner's Report and recommendations to the Board addressing the same. |
| R40(c) | To publish relevant minutes of the Board setting out plan making decisions and recommendations to the executive together with Ministerial Guidance received and proposed modifications to the plan / scheme. |
| R40(d) | To publish all relevant information submitted on Section 25 applications on the website, including plans/drawings and supporting information, requests for additional information and responses. This information is currently available but is protected to authorised users and password holders. |
| R40(e) | To allow interactivity between the Authority's GIS-database (see recommendation above) whereby interested parties can view a map based planning history for the area. |
| R40(f) | To allow the submission of electronic third party observations on applications and to make available all received third party observations online. |
| R40(g) | To publish minutes of Board meetings and decisions of the Board online. |

7 CONCLUSIONS AND RECOMMENDATIONS

7.1 Conclusions

Substantial progress has been made over the past two decades in respect of the objectives laid down for the DDDA through the 1997 Act. These are to deliver:

- the social and economic regeneration of the Dublin Docklands Area, on a sustainable basis,
- improvements in the physical environment of the Dublin Docklands Area, and
- the continued development in the Custom House Docks Area of services of, for, in support of, or ancillary to, the financial sector of the economy.

Established as a development authority in succession to the Custom House Docks Development Authority the DDDA has two principal tools available to it to deliver the regeneration of Dublin Docklands. These are powers

- to acquire (compulsorily if necessary), hold and dispose of land, particularly former publicly owned sites in need of regeneration;
- to operate a 'fast track' planning regime in accordance with specific legislative and administrative arrangements laid down by the 1997 Act as amended.

The creation of a new living and working community in Dublin Docklands represents a considerable achievement which stands comparison with other major waterfront regeneration projects in Europe. This has been acknowledged in international awards and interest from study groups around the world. That much of this change coincided with a strong period of growth in the Irish economy in which Dublin played a key role is no accident. The momentum which the Docklands helped to provide in the creation of a knowledge based, service economy was considerable. However, this was linked to a speculative development boom which resulted in an overheated property market and unsustainable land values. This sets an important context for much of what has happened in relation to planning in recent years.

The Authority has used its powers to attract occupiers and investors to create jobs, homes and facilities for the benefit of local people, Dublin and the wider regional and national economy. Particular attention has been paid to social regeneration with the aim of ensuring that traditional Docklands communities are able to benefit from the opportunities created. It is widely acknowledged that this area of the Authority's activities have been a success.

The attraction of private sector development and investment has been a key element in the Authority's approach. The Executive Board, which has been largely comprised of people from a business background, has used a private sector development model to create and unlock value to provide public assets and investment in the local community. At the same time the Authority has had responsibility for preparing forward plans (Masterplan and Planning Schemes) to realise regeneration objectives and guide the scale, nature and mix of development. These plans are subject to consultation with community and stakeholder interests are intended to provide a template against which progress can be measured and applications for development under S25 judged.

The Finlay Geoghegan Judgement in 2008 raised fundamental questions regarding the exercise of planning powers by the Authority under the 1997 Act. This was the first time that the planning activities of the Authority were opened up to detailed scrutiny. Key principles established by the Judgement in respect of the exercise of the planning powers under the 1997 Act were as follows:

- The adjudicative function of the Authority is a separate and distinct duty and power from its development function and remit. (Agreements which benefit the 'development' function of the Authority are not material considerations in the adjudicative function of the Authority.)
- In accordance with the principles of fair procedures, adjoining landowners should have a right to participate in the adjudicative process.
- The interpretation of the Planning Scheme and related documentation must apply the following principles:
 - They are not Acts or subordinate legislation and are not subject to the accepted canons of construction applicable to such material.
 - They are to be construed in their ordinary meaning as it would be understood by members of the public without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning.
- The Planning Scheme can be considered to constitute an 'environmental contract' in the same sense as statutory Development Plan. As such, there must be a legitimate expectation on the part of adjoining landowners (and one might argue the community) that certificates will only be granted where the proposed development has been adjudged to be compliant with the approved Scheme.
- A certificate can only be issued if the development is determined to be consistent with the Planning Scheme. Conditions which are intended to amend an application which is determined to be inconsistent with the scheme to make it consistent are *ultra vires*.
- A compliant scheme can be further amended by condition in a manner consistent with the Planning Scheme.
- Amendments to Planning Officer's Reports, arising out of internal discussions with the Executive, the Sub-Committee or the Board should be recorded on amended drafts.
- Pre-application discussions can and should take place, but that discussions must take place in a particular framework. No commitment or guarantees can be given in relation to the granting or otherwise of certificate and no member or employee of the authority can provide such commitments in return for some form of gain for the Authority.

These principles provide a clear legal and procedural framework within which the DDDA must exercise its planning powers going forward. There is little doubt that the ability of the Authority to deliver the objectives set by the 1997 Act is substantially enhanced by the powers which it enjoys in respect of both forward planning and adjudication. Certainty and speed of decision making with respect to planning is a significant weapon in the Authority's armoury. Development agencies which do not have planning powers are seldom as effective as those that do.

Given the uncertainty revealed by the Finlay Geoghegan Judgement it is considered appropriate to put in place clear regulations to govern the adjudication process. This would provide clarity and help rebuild confidence in the decision making by the Authority in respect of Section 25 applications.

Given that Planning Schemes have to apply a broadly consistent approach to the key parameters of plot ratio, building height and development mix consideration should be given to legislating for a 'material departure' process. This would need to be subject to safeguards to prevent the wholesale undermining of development principles. However, some mechanism needs to be found for schemes which cannot reasonably be anticipated.

These would have to be subject to full consultation procedures. This would avoid the need for regular amendments to Planning Schemes in response to changing market circumstances.

The principle established by the Finlay Geoghegan Judgement which prevents the use of conditions to render non compliant schemes compliant could become a significant obstacle to 'fast track' planning decisions. On balance however it is considered that there is a need to reinforce the message that Section 25 certificates will not be granted for schemes which are not in compliant with Planning Scheme requirements. This reinforces the need for a procedure capable of dealing with non-compliant schemes.

It is vital that Section 25 certificates provide a clear basis for the enforcement of planning conditions¹⁶. It seems entirely appropriate that responsibility for enforcement remains with DCC. DCC must be assisted in this task by the quality of documentation provided by the Authority.

Delivering the planning functions of the Authority under greater scrutiny will require a structure which is fit for purpose. The principal conclusions to emerge from the review of the current structure are as follows:

- There has been a light touch approach by the Department of Environment, Heritage and Local Government with respect to the DDDA both in relation to its wider sponsorship of the Authority and its planning responsibilities. There is now a case for a more 'hands on' strategic management role.
- While the legislation provides for Dublin City Council to be consulted in respect of the forward planning functions of the Authority and that there is a regular contact regarding the provision of infrastructure and services there is no clear procedure regarding the procedures to be followed with respect to consultation on Section 25 to the DDDA and planning applications to DCC.
- Examination of the internal structure and functioning of planning within the Authority indicates that it has operated as an enabling tool to promote development in Docklands. In this regard, the regulatory function of planning, which as the Finlay Geoghegan Judgement reveals requires the strict interpretation of compliance with planning schemes, has been subordinated to the Authority's development function.
- It is therefore concluded that the planning functions covering both forward planning, plan monitoring and adjudication should operate as a separate team with a direct reporting line to the Chief Executive. This will help achieve the necessary separation from the Authority's property and development role.
- It is further concluded that the legal function of the Authority should be separated from the property function to ensure that the planning team is able to access legal advice on the proper application of its planning powers in the light of the Finlay Geoghegan Judgement and any changes in legislation or regulation which may be required.

The review of forward planning functions has generally found that the plan making procedures are relatively robust and that the Council's role and public participation have been effective, transparent and meaningful, particularly in the Masterplan preparation process, and provide an adequate level of confidence that subject to the relatively minor recommended amendments to the processes they can be considered to be equitable.

¹⁶ This report has not undertaken any review of compliance with conditions on the basis of the Brief and the exclusive responsibility of DCC in this area. However, given the social regeneration objectives of the Authority it may be prudent to consider a review of delivery of Social and Affordable Housing through the Section 25 process.

Notwithstanding, an issue has been identified in the review which may potentially affect the perception that the plan making process associated with the proposed North Lotts Planning Scheme Amendment (No. 2) may not have been carried out in a manner which fully meets the tests of transparency, fairness and equity. The context for these concerns is grounded in part in the status afforded by the Finlay Geoghegan Judgement to the Authority's forward planning documents as community/democratic contracts. This status creates a legitimate expectation that such documents will be prepared and adopted, and subsequently interpreted and implemented, in a transparent and equitable manner.

There is considered to be a reasonable apprehension that the existence of the Agreement with NQIL in May 2007 and matters related to the proposed amendment referred to in that Agreement had the potential to influence the Executive, and possibly the Board insofar as it was aware of the detail of the Agreement¹⁷, in advancing the statutory approval processes provided for under the Act. This process includes stakeholder consultations, reporting on public consultation, consultation with the DDDA Council, preparation of the EIS, approval of the scheme for submission to the Minister, and consideration of the Scheme by the Minister having regard to the submissions of Dublin City Council.

Accordingly, while stakeholder consultation is appropriate in principle at the plan making stage of a planning scheme, there may be a legitimate concern that the actions of the Authority, and particularly the Executive, as outlined above, may have pre-determined certain matters and may have been pre-empting due process. While the plan making process by its nature must allow for some matters to be pre-determined, it is considered that an Agreement of the nature entered into had the potential to be perceived as compromising the requirements of transparency, accountability and fairness in the plan making process.

The above review also raises a potential issue around the demarcation of the functions of the Authority. The plan making and general development objectives of the Authority have been noted by the Finlay Geoghegan Judgement to be separate and distinct from the adjudicative function. The detail of the Agreement suggests that the adjudicative function may not have been adequately insulated from the plan making function. As a result, the adjudicative function could be perceived to have been inappropriately subordinated to or otherwise have been subsumed within the facilitating or enabling functions of the Authority with regard to its development powers and objectives.

This concern is further substantiated by the review of a representative sample of Section 25 files undertaken. The review concluded that a reasonably substantial number of Certificates issued can be considered to be strictly compliant with the provisions of the Planning Scheme.

A substantial number of Certificates could also be considered to be non-compliant within the meaning of a reasonable interpretation of the Planning Scheme. However, a substantial proportion of these potentially 'non-compliant' Certificates have been adjudicated by the Authority to be considered compliant on the basis of the Authority's interpretation of the Planning Scheme and its relevant standards, having regard to the perceived inconsistencies and latitude interpreted in some development standards.

¹⁷ The existence of the Agreement and the clause therein to cede land to the Authority was referred to in the Board Minutes of 11 June 2007. All current Board members have confirmed that they were not aware of any further detail relating to the Agreement at that time.

The wide discretion the Authority understood it had prior to the Judgement to attach conditions to a non-compliant development proposal to make it compliant with the Scheme, as interpreted, was also a factor in the decision making processes identified.

The review concludes that the findings of the Finlay Geoghan judgement were not unique to that particular case. The assessment strongly suggests that the adjudicative planning function appears to have been significantly influenced by the Authority's development remit and was not afforded the degree of separation from the development function required by the Judgement. The planning function appears to have operated to some extent in a facilitating or enabling role rather than regulatory role with the evidence suggesting that the adjudicative process appears on the face of the Planning Reports at least to have been liberally and inconsistently interpreted with the effect, whether intended or not, of 'shoehorning' proposals into compliance with the Planning Scheme. This apparent trend is supported by a review of approval rates between September 2004 and September 2007 which reveals a very high approval rate, particularly from September 2005.

In this regard, the examination of the internal structure and functioning of planning within the Authority also indicates that its regulatory planning function, which as the Finlay Geoghegan Judgement reveals requires the strict interpretation of compliance with Planning Schemes, has been subordinated to the Authority's development function. While the lack of clarity regarding the precise scope of the Authority's planning powers in conjunction with the weak processes and procedures undoubtedly contributed to this flawed approach, the Finlay Geoghegan Judgement and results of this review and other reviews provide a sound basis for the proposition that rebuilding public confidence in the DDDA is already underway.

7.2 Recommendations

This Report includes recommendations across all aspects of the Authority's structures and functions. The drafting of these recommendations for consideration by the Board has at all times been informed by the requirements to provide procedures which are transparent, accountable, fair and effective and are perceived as such by stakeholders, the community and investors. At the same time, these procedures must protect the integrity of the separate development and adjudicative functions but must not erode the competitive advantage of the 'fast-track' adjudicative powers assigned to the Authority to aid in the achievement of its economic and social regenerations objectives. The Report concludes that given the significant rights issues associated with the plan making and adjudicative functions, and to insulate the Authority from potential future legal challenges, consideration must be afforded to the introduction of a Statutory Instrument to provide a legislative basis for some of the procedures recommended in this Report.

In this regard, it is vital that the Authority's planning powers, structure and function are fit for purpose.

The recommendations set out in the preceding sections are summarised below for ease of reference as potential 'action points'. It is recommended that in deciding on the implementation or otherwise of these action points, the full context is assessed in the relevant section above.

Role and Function

- R1.** The Department of Environment Heritage and Local Government (DoEHLG) establish annual reporting requirements including an agreed set of key indicators, and institute a formal review process on a regular basis.
- R2.** A written protocol should be prepared to clearly define the Department's roles and responsibilities in respect of the administration of the Authority.

- R3.** A written protocol should be prepared to clearly define the roles and responsibilities of the Department's Representative on the Board and to ensure absolute clarity around reporting procedures between the Board and the Department.
- R4.** It may also be appropriate for the Minister in making appointments to the Board to consider the skills mix appropriate to the statutory functions required of the Board.
- R5.** A formal procedure should be instituted to ensure that Dublin City Council (DCC) is presented with an opportunity to comment on Section 25 applications and that these comments are taken into account by the Executive Board in adjudicating on such applications.
- R6.** There should be formal liaison meetings between DDDA and DCC planning teams to ensure effective management of areas of shared responsibility such as development levies and enforcement.
- R7.** The planning functions covering both adjudication and forward planning and plan monitoring should operate as a separate Planning Team within the Authority with a direct reporting line to the Chief Executive, to assist the necessary separation from the Authority's property and development role¹⁸.
- R7(a)** Within the Planning Team A Senior Planner should be delegated responsibility for protecting the integrity of the adjudicative function on the basis of a bi-annual monitoring and reporting procedure.
- R8.** It is recommended that consideration be given to the creation of a Director of Planning role dedicated to the planning functions of the Authority. This position should be filled by a qualified planner with management experience and with extensive experience of managing the regulatory function within a local authority.
- R9.** The legal function of the Authority be separated from the property function to ensure that the planning team is able to access legal advice on the proper application of its planning powers in the light of the Finlay Geoghegan Judgement and any changes in legislation or regulation which may be required.
- R10.** The function of Secretary be separated from the property function. The appointment of a dedicated Secretary or Administrative Officer be considered, to report between the Executive and Board and to support the Board in the carrying out of its functions.
- R11.** The role of the planning administrator to be maintained at least until such time as an IT based system is in place to support the processing of Section 25 applications and a quality and risk management culture is embedded in the leadership and day to day operations of the planning team.
- R12.** Enforcement powers under the Planning Acts should remain the responsibility of Dublin City Council in the Docklands area.

Consultation

- R13.** Provide for formal 'pre-draft' Masterplan consultation, similar to what many local authorities undertake for Development Plan and though not statutory, Local Area Plan preparation. Submissions in this regard should only be considered where they relate to strategic issues which are generic to the strategic direction of the Masterplan.
- R14.** Adoption of a formal procedure for reporting on submissions to the Council and Board. A report setting out the principal issues identified in submissions and the Executive's recommendations on how those

¹⁸ The current and proposed structures of the Planning Team are set out in Appendix C

issues are addressed in the draft Masterplan, should be prepared for formal consideration by the Council in advance of a draft Masterplan going on public display.

- R15.** In the event of a review of the 1997 Act and parallel planning legislation, consideration to be afforded to enhancing the status of the both the Masterplan and Planning Schemes as documents to which DCC and An Bord Pleanála must have regard in the event of an application or appeal to those respective authorities.

Planning Scheme Process

- R16.** Introduction of a Design Brief stage to the Planning Scheme process. The procedure around the Design Brief could be undertaken as a protocol or under Statutory Instrument with the following steps:

R16 (a) The preparation of a new Planning Scheme or an amendment to an existing scheme is approved by the Board.

R16 (b) A draft Design Brief is prepared which clearly sets out the following: the strategic planning, urban design, architectural and infrastructural reasons for the proposed scheme/amendment; a statement of appropriate objectives relating to the foregoing reasons; the broad parameters around urban form, density, height, public space, and architecture; options and alternatives available in respect of the urban form criteria which are relevant to meeting the stated objectives.

R16 (c) The Design Brief is considered by the Council. Recommendations by the Council and the Executive Response to those recommendations are set out in a Report which is furnished to the Board.

R16 (d) The Board must have regard to the recommendations of the Council.

R16 (e) The Board directs the Executive to amend/complete the Design Brief as considered appropriate.

R16 (f) The approved Design Brief is furnished to the Minister. The Minister can modify the Design Brief and give mandatory instructions to the Authority.

R16 (g) The Design Brief is placed on public display and recommendations and the Executive's response are furnished to the Board.

R16 (h) Following consideration of the Executive's Report and amendment/approval of the Design Brief, the Board instructs the Executive to proceed to drafting the Scheme/Amendment.

- R17.** A representative Steering Group to be set up at the commencement of the Planning Scheme/Amendment making process. The Steering Group would include representatives from the DDDA Executive, DDDA Council, Dublin City Council Planning Department, Dublin City Council Infrastructure Department, Dublin Transportation Authority and Dublin Regional Authority.

- R18.** Consider, possibly as part of amending legislation, some provision for granting a certificate which is not compliant with the development control standards set out in the Planning Scheme but by reason of some exceptional circumstance not envisaged at the time of the preparation of the Scheme is otherwise compliant with the overall objectives of the Scheme, the objectives of the Authority and the proper planning and sustainable development of the area.

R18 (a) The decision to proceed to consideration of such an application should be made by the Board in advance of the lodgement of the application.

- R18 (b)** Specified criteria relating to exceptional circumstances should be set out in Regulations which the Board must be satisfied are met in advance of lodgement of an application.
- R18 (c)** Proposals would be presented to the Executive in pre-planning meetings in sufficient detail to allow the Executive to prepare an informed recommendation to the Board as to whether to proceed to further consideration of the lodgement of an application. This decision would rest with the Board.
- R18 (d)** In the event that the Board agreed to consider an application, this decision would be notified to the prospective applicant subject to the qualification that it is strictly without prejudice to any decision the Board may subsequently make on an application.
- R18 (e)** Upon lodgement of an application, the Executive would make a recommendation to the Board.
- R18 (f)** Should the Board decide to refuse to issue a certificate, this decision and the reasons therefore would be notified to the applicant.
- R18 (g)** If the Board decided in principle to issue a certificate, it would send notification of this effect to the Minister and Dublin City Council.
- R18 (h)** In parallel it would publish a notice in a national daily newspaper indicating its decision in principle and inviting submissions from third parties.
- R18 (i)** Having considered all submissions the Board would issue its final decision.

Certificate Determination

- R19.** Review of procedure associated with application documentation:
 - R19 (a)** The description of development to be checked by the validating officer to ensure that a detailed and accurate description of the proposed development is provided stating the height of buildings (number of storeys), the overall floorspace proposed, and a breakdown of the proposed uses and residential units, if applicable.
 - R19 (b)** Upon confirmation of the description of development, which will coincide with the issue of a DD reference number; and after preliminary checks have been carried out, the applicant will erect a site notice reflecting the final and correct wording of the description of development.
 - R19 (c)** In instances where an application for a minor amendment to a previously certified development is submitted, the description of development shall clearly state the relevant DD reference number of the certificate to be amended, the description of the development as previously certified, and clearly state that the application is for an amendment whereby the proposed amendment is described in detail (see also recommendation in terms of amendment applications).
 - R19 (d)** All drawings received should be date stamped together with a stamped DD reference number unique to each application.
 - R19 (e)** Should the original or subsequently submitted drawings be amended in any way, a fresh set of application drawings shall be submitted and clearly stamped 'Amended' together with a date stamp and a stamp showing the unique DD case reference number. One full set of the originally submitted drawings shall be retained on file and stamped 'Superseded'.

- R19 (f)** Upon the issue of a Section 25 certificate, one full set of approved drawings shall be retained on file and be clearly stamped 'Approved' together with the corresponding date that the certificate was issued.
- R19 (g)** Section 25 Certificates, as issued should clearly reference the list of approved drawings accompanying the certificate.
- R20.** That the Authority has regard to the attached guidance note on validating applications attached at Appendix J.
- R21.** Review of procedures associated with the submission of Additional Information
- R21 (a)** Having regard to the objectives of the Section 25 process to expedite decision making and to certify compliant proposals, the Grant Thornton recommendation is endorsed that Additional or Further Information requests should not be entertained by the Authority where a proposal is clearly non-compliant with the relevant Planning Scheme.
- R21 (b)** Non-compliant proposals should be returned with a letter stating the reasons of non-compliance and inviting the applicant to withdraw the application and submit a fresh application addressing the deemed reasons for non-compliance. In the event that the applicant refuses to withdraw the application (by confirmation in writing), the application shall be registered and processed in an identical manner to other applications, as suggested by Grant Thornton resulting in non-certification following consideration by the Board. However, such applications should be fast tracked to enable an early Board determination in order to avoid time delays resulting from applicant's seeking to amend schemes subsequent to their confirmation of non-withdrawal of a proposal.
- R21 (c)** The Board is recommended to consider extending delegated powers to the Executive officers to confirm non-certification to the applicant without formal consideration by the Board provided that a delegated report by the Planning Officer is signed off by the relevant manager and director; prior to the issue of a notification of decision not to certify the proposed development and stating the reasons for same. Such applications together with delegated reports should be subsequently circulated to the Board for information purposes.
- R22.** Review of procedure associated with Planning Reports
- R22(a)** Planner's Reports should be prepared according to a standardised template, which includes the following:
- Heading stating whether it is a 'Delegated Report', report to the Sub-Committee and relevant date of Committee meeting or a Report to the Board and the date of the Board meeting where the report will be considered.
 - Reports, whether delegated, sub-committee or for the Board's consideration should be checked and signed by the relevant line manager with final sign-off required by the Director. Copies of signed reports shall then be included and circulated to members of the sub-committee and Board prior to relevant meetings.
 - Layout of a standard report template should provide for a detailed description of development in table format stating proposed floorspace areas against each use proposed together with a column of the applicable levy rates and calculations.
 - Standard report templates should provide for a summary of relevant Planning Scheme standards applicable to the proposal and a section setting out relevant planning history

where the subject application relates to a wider / comprehensive redevelopment proposal.

- R22 (b)** In order to allow feedback from third party consultees to be properly considered by the Board, as reflected in Planner's Reports, it is suggested that the current 10 day consultation period be extended to 21 days. The 21 day period should commence upon the date of erection of the site notice, which should coincide with formal letters of consultation being sent to other consultees, such as DCC. No formal consideration of a proposal shall either be undertaken by the sub-committee or the Board prior to the expiration of the 21 day consultation period.
- R23.** Support for the recommendation of Grant Thornton that the Board should consider delegating powers to the sub-committee of the Board or Senior Executive Officers to make decision on such applications which are of a minor and/or non-contentious nature, including applications for signage and minor changes of use.
- R24.** Procedures relating to applications for amendments to previously permitted development:
- R24 (a)** The Board adopts criteria whereby an application is determined as an amendment application. Such applications should genuinely be of a minor nature, which would not require consultation and would not materially alter the previously certified scheme. Such applications could typically be amendments to the design and appearance of a building – for example a change in fenestration pattern or materials / finishes or pedestrian access arrangements.
- R24 (b)** Any application which seeks to increase the volume or height of a previously certified scheme should be subjected to full scrutiny against the provisions of the Planning Scheme and be subjected to full consultation procedures. Such applications should also include change of use applications where the proposed change of use relates to a floorspace in excess of 100sq.m.
- R24 (c)** Applications for amendment that would result in a volumetric increase in building envelope or a change of use of floorspace in excess of 100sq.m shall not be described in the description of development as an 'amendment application' but shall be described and considered as a fresh Section 25 application.
- R24 (d)** Applications for 'minor amendments', as described above, shall make reference to the DD reference number of the parent certificate and shall provide a detailed description of the proposed amendment along with the description of the certified development.
- R24 (e)** Plans / Drawings submitted for amendment applications shall include a copy of the final certified drawings of the Scheme they seek to amend with the proposed changes clearly marked / indicated on the new plans/drawings for ease of comparison.
- R24 (f)** The Board might consider extending delegated powers to the Executive to deal with such applications for minor amendment meeting the suggested criterion above in order to fast-track decision making.
- R25.** Procedures relating to Compliance Issues:
- R25 (a)** That a separate procedure is adopted whereby applications for compliance are treated as standalone applications through the allocation of a unique reference number that will link the compliance application with the relevant certificate and condition for compliance. Example - compliance with Condition 13 attached to Certificate Reference DD167 be allocated a unique reference number CDD167.C13.
- R25 (b)** That a separate, parallel compliance register be established and linked to the planning register file.

- R25 (c)** Upon compliance of all relevant conditions that the applicant applies for a compliance certificate to the DDDA requesting confirmation of compliance with all relevant conditions.
- R25 (d)** That the DDDA issue such a Compliance Certificate only in the event that it is satisfied that all relevant conditions have been complied with and that a copy of the compliance certificate is put on file and distributed to the applicant and other relevant bodies, such as DCC in the same manner as a Section 25 Certificate.
- R25 (e)** In the case that the DDDA is not satisfied that compliance with all conditions has been achieved it shall issue a letter stating the reasons for non-compliance and withholding a Certificate of Compliance together with an invitation to the applicant to submit outstanding items by listing any outstanding conditions. A copy of this letter shall also be put on file and provided to the applicant.
- R25 (f)** That the Board extend delegated powers to the executive to determine applications for compliance at sub-committee level.
- R26.** Procedures relating to Sub-Committee and Board Meeting requirements:
- R26 (a)** Minutes of Board and Sub-Committee meetings should be placed on the planning file.
- R26 (b)** The number of applications to be considered at any one meeting should be regulated / capped in order to focus efforts. Minor applications could be delegated for decision making, as set out above to ease workload.
- R26 (c)** Members of relevant Committee / Board carry out site visits on large/complex applications prior to meeting – at least the Chair of the Planning Sub-committee and two other members, which can be on a rota basis.
- R26 (d)** The presenting Planning Officer should provide a 3-5 minute presentation on each agenda item prior to discussion, which will inform discussion and decision making.
- R26 (e)** Relevant Planning Scheme policies should be highlighted and included in presentation and reports.
- R27.** A Statutory Instrument by which certain procedures are provided with a legislative basis should be considered by the Board for recommendation to the Minister. Regulations could specifically address procedures and timeframes for validation of Section 25 applications; further information and additional information requests; public consultation and consultation with statutory consultees; reporting procedures to the Board and its Sub-Committee; certification; and post-certification compliance.
- R28.** A Section 25 Certificate should make explicit reference to the plans/ drawings numbers certified and refers to the date of the Board meeting where the decision was made to certify a development.
- R29.** A Section 25 Certificate should expressly state that the scheme as proposed and considered by the Board is compliant with the relevant Planning Scheme in operation at the date of making the decision.
- R30.** That protocol be agreed to ensure the consistent and reasonable interpretation of Planning Schemes which avoids inconsistent and/or overly liberal interpretations of ambiguous references within the Planning Scheme. The Board should endorse a more prescriptive interpretation of Planning Scheme standards and provisions in terms of permissible building heights, plot ratio's, land use mix, residential mix, social and affordable housing, car parking provision, etc.
- R31.** That the Board considers a review of Planning Schemes whereby potentially ambiguous provisions within Planning Schemes are identified (for example plot ratio calculation, references to building heights, land use mix, etc.) and are formally reviewed and subjected to Ministerial approval. Such a review could

provide an appropriate opportunity to revisit issues of planning importance and the overall strategy and future direction for the Planning Scheme areas against progress to date. For instance the issue on land use mix (60/40 ratio) and appropriate plot ratios might be revisited in light of implemented schemes and a survey of floorspace and ratio's achieved to date.

- R32.** That the Board reviews the practice whereby planning conditions are attached to Certificates to:
- seek to render a non-compliant scheme, compliant with the Planning Scheme; and/or,
 - seek to transfer or link compliance of one or more elements of a Scheme onto a subsequent phase of development for which a formal application had not been lodged; and
 - seek compliance with the Planning Scheme in a manner whereby individual sites are linked together that does not form part of the same planning unit, albeit that such sites are in the same ownership.
- R33.** The role of the Design Review Panel should be limited to large and complex applications or sites which include landmark buildings.

IT System

- R34.** Develop a GIS database of applications, that would aid in identifying relevant certificates and planning histories for a site, and that could potentially be linked to DCC's database.
- R35.** Undertake an upgrade to the system would allow the calculation of the consultation period automatically, which could also provide a prompt to Planners at key stages to chase comments from consultees prior to the finalisation of Planning Reports.
- R36.** Undertake an upgrade to the system to make provision for the automatic calculation of the full range of levies applicable within the Docklands, without the need for manual manipulation.
- R37.** Investigate the possibility of upgrading the planning software to allow interactive information sharing between accounts information and planning, which would enhance certainty over correct levy calculations and collection at the appropriate phases of development.
- R38.** Undertake an upgrade to the system to allow functionality to create and save electronic advisory memorandums following consideration by the sub-committee and Board meetings. Such a function should also make provision for prompts when a final Certificate is generated on the system to act as a reminder for conditions to be added, amended or deleted prior to the signing and sealing of the final Certificate.
- R39.** Upgrade the system software to allow various stages of the Planner's Report to be saved on the system at key stages. The system should ideally be set up to make a distinction between reports to the sub-committee and reports to the Board and final versions of a Report (in accordance with recommendations from the Board) whereby information contained on advisory memo's are incorporated when prompted to do so and in order to generate a Certificate for signing and sealing.
- R40.** The adoption of standard practices in order to enhance the transparency of the plan making and development control functions of the Authority and to enhance public participation and consultation strategies.
- R40 (a)** To allow electronically submitted third party submissions at the various public consultation phases of the plan making process.

- R40 (b)** To publish a list of third party observations received, together with a Planner's Report and recommendations to the Board addressing the same.
 - R40 (c)** To publish relevant minutes of the Board setting out plan making decisions and recommendations to the Executive together with Ministerial Guidance received and proposed modifications to the plan / scheme.
 - R40 (d)** To publish all relevant information submitted on Section 25 applications on the website, including plans/ drawings and supporting information, requests for additional information and responses. This information is currently available but is protected to authorised users and password holders.
 - R40 (e)** To allow interactivity between the Authority's GIS-database (see recommendation above) whereby interested parties can view a map based planning history for the area.
 - R40 (f)** To allow the submission of electronic third party observations on applications and to make available all received third party observations online.
 - R40 (g)** To publish minutes of Board meetings and decisions of the Board online.
- R41.** Consider a review of compliance with conditions relating to the delivery of Social and Affordable housing (as identified in Footnote No. 13 of this report).

APPENDICES

Appendix A: Copy of the DDDA's Brief and Correspondence from the DoEHLG Commissioning the Review

Appendix B: List of persons Consulted

Appendix C: Staffing Structure (Organogram)

Appendix D: Overview of the Action Area Plans

Appendix E: Overview of the Grand Canal Dock Planning Scheme

Appendix F: Overview of the Custom House Planning Scheme

Appendix G: Planning Scheme Procedural Checklist

Appendix H: Section 25 Assessment Checklist

Appendix I: Excerpt, Section 6.2 of the Grant Thornton Report

Appendix J: Validation of Section 25 Applications – Guidance for Dublin Docklands Development Authority

Submission of Corporate Governance
Financial and Planning Reviews
to the Minister for the Environment, Heritage and Local
Government

Report of the Executive Board of the Dublin Docklands
Development Authority

May 2010

1. Introduction

The Minister for Environment, Heritage and Local Government wrote to the Authority in August 2009 and requested that a comprehensive review of corporate governance be conducted within the Authority (see Appendix 1). The timeframe for the review was extremely short. Accordingly, the Board decided to commission an evidence-based review of the key business and planning documentary records within the Authority and to focus on the key areas of activity within the Authority.

The Minister's letter indicated that the Board's report should include an assessment as to whether a more detailed investigation is warranted on foot of the review's findings. The Board's conclusion on this question is addressed in the last "Concluding Comment" section of this Report.

The Executive Board decided to conduct two reviews, one to examine planning issues and one to consider the financial aspects of the Authority. Terms of reference were prepared which are included with each review. The firms of Declan Brassil & Company Limited, Chartered Planning Consultants, and Ray King and Associates, Incorporated Public Accountants, Registered Auditors, were selected to carry out the Planning and Financial reviews respectively.

Both firms commenced their work in the week beginning 28 September 2009. The Planning Review was completed in December 2009. The Executive Board received a report of the Financial Review in November 2009, and requested that the area of procurement be subjected to further examination. The final version of the Financial Review was completed in January 2010. The Executive Board received a report of the Planning Review in November 2009. Following feedback from the Executive Board, this review was finalised in December 2009.

The purpose of this report from the Executive Board of the Dublin Docklands Development Authority is to provide the Executive Board's comments on the two reviews, and in particular to provide a detailed implementation schedule concerning each of the recommendations in the two reviews.

2. Financial Review

The findings of this review point to a loose culture in relation to internal systems of financial control. While the Authority has in place a system of internal controls, in some instances it was found that the system was over-ridden at senior management level. In some areas, notably salary increases and the renewal of staff contracts, there was an absence of systems, with authority for transactions resting entirely with the CEO. There was no evidence of oversight of the CEO by his superiors in his execution of these responsibilities, partly because it was found that the CEO did not bring these matters to the Board's attention. In other areas, notably project costs, there were extensive systems for cost control but these systems were not always implemented in practice.

In addition, and possibly reflecting its financial successes until 2007, it was identified that value-for-money considerations were largely absent in the work of the Authority.

Significant changes in oversight arrangements at Executive Board level and in the composition and management approach of the Senior Management Team took place in 2009. Further changes have arisen from the Authority's straitened financial circumstances and the Government moratorium. These changes have resulted in a major culture change within the Authority.

The Executive Board put the external audit and internal audit functions out to tender in late 2009. The external and internal auditors will be asked to focus particularly on the internal control systems within the Authority, which systems are being continually strengthened in the second half of 2009 and 2010.

Mr King has made 52 recommendations in his Review. Appendix 2 summarises these recommendations, together with the responses of the Authority to each recommendation, and an implementation timeframe for addressing the recommendations. Table 1 summarises the implementation status of the recommendations.

Table 1: Implementation of the recommendations of the Financial Review	
Implementation status	No.
Recommendations implemented	8
Implementation of recommendations in progress for completion April 2010	40
Implementation of recommendations in progress for completion after April 2010	3
Recommendation not accepted	<u>1</u>
Total recommendations	<u>52</u>

3. Planning Review

The Planning Review has found serious weakness across aspects of the planning functions of the Authority in recent years. Under its legislation, the Authority has a planning remit and a development remit. Until the judgement of Ms Justice Finlay Geoghegan in what is referred to as the Mountbrook Case, it appears that the Authority's planning functions were generally subservient to its development and architectural functions and that planning was used to promote development. This philosophy seriously compromised the integrity of the planning function.

In the preparation of these reports, information has come to the Executive Board's attention concerning inappropriate planning decisions in the past. Mr Brassil's Review reflects these inappropriate planning decisions. Many of Mr Brassil's findings are commercially sensitive.

It appears that key information was withheld from the Executive Board, including on planning issues. The agreement entered into by senior Executives of the Authority without the knowledge or authority of the Executive Board in relation to the Anglo Irish Bank headquarter building is a case in point. Arising from this agreement, Ms Justice Finlay Geoghegan made the following observations during the case:

"How does the Authority inform itself about any opposing view to that recommended by its Executive? Is there any reality to that? You have the members of the Authority who are asked to take a decision...And in common sense and practicality, I assume, as in every other organisation, it receives a report from the members of its executive... which it then acts upon. It may ask questions, and should ask questions if the members of the Authority are non-executive people who bring to bear an expertise. But primarily they are relying on their executives who will have carried out the detailed work... Therefore what reality is there if the executives are committed to taking a particular course of action, what reality is there to the Authority taking any differing decision and how do they even inform

themselves to go about it?" (Source: Transcript, North Wall Quay Property Holdings Ltd & Sean Dunne vs. Dublin Docklands Development Authority and North Quay Investments Ltd (Liam Carroll's company), Day 3, 24 April 2008, pages 40-41)

The judgement of Ms Justice Finlay Geoghegan had a significant effect on the Authority's planning processes and procedures. The Executive Board commissioned a report on its planning processes from Grant Thornton. The recommendations of the Grant Thornton report have been implemented in full by the Authority. The changed culture around planning is reflected in the findings of Mr Brassil's Report. He acknowledges significant improvements such that the issues he found in pre-Finlay Geoghegan Section 25 certificates have now been effectively addressed. The Executive Board believes that all planning decisions of the Authority since the Finlay Geoghegan judgement are fully compliant with the current planning schemes.

Mr Brassil has made 88 recommendations in his Report. Appendix 3 summarises these recommendations, together with the responses of the Authority to each recommendation, and an implementation timeframe for addressing the recommendations. Table 2 summarises the implementation status of the recommendations.

Table 2: Implementation of the recommendations of the Planning Review	
Implementation status	No.
Recommendations implemented	4
Implementation of recommendations in progress for completion April 2010	57
Implementation of recommendations in progress for completion after April 2010	5
Implementation of recommendations for parties other than the Authority	8
Recommendations not accepted	
	<u>14</u>
Total recommendations	<u>88</u>

4. Challenges facing the Authority

The Authority is currently facing a number of very difficult challenges.

- The Authority's 26% investment in Becbay Limited has been written down to €nil in its own 2008 financial statements. For as long as Becbay Limited continues in existence, the Authority will suffer interest on its share of Becbay Limited borrowings. This interest

bill amounts to approximately €5 million per annum. The Authority is incapable of operating on a break even basis with this annual liability.

- One of the Authority's joint venture partners, Mr Bernard McNamara, is suing the Authority, consequent on Mr McNamara being sued by Davy investors in respect of personal guarantees he provided to them concerning his investment in Becbay Limited. The amount involved is circa €100 million. The Authority is robustly defending these legal proceedings. However, the legal costs are expected to be substantial.
- The Authority is operating in a very litigious environment and it is possible that the Authority may be subject to other legal challenges in the future.
- The Authority has significant receivables which are proving very difficult to collect. At the end of December 2008 the Authority was owed over €8 million in levies. The Authority has recently begun to take more proactive steps in collecting its receivables by taking legal proceedings to recover these monies.
- By 31 December 2010, the Authority will have reduced its staffing level from a high of 63 in 2008 to its 2005 staffing level of 26. The current staffing level is 31 as of the 23rd April 2010. This will fall to 30 on the 8th May 2010. However, to ensure the recommendations of the two corporate governance reviews are fully implemented it may be necessary for specialist personnel to be replaced during 2010. These replacements may be recruited through transfers or secondments from existing State Bodies or Government Departments.
- The financial outturn for 2010 is dependent on a payment due to the Authority of €20 million in September 2010.
- The Authority is currently operating within its borrowing limits of €127 million. However, this limit may come under pressure arising from the issues flagged above.
- The financial outlook for the Authority will be extremely challenging for the foreseeable future.

Concluding comment

The Executive Board is satisfied that the executive of the Authority has a robust plan in place to address with speed the recommendations in these two reports to enhance the internal processes in the Authority to best practice standards. The Executive Board is confident that all information necessary for it to take appropriate decisions is being shared by the executive with the Executive Board. The Executive Board is further confident that all financial transactions are appropriate and are cognisant with value for

money principles. Further, since the Finlay-Geoghegan judgment, section 25 planning certificates have only been issued by the Executive Board when all key prescriptive elements of the relevant planning scheme have been complied with.

Finally, the Executive Board commissioned Brady Shipman Martin to conduct a review of the draft Poolbeg Planning Scheme. Their draft report is now to hand. No illegalities have been found. However, the draft report finds that the preparation of the Scheme has not to date been carried out in a fair, equitable and transparent manner. While the urban design approach to the Planning Scheme was generally acceptable, significant broader planning issues have been identified. The Executive Board is currently considering how the issues raised might be resolved.

In conclusion, except for the Irish Glass Bottle site transaction, the issues raised concerning the Authority's system of internal financial controls in the King Report have been, or are being, addressed (as set out in this report) and require no further investigation. Questions remain, however, in relation to the background to the purchase of the Irish Glass Bottle site. In addition, the Executive Board is of the view that there are unanswered questions concerning evidence that has come to light in the Brassil Report into planning, in particular the rationale for the granting of non-compliant S.25 planning certificates and S.25 planning certificates that represent an inconsistent or inappropriate interpretation of the relevant planning scheme. Further independent investigation would be required to address these questions.

Appendix 1 Letter from the Minister requesting Review of Corporate Governance

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King

	Recommendations	Authority's response	Implementation Timeframe/Status
	Salary increases		
FR3.1	There should be a document completed by the Executive Director with responsibility for the employee recommending a salary increase and giving the reasons why the employee should receive an increase.	There are no salary increases currently.	Implemented
FR3.2	There should be a document completed jointly by the Executive Director with responsibility for the employee, and the Human Resources Department, benchmarking the amount of the proposed salary, whether it be benchmarked against other salaries paid by the Dublin Docklands Development Authority, other State Bodies, the Civil Service and the Private Sector, and justifying the choice of benchmarking.	Employee salaries are being benchmarked against public sector pay scales and are being recalibrated where necessary.	Implemented
FR3.3	The Chief Executive should have authority to approve salary increases for staff below the level of Executive Director, so long as the amount of the salary increase does not exceed a particular percentage to be decided by the Executive Board.	There are no salary increases currently. The revisions to the Authority's governance framework will specify a percentage salary increase limit.	Revised governance framework work in progress.
FR3.4	4. The Chief Executive should recommend the salary increases for Executive Directors. The documents detailed in recommendations 1 and 2 should also be completed by the Chief Executive for salary increases for Executive Directors. These salary increases should be approved by the Executive Board.	There are no salary increases currently. The revisions to the Authority's governance framework will include this recommendation.	Revised governance framework work in progress.
FR3.5	5. In the case of the Chief Executive the Code of Conduct at 14.2 requires a Remuneration Committee to be established to determine any salary increases for the Chief Executive.	Remuneration of the CEO is dealt with by the board or a remuneration sub-committee of the Board, and is approved by the Department of Environment Heritage and Local Government (DoEHLG). In any event, the salary level is determined by the Review Body on Higher Remuneration.	Implemented

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King (continued)

	Recommendations	Authority's response	Implementation Timeframe/Status
FR3.6	6. Salary reviews should take place on set dates, whether that is the anniversary date of an employee's commencement, which means different dates for every employee, or a set date being the same for every employee. In any event, salary reviews should only take place once every year.	There are no salary increases currently. The revisions to the Authority's governance framework and financial procedures will include this recommendation.	Revised governance framework work in progress.
FR3.8	The policy adopted on salary increases should be included in the Code of Conduct.	The revisions to the Authority's governance framework and financial procedures will include these recommendations.	Revised governance framework work in progress.
	Staff contracts		
FR4.1	Three months before a contract expires, there should be a document completed by the Executive Director with responsibility for the position stating whether the position is still required and, if it is, justifying why.	All contracts are currently caught by the Government moratorium and are not being renewed. This procedure will be included in the revisions to the Authority's financial procedures.	Implemented
FR4.2	If the Executive Director states that the position is still required, the Executive Director should then complete a document making recommendations, and justifying same, as to the filling of the position, whether that be by the existing employee, another employee or a new employee.	All contracts are currently caught by the Government moratorium and are not being renewed. This procedure will be included in the revisions to the Authority's financial procedures. In future, all contracts to be renewed will be submitted to the Department of Environment Heritage and Local Government (DoEHLG) for approval.	Implemented
FR4.3	The Chief Executive should review R4.1 and R4.2, add his own recommendations, and present the documents to the Board. The Board should then make a decision.	This procedure will be included in the revisions to the Authority's financial procedures.	Implemented
FR4.4	In the case of Executive Directors, R4.1 and R4.2 should be completed by the Chief Executive and R4.3 by the Chairman.	This procedure will be included in the revisions to the Authority's governance framework and financial procedures.	Revised governance framework work in progress.
FR4.5	In the case of the Chief Executive the Code of Conduct at 14.2 requires a Remuneration Committee to be established and this policy should be extended to deal with any contract renewal for the Chief Executive.	This procedure will be included in the revisions to the Authority's governance framework.	Revised governance framework work in progress.
FR4.7	The policy adopted on contract renewals should be included in the Code of Conduct.	This procedure will be included in the revisions to the Authority's governance framework.	Revised governance framework work in progress.

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King (continued)

	Recommendations	Authority's response	Implementation Timeframe/Status
	Credit cards		
FR5.1	Cash withdrawals on credit cards should not be allowed.	Cash withdrawals are no longer permitted on credit cards, effective January 2010. This procedure will be included in the revisions to the Authority's financial procedures.	Implemented
FR5.2	The travel credit card is presently controlled by the Finance Department. The policy of who is entitled to use the travel credit card, and their limit of expenditure, should be reviewed and committed to writing.	A policy on use of credit cards has been written and will be updated and included in the revisions to the Authority's financial procedures.	Implemented
FR5.3	A policy needs to be prepared and committed to writing, on the level of expenditure allowed on Hotels, Meals, Flights etc.	No foreign travel or hotel usage is currently taking place in the Authority. The Government travel policy Circular No. 11/1982, as clarified by the Department Office Notice 5_09 and the Department of Finance Guidelines of July 2009 is being implemented. A policy on hotel and travel expenditure reflecting this update will be completed and will be included in the revisions to the Authority's financial procedures.	Implemented
	Employee expenses		
FR6.1	1. The policy of who is entitled to claim expenses, and their limit of expenditure, should be reviewed and committed to writing.	A policy on employee expenses has been written and will be reviewed and updated with the update included in the revisions to the Authority's financial procedures.	Implemented
FR6.2	2. A policy needs to be prepared and committed to writing, on the level of expenditure allowed on Hotels, Meals, Flights etc.	No foreign travel or hotel usage is current by taking place in the Authority. The Government travel policy Circular No. 11/1982, as clarified by the Department Office Notice 5_09 and the Department of Finance Guidelines of July 2009 is being implemented. A policy on hotel and travel expenditure will be completed in line with this circular and will be included in the revisions to the Authority's financial procedures.	Implemented

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King (continued)

	Recommendations	Authority's response	Implementation Timeframe/Status
	Project Expenditure – Project packs		
FR9.1	(a) The Project Packs are an excellent form of monthly report which clearly reflects pertinent details of the expenditure on the various projects. The Executive Board needs to decide who should review and approve the Project Packs monthly whether it be the Executive Board itself, the Audit Finance and Risk Committee, the Chief Executive or a combination thereof.	The Project pack is circulated to the Audit, Finance and Risk Committee and the Chief Executive each month together with detailed management accounts. The Board are provided with a 'Flash report' which from March 2010 will include the key issues summary from the project pack.	Implemented
FR9.2	Part of that monthly review should be to take action where any project shows expenditure incurred that is greater than the expenditure approved.	In all cases the Project Management procedures will be followed to include the generation of the appropriate documents detailing the overspend/new spend, reporting to the Audit, Finance and Risk Committee via the project pack and to the Board.	Implemented
	Project Expenditure – Project Approval Documents		
FR9.3	(a) All project approval documents should be signed by the Project Director and the Chief Executive before the expenditure is incurred. A third signature, being the Finance Director, seems excessive.	To complete the project approval document requires the provision of the details behind the proposed expenditure which are reviewed by Finance. The signature of the Finance Director is essential to ensure that this is completed and if completed in a timely manner will not delay key project dates.	Recommendation not accepted
FR9.4	There should be at least two copies of the project approval document signed, with one copy being retained in the Finance Department and one copy on the Project File.	Agreed	Implemented
	Project Expenditure – Purchase orders		
FR9.5	(a) Purchase Orders should be completed for all project expenditure.	Purchase orders are completed for all project expenditure, as is required by the Authority's procedures	Implemented
FR9.6	(b) Clearly expenditure should not be allowed to exceed the level of approval for any project. Accordingly, the Executive Board needs to confirm which of the employees has responsibility for controlling the level of expenditure incurred, and ensuring that it is not greater than the expenditure approved.	The project director has responsibility for ensuring that project expenditure is managed within approved limits and ensuring that it is not greater than the amount approved. A list of projects and their directors will be provided to the Board to sign-off on the allocation of responsibility for cost control.	A list of projects and their proposed directors will be provided to the Board in May 2010 for approval.

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King (continued)

	Recommendations	Authority's response	Implementation Timeframe/Status
FR9.7	By the time the cheque request reaches the Finance Department it is too late to prevent the expenditure as the goods and/or services have already been received, usually in accordance with a Purchase Order. Financial control needs to be exerted at the time the goods and/or services are being ordered and the Purchase Order is being signed. That means that the responsibility in the first instance should be given to the relevant Project Director.	Agreed. Information on project spend together with invoices yet to be approved and outstanding purchase orders is available directly to each project manager through the Authority's Executive Information System (Vision). This will be reviewed in advance of requesting further spend by the Project Manager and Director before sign-off is complete with a hard-copy retained with the purchase order.	To be completed by May 2010. Enhancement to existing system is in progress and roll out to all staff members of new procedure will be in May 2010.
FR9.8	(c) When a purchase order is being presented to a Project Director for approval, a document needs to be presented to the Project Director showing both the expenditure approved for the project and the expenditure incurred to date.	Information of project spend together with invoices yet to be approved and outstanding purchase orders is available directly to each project manager through the Authority's Executive Information System (Vision) which can generate this in report format. The format of this report will be reviewed to ensure it provides the appropriate information. In advance of approving a purchase order this will be reviewed by the Project Director. The purchase order will be amended to record that this has been completed.	To be completed by May 2010. Enhancement to existing system is in progress and roll out to all staff members of new procedure will be in May 2010.
FR9.9	This document should not simply reflect the total amount of expenditure incurred and compare it with the total expenditure approved. It should analyse the expenditure approved over the appropriate categories and compare that analysis with the actual expenditure incurred over the same categories. For instance, if the expenditure that has been approved covers say construction, quantity surveyor's fees, architect's fees etc., then the expenditure approved in each category and the expenditure incurred each category should be compared.	The Executive Information System provides details of spend by project and supplier but not by category. This will be rectified from 2010. Similarly the approved spend will be analysed in the same level of detail. This will be a standard template available to all project teams.	Implemented

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King (continued)

	Recommendations	Authority's response	Implementation Timeframe/Status
FR9.10	This document should be prepared by the Project Manager, approved by the Project Director and finally retained on the Project File.	A hard copy of this document will be kept with the Purchase order and retained on the Project file.	Implemented
FR9.11	(d) Clearly, the Project Director cannot sign a Purchase Order that increases expenditure on a project beyond the expenditure level approved. Accordingly, the presentation of such a Purchase Order to the Project Director should automatically instigate an investigation into the project and the expenditure both approved and incurred.	The Project director is required to generate a Project Change document in this case. Details of spend to date versus previous amounts approved will be attached with explanation of the overruns/new line items identified and reported to the Audit, Finance and Risk committee and the Board.	Implemented
FR9.12	If necessary, this investigation could result in the preparation of the relevant documentation to increase the level of expenditure approval, whether that is a project approval document or a paper to the Executive Board.	In line with the project procedures at the Authority a Project Change Document will be required in this case and reported via the Monthly Project Pack to the Audit, Finance and Risk Committee and via the Flash report to the Board with a Board paper prepared if required.	Implemented
FR9.13	(e) The Executive Board might give consideration to deciding that Purchase Orders over a certain value need to be signed by both the Project Director and the Chief Executive.	See below.	Implemented Thresholds will be reviewed in revised governance framework work.

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King (continued)

	Recommendations	Authority's response	Implementation Timeframe/Status
FR9.14	As project approval documents for expenditure between €30,000 and €260,000 presently are meant to be signed by the Project Director, the Finance Director and the Chief Executive, it seems only logical that Purchase Orders over €30,000 and up to €260,000 should be signed by at least the Project Director and the Chief Executive.	<p>The project approval document is designed to obtain approval for expenditure to a number of suppliers each of which is procured through the generation of the individual purchase order. All purchase orders are routed through finance for approval. In line with the current Board sign-off any purchase order for an amount in excess of €50,000 will be brought to the Board for approval effective February 2010. For amounts above €30,000 but below €50,000 the project director, finance director and Chief Executive will sign-off.</p> <p>From 2010 finance will check that the proposed spend is within Board approved amounts before processing any purchase order. The Project accountant will review this for all projects prior to completion of the project pack.</p> <p>In addition Business planning will be carried out each quarter to review key timelines for each project and identify any delays/amendments to projects that could impact on the level of spend.</p>	<p>Implemented</p> <p>Implemented</p> <p>Implemented</p>
FR9.15	For consistency, whatever the signing requirements are for project approval documents, whether that is two or three signatures, should be repeated for Purchase Orders.	As with FR9.14	Implemented
FR9.16	(f) At present, if over €260,000 is to be spent on a project a paper has to be prepared for the Executive Board and the expenditure has to be approved by the Executive Board. It seems logical, therefore, that a Purchase Order for more than €260,000 should not only be approved by the Project Director and the Chief Executive but also be approved by the Executive Board.	As with FR9.14	Implemented

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King (continued)

	Recommendations	Authority's response	Implementation Timeframe/Status
	Project Files - Filing System		
FR10.1	There should be a universal file system for certain basic information on each project. That makes sense in any organisation but is particularly relevant at present where staff are, and will be, leaving the Dublin Docklands Development Authority, leaving the staff remaining to take over projects.	The Authority uses Microsoft SharePoint to store relevant documentation by project and to have a central location for all documentation that supports the project management procedures. However, currently all project documents are not always loaded to the system. In addition system improvements are required to improve its functionality. Therefore the system is currently supplemented by both soft and hard-copy files maintained by each project manager/director. A full review of project filing will be conducted in 2010 to ensure consistency of filing for all projects.	May 2010 – review of current filing and identification of weaknesses with SharePoint and in particular standard filing layout. June 2010 – develop plan to correct weaknesses July 2010 – ensure that all issues have been addresses and that all project filing is managed in a consistent manner.
FR9.20	The universal file system should contain standard sections for a number of aspects of any project.	Microsoft SharePoint is designed to be a standardised format and to support the Authority's project management procedures. Not all projects follow the filing methodology within SharePoint. This will be reviewed as part of an overall review of project filing in 2010.	May 2010 – review of current filing and identification of weaknesses with SharePoint and in particular standard filing layout. June 2010 – develop plan to correct weaknesses July 2010 – ensure that all issues have been addresses and that all project filing is managed in a consistent manner.

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King (continued)

	Recommendations	Authority's response	Implementation Timeframe/Status
FR10.2	<p>In the first instance the Project Managers and Project Directors would be best placed to decide the kind of information and documentation that should be included in a universal file system, as they are the people who would be using the files most regularly. However, it seems to me that the following documents would be amongst those that would be relevant:</p> <p>(i) Original Budget (ii) Project approval documents completed for Project (iii) Papers submitted to the Executive Board (iv) Copies of Purchase Orders issued on Project (v) Continuous summary of expenditure approved and expenditure incurred (vi) Tender Forms issued (vii) Tender Appraisal Forms (viii) Successful Tenders (ix) Schedule of Unsuccessful Tenders</p>	<p>The design and layout of SharePoint was built around the project needs of the organisation. The system will capture each of the documents identified but there are a number of exceptions to how projects are filed within SharePoint that will need to be corrected. Project filing at the Authority will be reviewed early in 2010 to ensure all of the items listed and any others required are captured in a consistent way for all projects.</p>	<p>May 2010 – review of current filing and identification of weaknesses with SharePoint and in particular standard filing layout.</p> <p>June 2010 – develop plan to correct weaknesses</p> <p>July 2010 – ensure that all issues have been addresses and that all project filing is managed in a consistent manner.</p>
	Purchase Orders – General		
FR11.1	(a) Purchase Orders should be completed for all expenditure where goods and/or services are supplied to the Dublin Docklands Development Authority, other than utilities.	Purchase orders are being completed for all expenditure (other than utilities), as is required by the Authority's procedures	Implemented
FR11.2	(b) The Executive Board might give consideration to deciding that Purchase Orders over a certain value need to be signed by both the Project Director and the Chief Executive.	The Board terms of reference will ensure that authorisation limits will be applied consistently across the Authority, to include authorisation limits for project expenditure, other expenditure, purchase orders, and cheque signing limits.	Implemented Thresholds will be reviewed in revised governance framework work.

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King (continued)

	Recommendations	Authority's response	Implementation Timeframe/Status
FR11.3	As project approval documents for expenditure between €30,000 and €260,000 presently are meant to be signed by the Project Director, the Finance Director and the Chief Executive, it seems only logical that Purchase Orders over €30,000 and up to €260,000 should be signed by at least the Project Director and the Chief Executive.	All non-project spend is identified and analysed during the annual budget. Purchase orders are raised for all items (except utilities). From 2010 finance will check that the proposed spend is within Board approved amounts before processing any purchase order and any individual purchase orders in excess of €50,000 (the current Board threshold) brought to the Board for approval. Purchase orders for expenditure of between €30,000 and €50,000 will be signed-off by the Project Director, the Finance Director and the Chief Executive.	Implemented
FR11.4	For consistency, whatever the signing requirements are for project approval documents, whether that is two or three signatures, should be repeated for Purchase Orders.	As with FR11.3	Implemented
FR11.5	(c) At present, if over €260,000 is to be spent on a project a paper has to be prepared for the Executive Board and the expenditure has to be approved by the Executive Board.	As with FR11.3	Implemented
FR11.6	It seems logical, therefore, that a Purchase Order for more than €260,000 should not only be approved by the Project Director and the Chief Executive but also be approved by the Executive Board.	As with FR11.3	Implemented

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King (continued)

	Recommendations	Authority's response	Implementation Timeframe/Status
	Purchase Orders – Legal Costs		
FR11.7	(a) At present, Purchase Orders are not issued for Legal Costs. The logic is that it is usually not possible to quantify the total cost of the legal services to be provided, such as with Court proceedings. However, substantial legal costs have been incurred by the Dublin Docklands Development Authority during 2008 and 2009 and it is, therefore, important that a system of control is implemented. Purchase orders should be completed for all Legal Costs detailing the tasks to be undertaken, the hourly charge out rates to be applied by the Solicitors and the frequency of invoicing.	Legal and Finance currently meet each month to determine the scale of the legal accrual. A report summarising the position to date and the expected outturn will be provided as part of the management accounts from March 2010 and a purchase order will be drawn-up and approved as payment falls due. In advance of payment a Board paper will be prepared on the proposed payment of legal fees from Feb 2010.	Implemented
FR11.8	(b) Details of charge out rates of the major firms of solicitors have already been obtained by the Company so this information is readily available. Naturally, if these rates are changed by the solicitors involved they will have to notify this fact to the Dublin Docklands Development Authority and a fresh Purchase Order will have to be issued.	This will be captured as part of the monthly review of legal actions and costs between finance and legal and an amending purchase order raised from Feb 2010.	Implemented
FR11.9	(c) With regard to frequency of invoicing, the Purchase Order could provide for invoicing periodically say every month or quarter. Alternatively, invoicing could take place based on the build up of fees, say every time they reach €20,000, €30,000 or €50,000. Such regular invoicing will enable the Dublin Docklands Development Authority to monitor legal costs as they are incurred.	All legal firms acting for the Authority will be encouraged to progress bill rather than wait until completion of work. This will be followed up at the monthly review between finance and legal from Feb 2010.	Implemented

Appendix 2: Recommendations from Financial Review (FRs) by Mr Ray King (continued)

	Recommendations	Authority's response	Implementation Timeframe/Status
FR11.10	(d) An indication should also be obtained from the Solicitors as to the possible level of fees, whether that is under €30,000, between €30,000 and €260,000 or over €260,000. This will determine who should approve the Purchase Order, whether it is the Project Director alone, where the fees are likely to be less than €30,000, the Project Director and the Chief Executive, where the fees are likely to be between €30,000 and €260,000, or the Executive Board, where the fees are likely to be more than €260,000.	As with FR11.7	Implemented
	3. Cheque Requests		
FR11.11	(a) Requests for cheques should only be made where a Purchase Order has been issued and an invoice received. The exception to this will be in the case of utilities, where only an invoice will have been received.	Cheque requisitions are only raised where there is a purchase order and an invoice. The revisions to the Authority's governance framework and financial procedures will include this recommendation.	Implemented
FR11.12	(b) In the first instance, the invoice received should be approved by the Project Director who issued the Purchase Order. In the case of utilities, the Director of Finance should request the cheque.	Agreed – this will be reflected in amended financial procedures.	Implemented
FR11.13	(c) Where the cheque request is for more than €30,000 it should also be approved by the Chief Executive.	All cheques for more than €30,000 will be approved and co-signed by the Chief Executive.	Implemented
FR11.14	(d) Where the cheque request is for more than €260,000 it should also be approved by the Executive Board or one of the Directors nominated by the Executive Board.	For cost control purposes, the Board reduced the expenditure authorisation limits to €50,000 in May 2009. Currently, a board member signs cheques for amounts exceeding €50,000. These authorisation limits will be reviewed as part of the revisions to the governance framework of the Authority.	Implemented
Procurement	Keep all relevant records which will demonstrate compliance with the Public Procurement Guidelines by the Dublin Docklands Development Authority in respect of Non Project Expenditure.	All records of the Authority currently being kept in a methodical accessible manner such that a review of procurement would be possible on all current projects.	Implemented.

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
	Role and Function		
PR1	The Department of Environment Heritage and Local Government (DoEHLG) establish annual reporting requirements including an agreed set of key indicators, and institute a formal review process on a regular basis.	This is a matter for the Department of Environment Heritage and Local Government (DoEHLG)	DoEHLG to determine
PR2	It may also be appropriate for the Minister in making appointments to the Board to consider the skills mix appropriate to the statutory functions required of the Board.	Skills mix is a factor in determining Board membership is a matter for the Minister. Rotation of Board members may be appropriate as the replacement of the full Board at a point in time may result in a loss of institutional knowledge at board level.	Minister to determine, as board vacancies arise
PR3	A formal procedure be instituted to ensure that Dublin City Council (DCC) is presented with an opportunity to comment on Section 25 applications and that these comments are taken into account by the Executive Board in adjudicating on such applications.	Senior management of both DDDA and DCC have agreed to set up a formal procedure for interaction to address all planning issues relating to both authorities on a regular basis. Dublin City Council Planning Department is circulated with Section 25 applications at referrals stage. Dublin City Council Roads and Water Divisions are circulated with Section 25 applications at referral stage as deemed appropriate by the DDDA planning team. All responses are incorporated into the DDDA planner's assessment.	Preliminary meetings between the DDDA and DCC have been conducted. A formal procedure, frequency and a schedule of meetings is to be agreed between DCC and the DDDA.
PR4	Instigate formal liaison meetings between DDDA and DCC planning teams to ensure effective management of areas of shared responsibility such as development levies and enforcement.	Such meetings have been instigated by the Acting CEO. Also consider including 'development management' in shared responsibility.	Preliminary meetings between the DDDA and DCC have been conducted. A formal procedure, frequency and a schedule of meetings is to be agreed between DCC and the DDDA.
PR5	The planning functions covering both adjudication and forward planning and plan monitoring should operate as a separate Planning Team within the Authority with a direct reporting line to the Chief Executive, to assist the necessary separation from the Authority's property and development role.	Will impact positively on planning team functions.	Implemented

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR5a	Within the Planning Team, a Senior Planner should be delegated responsibility for protecting the integrity of the adjudicative function on the basis of a bi-annual monitoring and reporting procedure.	A senior planner has been delegated responsibility to protect the integrity of the adjudicative function. Monitoring requirements are to be established with the DoEHLG.	Part implemented. Ongoing.
PR6	The legal function of the Authority be separated from the property function to ensure that the planning team is able to access legal advice on the proper application of its planning powers in the light of the Finlay Geoghegan Judgement and any changes in legislation or regulation which may be required.	On the recent retirement of the Secretary/Director of Property, all legal matters are being handled by the Authority's solicitor.	Implemented
PR7	The function of Secretary be separated from the property function. The appointment of a dedicated Secretary or Administrative Officer be considered, to report between the Executive and Board; and to support the Board in the carrying out of its functions.	On the recent retirement of the Secretary/Director of Property, a member of the Authority's staff has been appointed on a dedicated basis to the position of Acting Secretary	Implemented
PR8	The role of the planning administrator to be maintained at least until such time as an IT based system is in place to support the processing of Section 25 applications; and a quality and risk management culture is embedded in the leadership and day to day operations of the planning team.	The role of planning administrator is being maintained. Following recent changes in the Executive of the Authority, there has been a significant change in culture including a quality and risk management culture, in the leadership and day to day operations of the planning team and throughout the Authority.	Implementation of a significant culture change is in progress.
PR9	Enforcement powers under the Planning Acts should remain the responsibility of Dublin City Council in the Docklands area.	Agreed. However the practicalities of enforcement action being the priority of a separate organisation need to be discussed and procedures need to be put in place for the benefit of both DCC and the DDDA.	DoEHLG / DCC to determine in discussion with the Authority
	Consultation		
PR10	Consider the provision of formal 'pre-draft' Masterplan consultation. Submissions in this regard should only be considered where they relate to strategic issues which are generic to the strategic direction of the Masterplan.	The next Masterplan is due in 2013. Defining a submission as strategic or otherwise may be problematic. Criteria would have to be prepared to triage submissions. Review of Master Plan to begin 2011.	This may require a change to legislation or for the scope/terms of pre-draft consultation to be set out in regulations. DoEHLG to determine if there are any legislative changes required. To be implemented in advance of the commencement of at the time of the next Masterplan in 2013.

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR11	Adoption of a formal procedure for reporting on submissions to the Council and Board. A report setting out the principal issues identified in submissions and the Executive's recommendations on how those issues are addressed in the draft Masterplan, should be prepared for formal consideration by the Council in advance of a draft Masterplan going on public display.	The next Masterplan is due in 2013. It is noted that this is the process post public display.	This may require a change to legislation or for the scope/terms of pre-draft consultation to be set out in regulations. DoEHLG to determine if there are any legislative changes required. To be implemented in advance of the commencement of at the time of the next Masterplan in 2013.
PR12	In the event of a review of the 1997 Act and parallel planning legislation, consideration to be afforded to enhancing the status of the both the Masterplan and Planning Schemes as documents to which DCC and An Bord Pleanála must have regard in the event of an application or appeal to those respective authorities.	This is a matter for the Department of Environment Heritage and Local Government (DoEHLG). This brings into question the efficacy of the dual planning mandate i.e. the Section 25 certification process under the Authority's legislation or a planning application to DCC under the Planning Acts. Review of the legislation should be undertaken to ascertain the merit of abolishing the alternative consent process, as the integrity of the Planning Scheme can be compromised by incremental planning permission within the planning scheme area.	DoEHLG to determine
PR13	Introduction of a Design Brief stage to the Planning Scheme process. The procedure around the Design Brief could be undertaken as a protocol or under Statutory Instrument with the following steps:	This procedure should be undertaken as a matter of protocol. The need for regulations will be discussed with DoEHLG	To be implemented for all new planning schemes and amendments to existing planning schemes. Necessary legislative change to be advised by the DoEHLG.
PR13a	The preparation of a new Planning Scheme or an amendment to an existing scheme is approved by the Board.	This is currently the practice.	Implemented

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR13b	A draft Design Brief is prepared which clearly sets out the following: the strategic planning, urban design, architectural and infrastructural reasons for the proposed scheme/amendment; a statement of appropriate objectives relating to the foregoing reasons; the broad parameters around urban form, density, height, public space, and architecture; options and alternatives available in respect of the urban form criteria which are relevant to meeting the stated objectives.	The Authority recommends the implementation of the preparation of a draft Design Brief. The brief needs to be more holistic to include additionally mixed use, transportation, community gain / community infrastructure etc. The design brief needs to be informed by an analysis of the success of the previous planning schemes, current spatial policy and other relevant national policy (e.g. transport, ports, energy, climate, etc), observation and initial survey work on the ground, etc.. The brief should be framed bottom up and top down for a balanced framework.	To be implemented for all new planning schemes and amendments to existing planning schemes. Necessary legislative change to be advised by the DoEHLG.
PR13c	The Design Brief is considered by the Council of the Docklands Authority. Recommendations by the Council and the Executive of the Authority Response to those recommendations are set out in a Report which is furnished to the Board.	The Authority agrees the recommendation suggested. However, the Steering Group may fulfil this function. The composition of the Steering Group may make this recommendation redundant.	To be implemented for all new planning schemes and amendments to existing planning schemes. Necessary legislative change to be advised by the DoEHLG.
PR13d	The Board must have regard to the recommendations of the Council.	Agreed. However, the Steering Group may fulfil this function. The composition of the Steering Group may make this recommendation redundant.	To be implemented for all new planning schemes and amendments to existing planning schemes. Necessary legislative change to be advised by the DoEHLG.
PR13e	The Board directs the Executive to amend/complete the Design Brief as considered appropriate.	Agreed	To be implemented for all new planning schemes and amendments to existing planning schemes. Necessary legislative change to be advised by the DoEHLG.
PR13f	The approved Design Brief is furnished to the Minister. The Minister can modify the Design Brief and give mandatory instructions to the Authority.	The Department of the Environment Heritage and Local Government, representing the Minister, should be included as a member of the Steering Group. This would reduce any time delay while ensuring the Minister and Departments involvement in the design brief process.	DoEHLG to determine. This may require changes to the Authority's legislation.
PR13g	The Design Brief is placed on public display and recommendations and the Executive's response are furnished to the Board.	As it is proposed to put in place a representative Steering Group to agree the design brief and as the Draft Planning Scheme must go on public	Recommendation not accepted

		display within the terms and conditions of the Act for a statutory consultation period, the Authority does not agree with this suggestion.	
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Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR13h	Following consideration of the Executive's Report and amendment/approval of the Design Brief, the Board instructs the Executive to proceed to drafting the Scheme/Amendment.	Agreed	To be implemented for all new planning schemes and amendments to existing planning schemes. Necessary legislative change to be advised by the DoEHLG.
PR14	A representative Steering Group to be set up at the commencement of the Planning Scheme/Amendment making process. The Steering Group would include representatives from the DDDA Executive, DDDA Council, Dublin City Council Planning Department, Dublin City Council Infrastructure Department, Dublin Transportation Authority and Dublin Regional Authority.	The Authority believes that there is a case to be made for including the Department of the Environment Heritage and Local Government on this proposed Steering Group, though the implications of this for the subsequent Ministerial decision making process on planning schemes needs to be considered. Formation of the Steering Group should be at an early stage in the process. The Steering group should also include representative residents in the area, business community, political representatives	DoEHLG to determine
PR15	Consider, possibly as part of amending legislation, some provision for granting a certificate which is not compliant with the development control standards set out in the Planning Scheme but by reason of some exceptional circumstance not envisaged at the time of the preparation of the scheme is otherwise compliant with the overall objectives of the scheme, the objectives of the Authority and the proper planning and sustainable development of the area.	This is similar to the "material contravention" provisions under the Planning Acts. This is a matter for the Department of Environment Heritage and Local Government. An alternative to this approach may be a mechanism whereby the planning scheme may be varied, with limited timeframe and public consultation, to allow for some unforeseen circumstance. This would be preferable to PR15, which may undermine the integrity of the scheme if abused.	DoEHLG to determine
PR15a	The decision to proceed to consideration of such an application should be made by the Board in advance of the lodgement of the application.	The Authority supports an alternative approach as outlined in the response to recommendation PR15. This procedure would equally apply to variation of the Scheme.	Recommendation not accepted at this point in time subject to determination of recommendation PR15 by DoEHLG
PR15b	Specified criteria relating to exceptional circumstances should be set out in Regulations which the Board must be satisfied are met in advance of lodgement of an application.	The Authority supports an alternative approach as outlined in the response to recommendation PR15. This procedure would equally apply to variation of the Scheme.	Recommendation not accepted at this point in time subject to determination of recommendation PR15 by DoEHLG

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	Recommendations	Authority's response	Implementation Timeframes
PR15c	Proposals would be presented to the Executive in pre-planning meetings in sufficient detail to allow the Executive to prepare an informed recommendation to the Board as to whether to proceed to further consideration of the lodgement of an application. This decision would rest with the Board.	The Authority supports an alternative approach as outlined in the response to recommendation PR15. This procedure would equally apply to variation of the Scheme.	Recommendation not accepted
PR15d	In the event that the Board agreed to consider an application, this decision would be notified to the prospective applicant subject to the qualification that it is strictly without prejudice to any decision the Board may subsequently make on an application.	The Authority supports an alternative approach as outlined in the response to recommendation PR15. This procedure would equally apply to variation of the Scheme.	Recommendation not accepted
PR15e	Upon lodgement of an application, the Executive would make a recommendation to the Board.	The Authority supports an alternative approach as outlined in the response to recommendation PR15. This procedure would equally apply to variation of the Scheme.	Recommendation not accepted
PR15f	Should the Board decide refuse to issue a certificate, this decision and the reasons therefore would be notified to the applicant.	The Authority supports an alternative approach as outlined in the response to recommendation PR15. This procedure would equally apply to variation of the Scheme.	Recommendation not accepted
PR15g	If the Board decided in principle to issue a certificate, it would send notification of this effect to the Minister and Dublin City Council.	The Authority supports an alternative approach as outlined in the response to recommendation PR15. This procedure would equally apply to variation of the Scheme.	Recommendation not accepted
PR15h	In parallel it would publish a notice in a national daily newspaper indicating its decision in principle and inviting submissions from third parties.	The Authority supports an alternative approach as outlined in the response to recommendation PR15. This procedure would equally apply to variation of the Scheme.	Recommendation not accepted
PR15i	Having considered all submissions the Board would issue its final decision.	The Authority supports an alternative approach as outlined in the response to recommendation PR15. Final decision would be certification or rejection subsequent to assessment against the varied Planning Scheme.	Recommendation not accepted

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
	Certificate Determination		
PR16a	Review of procedure associated with application documentation: The description of development to be checked by the validating officer to ensure that a detailed and accurate description of the proposed development is provided stating the height of buildings (number of storeys), the overall floor space proposed, and a breakdown of the proposed uses and residential units, if applicable.	Agreed. Include mix of use. State if a protected structure. Validation by DDDA must include GIS registration of the site outline, which will check if lands have previous site history.	Implemented IT and GIS system to be implemented by June 2010 as per recommendation PR33.
PR16b	Upon confirmation of the description of development, which will coincide with the issue of a DD reference number; and after preliminary checks have been carried out, the applicant will erect a site notice reflecting the final and correct wording of the description of development.	Agreed. The DD reference number must be displayed prominently, as this is the means by which a member of the public may distinguish between initial and subsequent notices on an applicant site.	Implemented
PR16c	In instances where an application for a minor amendment to a previously certified development is submitted, the description of development shall clearly state the relevant DD reference number of the certificate to be amended, the description of the development as previously certified and clearly stating that the application is for an amendment whereby the proposed amendment is described in detail (see also recommendation in terms of amendment applications).	Agreed. In further discussions with Declan Brassil and Company the term 'amendment' to be replaced with the term 'varied'.	Implemented
PR16d	All drawings received should be date stamped together with a stamped DD reference number unique to each application.	Agreed. All A3 and A4 documents material should be scanned and maintained in an electronic archive.	Implemented
PR16e	Should the original or subsequently submitted drawings be amended in any way, a fresh set of application drawings shall be submitted and clearly stamped 'Amended' together with a date stamp and a stamp showing the unique DD case reference number. One full set of the originally submitted drawings shall be retained on file and stamped 'Superseded'.	Agreed	Implemented

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR16f	Upon the issue of a Section 25 certificate, one full set of approved drawings shall be retained on file and be clearly stamped 'Approved' together with the corresponding date that the certificate was issued.	Agreed	Implemented
PR16g	Section 25 Certificates, as issued should clearly reference the list of approved drawings accompanying the certificate.	Agreed	Implemented
PR17	That the Authority has regard to the attached guidance note on validating applications.	Agreed, and as per Appendix 1 of the Grant Thornton Report	Implemented
PR18a	Review of procedures associated with the submission of Additional Information Having regard to the objectives of the Section 25 process to expedite decision making and to certify compliant proposals, the Grant Thornton recommendation is endorsed that Additional or Further Information requests should not be entertained by the Authority where a proposal is clearly non-compliant with the relevant Planning Scheme.	Agreed. The prioritisation of pre-application discussions should minimise clarification requirements after validation.	Implemented
PR18b	Non-compliant proposals should be returned with a letter stating the reasons of non-compliance and inviting the applicant to withdraw the application and submit a fresh application addressing the deemed reasons for non-compliance. In the event that the applicant refuses to withdraw the application (by confirmation in writing), the application shall be registered and processed in an identical manner to other applications, as suggested by Grant Thornton resulting in non-certification following consideration by the Board. However, such applications should be fast tracked to enable an early Board determination in order to avoid time delays resulting from applicant's seeking to amend schemes subsequent to their confirmation of non-withdrawal of a proposal.	Agreed. Non-compliant applications where the applicant refuses to withdraw the application should be brought to the Board's attention but should not be prioritised over compliant applications.	Implemented

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR18c	The Board are recommended to consider extending delegated powers to the Executive officers to confirm non-certification to the applicant without formal consideration by the Board; provided that a delegated report by the Planning Officer is signed off by the relevant manager and director; prior to the issue of a notification of decision not to certify the proposed development and stating the reasons for same. Such applications together with delegated reports should be subsequently circulated to the Board for information purposes.	In the current climate the Authority would not recommend the extension of current executive powers to confirm non-certification to an Applicant without formal consideration by the Board.	For re-examination in January 2011
PR19a	Planner's Reports should be prepared according to a standardised template, which includes the following: <ul style="list-style-type: none"> o Heading stating whether it is a 'Delegated Report', report to the Sub-Committee and relevant date of Committee meeting or a Report to the Board and the date of the Board meeting where the report will be considered. 	Agreed. Note the comments on PR38 apply. The template for the delegated report is to be finalised subject to PR 18c.	Implemented
	<ul style="list-style-type: none"> o Reports, whether delegated, sub-committee or for the Board's consideration should be checked and signed by the relevant line manager with final sign-off required by the Director. Copies of signed reports shall then be included and circulated to members of the sub-committee and Board prior to relevant meetings. 	Not applicable if referring to recommended delegated powers. All other recommendations agreed. Minor applications should be delegated for sign off to the senior planner. Final sign off is currently completed by the senior planner.	Implemented in part.
	<ul style="list-style-type: none"> o Layout of a standard report template should provide for a detailed description of development in table format stating proposed floor space areas against each use proposed together with a column of the applicable levy rates and calculations. 	Agreed.	Implemented

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
	<ul style="list-style-type: none"> o Standard report templates should provide for a summary of relevant Planning Scheme standards applicable to the proposal and a section setting out relevant planning history where the subject application relates to a wider / comprehensive redevelopment proposal. 	Agreed.	Implemented
PR19b	In order to allow feedback from third party consultees to be properly considered by the Board, as reflected in Planner's Reports it is suggested that the current 10 day consultation period be extended to 21 days (commencing upon the date of erection of the site notice, which should coincide with formal letters of consultation being sent to other consultees, such as DCC). No formal consideration of a proposal shall either be undertaken by the sub-committee or the Board prior to the expiration of the 21 day consultation period.	The Authority disagrees with this recommendation as it would severely impact on the Authority's fast track planning facility. The current policy of the 10 day consultation period has worked extremely well since its implementation. However this is an item which should be kept under review. It is assumed the 21 days include weekends and that the total consultation period is 3 weeks rather than the 10 working days as is.	Recommendation not accepted - To be kept under review.
PR20a	Procedures pertaining to applications for amendments to previously permitted development. The Board adopts criteria whereby an application is determined as an amendment application. Such applications should genuinely be of a minor nature, which would not require consultation and would not materially alter the previously certified scheme. Such applications could typically be amendments to the design and appearance of a building – for example a change in fenestration pattern or materials / finishes or pedestrian access arrangements.	The Authority recommends that at this point this recommendation is not implemented. Public consultation is considered appropriate for all Section 25 applications.	Recommendation not accepted - To be kept under review.

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR20b	Any application which seeks to increase the volume or height of a previously certified scheme should be subjected to full scrutiny against the provisions of the Planning Scheme and be subjected to full consultation procedures. Such applications should also include change of use applications where the proposed change of use relates to a floor space in excess of 100sq.m.	Agreed	Implemented
PR20c	Applications for amendment that would result in a volumetric increase in building envelope or a change of use of floor space in excess of 100sq.m shall not be described in the description of development as an 'amendment application' but shall be described and considered as a fresh Section 25 application.	Agreed. Perhaps the wording 'modification' / 'variation' may be used in the description and extent of development rather than a full description of that previously certified.	Implemented
PR20d	Applications for 'minor amendments', as described above, shall make reference to the DD reference number of the parent certificate and shall provide a detailed description of the proposed amendment along with the description of the certified development.	Agreed. A brief outline of the certified parent development would be sufficient in the description and extent of development.	Implemented
PR20e	Plans / Drawings submitted for amendment applications shall include a copy of the final certified drawings of the scheme they seek to amend with the proposed changes clearly marked / indicated on the new plans/drawings for ease of comparison.	Agreed	Implemented
PR20f	The Board might want to consider extending delegated powers to the Executive to deal with such applications for minor amendment meeting the suggested criterion above in order to fast-track decision making.	The Authority recommends that at this point this recommendation is not implemented.	Recommendation not accepted - To be kept under review.
PR21	Support for the recommendation of Grant Thornton that the Board should consider delegating powers to the sub-committee of the Board or Senior Executive Officers to make decisions on such applications which are of a minor and/or non-contentious nature, including applications for signage and minor changes of use.	The Authority recommends that at this point this recommendation is not implemented.	Recommendation not accepted - To be kept under review.

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR22	Prohibit the practice whereby planning conditions are attached to Certificates to:		
	<ul style="list-style-type: none"> o seek to render a non-compliant scheme, compliant with the Planning Scheme; and/or, 	Practice has ceased. Such conditions have not been used since the Finlay Geoghegan judgement.	Implemented
	<ul style="list-style-type: none"> o seek to transfer or link compliance of one or more elements of a scheme onto a subsequent phase of development for which a formal application had not been lodged; and 	This practice has ceased. Such conditions have not been used since the Finlay Geoghegan judgement.	Implemented
	<ul style="list-style-type: none"> o Seek compliance with the Planning Scheme in a manner whereby individual sites are linked together that does not form part of the same planning unit, albeit that such sites are in the same ownership. 	The Finlay Geoghegan judgement made it clear that applicant sites must be judged in and of themselves. Practice has ceased.	Implemented
PR23	A Section 25 Certificate should make explicit reference to the plans/ drawings numbers certified and refers to the date of the Board meeting where the decision was made to certify a development.	Agreed	Implemented
PR24	A Section 25 Certificate should expressly state that the scheme as proposed and considered by the Board is compliant with the relevant Planning Scheme in operation at the date of making the decision.	Agreed	Implemented
	Compliance Issues:		
PR25a	That a separate procedure is adopted whereby applications for compliance are treated as standalone applications through the allocation of a unique reference number that will link the compliance application with the relevant certificate and condition for compliance. Example - compliance with Condition 13 attached to Certificate Reference DD167 be allocated a unique reference number CDD167.C13.	Agreed	To be implemented, with effect from April 2010.

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR25b	That a separate, parallel compliance register be established and linked to the planning register file.	Agreed. A conditions and associated compliance register has been created. This is updated upon certification of a development and receipt of compliance submissions. The register should integrate with the Section 25 system as part of the IT upgrade.	Implemented in part. IT upgrade scheduled for June 2010.
PR25c	Upon compliance of all relevant conditions that the applicant applies for a compliance certificate to the DDDA requesting confirmation of compliance with all relevant conditions.	This matter is currently under review by the Authority so as to ensure best practice is achieved. Issuing compliance certificates could expose the Authority to additional legal risks. The Authority's understands that it is not the practice of other planning authorities to issue compliance certificates. The planning team is to retain the current practice of issuing partial opinions of compliance at appropriate stages, in accordance with the development construction program and in line with the requirements of the conditions until such time as a study of best practice elsewhere in connection with the issue of opinions of compliance is concluded.	Implementation ongoing.
PR25d	That the DDDA issue such a Compliance Certificate only in the event that it is satisfied that all relevant conditions have been complied with and that a copy of the compliance certificate is put on file and distributed to the applicant and other relevant bodies, such as DCC in the same fashion as a Section 25 Certificate.	Agreed, subject to the comments at PR25c.	Implementation ongoing.
PR25e	In the case that the DDDA is not satisfied that compliance with all conditions has been achieved it shall issue a letter stating the reasons for non-compliance and withholding a Certificate of Compliance together with an invitation to the applicant to submit outstanding items by listing any outstanding conditions. A copy of this letter shall also be put on file and provided to the applicant.	Agreed, subject to the comments at PR25c. Non compliance should be advertised on the Authority website.	Implementation ongoing. IT upgrade scheduled for June 2010.
PR25f	That the Board extend delegated powers to the executive to determine applications for compliance at sub-committee level.	Agreed. In reference to compliance submissions requiring Board's approval. Other submissions to be agreed with planning team of the DDDA.	Implementation ongoing.

PR26	Sub-Committee and Board Meeting requirements:		
PR26a	Minutes of Board and Sub-Committee meetings should be placed on the planning file.	Agreed Cover sheet and extract of minute relevant to certificate only.	To be implemented, with immediate effect from April 2010.
PR26b	The number of applications to be considered at any one meeting should be regulated / capped in order to focus efforts. Minor applications could be delegated for decision making, as set out above to ease workload.	The Authority while agreeing with this recommendation still requires time to finalise criteria for its full and proper implementation. At this point in time the recommendation referring to delegated powers is not recommended but will be kept under review. Refer to recommendation PR 18c.	Time frame for completion by May 2010 subject to delegate powers being finalised.

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR26c	Members of relevant Committee / Board carry out site visits on large/complex applications prior to meeting – at least the Chair of the Planning Sub-committee and two other members, which can be on a rota basis.	Agreed. The Planning Team is to draft a policy paper, which will afford Board Members site visits in exceptional circumstances, to development sites, for large or complex Section 25 applications. These site visits will be at the discretion of the Board Members. Site visits are primarily the responsibility of the Executive.	Implementation ongoing.
PR26d	The presenting Planning Officer should provide a 3-5 minute presentation on each agenda item prior to discussion, which will inform discussion and decision making.	Agreed	Implemented
PR26e	Relevant Planning Scheme policies should be highlighted and included in presentation and reports.	Agreed	Implemented
PR27	A Statutory Instrument by which certain procedures are provided with a legislative basis should be considered by the Board for recommendation to the Minister. Regulations could specifically address procedures and timeframes for validation of Section 25 applications; further information and additional information requests; public consultation and consultation with statutory consultees; reporting procedures to the Board and its Sub-Committee; certification; and post-certification compliance.	This is a matter for the Department of Environment Heritage and Local Government (DoEHLG)	DoEHLG to determine.
PR28	That protocol be agreed to ensure the consistent and reasonable interpretation of Planning Schemes which avoids inconsistent and/or overly liberal interpretations of ambiguous references within the Planning Scheme. The Board should endorse a more prescriptive interpretation of Planning Scheme standards and provisions in terms of permissible building heights, plot ratio's, land use mix, residential mix, social and affordable housing, car parking provision, etc.	Agreed. An interpretation of one provision of the planning scheme should not compromise the overall integrity of the planning scheme.	Time frame for completion by May 2010

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR29	That the Board considers a review of Planning Schemes whereby potentially ambiguous provisions within Planning Schemes are identified (for example plot ratio calculation, references to building heights, land use mix, etc.) are formally reviewed and subjected to ministerial approval. Such a review could provide an appropriate opportunity to revisit issues of planning importance and the overall strategy and future direction for the Planning Scheme areas against progress to date. For instance the issue on land use mix (60/40 ratio) and appropriate plot ratios might be revisited in light of implemented schemes and a survey of floor space and ratio's achieved to date.	Agreed. Specific to reviews of existing planning schemes and planning scheme amendments.	On-going
PR30	The role of the Design Review Panel should be limited to large and complex applications or sites which include landmark buildings.	The role of Design Review Panels is at present under review by the Authority	On-going
	IT System		
PR31	The adoption of standard practices in order to enhance the transparency of the plan making and development control functions of the Authority and to enhance public participation and consultation strategies.	Agreed. This recommendation needs to be fleshed out in terms of national and international best practice and the status of our existing legislation.	Time frame for completion by June 2010
PR31a	To allow electronically submitted third party submissions at the various public consultation phases of the plan making process.	Agreed	Implemented. Agreed policy as of February 2010.
PR31b	To publish a list of third party observations received, together with a Planner's Report and recommendations to the Board addressing the same.	Agreed	Implemented. Agreed policy as of February 2010.
PR31c	To publish relevant minutes of the Board setting out plan making decisions and recommendations to the executive together with Ministerial Guidance received and proposed modifications to the plan / scheme.	Agreed	Implemented. Agreed policy as of February 2010.

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR31d	To publish all relevant information submitted on Section 25 applications on the website, including plans/ drawings and supporting information, requests for additional information and responses. This information is currently available but is protected to authorised users and password holders.	Agreed	Time frame for completion by May 2010
PR31e	To allow interactivity between the Authority's GIS-database (see recommendation above) whereby interested parties can view a map based planning history for the area.	Agreed, IT and GIS update required.	Time frame for completion by June 2010
PR31f	To allow the submission of electronic third party observations on applications and to make available all received third party observations online.	Agreed, IT and GIS update required.	Time frame for completion by June 2010
PR31g	To publish minutes of Board meetings and decisions of the Board online.	Agreed, subject to the need to redact commercially sensitive matters. It would be the Board's intention to keep the extent of redacting to a minimum.	Time frame for completion by May 2010. Ongoing DDDA web site designed to accommodate corporate governance information.
PR32	Consider a review of compliance with conditions relating to the delivery of Social and Affordable housing.	Agreed. This review should form part of the statutory annual report. A monthly Key Performance Indicate is now being maintained in respect of Social and Affordable housing certified and delivered.	Time frame for completion by May 2010
PR33	Develop a GIS database of applications, that would aid in identifying relevant certificates and planning histories for a site, and that could potentially be linked to DCC's database.	Agreed	Time frame for completion by June 2010
PR34	Undertake an upgrade to the system would allow the calculation of the consultation period automatically, which could also provide a prompt to planner's at key stages to chase comments from consultees prior to the finalisation of Planning Reports.	Agreed	Time frame for completion by June 2010
PR35	Undertake an upgrade to the system to make provision for the automatic calculation of the full range of levies applicable within the Docklands, without the need for manual manipulation.	Agreed	Time frame for completion by June 2010

Appendix 3: Recommendations from Planning Review (PRs) by Declan Brassil & Company Limited

	Recommendations	Authority's response	Implementation Timeframes
PR36	Investigate the possibility of upgrading the planning software to allow interactive information sharing between accounts information and planning, which would enhance certainty over correct levy calculations and collection at the appropriate phases of development.	Agreed	Time frame for completion by June 2010
PR37	Undertake an upgrade to the system to allow functionality to create and save electronic advisory memorandums following consideration by the sub-committee and Board meetings. Such a function should also make provision for prompts when a final Certificate is generated on the system to act as a reminder for conditions to be added, amended or deleted prior to the signing and sealing of the final Certificate.	Agreed	Time frame for completion by June 2010
PR38	Upgrade the system software to allow various stages of the planner's report to be saved on the system at key stages. The system should ideally be set up to make a distinction between reports to the sub-committee and reports to the Board and final versions of a report (in accordance with recommendations from the Board) whereby information contained on advisory memo's are incorporated when prompted to do so and in order to generate a Certificate for signing and sealing.	Agreed. It is noted that there is only one version of the Planner's Report, which is distinguished from the preparation stage reports (draft reports) by the signature of the planning officer and the senior planner. The planner's report is presented to the Planning Sub-Committee and all subsequent changes recommended by the Planning Sub-Committee and the Board are captured in advisory memorandum.	Time frame for completion by June 2010
	ADDITIONAL RECOMMENDATIONS STAFFING	Under review. Written procedures in relation to the recruitment and appointment of planning staff to be put in place, including the composition of the interview panel, qualifications, work experience, term of employment, contractual arrangements etc. See also recommendations PR5 and PR8.	Time frame for completion by May 2010.

APPENDIX A: DDDA BRIEF AND CORRESPONDENCE FROM THE DOEHLG COMMISSIONING THE REVIEW**Draft specification for an independent review of the function and structure of Dublin Docklands Authority Planning powers:**

The Dublin Docklands Development Authority (DDDA) wishes to conduct a comprehensive review of the Authority's Planning Function to include a review of planning structure, decisions, policies and procedures. A draft of the review will be required by the end of the first week in October.

A review of the Section 25 application process was undertaken by Grant Thornton Consultants in association with Tom Philip & Associates, Planning Consultants, immediate to the Judgement of Finlay-Geoghan in Autumn 2008. The recommendations arising from this review were adopted by the Board of the Authority in February 2009. The Authority would now like to review these procedures in the context of a full planning audit.

The following framework shall form a guide to review subject to the methodology of the review being agreed by the Board of the Authority.

Methodology may include the following audit:

- Planning outcomes over the last 10 years reviewed in light of the Judgement, (Section 25 Certifications)
- The decision making process on Section 25 applications including the role of precedent in arriving at a positive recommendation
- Reporting relationships
- The vires of conditions attached to Section 25 certificates
- Time scales for Section 25 adjudication
- Stakeholders and third party input in Planning Scheme preparation and Section 25 applications
- Interview all planning staff past and present and ascertain their views and concerns
- Review of Grant Thornton procedures document

1. **A Legislative Review** of the planning powers of the Authority as provided for in the dedicated Docklands Act and as amended.

This review should consider the efficacy of the introduction of planning regulations, which would regulate the planning powers of the Authority.

2. **Planning Structure and Function Review.**

a. **Planning Structure (and the separation of powers):**

- i. A review of planning structure to include the internal and external relationships of the Planning team, for example the relationship between the adjudicative role of the planning team and the preparation of Planning Schemes and the relationship between the planning team and the development remit of the Authority.

- ii. The administrative function in terms of document management and planning procedure administration and the role of this function within the planning team
- iii. The relationship between the finance team and the planning team in terms of contribution levy calculation and collection
- iv. The relationship between the legal team and the planning team and the demarcation of legal and planning issues
- v. Relationship between the DOE and the Authority and the relationship between DCC and the Authority

b. Planning Function:

- i. A review of the Master Plan and Planning Scheme preparation
- ii. Implementation of the Planning Scheme; a review of the Section 25 adjudicative function of the Authority
- iii. Equity in the preparation and implementation, (section 25), of the Planning Schemes and Master Plan for all participants, for example section 25 applicants and equitable outcomes
- iv. The position of IT in the operation of the planning function and a review of the existing planning IT system

Correspondence from the DoEHLG



Comhshaol, Oidhreacht agus Rialtas Áitiúil
Environment, Heritage and Local Government



17 August 2009

Ms. Niamh Brennan,
Chairperson,
Dublin Docklands Development Authority,
52-55 Sir John Rogerson's Quay,
Dublin 2.

Dear Chairperson,

The Department wrote to the Authority on 25 June 2009, setting out the new provisions contained in the updated *Code of Practice for the Governance of State Bodies*. In the letter, the Board was asked to submit a report to the Department providing confirmation of the Authority's compliance with the provisions of the Code at an early date.

The Minister and the Minister for Finance have recently received correspondence both from the Chairman of the Public Accounts Committee (PAC) and from the Clerk to the Joint Committee on Environment, Heritage and Local Government. The Environment Committee was seeking an independent assessment by the Comptroller and Auditor General (C&AG) of the Authority's accounts for the last 5 years and the PAC specifically sought the inclusion of the Authority within the remit of the C&AG given, *inter alia*, concerns publicly expressed in relation to standards of corporate governance in the Authority.

The Minister believes that the excellent work undertaken in the social and economic regeneration of the Docklands area must be pursued in an open and transparent way that has the confidence of local communities, other stakeholders and the general public. He is, therefore, of the view that a comprehensive review of corporate governance should be undertaken immediately within the Authority with a view to a report being submitted to him no later than early October. This report should include the Board's assessment as to whether a more detailed investigation is warranted on foot of the review's findings.

Finally, the Minister wishes to thank you and the Board for the very significant personal commitment of time and effort to the work of the Authority, which is a priority project for the City and the State, and to assure you of his continued support in the challenging period ahead.

Yours sincerely,

David Walsh
Principal
Planning System and Spatial Policy

An Roinn Comhshaoil, Oidhreacht agus Rialtais Áitiúil, Teach an Chustaim, Baile Átha Cliath 1
Department of the Environment, Heritage and Local Government, Custom House, Dublin 1
Tel: 353 1 888 2000 LoCall: 1890 20 20 21 Fax: 353 1 888 2888 Web: www.ewh.gov.ie



APPENDIX B: LIST OF PERSONS CONSULTED**DDDA Board Members**

Mr Mark Griffin, Assistant Secretary, Water & Planning Division, DoEHLG and DDDA Board Member¹

Ms Niamh O'Sullivan, DDDA Board Member

DoEHLG

Mr John Martin, Principal Planning Advisor, Spatial Planning Unit, DoEHLG

DDDA Executive

Mr John McLoughlin, Director of Architecture (current)

Mr Terry Durney, Director of Planning and Technical Services (past)

Mr Anthony Abbott King, Senior Planner (current)

Mr Cameron Rush, Executive Planner (current)

Mr Brian Keaney, Senior Planner (past)

Mr Jerry Barnes, Chief Planner (past)

Mr Hugh McCann, Planning Administrator (current)

Mr David Higgins, Director of Finance (current)

Mr Pat Boland, Finance Manager/Project Accountant. (current)

Mr Niall Mulcahy, Director of Property/Legal (current)

DDDA Council

Ms Deirdre Scully, Irish Planning Institute (by telephone)

Ms Fionnuala Rogerson, RIAI (by telephone)

Ms Betty Ashe, Saint Andrews Resource Centre (by telephone)

Mr Seanie Lambe, Inner City Organisations Network (by telephone)

¹ Mr Griffin was accompanied by Mr Barry Quinlan

Mr Charlie Murphy, Irish Nautical Trust (by telephone)

Mr Gerry Fay, North Wall Community Association (by telephone)

APPENDIX C: CURRENT AND PROPOSED PLANNING STRUCTURE (ORGANOGRAM)

Figure C1: Current Planning Structure

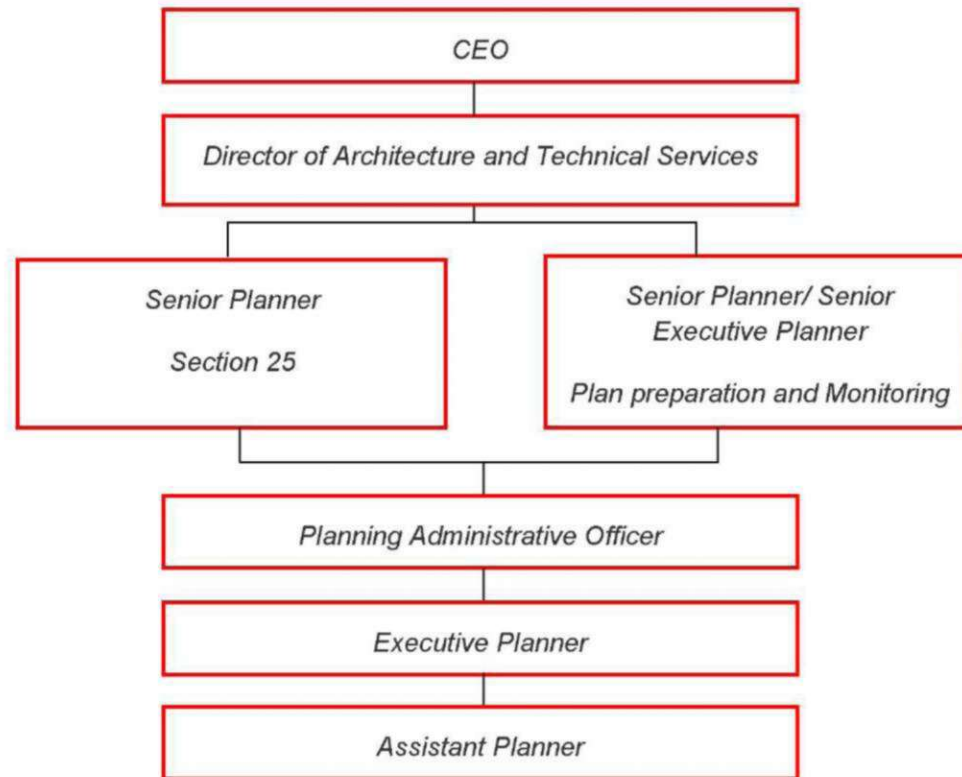
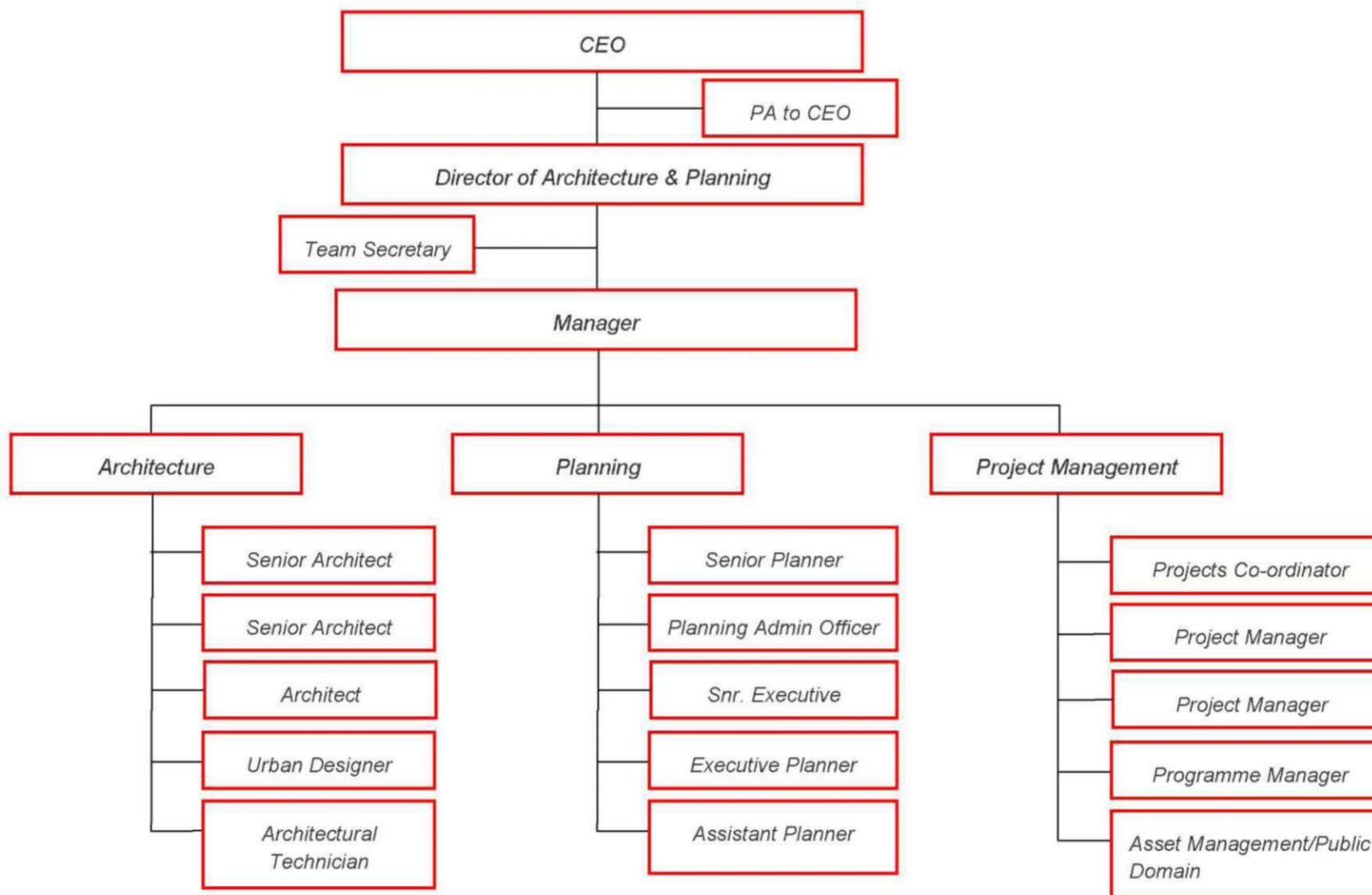


Figure C2: Proposed Planning Structure



Source: Working Draft Organisation Structure, Dublin Docklands Development Authority.

APPENDIX D: OVERVIEW OF THE ACTION AREA PLANS

Introduction

Action Area Plans are a mechanism used by Planning Authorities to outline a planning framework for the design and layout of a developing area, with regard to local physical, social and economic conditions. An Action Area Plan (AAP) is not a statutory document, unless adopted into the relevant County/City Development Plan. An AAP is primarily intended to function as a co-ordinating tool to provide guidance to stakeholders in setting the appropriate context for individual planning applications within the Plan area where there may be a number of different developers involved and where individual site development is required to have regard to the wider County/City Development Plan strategic objectives.

The Dublin Docklands Masterplan identifies a number of land parcels within the Docklands area where Action Area Plans are appropriate in order to guide their future development. There are four Action Area Plans which have been produced to guide the development of:

- Ringsend AAP (No Date provided)
- East Wall AAP (2004)
- City Quay and Westland Row AAP (No Date provided)
- Church Road and East Wall AAP (No Date provided)

The above AAP's provide limited development standard guidance, reflecting the non-statutory status of such plans. Development control standards are more appropriately taken from the Masterplans and Area Planning Schemes. The principal provisions of each AAP are summarised below.

Ringsend AAP

This plan area may be identified as the Ringsend/Irishtown village centre and the River Dodder area as it flows through the Dublin Docklands area.

Provisions of Ringsend AAP:

- Provisions for road realignment at Cambridge Road and Thorncastle Street (at section nearest Bridge Street) and general road improvements to Cambridge Road, Thorncastle Street, Irishtown Road, Ringsend Park, the Grand Canal area and the Dodder pathways.
- Investigation of lands in Bremen Road area for the provision of Social Housing (estimated 50 units yield).
- Basic design standards, including three storeys plus attic standard for site on Cambridge Road.
- Plan area lies within a zone of archaeological interest and regard is required to DCC policies.

East Wall AAP

The Plan area comprises lands located to the east of the Royal Canal, between East Wall Road and Sheriff Street Upper, of some 39.8 hectares in extent.

Provisions of East Wall AAP

- *Social Infrastructure* - provision of including redevelopment of East Wall Community Centre.
- *Traffic and Movement* - Create an Environmental Traffic Cell, Church road to form central spine movement route.
- *Mixed uses* - Seek provision of mixed-use development in area to achieve sustainable environment integrated living, working, shopping, leisure & community activities.
- *Building Heights* - to generally hold to maximum heights illustrated in Figure 5.11. Proposed schemes will have to comply with control standards and guidelines outlined in the City Development Plan. The North Lotts Planning Scheme allows for five storeys of commercial (plus one set-back storey) or six storeys of residential (plus two set-back storeys). Nine storey heights permitted at junction of East Road & Sheriff St. Upper.
- *Land use Mix* - ensure overall land use mix of 30% commercial (in particular enterprise & small business units) & 70% residential in all new building. However, the East Wall Road is more commercial in nature & higher % of commercial uses will be sought along frontage.
- *Residential density* – not in excess of net density of 150 units per hectare.
- *Residential mix* - mix of unit sizes in residential development in large scale schemes (> 20 units) of minimum 30% family sized units (at minimum of 80sqm).
- *Residential Open Space* - Provision of 8sqm per bed space of open space for new residential development
- *Individual development sites* - proposals for six development sites provided (Wiggins Teape, Print Works, Church Road, East Wall Community Centre, St. Mary's Road North, East Road/Ravensdale Road and Abercorn Road/Church Street East.

City Quay and Westland Row AAP

The area of this plan is strategically located within walking distance of the inner city and public transport linkages. The northern fringe of the area is defined by the Campshires and the River Liffey and beyond it, on the opposite bank, is the International Financial Services Centre and the ongoing development of the North Docklands.

Provisions of City Quay and Westland Row AAP

Four precincts are identified within the Plan area, comprising existing residential precincts, Office Precinct, Mixed Use Precincts and the quayside. Generic development advice is given for each precinct.

Within these precincts the provision of safe and active streets, focal spaces, the retention of historic fabric and building heights (general maximum building heights for area identified at 4-6 storeys) and landmarks are provided. Two key development sites are identified:

- *Tara Street Station* – potential to develop a landmark building at a height appropriate to the prominent quay location and existing office development on Tara Street.
- *Pearse Station/Trinity College* – mixed use development providing for educational facilities, residential use & offices, with building heights responsive to established heights on Pearse Street and Westland Row.

General development standards are also provided to include:

- *Parking* standards to be consistent with DTO Strategy
- Where *plot ratio* of 2.5 or more permitted, parking provision should not be increased to reflect increased densities.
- *Mobility Management plan* required for all development sites above 0.2 hectares
- Propose *traffic management* measures to reduce pedestrian/vehicle conflict;
- *Link Street provision* - North-South link (Westland Row to Lombard Street East) and East-West link (Townsend Street/Hanover Street East and Sandwith St. Upper & Lower).
- *Provision of Focal Spaces* – at Townsend Street/Hanover Street, Erne Street Upper/Hogan Place pocket park, Lombard Street East pocket park and the Campshires.

Church Road and East Wall AAP

This primary purpose of this plan is to secure the improvement of the main street of East Wall Village (Church Street). Accordingly, the provisions of the AAP are limited in nature, with an emphasis on street improvements, aesthetic improvement of private property, the encouragement of street activity and improved traffic. The following design concepts are promoted:

- Reinforce linear quality of street linking to elements along it
- Improve quality of surfaces and furniture on street
- Use compatible finishes & elements
- Provide boundary to street
- Emphasise local landmarks/business and social points

Remove visual clutter of wirescape

APPENDIX E: OVERVIEW OF THE GRAND CANAL DOCK PLANNING SCHEME

Introduction to the Grand Canal Dock Planning Scheme

The Grand Canal Dock area comprises the lands framing the inner and outer basins of the Grand Canal Dock, covering 38.2 hectares and including 9 hectares relating to water bodies (inner and outer basins). A large proportion of the area fronts either onto the River Liffey, the basins or the River Dodder.

The area has been divided into 9 specific development zones with specific characteristics, ownership patterns, and development potentials.

Objectives of the Masterplan for the Planning Scheme Area

The Planning Policy Framework that informed the preparation of the Grand Canal Dock Planning Scheme was the Dublin Docklands Area Masterplan 1997. The overall objective set by the Masterplan for the area was to seek the development of a new city quarter which responds to the potential of the water bodies and the proximity to the city centre, to seek the social, economic and physical regeneration of these lands, with particular regard to the former Dublin gas production site, and to allocate 60% of the area for residential purposes.

Lands within this area benefit of a predominantly Zone 14 Land Use Zoning Objective, the purpose of which is *'To seek the social, economic and physical development or rejuvenation of an area with mixed use of which residential and Zone 6 (enterprise and employment creation) would be the predominant land uses'*. The remainder of lands located within the area are mainly subject to a Z2 Land Use Zoning Objective *'To protect, provide and improve residential amenities'*.

The only Conservation areas identified in the Masterplan within the area are those specifically related to the water bodies, namely the inner and outer basins, the River Liffey and the Dodder). These areas include the immediate areas fronting the rivers and docks, where protected structures are located.

It is noted that the Campshires and Grand Canal Dock waterfront are designated as linear parks under the Amenity Objectives of the Masterplan 2003.

C. Procedural Aspects of the Planning Scheme

In November 1998, the Dublin Docklands Development Authority commissioned the preparation of a development Framework for the Grand Canal Dock area. It was intended that this Framework would form the basis for a draft Area Action Plan and/or ultimately a Planning Scheme for the area. The Masterplan 1997 advocated the designation of the area as a Section 25 Area. However, the DDDA felt that it was considered inappropriate to pursue this until the remediation process was cleared through the normal planning and waste management licence process.

A consultation process with Dublin City Council and other significant interested parties such as Duchas, CIE (major landowner), Dublin Port and Community interests took place in 1999 and 2000. On the 8th of March 2000, the Minister for the Environment and Local Government specified by Order the Grand Canal Dock area as an area for which the Authority may prepare a Planning Scheme. The Final version was approved by the Planning Sub-Committee in May 2000 and was available for inspection by the public from the 12th of June to the 7th of July. The submissions received (33) were reviewed, and the draft document was changed and adapted in the light of the submissions (33 variations).

The Planning Scheme and related EIS were finalised by the Authority on the 25th of July 2000, submitted to the Minister on the 31st of August 2000 and approved by the Minister on the 21st of December 2000, subject to 6 no.

modifications relating to housing strategy and social housing, childcare facilities, Seveso sites, archaeology, building height on the Thorncastle Street façade of zone 9, and the provisions of the Dublin City Development Plan regarding the design of high buildings

The Authority finalised a Draft version of an **Amending Planning Scheme** in mid-2005. The amendments related to Area 4 as described in the GCDPS2000, an area of 1.90ha bounded by Sir John Rogerson's Quay, Britain Quay, Green Street East and Benson Street. A consultation process took place and 28 no. submissions were received and reviewed. The Draft was subsequently revised and presented to the Board Council. On the 12th of January 2006, the DDDA finalised an amended Planning Scheme and EIS (the amendment relating to), which were referred to the Minister on the 10th of March 2006 and approved by the Minister on the 26th of June 2006, subject to No. 3 modifications relating to residential amenity (daylight, sunlight and shadow projections to be submitted as part of Section 25 applications for residential development, requirements regarding urban design and the clear articulation of semi-public and private spaces where they directly abut public streets, and a minor amendment regarding the location of the new urban space.

Provisions of the Grand Canal Planning Scheme, 2000

This section outlines all relevant provisions of the Grand Canal Dock Planning Scheme (as set out by policies, additional written statements or diagrams) that may inform the preparation and assessment of any development proposals in the area.

Use Mix

Paragraph 3.2 states that an overall mix of 40% commercial and 60% residential will be promoted. Policy 4.10.1 states that the Authority will allocate land use in the mixed fashion shown in Diagram 6 and as articulated in paragraphs 4.1 to 4.9. Diagram 6 shows the proportionate emphasis on land use, with the light blue being predominantly residential and the darkest blue being predominantly commercial offices.

Policy 4.10.2 states that the Authority will ensure that a land use mix of 40% commercial and 60% residential based on land area is achieved overall within the Area. There is a prior assumption that this ratio will be met on all sites above 0.2 hectares (0.5 acres). Variations on that ratio may be considered subject to an absolute minimum of 40% residential and 30% commercial with 30% variable where a development: **(i)** contributes to the enhancement of the area through the provision of public open space; or **(ii)** provides social and affordable housing in excess of the authority's minimum requirement; or **(iii)** provides other elements which can be clearly demonstrated to advance the social economic and physical policies of the Masterplan; and where significant falling demand for either particular use can be independently demonstrated.

Paragraph 4.1 states that small sites, i.e. those below 0.2 hectares, may be exclusively devoted to a single use, provided the use at ground floor enlivens the street.

Density

Policy 3.3.4 states that the Authority will apply density standards in line with those indicated in the Dublin City Development Plan, 1999 but ensuring that residential development does not exceed a net density of 247 units per hectare unless it can be clearly demonstrated that good orientation and suitable private open space standards are achieved.

This paragraph further states that plot ratios should fall within the indicative range outlined in the Dublin City Development Plan 1999 of 2.5 and 3.1 with higher plot ratios being open for consideration adjoining major public

transport termini (in this case, Grand Canal Dock Station). Architects / designers of buildings adjacent to protected structures will be required to demonstrate that their designs are sufficiently respectful of such structures, for example by reducing their heights and/or increasing setbacks, which may involve a reduced plot ratio.

Building Height

Policy 5.5.10 requires building heights not to exceed the maximum heights shown in Diagrams 11 to 19 inclusive (Diagram 11 being the most relevant regarding Building Heights). It should be noted that the heights are expressed as main parapet heights. The Authority will consider architectural features standing above the main height limitation provided they contribute to the architectural design qualities of the building. It will also consider additional height within the body of a site provided it does not impact on the civic design qualities of the streets and spaces as articulated by the dimensional criteria set out in this chapter.

Regarding building heights, additional statements (paragraph 5.3) further detail the provisions of the Planning Scheme, based on specific locations.

There are also specific additional provisions regarding landmark buildings, as follows:

- The high landmark building shown situated at the junction of Sir John Rogerson's Quay and Britain Quay shall not exceed 60 metres in height above pavement level.
- That shown located close to Grand Canal Dock Station shall not exceed 50 metres in height above pavement level.
- A suitable slenderness ratio shall be adopted in both cases to create an image of a tall slender building. The slenderness ratio shall not be less than 4:1 in the case of a building having an integrated three dimensional form or 2:1 in the case of a building with a dis-aggregated three dimensional form. As indicated in paragraph 4.9.3 the design of a tall building adjacent to the Grand Canal Dock Station will present a difficult design challenge in view of the proximity of both low rise and the protected structures.

Urban Structure, Grain & Building Line

Policy 5.5.6 states that the Authority will retain but also develop the original orthogonal road layout characteristic of the area to create a block structure and urban grain as shown in Diagrams 9 and 10. It is noted that Diagram 10 is particularly relevant with regard to interconnectivity and permeability.

Policy 5.5.11 requires buildings to conform to the building lines established for the streets and spaces as shown on diagrams 9 to 19 inclusive.

Residential Amenity Space Provision

The Planning Scheme sets that 8m² per bed space of private or semi-private open space should be provided (including balconies, roof gardens and courtyards).

Social & Affordable Housing

Policy 4.10.3 requires the provision of 20% of each typology (size and nature) of new residential units to be social and/or affordable accommodation. Paragraph 4.3 further states that *'twenty percent of each typology (size and nature of units) of residential development should be social / affordable housing. It should not be possible to differentiate social/affordable housing from private by design quality'*.

Landmark Buildings

Policy 5.5.14 seeks the development of landmark buildings in the location shown in Diagrams 11 and 19 (EIS to be provided as part of any Section 5 Application for such a building as per paragraph 5.3.5). It is indicated in the Planning Scheme that the asterisk symbol in Diagram 11 does not indicate a precise location for a high landmark building but shows the general location considered suitable for such a building. Additional requirements regarding slenderness ratio are set out in the Planning Scheme.

Glossary & Relevant Definitions

Appendix 4 attached to the Planning Scheme sets out relevant elements of definition that may assist the assessment of any development proposals, as follows:

Gross Density is defined as the total number of residential units per hectare or acre on a site, but inclusive of half the width of the surrounding or adjoining public roads and public open space

Net density is defined as the total number of residential units per hectare or acre on an individual site.

Plot Ratio is defined as the expression of the relationship between the area of a site and the total gross floor area of the building(s). It is determined by the following equation: gross floor area of the building(s) / site area = plot ratio.

Site Area is defined as including land that lies within the curtilage of the related buildings

4.3.2.3 Grand Canal Dock Amending Planning Scheme 2006

A. Introduction to the Grand Canal Dock Amending Scheme 2006

This section is based on the review of draft and final versions of the Amending Planning Scheme, and the detailed review of the minutes of Board Meetings pertaining to the preparation process of the Planning Scheme.

Context of Amendment

The amended Planning Scheme relates to Area 4 as described in the Grand Canal Planning Scheme 2000, an area of 1.90ha bounded by Sir John Rogerson's Quay, Britain Quay, Green Street East and Benson Street.

There are two landowners in the area including the Authority.

The Amending Planning Scheme sets the planning context of the amendment, as follows:

- The prominent location of the site will ensure that any significant development of the site will be high profile in nature. The potential for marking the area with a landmark/higher building has been recognised in the current Planning Scheme. The Masterplan identifies a larger legibility objective for this landmark building, acting with other planned high buildings in the Docklands (Docklands North Lotts/Point Square and Grand Canal Docks) as a significant and visual point of reference. Locally, the landmark building will need to provide legibility and position, while its scale should be such that it remains part of the surrounding urban fabric. The final development outcome will need to consider relationships with the planned development on the opposite sides of the water bodies.
- Permission was granted for a mixed use development of the site in 2002 (4 smaller, orthogonal blocks and a landmark tower measuring 95m on the corner of Sir Rogerson's Quay and Britain Quay). The permission was never implemented, following the Authority's decision in February 2002 not to cede the portion of land controlled by the Authority to the Applicant. A competition was subsequently launched in

2002 for the design of a landmark tower (the U2 Tower) and studio. The winning entry proposed a 60m tower, with studio at top levels and an associated plinth building.

- Significant adjoining and adjacent developments have been certified in accordance with the Planning Scheme which significantly contributed to the positive evolution of the area.

Status and Purpose of Amendment

The specific purpose of the Planning Scheme Amendment is to recognise the existing and changed development context in the area; acknowledge the significant potential of this strategic and prominent site, and provide more detailed guidance for its planning and development.

The Planning Scheme states that unless explicitly so stated, the existing policies and provisions of the Grand Canal Dock Planning Scheme, 2000, remain in effect. Additional policies and provisions have been included, reflecting other updated policies which post-date the original Planning Scheme.

Specific Objectives of the Masterplan 2003 for the area

The Campshires is Zone 9 'To preserve, provide and improve recreational amenity and open space' and the zoning for the remainder of the area is Zone 14 'To seek the social, economic and physical regeneration of an area with mixed use of which residential and zone 6 would be the predominant use'; the Water body is covered by Zone 11 'To protect and improve canal, costal and river amenities').

Notably, the guidelines identify potential for permeability in new developments and the importance of proportionate building scale and height to spaces.

A Dodder bridge is included in the transport objectives. The Masterplan requires this bridge to be public transport, pedestrian and cycle only.

B. Provision of the Amending Planning Scheme 2006

Land Use & Use Mix

Diagram 2 shows the proportionate emphasis on land use with the light blue being 'predominantly' residential and the darkest blue being 'predominantly' commercial offices. The Planning Scheme further states that the principle of mixed development applies throughout the Amendment area. Diagram 2 also identifies specific locations for Hotel and Cultural uses.

Density and Plot Ratio

In this regard, the Planning Scheme states as follows:

- Plot ratios should fall within the indicative range outlined in the Dublin City Council Development Plan, 2005, and subject to the provisions of Paragraph 15.4.0 of the Development Plan.

Comment: It is assumed that the maximum net residential density of 247 units/ha still applies.

Building Heights

Diagram 5 prescribes maximum numbers of storeys for both commercial and residential developments (depending on options regarding urban structure) with building heights ranging between 5-8 storeys for commercial developments and 6-9 storeys for residential developments. Diagram 5 also identifies several sites for 1 storey commercial buildings, one site for the development of a High Landmark building, and indicates where set back top floors are to be provided.

Regarding the landmark building, the amending Planning Scheme states that the main element of the landmark tower should not exceed 100 metres in height to the shoulder above existing street level. The shoulder is the top of the front wall of the building, excluding any parapet. Accommodation above this level must be well set back and consistent with architectural and service elements. Such elements will be permitted subject to an overall building height not exceeding 120 metres above existing street level.

Specific Requirement for the Landmark Tower – Slenderness Ratio

The overall slenderness ratio for the tower will not be less than 4:1. The footprint will need to have regard to the need for public access to the waterfront. The ground floor of the tower should present active uses to surrounding spaces. The architectural design of the tower should show clear consideration of the base, shaft and capital elements.

Urban Structure, Massing & Grain

The Planning Scheme stresses that a variation to the orthogonal block pattern of the Planning Scheme is appropriate to the area under amendment to articulate the end of the peninsula and facilitate an intensification of activities at a new focal point and public realm. A new diagonal street will traverse the main site connecting the new square at Benson Street and the proposed new urban space and landmark building at the corner of Sir John Rogerson's Quay and Britain Quay. The acceptable general variations on block structure are shown in the accompanying plans and sections. This refers to Diagram 3, where two different options are shown.

Additional statements regarding this urban structure stress the following elements:

- The block structure will optimise block size and will allow for a series of north-south linear blocks at offsets to give maximum light penetration and vista to the waterfront.
- Penetrated by the diagonal route, the blocks will clearly distinguish between public and private space. All block frontages will be required to front public spaces and streets.
- The principal frontages to Sir John Rogerson's Quay and Britain Quay will present a larger grain and scale of development, reflecting their prominence and position. In addition to the layout illustrated in Diagrams 3 and 5, the Authority will consider acceptable the closure of one or more of the blocks fronting onto Sir John Rogerson's Quay.
- The scale of development to the proposed new urban square will reflect the scale of the space and the need to maximise sunlight and daylight.
- The scale of buildings fronting the new streets within the site will be modest, to reflect an intimate human scale that is appropriate to living, residential streets. Building massing will be placed principally along the perimeters of the new blocks, providing for continuous street and space frontage and enclosed private/shared amenity spaces within.

Residential Use

The written statement stresses that 'residential should be focused on Green Street and Benson Street' and that 'residential should also form an important part of mixed use development to Sir John Rogerson's Quay and Britain Quay'.

Additional relevant requirements may be outlined as follows:

- 25% of units to be family sized (85 m2 min);
- Dual Aspect required except in appropriate circumstances (e.g. difficult corner locations) where single aspect units may be considered (no single aspect north facing units);
- 8m2 of private & semi-private open space per bed space required. The Authority will be prepared to reduce this requirement for the residential component of the landmark tower if it can be demonstrated that by the applicant that there is sufficient public open space.
- The Authority will require all section 25 applications for residential development (except in the case of south-facing elevations or where directly opposing windows are more than 22 metres apart) to be accompanied by daylight, sunlight and shadow projections to demonstrate that reasonable standards of residential amenity can be achieved.
- Residential Amenity: the Planning Scheme states that Paragraph 15.9.2 & 15.9.3 of the Dublin City Development Plan 2005-2011 or any other applicable Ministerial guidelines to apply.

APPENDIX F: OVERVIEW OF THE CUSTOM HOUSE PLANNING SCHEME

The Customs House Docks area comprises 29.85 hectares situated on the north side of the River Liffey (extending from the Matt Talbot Bridge to the intersection of North Wall Quay and Guild Street) to include the Custom House Docks site, the An Post sorting office and Connolly Station, the former National Sports Centre site and the Sheriff Street flats site and extends to the centre line of the river.

Lands within this area and fronting to the quayside are predominately zoned in accordance with land use zoning objective Z5, the purpose of which is *'To consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen and protect its civic design character and dignity'*. The remainder of the Planning Scheme lands are predominately zoned for residential uses in accordance with Zoning Objective Z1, which seeks: *'To protect, provide and improve residential amenities'*.

The Planning Scheme was made by the Customs House Docks Development Authority (CHDDA) on the 17th November 1994 and submitted to the Minister on the 19th December 1994. The scheme was approved on the 16th February 1995 by the Minister subject to 4 modifications.

On the 2nd April 1998, the CHDDA made an amended Planning Scheme, which was referred to the Minister on the 6th April 1998. On the 26th August 1998 the Minister approved the Scheme, with no modifications.

The 1994 Planning Scheme does not provide quantitative guidance with regard to development standards or mix of uses required within the Scheme area. Broad statements are provided in respect of the following objectives and standards:

- To encourage mixed use development with emphasis on the IFSC and residential use as a catalyst in developing other uses.
- Density – to develop the various sites at a 'reasonably high density appropriate to an area which lies on the fringe or, and forms part of, the natural extension of the City Centre and appropriate to a location close to major public transport nodes'. The Amended 1998 Scheme provides a maximum density for all new residential developments at 160 units per hectare (65 units per acre) gross. Residential density permitted of up to 50 units per acre, and 70 units per hectare at the An Post site.
- Plot Ratio – a maximum of 1:2.5 for undeveloped areas (such as Spine Block and National Sports Centre area where zoned for offices or city centre activities, with a maximum site coverage of 80%. In the case of the An Post building the existing plot ratio of 1:2.5 and site coverage of 87.5% is the maximum permissible. No plot ratio or site coverage standards are prescribed for Connolly Station, rather the Planning Scheme relies on proposals for maximum heights and building lines to determine built form.

Six character areas identified with the Scheme area. Development control standards are applied to each, with no overarching quantitative guidance for the entire Scheme area.

Principal Provisions of the 1998 Amended Planning Scheme

The amendment to the 1994 Planning Scheme relates to the area described in the 1994 Planning Scheme and specifically the area of land assigned to cater for the continued development of the financial sector, lands for a major national institution and community training workshop lands.

The stated purpose of the Planning Scheme Amendment is:

- To amend density standards for new residential developments;
- To facilitate further office development within the financial services lands of the Customs House Docks area;
- To obviate the need for a major national institution and community training workshop; and
- To outline revised building heights allowable and the creation of an Environmental Traffic Cell (ETC)

The principal amendments to the Scheme are summarised as follows:

- An area of designated residential land, (0.48 ha) is identified for office use to cater for the continued development of services of, for, in support of, or ancillary to the financial sector of the economy.
- Sections 3.02 and 3.03 of the amended Planning Scheme exclude the requirement for a major national institution or Community Training Workshop within the Scheme area.
- Section 2.01 provides that the maximum permissible density for all new residential developments at 160 units per hectare (65 units per acre) gross. The Gross area for density purposes is taken to include the curtilage plus the area to the centre of adjoining roads, subject to a maximum of 7 metres of road width.
- Section 4.01 reiterates the requirement that building heights and street lines conform to those illustrated in Map 5 of the 1994 Planning Scheme. In the assessment of development proposals the Authority will consider, where the overall urban design intent is maintained, marginal departures from the main parapet heights (to a maximum of two metres), where the floor-to-floor heights of particular uses might demand higher than normal heights.
- Section 5.01 provides details of the creation of an Environmental Traffic Cell with access from Guild Street via Mayor Street. Map 10 'Revised Traffic Circulation' provides illustrative details.

APPENDIX G: PLANNING SCHEME PROCEDURAL CHECKLIST

ITEMS		DATA	COMMENT / DETAILS	COMPLIANCE
2.0	REVIEW OF PLANNING SCHEME CONTENT, REQUIREMENTS & STANDARDS			
2.1	Context			
	Planning Context			
	List of Planning Policy Docs referred to in the Planning scheme			
	Physical Context			
	Identification of sub-areas (development areas / character areas)			
	Identification of Conservation Issues			
	Identification of Specificities (Water body etc.)			
	Urban Analysis	Summary e.g. identification of Character Areas, Gateway Sites, Existing Landmarks, Nodes, Sunny Aspects, Frontage Issues, Views		
	Movement & Access	Summary e.g. identification of existing and potential bus corridors / luas / rail + walking distances		
	Services & Utilities	Summary e.g. Electricity, Gas, Gas depot, Water Distribution, Main sewers, Preferred Outfall Route, Pipeline Gauge		
2.2	Prescriptions, Key Standards & Requirements			

			<p><i>Our assessment should address the following: Does the Section 25 complies with this? (summary of conclusions to be included into the Section 25 Review Checklist in Section 2.0 Would it be possible to set a Compliance Checklist based on the Requirements of the Planning Scheme (i.e. is the Planning Scheme clear enough to do so? - Interpretation? Reasonable Person's point of view) Is it possible to undertake a reasonable assessment of any S25 based on the requirements of the Planning scheme? Etc.</i></p>	
2.2.1	Nature and Extent of Proposed Development			
	<i>General Principles</i>			
	<i>Policies</i>			
	<i>Other Statements which may inform assessment/interpretation</i>			
2.2.2	Distribution and Location of Uses			
	<i>General Principles</i>			
	<i>Policies</i>			
	<i>Other Statements which may inform assessment/interpretation</i>			
2.2.3	Overall Design including maximum heights and external finishes			
	<i>General Principles</i>			

	<i>Policies</i>			
	<i>Other Statements which may inform assessment/interpretation</i>			
2.2.4	Development of Amenities and conservation of architectural heritage and other features			
	<i>General Principles</i>			
	<i>Policies</i>			
	<i>Other Statements which may inform assessment/interpretation</i>			
2.2.5	Transportation including Roads layout, provision of parking spaces and traffic management			
	<i>General Principles</i>			
	<i>Policies</i>			
	<i>Other Statements which may inform assessment/interpretation</i>			
2.2.6	Infrastructure and remediation			
	<i>General Principles</i>			
	<i>Policies</i>			
	<i>Other Statements which may inform assessment/interpretation</i>			
2.2.7	Appendices			
	<i>List of Documents attached</i>			
	<i>Glossary</i>	Useful definitions? Status of the Glossary?		

APPENDIX H: SECTION 25 ASSESSMENT CHECKLIST

UDXXX	ITEMS	Y/N Data Etc.	ADDITIONAL DATA / COMMENTS
1.0	KEY DATA		
1.1	Application / Certificate Details & Description		
1.1.1	Name of Applicant <i>Is the DDDA involved (applicant or joint venture, etc.)?</i>		
1.1.2	Date of Application		
1.1.3	Date of Decision		
1.1.4	Nature & Description of Development as submitted and recorded on file: Address: Site Area Mixed / Commercial / Residential Development area Plot ratio Building Heights Etc. (any other relevant elements to be assessed against the relevant Planning Scheme)		
1.1.5	Planning Scheme Area		
1.1.6	Masterplan Applicable		
1.1.7	Related S25 Certificates		
1.1.8	Consultations & Site History Record of observations by Statutory Bodies (DCC, DTO, RPA, Dublin Port, Iarnród Éireann, etc.) Identification of an application to DCC for same site (or part of the site - phasing)? Status of Decision? From the review of the file, is there any reference to a submission to Masterplan / Planning Scheme in respect of the proposed development (e.g. reflecting pre-planning discussions)? And to DBCL knowledge?		
1.2	Summary of Decision		
1.2.1	Relevant dates identified from file review: Design Advisory Panel Meeting Sub-Committee Meeting Executive Board Meeting Certificate Signed & sealed Certificate issued to Applicant		
1.2.2	Timeframe for Decision (Date of Application / Date of Decision/Certificate signed / Certificate issued)		
1.2.3	Decision Rationale / Form What provisions issued by Board to endorse issue of certificate (i.e. does the decision state that the planner's report was reviewed, that the proposed development is compliant with the Planning Scheme, thus that a Certificate		
1.2.4	Reference to Executive Board's meeting in Certificate?		
1.2.5	Is it possible to determine on which version of the Planner's report the decision was made?		
1.2.6	Instruction to the Executives as issued by the Board (physical file with minutes or any other documents, etc.?)		
1.2.7	Any references to the fact that the Board followed the Planner/Sub-Committee's Recommendations? If not followed, any references to why and on which basis? If no reference to the Planner's report, assess planner's report against decision (section 3.6 of f		
1.2.8	Conditions attached to Certificate Number of Conditions attached Levies Areas calculated by Applicant or DDDA (measurements)? Signed off by whom? Counter signed? Any Details on how the proposed development will directly and indirectly benefit from the infrastructure/works to be provided for according to the Contribut		
1.2.8.1	How does the decision deal with Affordable and Social Housing?		
1.2.8.2	Standard Conditions issued as per the provisions of the Act (conditions that relate to the carrying out of the certified/compliant) [DDDA Act 1997, Section 25(7)(a): 'A certificate under this paragraph may contain such conditions in relation to the carryin		
1.2.8.3	Other Conditions [Interpretation of Section 25 amended by Section 22 of the Housing Act 2002, Section 25 (7)(c)(iii): 'For the avoidance of doubt, a certificate issued under paragraph (a)/b (i.e. a development that is certified by the Authority to be c		
1.2.8.4	Conditions to render a non compliant proposal compliant with the Planning Scheme?		
1.2.8.5	Conditions transferring the compliance of the subject phase of development to a future phase of development?		
1.2.8.6	Conditions resulting from an agreement between the DDDA and the Applicant (Transfer of an area of land free of cost to the Authority, Provision of Open space, Financial agreement, etc.)		
1.2.8.7	Any reference to the agreement on file? Other Conditions?		
1.2.9	Notification of Decision		
1.2.9.1	Notification of Decision issued to Third Party? - Date		
1.2.9.2	Notification of Decision issued to other Bodies? (DCC, RPA, etc.) - Date		
2.0	INDEPENDENT ASSESSMENT OF COMPLIANCE OF PROPOSED DEVELOPMENT WITH PLANNING SCHEME		
2.1	DBCL assessment of the compliance of the proposed development with (Masterplan & Planning Scheme.		
3.0	DETAILS OF FILE HISTORY & PROCESS		
3.1	Pre-Application Stage		
3.1.1	Pre-planning Discussions		
3.1.2	Minutes available (Date of meetings & Discussions)		

3.2	Application Package		
3.2.1	Content of Application Package		
	<i>DBCL Comments on Documentation</i>		
	<i>Is there a report /statement submitted by the Applicant stressing the compliance of the proposed development with the Planning Scheme including any reference to Plot Ratio, Building heights, etc (statement, calculation, interpretation)?</i>		
3.2.2	Does it give details regarding Social & Affordable Housing (nature, location, distribution, agreement)?		
3.3	Validation		
3.3.1	Any reference to a Validation Process? On which basis? Records on file?		
3.4	Public Consultation or Other Consultations		
3.4.1	Formal Third Party Consultation / Observation		
3.4.1.1	Planning Notices?		
3.4.1.2	Comments on Public Notices?		
3.4.1.3	Third Party Observations?		
3.4.1.4	Response to Third Party Observations?		
3.4.2	Informal Third Party Consultation / Observation <i>(Any informal observation/correspondence from third party relating to the proposed development on file?)</i>		
3.5	Additional Information or Unsolicited A.J.		
3.5.1	Any Request? Timeframe & Content		
3.5.2	Any Additional Information (requested of unsolicited) submitted? Timeframe & Content		
3.6	Planner's Report & Assessment		
3.6.1	Timeframe for completion of report		
	Date(s) of Planner's report		
	Several versions with same date?		
3.6.2	Several versions with different dates?		
3.6.3	Number of pages		
3.6.4	Signed by		
3.6.5	Checked by / Counter Signed by		
3.6.6	Issues raised in draft / final version of assessment including compliance / non compliance, social & affordable housing, plot ratio calculation, building height, provision of open space, etc. <u>and related conditions attached</u>		
3.6.7	Details of Assessment		
3.6.7.1	Is there a concluding statement in the Planner's report for concluding that the proposed development is compliant with the Planning Scheme??		
3.6.7.2	Is there a checklist of what the proposed scheme should need to comply with? <i>(interpretation of the Planning Scheme)</i>		
	Is there an assessment of the proposed development against the provisions / requirements of the Planning Scheme? <i>Consistency with accepted / best practice?</i>		
3.6.7.3	<i>Reasonable interpretation / application of Scheme (reasonable person's perspective - not a lawyer.</i>		
3.6.8	Is there any References made in the Planner's report to the following:		
3.6.8.1	Comments from statutory Bodies (DCC, DTO, RPA, etc.). References to timeframe of reception/treatment?		
3.6.8.2	Plot ratio calculation? Application to DCC for same or part of the site? Status of Decision?		
3.6.8.3	Any recommendations made by the Design Review Group?		
3.6.9	Conditions proposed / attached to the Planner's report		
	<i>Are the conditions attached to the Planner's report on a separate page?</i>		
	<i>Are the conditions attached to the Planner's report different, in nature, to those attached to the Certificate?</i>		
3.6.9.1	<i>If Yes, differences identified.</i>		
3.6.9.3	<i>Are the conditions attached to the Planner's report all reflected in the Planner's assessment</i>		
3.7	Comments / Recommendations / Directions from Executive / Sub-Committee / Board		
3.7.1	Executive Level		
3.7.1.1	Minutes available on file?		
3.7.1.2	Dates of Meetings, Timeframe, Process stage		
3.7.1.3	Comments by Planner / Executive (discussion) & Modifications to the report		
3.7.2	Sub Committee Level		
3.7.2.1	Minutes available on file?		
3.7.2.2	Comments from Planning Sub Committee, Recommendations & Modifications to the report		
3.7.2.3	Sub-Committee Recommendations		
3.7.2.4	Quorum? / Vote?		
3.7.3	Board Level		
3.7.3.1	Minutes available on file?		
3.7.3.2	Comments from Board & Modifications to the report		
3.7.3.3	Board's directions		
3.7.3.4	Quorum? Vote?		
4.0	Post Certificate Process (Compliance, correspondence)		
4.1	Compliance		
4.2	Correspondence / Minutes of Meetings		
5.0	Comments		

APPENDIX I: EXCERPT, SECTION 6.2 OF THE GRANT THORNTON REPORT.

6.2 “As is” process

The map for the “as is” process, as it existed at the outset of the review, based on material supplied by the DDDA is included as Appendix I.

In summary, the Section 25 Certification process may be divided into three distinct stages, namely: the stage from receipt of an application to registration; the consultation and planning report stage; and finally the presentations and Board decision stage. In light of the recent High Court judgement and as part of this process review we recommend another stage be added at the beginning of the process, namely a Pre-application stage. Our proposals and recommendations in respect of this stage are outlined below.

6.2.1 Pre-application stage and requirements for applications

Prior to the new process, there were some pre-application meetings with potential applicants. Where meetings had been held with potential or intending applicants, they were carried out in an informal manner, and we found no minutes recording such meetings. Any records that may have been kept were not included in the requirements for the “public file” relating to applications.

Recommendations that we make in respect of the pre-application stage of the Section 25 process are as follows:

Pre-application meetings

- That a process for pre-application meetings be established and that a formal minute of such meetings be recorded and kept on file. Meeting should be arranged in advance and held at the DDDA offices.
- The parties should acknowledge at the outset of the meeting that any views or opinions expressed are non-binding on the DDDA, as any decision on approval is reserved for the Board. A checklist should be used by the planner during the course of the pre-application meeting to guide the meeting.
- Concise and accurate minutes of all pre-application meetings should be prepared, using the standard checklist/template, and the minutes shall be circulated to all parties attending the meeting. This checklist should be completed while the meeting takes place. The checklist should then be photocopied when the meeting is finished and initialled by all attendees. (The purpose of this is to minimise the potential for any subsequent dispute as to what may have been said at any such meeting).
- No undertaking should be made by the DDDA Planner(s) except that any applications will be considered, but that decisions are reserved for the Board only.

6.2.2 Receipt and Registration of applications

In this stage of the Section 25 Certification process, the following steps occurred, as described in the material provided by the DDDA:

- An application was received, either by post or by delivery, and receipt of the application is recorded on a manual ledger;
- Details of the application, such as the location of the proposed development, persons making the application, building details etc., were recorded on the Section 25 IT system;
- A “hard copy” file was set up, and the documentation relating to the application entered on the file;
- The documents were date stamped and forwarded to Mapping;

- The Docklands area map was updated with details of the proposed development;
- The file was returned to Planning, and the application was then validated;
- If the validation was positive, an acknowledgement letter was sent to the applicant, and the application was deemed to be registered;
- If the validation could not be completed, the applicant was requested to submit any missing documentation, and on receipt of same, the application was then validated, and an acknowledgement letter issued.
- The process of validation consists of comparing the documents submitted as part of the application with a checklist which describes the requirements of an application. Validation means that the documentation relating to each requirement has been supplied as part of the application. Validation does not make any judgement on the quality or technical merit of the documentation, merely that the documentation has been submitted per the application requirements.

Registration was a term used within the DDDA to indicate that an application has been submitted, and all the documentary requirements have been fulfilled, at least nominally. Registration means that the application can be submitted for consideration by the planners.

Six copies of each application were requested by the DDDA. Following registration, the copies were assigned as follows:

A working copy used by the DDDA during its evaluation and assessment;

1. A backup copy to (1) above;
2. A full copy of the application for forwarding to the Dublin City Council Planning Department;
3. A full copy of the application for submission to the Dublin City Council Roads Department;
4. A full copy of the planning application for submission to the Dublin City Council Water and Drainage Department; and
5. A full copy of the application to be forwarded to a conservation specialist.
6. Additional copies may be forwarded to other referral agencies depending on the nature of the individual application.

Each of these bodies was requested, in writing, to consider the application that has been made, and to forward any observations or comments in respect of the planning application to the DDDA within a two week period. Following receipt of any observations from these parties, and following consideration of the planning application, the Planner assessed the application and prepared a Planner's Report for submission to a sub-committee of the Board.

The process that we have described is relatively simple and straightforward, and if an application is complete, then the time span from receipt of the application to registration can be very short indeed; typically less than one day. From our discussions with the planning department staff, where certain documentation may be missing, it is generally a matter of one or two days before any omissions have been addressed by applicants. In summary, it appears that the initial stage in the Section 25 process is, by and large, completed relatively quickly, and without significant difficulty.

We make the following recommendations for the stage covering the period from receipt of applications to registration:

Application documentation requirement

- We recommend that the DDDA should add a requirement to their application procedure, whereby the applicant will submit a full copy of the application on a CD-ROM, including all drawings, plans, and such like. The purpose of this is to calculate the third party consultation process described later while ensuring the integrity of the planning file.

Preliminary checking

- We recommend the preparation of two checklists which should be completed by the DDDA when an application has been received. The first checklist should be used to verify the requirements of the application in terms of the documents and plans to be submitted. The second checklist should allow for a high level review of the compliance of the application with the requirements of the relevant Planning Scheme. This latter checklist relates to matters such as building height; residential to commercial ratio; plot ratio and such matters. In the event that an application is incomplete in respect of the documentation submitted or is clearly not compliant with the relevant Planning Scheme, then the application in full should be returned to the applicant together with copies of the completed checklists which will provide the reasons why the application is not being accepted at this stage. The applicant should be advised that they are free to re-submit their applications at any time in the future, but that future applications will be checked *ab initio* and that any further applications made that are either incomplete or non-compliant or both will be returned.

Site Notice

- In light of the High Court Judgement, requiring the DDDA to afford landowners whose property rights may be affected the opportunity to make submissions on applications for Section 25 Certificates, we recommend that applicants should be required to place a notice of their intention to make an application for a section 25 certificate on the relevant site. This is to facilitate the process of third party submissions. Our comments and recommendations in respect of third party submissions will be addressed later in this chapter.
- Applicants should be required to place a notice of their application for a Section 25 certificate on the relevant site in a manner similar to the existing requirement specified by local authorities, though with different requirements as to the time and timing of the notice. We recommend that the requirements for this notice in terms of size should be similar to that used by planning authorities elsewhere in Ireland. We suggest that the notice should contain the name of the applicant; a succinct description of the proposed development; together with the statement that an application is being made to the DDDA for a Section 25 certificate in respect of the development.

The objective of the Site Notice process is to take account of the content of the High Court judgement and to provide adjacent property owners whose property rights may be affected the opportunity to become aware of the application and to make their views, comments or observations known. In our view, it is essential that such property owners should be advised by public notice of a Section 25 Certificate application, and particularly if it is desired to maintain a time efficient process. The site notice requirement must be viewed in the context of the time within which affected parties are required to submit their views comments or observations.

Registration and setting up of file

- We note that according to the process, the interface with Mapping currently occurs prior to the application being validated, and prior to the application being registered. We question whether it is appropriate that this interface should occur prior to registration. We recommend that Mapping should be involved immediately after registration of the application.
- When a paper file (the public file) is set up, a hard copy checklist for the various stages in the planning process is attached to the inside front cover of the blue file. Consideration could be given to this checklist being system based, i.e. that details of the progress of an application should be maintained or retained on the IT system only. While such a system-based checklist is possible in theory, in practice it may be seen to be of limited use within the Planning department. However, we believe that it would be possible that a system-based checklist could be used to generate management information on the performance and processing of the planning department, and such a system-based checklist may be considered. This will ensure the accuracy of information available for inspection.
- We recommend that registered applications be also notified to the public by way of the DDDA website. We recommend that consideration be given to providing a facility that allows third parties to register on the website and to receive notification automatically of any planning applications.

6.2.3 Process from Registration to the Planner's Report

At the outset of the review, this stage commenced with an acknowledgement letter in respect of the planning application being sent by the Secretary of the DDDA to the applicant.

Where necessary, following review of the material submitted, requests for additional information were directed to the persons making the application;

Where an application is complete, or when the additional information had been received, the Planner carried out his/her assessment, and the Planner's Report, including recommendation in respect of the decision to be made, and recommendations in respect of conditions were prepared and formalised in the Planner's Report;

The Planner's Report, in final form, was prepared for circulation to a sub committee of the Board.

Normally this stage of the process took place over a period of the order of three weeks, depending on the scale and quantity of materials received, or on the scale of the planning application. However, no provision was made for the receipt of observations from affected third parties because the relevant legislation does not specify such a process. However, in light of the High Court Judgement referred to above, and in line with similar procedures in the normal planning process, we propose the following in respect of third party observations and submissions:

Third party observations and submissions

- Third parties whose property rights may be affected should be able to provide observations and/or objections in respect of a Section 25 application received by the DDDA. To facilitate this, a site notice has been recommended and registered applications should be published on the DDDA website, together with summary details of the application as per the current Section 25 IT system input. It should be specified that any third party observations should be received within 10 working days from the day after the date of registration.
- Any third party submission received during the 10 working day submission period should be receipted, acknowledged, filed in hard copy on the public file, and should also be recorded on the Section 25 IT

system. The details to be recorded in respect of any submissions should be the date as recorded on the submission, the name and address of the person or persons making the submission, together with a description of the submission in terms of whether it is a letter, a report, together with a description in terms of the number of pages contained in the submission.

- A listing of submissions made in relation to any application, together with copies of each of the submissions, should be sent to the applicant at the end of the 10 working day submission period. The applicant should be advised that he or she has 10 working days in which to respond to any of these submissions.
- If necessary, following review of the material submitted, requests from the DDDA planners for additional information should also be directed to the persons making the application at this stage. The requests for additional information should be at the discretion of the planner.
- In their responses to third party observations/submissions and the DDDA request for information, applicants may either (a) leave their application unchanged, (b) modify their applications, supporting any such proposed modifications with revised drawings where necessary, or (c) withdraw their applications. Any modifications should be submitted within the 10 day working period. Where an application is either left unchanged or modified, the planner should proceed to complete his/her report and make recommendation(s) to the Board. Should a material change occur due to modification the application is brought to the Board. At the discretion of the Board the applicant may be asked to re-submit the application and begin the Section 25 process again. In the case of a withdrawal, the third parties that made observations should be so advised. The website should also be updated to reflect the withdrawal.

The timescale for third party consultation is considerably shorter than that provided for in local authority planning procedures. However, those procedures do not have the context of Planning Schemes to guide the planning applications. In our view, property owners have the opportunity to make their views known in respect of the planning scheme during that process. It is our view that any relevant observations should be capable of being prepared and submitted within a ten working day period.

Preparation of the Planners' Reports

- While this potential response of the applicant may contain some material that will be taken into consideration by the planners in preparing their report and drawing up their recommendation to the Board, nonetheless we consider that the planners should be able to commence a drafting of their report at this juncture.
- We recommend that the list of observations maintained on the IT system should be included as an appendix to the Planner's Report and that a copy of all valid third party observations should be provided with the Planner's Report to the Sub-committee and to the Board.
- The applications received are allocated to different Planners on the basis of the scale and/or complexity of the application together with the experience of the relevant staff member. However, there is no formal recording of how, or to whom individual applications are allocated for consideration. We consider that it should be possible to record this allocation on the planning IT system. We recognise that the Planning Department is a relatively small unit, and as such, we expect, and understand, that there is considerable inter-team working and consultation. While such consultation should naturally take place, it should be clear which staff member is responsible for ensuring the processing of particular applications.

- In our discussions with staff, we were advised that the support provided by the planning IT system at the Planner's Report stage is not user friendly, can be unreliable, and does not enjoy the confidence of the staff involved. We will address these issues in conjunction with other IT issues at a later stage in this chapter.

6.2.4 Presentations and Board decision

The current process is as follows: the Planner's Report, containing recommendations and any conditions, both standard and non-standard, is circulated to the planning Sub-committee of the Board of the DDDA. Following consideration and possible amendment, the application and the Planner's Report together with the recommendation of the Sub-committee is then forwarded to the Board and a decision, either to approve the Section 25 application or to reject it is made.

The steps in this process as per the DDDA manual are as follows:

- The Planner's Report is circulated to the planning sub-committee of the Board prior to the committee's monthly meeting;
- The Planner makes a presentation to the sub-committee in respect of the application and the basis for the Planner's Report;
- The Sub-committee considers the application and may request that the Planner's Report be extended and/or amended, such as by the addition of further explanation on particular aspects of the Planner's assessment, or the addition of any particular conditions;
- The recommendations of the Sub-committee are then attached to the Planner's Report;
- The Planner's Report together with the Sub-committee recommendations, is circulated to the members of the Board at least four days prior to the Board meeting;
- A member of the Sub-committee presents the application and the recommendations to the Board, and following consideration, the Board issues a decision either for the approval or rejection of the application; the Board may amend the conditions attached in the Planner's Report, or may add new conditions as it sees fit;
- In the case of a Board decision to approve an application, the process for the issuance of a certificate is initiated;
- In the case where an application is rejected by the Board, the applicant is notified in writing of the decision within one week of the Board decision.

In overall terms, this stage in the overall process is typically carried out within a two week period.

Items and issues of note in respect of this stage of the Section 25 process are as follows:

- The role of the planning Sub-committee of the Board does not appear to have been formalised to the extent that its roles, responsibilities and powers are clearly defined and are unambiguous. We understand from our discussions, that the functioning of the Sub-committee has developed over time: initially the Sub-committee met immediately prior to the Board, but this evolved into the current practice whereby the Sub-committee meets approximately one week before the Board meeting;

- We note that the recording of Sub-committee amendments is done by way of a memo attached to the Planner's Report. From this, we deduce that the Sub-committee is not amending or changing the Planner's Report, but adding requests for additional information by way of clarification or recommending some additional conditions or amendments to the conditions proposed by the Planner. However, we deduce that the Planner's Report remains a Planner's Report and that it is not modified by the Sub-committee;
- We note that following the Board decision to approve an application, that the process of issuance of a certificate is initiated. We have queried as to whether the decision made by the Board is effective in a legal sense when it has been made by the Board, or does it require the adoption of the minutes of that meeting of the Board in order for the decision to have legal standing. We are advised that the decision of the Board is sufficient for the granting of a certificate to have legal status, and that it is not necessary for the Board minutes to be approved in order that a decision to grant or reject has legal standing. We do note that this means that where approval has been agreed by the Board, that a certificate can be issued in a relatively short period of time whereas if a certificate could not be issued prior to the acceptance of the Board minutes, then a substantial delay, possibly of the order of eight weeks at particular times of the year, might occur. However, on issuance, certificates should be dated for the day on which they are issued, not the date of the relevant Board meeting.
- In our discussions we have found that, due to limitations within the planning IT system, there is an issue in respect of how amendments made by the Board in respect of conditions are recorded. We are advised that when the certificate that is being issued is being drawn up on the supporting IT system, the process within the IT system is that the certificate takes the conditions as they are recorded in the panel's report. However, in the event of the Board amending a condition or inserting a new condition, under this process the certificate would take only the conditions attached to the Planner's Report as presented to the Sub-committee. Consequently, in order to ensure that the correct decisions as determined by the Board are picked up in the certificate, a new version of the Planner's Report is prepared, which includes the conditions as determined by the Board. In this case, the IT system now contains a Planner's Report, which is the one Submitted to the Sub-committee, and also a Planner's Report which is identical save for changes or amendments to the conditions as decided to the Board. This in turn leads to some inconsistency among staff members as regards what is the proper Planner's Report as per the Section 25 IT system;
- This also leads to some inconsistency over what materials are retained on the hard copy file, which is referred to as the "public file" and which is available for public inspection. It will be important to have systems in place to ensure that both the hardcopy and soft copy files are consistent and accurate.

APPENDIX J: VALIDATION OF SECTION 25 APPLICATIONS – GUIDANCE FOR DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Introduction

This guidance note seeks to support and drive a quicker, more predictable and efficient planning service.

Validation represents a decision by the DDDA on a Section 25 Application as to whether the submitted information is sufficient to allow the Authority to reach an informed decision.

This guidance is aimed to support the use of the standard application form. It outlines and provides guidance on the information that should be supplied with Section 25 applications.

Information Supporting Applications

Different types and scale of application will require different levels of information and supporting documentation to be submitted. In all cases the requirements will be specified by the DDDA. This information is divided into a 'Standard List' that will apply in all cases and 'Additional Items' that may be required in certain circumstances.

The Standard List

Section 25 Applications for certification are required to be accompanied by a completed DDDA standard application form and a signed and dated declaration of compliance as adopted by the DDDA.

Such an application shall also be accompanied by the following plans / drawings:

- A location plan - All applications must include copies of a location plan based on an up-to-date map. This should be at a scale of 1:1250 or 1:2500. Plans should wherever possible show at least two named roads and surrounding buildings. The properties shown should be numbered or named to ensure that the exact location of the application site is clear.

The application site should be edged clearly with a red line. It should include all land necessary to carry out the proposed development – for example, land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings.

A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.

- Site and Other Plans - Copies of the site plan should be submitted, drawn at a scale of 1:500 or 1:200 and should accurately show:
 - a) the direction of North;
 - b) the proposed development in relation to the site boundaries and other existing buildings on the site, with written dimensions including those to the boundaries;
 - c) all the buildings, roads and footpaths on land adjoining the site including access arrangements;
 - d) all public rights of way crossing or adjoining the site;
 - e) the position of all trees on the site, and those on adjacent land that could influence or be affected by the development;

- f) the extent and type of any hard surfacing; and
- g) boundary treatment including walls or fencing where this is proposed.

In addition other plans should be submitted and may include:

- Block plan of the site (e.g. at a scale of 1:100 or 1:200) showing any site boundaries

Copies of plans should show: any site boundaries; the type and height of boundary treatment (e.g. walls, fences etc); the position of any building or structure on the other side of such boundaries.

- Existing and proposed elevations (e.g. at a scale of 1:50 or 1:100)

These should be drawn to a scale of 1:50 or 1:100 and show clearly the proposed works in relation to what is already there. All sides of the proposal must be shown and these should indicate, where possible, the proposed building materials and the style, materials and finish of windows and doors. Blank elevations must also be included; if only to show that this is in fact the case.

Where a proposed elevation adjoins another building or is in close proximity, the drawings should clearly show the relationship between the buildings, and detail the positions of the openings on each property.

- Existing and proposed floor plans (e.g. at a scale of 1:50 or 1:100)

These should be drawn to a scale of 1:50 or 1:100 and should explain the proposal in detail. Where existing buildings or walls are to be demolished these should be clearly shown. The drawings submitted should show details of the existing building(s) as well as those for the proposed development. New buildings should also be shown in context with adjacent buildings (including property numbers where applicable).

- Existing and proposed site sections and finished floor and site *levels* (e.g. at a scale of 1:50 or 1:100)

Such plans drawn at a scale of 1:50 or 1:100 should show a cross section(s) through the proposed building(s). In all cases where a proposal involves a change in ground levels (including OD levels), illustrative drawings should be submitted to show both existing and finished levels to include details of foundations and eaves and how encroachment onto adjoining land is to be avoided.

Full information should also be submitted to demonstrate how proposed buildings relate to existing site levels and neighbouring development. Such plans should show existing site levels and finished floor levels (with levels related to a fixed datum point off site) and also show the proposals in relation to adjoining buildings. This will be required for all applications involving new buildings.

Levels should also be taken into account in the formulation of design and access statements.

- Roof plans (e.g. at a scale of 1:50 or 1:100)

A roof plan is used to show the shape of the roof and is typically drawn at a scale smaller than the scale used for the floor plans. Details such as the roofing material and their location are typically specified on the roof plan.

- Design and Access Statements

A Design and Access Statement must accompany all applications, unless it is an application for a 'minor amendment' to a previously certified scheme.

A Design and Access Statement is a short report accompanying and supporting a Section 25 application that should seek to explain and justify the proposal in a structured way. The level of detail required in a Design and Access Statement will depend on the scale and complexity of the application, and the length of the statement will vary accordingly.

The Design and Access Statement should cover both the design principles and concepts that have been applied to the proposed development and how issues relating to access to the development have been dealt whilst demonstrating compliance with the Planning Scheme.

Applications involving protected structures will also be required to be accompanied by a Design and Access Statement. In particular, such a statement should address:

- i. the special architectural or historic interest of the building;
- ii. the particular physical features of the building that justify its designation as a protected structure; and
- iii. the building's setting.

'Additional Items' that may be required

The list below comprises the range of additional information which the DDDA may require before validating an application.

Given the generic nature of the list below, it is recommended that the Board adopt specific local lists that are tailored to the types of applications received. The Board might wish to supplement its published lists with guidance setting out thresholds and criteria for information to help applicants to decide whether a particular document needs to be submitted with the application in their particular case.

Affordable housing statement

Where the Planning Scheme requires the provision of affordable housing, the DDDA may require information concerning both the social and affordable housing and any market housing. For example, the numbers of residential units, the mix of units with numbers of habitable rooms and/or bedrooms, or the floor space of habitable areas of residential units, plans showing the location of units and their number of habitable rooms and/or bedrooms, and/or the floor space of the units. If different levels or types of affordability or tenure are proposed for different units this should be clearly and fully explained. The affordable housing statement should also include details of any consultations with DCC and Housing Association(s) acting as partners in the development.

Daylight/Sunlight Assessment

In circumstances where there is a potential adverse impact upon the current levels of sunlight/daylight enjoyed by adjoining properties or building(s), including associated gardens or amenity space then applications may also need to be accompanied by a daylight/sunlight assessment.

Where a proposed building is likely to overshadow nearby or proposed public spaces and/or private or public open spaces, a Daylight / Sunlight assessment in accordance with the BRE guidelines on daylight assessments will be compulsory.

Foul Sewage and Utilities Assessment

All new buildings need separate connections to foul and storm water sewers. If an application proposes to connect a development to the existing drainage system then details of the existing system should be shown on

the application drawing(s). It should be noted that in most circumstances surface water is not permitted to be connected to the public foul sewers.

Where the development involves the disposal of trade waste or the disposal of foul sewage effluent other than to the public sewer, then a fuller foul drainage assessment will be required including details of the method of storage, treatment and disposal. A foul drainage assessment should include a full assessment of the site, its location and suitability for storing, transporting and treating sewage. Where connection to the mains sewer is not practical, then the foul/non-mains drainage assessment will be required to demonstrate why the development cannot connect to the public mains sewer system and show that the alternative means of disposal are satisfactory.

If the proposed development results in any changes/replacement to the existing system or the creation of a new system, scale plans of the new foul drainage arrangements will also need to be provided. This will include a location plan, cross sections/elevations and specification. Drainage details that will achieve Building Regulations Approval will be required. If connection to any of the above requires crossing land that is not in the applicant's ownership, other than on a public highway, then notice may need to be served on the owners of that land.

An application should indicate how the development connects to existing utility infrastructure systems. Most new development requires connection to existing utility services, including electricity and gas supplies, telecommunications and water supply, and also needs connection to foul and surface water drainage and disposal. Two planning issues arise; firstly, whether the existing services and infrastructure have sufficient capacity to accommodate the supply/service demands which would arise from the completed development, and secondly, whether the provision of services on site would give rise to any environmental impacts, for example, excavations in the vicinity of trees or archaeological remains.

The applicant should demonstrate:

- a) that, following consultation with the service provider, the availability of utility services has been examined and that the proposals would not result in undue stress on the delivery of those services to the wider community;
- b) that proposals incorporate any utility company requirements for substations, telecommunications equipment or similar structures;
- c) that service routes have been planned to avoid as far as possible the potential for damage to trees and archaeological remains;
- d) where the development impinges on existing infrastructure the provisions for relocating or protecting that infrastructure have been agreed with the service provider.

Heritage Statement (including Historical, archaeological features and Protected Structures / Monuments)

The scope and degree of detail necessary in a Heritage Statement will vary according to the particular circumstances of each application. Applicants are advised to discuss proposals with either a planning officer or a conservation officer before any application is made. The following is a guide to the sort of information that may be required for different types of application.

For applications involving internal or external alterations or extensions of protected structures, a written statement that includes a schedule of works to the protected structure(s), an analysis of the significance of archaeology, history and character of the building/structure, the principles of and justification for the proposed works and their

impact on the special character of the protected structure, its setting and the setting of adjacent / nearby protected structures may be required. A structural survey may be required in support of such applications.

For all applications involving the disturbance of ground within an Area of Archaeological Potential as defined in the Dublin City Development Plan or in other areas in the case of a major development proposal or significant infrastructure works, an applicant may need to commission an assessment of existing archaeological information and submit the results as part of the Heritage Statement.

Land Contamination Assessment

Applications may also need to be accompanied by a land contamination assessment which should include an extended assessment of contamination.

Sufficient information should be required to determine the existence or otherwise of contamination, its nature and the risks it may pose and whether these can be satisfactorily reduced to an acceptable level. Where contamination is known or suspected or the proposed use would be particularly vulnerable, the applicant should provide such information with the application as is necessary to determine whether the proposed development can proceed.

Landscaping details

Applications may be accompanied by landscaping (hard and soft) details and include proposals for long term maintenance and landscape management. There should be reference to landscaping and detailed landscaping proposals which follow from the design concept in the Design and Access Statement. Existing trees and other vegetation should, where practicable, be retained in new developments and protected during the construction of the development.

Lighting Assessment

Proposals involving the provision of publicly accessible developments, in the vicinity of residential property, a listed building or a conservation area, where external lighting would be provided or made necessary by the development, should be required to be accompanied by details of external lighting and the proposed hours when the lighting would be switched on. These details shall include a layout plan with beam orientation and a schedule of the equipment in the design.

Noise Assessment

Applications for developments that raise issues of disturbance by noise to the occupants of nearby existing buildings, and for developments that are considered to be noise sensitive and which are close to existing sources of noise should be supported by a noise assessment prepared by a suitably qualified acoustician.

Open Space Assessment

Application proposals should be accompanied by plans showing any areas of existing or proposed open space within or adjoining the application site.

Parking Provision

Applications may be required to provide details of existing and proposed parking provision. These details could also be shown on a site layout plan.

Photographs and Photomontages

These provide useful background information and can help to show how large developments can be satisfactorily integrated within the street scene. Photographs should be provided if the proposal involves the demolition of an existing building or development affecting a conservation area or protected structure(s).

Planning Statement of Compliance

A planning statement identifies the context and need for a proposed development and includes an assessment of how the proposed development accords with the relevant Planning Scheme and should include details of pre-application discussions and how the proposal address any issues raised prior to the application submission, including details of any community consultation undertaken prior to submission. Alternatively, a separate statement on community involvement may also be appropriate.

Site Waste Management Plan

Proposed new development should be supported by a site waste management plans. This is intended to encourage the identification of the volume and type of material to be demolished and/or excavated, opportunities for the reuse and recovery of materials and to demonstrate how off-site disposal of waste will be minimised and managed.

Structural Survey

A structural survey may be required in support of an application if the proposal involves substantial demolition, conversion or alterations / extension of existing buildings, including protected structures.

Transport Assessment

Transport Assessment (TA) should be submitted as part of any planning application where the proposed development has significant transport implications. The coverage and detail of the TA should reflect the scale of the development and the extent of the transport implications of the proposal. For smaller schemes the TA should simply outline the transport aspects of the application, while for major proposals, the TA should illustrate accessibility to the site by all modes of transport, and the likely modal split of journeys to and from the site. It should also give details of proposed measures to improve access by public transport, walking and cycling, to reduce the need for parking associated with the proposal, and to mitigate transport impacts.

Tree survey / Arboriculture implications

Where there are trees within the application site, or on land adjacent to it that could influence or be affected by the development (including street trees), information will be required on which trees are to be retained and on the means of protecting these trees during construction works. This information should be prepared by a qualified arboriculturist.

Ventilation/Extraction Statement

Details of the position and design of air conditioning, ventilation and extraction equipment, including odour abatement techniques and acoustic noise characteristics, will be required to accompany all applications for the use of premises for purposes such as restaurants and cafes – use for the sale of food and drink for consumption on the premises, drinking establishments, hot food takeaways – use for the sale of hot food for consumption off the premises and general commercial uses. This information (excluding odour abatement techniques unless specifically required) will also be required for significant retail, business, industrial or leisure or other similar developments where substantial ventilation or extraction equipment is proposed to be installed.

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DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

1 February 2010

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

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Appendix A – Terms of Reference

This report is provided for the information of the Dublin Docklands Development Authority only. The report may not be quoted or referred to without the prior written consent of Ray King & Associates.

Ray King & Associates accept no responsibility to any third party in relation to the contents of the report.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

INTRODUCTION

1.1 Terms of Reference

Substantial funds are expended by the Dublin Docklands Development Authority and my task was to review the finance function in place to approve, authorise and control this expenditure particularly procurement and payroll.

Appendix A details the Terms of Reference

1.2 Directors and Employees

Formal meetings were held with a number of the present directors and employees of the Dublin Docklands Development Authority including:

Professor Niamh Brennan – Chairman

Niall Coveney – Director and Chairman of Audit Finance and Risk Committee

Gerry Kelly – Chief Executive - Acting

Neil Mulcahy – Company Secretary and Director of Property

David Higgins – Director of Finance

John McLaughlin – Director of Architecture and Planning

Loretta Lambkin – Director of Marketing and Arts

Olivia O'Connor – Finance Manager

Pat Boland – Project Accountant

Kay O'Sullivan – Senior Finance Admin & Wages

Hugh McCann – Planning Admin Officer

Susan Cogan – Manager Architecture and Planning

Tom Armstrong – Project Manager

Angus Denvir – Senior Architect

Joseph O'Sullivan – Senior Architect

Chris Garde – Executive Planner

Olivia O'Connor – Finance Manager

Caroline Buttar – HR Generalist

No meetings, formal or otherwise, were held with any former directors or employees.

1.3 Cooperation

All of the directors and employees of the Dublin Docklands Development Authority that my staff and I had dealings with were extremely friendly and very helpful and I would like to express my gratitude to them for their cooperation.

1.4 Legal Interpretation and Opinion

Some of the documentation reviewed in preparing this report consists of legal agreements. Neither I, nor any of my staff, are qualified as either a solicitor or barrister. Accordingly, interpretations and opinions expressed are clearly given by a “layman”.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll.

SALARY SYSTEM

2.1 Tasks Undertaken

I reviewed the operation of the salary system for 2009.

2.2 Findings

Human Resource Caroline Buttar is notified by the relevant managers of any salary adjustments to be made for their respective staff for any particular period. Salary adjustments can consist of such items as Maternity Leave, Paternity Leave, Reduced Hours etc.

This information is e-mailed to the Finance Department. The Finance Department then completes a schedule showing the individual adjustments made during that pay period. The

Finance Department then processes the wages using a Sage Payroll Package. A reconciliation is also prepared reconciling the gross wages for the previous pay period with the gross wages for the current pay period and showing the adjustments that have been made.

A separate member of staff then reviews the salaries for that pay period.

The Director of Finance then approves the salaries for that pay period.

2.4 Recommendations

In my view, the salary system works well.

Accordingly, I have no recommendations to make.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

SALARY INCREASES

3.1 Tasks Undertaken

I reviewed the system in place for giving employees salary increases. This also involved increases in car allowances and overtime allowances.

3.2 Findings

In the case of the “Towards 2016 Partnership Agreement” increases, there are detailed letters on the personnel files explaining the salary increases.

In virtually every other case there is very little information or documentation. In general, there is one page showing the salary increase which has been approved usually by the Chief Executive of the Dublin Docklands Development Authority. This page on occasions contains a phrase or sentence explaining the reason for the increase in salary or car allowance but on other occasions contains no such information.

Under Section 34 (2) (b) Dublin Docklands Development Act 1997, the Dublin Docklands

Development Authority can engage employees to

“be employed on such other terms and conditions as the Authority, with the consent of the Minister and the Minister for Finance, may determine.”

The personnel files do not contain any documentary evidence that the Minister has consented to any salary increases, or has received any notification of same.

When you see the detailed documentation and information that appears on the Personnel Files when a new employee is engaged, the lack of information and documentation for increases in salary and car allowances is remarkable.

3.3 Recommendations

1. There should be a document completed by the Executive Director with responsibility for the employee recommending a salary increase and giving the reasons why the employee should receive an increase.
2. There should be a document completed jointly by the Executive Director with responsibility for the employee, and the Human Resources Department, benchmarking the amount of the proposed salary, whether it be benchmarked against other salaries paid by the Dublin Docklands Development Authority, other State Bodies, the Civil Service and the Private Sector, and justifying the choice of benchmarking.
3. The Chief Executive should have authority to approve salary increases for staff below the level of Executive Director, so long as the amount of the salary increase does not exceed a particular percentage to be decided by the Executive Board.
4. The Chief Executive should recommend the salary increases for Executive Directors. The documents detailed in recommendations 1 and 2 should also be completed by the Chief Executive for salary increases for Executive Directors. These salary increases should be approved by the Executive Board.
5. In the case of the Chief Executive the Code of Conduct at 14.2 requires a Remuneration Committee to be established to determine any salary increases for the Chief Executive.
6. Salary reviews should take place on set dates, whether that is the anniversary date of an employee’s commencement, which means different dates for every employee, or a set date being the same for every employee. In any event, salary reviews should only take place once every year.
7. Naturally, all matters relating to salary reviews at Dublin Docklands Development Authority are subject to the Dublin Docklands Development Authority Act 1997, Government policies, mandates and decisions.
8. The policy adopted on salary increases should be included in the Code of Conduct.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

CONTRACT RENEWALS

4.1 Tasks Undertaken

I reviewed the system in place for giving employees contract renewals and extensions.

4.2 Findings

The only documentation that appears on Personnel Files in respect of contract renewals and extensions is the new contract itself.

Under Section 34 (1) Dublin Docklands Development Act 1997, the Dublin Docklands Development Authority may appoint

“such and so many persons to be employees of the Authority as it, subject to the consent of the Minister and the Minister for Finance as to number and classes of such employees, from time to time thinks proper”.

The personnel files do not contain any evidence that the Minister has consented to any contract extension or renewal, or has received any notification of same.

On 27 March 2009 the Government announced the *“Implementation of Moratorium on Recruitment and Promotions in the Public Service”*. However, one contract was renewed on 13 April 2009. There was no evidence on the relevant personnel file that permission for this renewal was obtained under the terms of the moratorium.

When you see the documentation and information that appears on the Personnel Files when a new employee is engaged, the lack of information and documentation for contract renewals and

extensions is remarkable.

4.3 Recommendations

1. Three months before a contract expires, there should be a document completed by the Executive Director with responsibility for the position stating whether the position is still required and, if it is, justifying why.
2. If the Executive Director states that the position is still required, the Executive Director should then complete a document making recommendations, and justifying same, as to the filling of the position, whether that be by the existing employee, another employee or a new employee.
3. The Chief Executive should review items 1 and 2, add his own recommendations, and present the documents to the Board. The Board should then make a decision.
4. In the case of Executive Directors, items 1 and 2 should be completed by the Chief Executive and item 3 by the Chairman.
5. In the case of the Chief Executive the Code of Conduct at 14.2 requires a Remuneration Committee to be established and this policy should be extended to deal with any contract renewal for the Chief Executive.
6. Naturally, all matters relating to contracts and employment positions at Dublin Docklands Development Authority are subject to the Dublin Docklands Development Authority Act 1997, Government policies, mandates and decisions.
7. The policy adopted on contract renewals should be included in the Code of Conduct.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

CREDIT CARDS

5.1 Tasks Undertaken

I reviewed the statements and supporting documents for the three credit cards for 2008 and 2009.

5.2 Findings

The vast majority of expenditure is vouched and approved. There were only a few exceptions.

All cash withdrawals, which tended to be foreign currency, were vouched and reconciled.

5.3 Recommendations

1. Cash withdrawals should not be allowed.
2. The travel credit card is presently controlled by the Finance Department. The policy of who is entitled to use the travel credit card, and their limit of expenditure, should be reviewed and committed to writing.
3. A policy needs to be prepared and committed to writing, on the level of expenditure allowed on Hotels, Meals, Flights etc.
4. Naturally, all matters relating to employee expenses at Dublin Docklands Development Authority are subject to the Dublin Docklands Development Authority Act 1997, Government policies, mandates and decisions.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

EMPLOYEE EXPENSES

6.1 Tasks Undertaken

I reviewed the employee expense claims and supporting documents for 2008 and 2009.

6.2 Findings

The vast majority of expenditure is vouched and approved. There were only a few exceptions.

6.3 Recommendations

1. The policy of who is entitled to claim expenses, and their limit of expenditure, should be reviewed and committed to writing.
2. A policy needs to be prepared and committed to writing, on the level of expenditure allowed on Hotels, Meals, Flights etc.
3. Naturally, all matters relating to employee expenses at Dublin Docklands Development Authority are subject to the Dublin Docklands Development Authority Act 1997, Government policies, mandates and decisions.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

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Finance Function – Particularly Procurement and Payroll

JOINT VENTURE – BECBAY LIMITED

7.1 Background

The Executive Board made a number of decisions in October 2006 which lead to them entering into a Joint Venture for the purchase of the former Irish Glass Bottle site.

Becbay Limited was incorporated for the purposes of this Joint Venture, with the Dublin Docklands Development Authority acquiring 26% of Becbay Limited.

Before entering into this Joint Venture the Executive Board obtained legal advice from A & L Goodbody and tax advice from Price Waterhouse Coopers.

Dublin Docklands Development Authority did not obtain a professional valuation of the site at the time of the Joint Venture. A paper presented to the Board on 3 October 2009 did, however, refer to an informal valuation.

A draft of a valuation prepared in November 2006 for the financial institutions by CB Richard Ellis Gunne exists, although it is not clear whether this is the final document. A further valuation was prepared by the same company in January 2008.

The Executive Board initially entered into a Heads of Agreement, a Subscription Agreement and subsequently a Shareholder's Agreement with the Joint Venture Partners.

Dublin Docklands Development Authority initially invested €32,808,546 in Becbay Limited, by way of Shares and Loan Stock.

7.2 Purchase Price

The initial cost of the transaction was €426,800,487 as follows:

Details			€			
Purchase Price			411,987,000			
Stamp						

Duty			12,458,487			
Profes sional Fees			2,355,000			
Total			426,800,4 87			

7.3 Initial Investment

The initial investment in the joint venture was as follows:

The balance of the funds necessary were obtained by Becbay Limited borrowing money from Anglo Irish Bank Corporation plc

7.4 Limitation of Exposure

Clause 4.2 of the Heads of Agreement states:

“.....the total recourse to the DDDA under any loans to JVCO, guarantees or on any account whatsoever in respect of the acquisition of the Company or otherwise shall not in aggregate exceed €35 million”

Clause 2.3 of the Shareholders Agreement states:

“DDDA’s Liability: Notwithstanding any other provision of this Agreement and the Subscription Agreement to the contrary.....the parties hereto hereby expressly agree and acknowledge that the total aggregate liability of the DDDA to the other parties hereto, and to all third parties;

2.3.2 in relation to the acquisition of the Target and/or the operation of the Company shall not exceed €35,000,000 in aggregate.”

Clearly the intention of the Dublin Docklands Development Authority was to limit its exposure to €35m and that was agreed to by its Joint Venture partners as they signed both the Heads of Agreement and the Shareholder’s Agreement.

However, both the Heads of Agreement and the Shareholder’s Agreement were only agreements between the Joint Venture partners and are, therefore, not binding on any other party, whether that is Anglo Irish Bank Corporation plc or any supplier.

7.5 Interest

Clause 2.1.7 of the Shareholder’s Agreement states:

“Each of the Investors agrees and acknowledges that they will, for so long as they, or any member of their Shareholder Group holds shares, for the first two years following Completion,

fund their pro rata portion of the interest charged by the Banks on the Debt Financing.”

Clause 2.1.8 of the Shareholder’s Agreement states:

“Each of the Investors agrees and acknowledges that the arrangement fee for the Debt Financing, being €4,750,000, shall be treated and paid as part of the Debt Financing of the company.”

Accordingly, the Dublin Docklands Development Authority agreed to loan funds to Becbay Limited to pay 26% of the interest payable to Anglo Irish Bank Corporation plc during the first two years on the “Debt Financing” and that “Debt Financing” included not only interest on the initial loan but also any interest on the arrangement fee.

7.6 Conflict

The loan from Anglo Irish Bank Corporation plc to Becbay Limited was initially €293m and the projected annual interest on this loan was approximately €16m.

Accordingly, it was clear at the commencement of this Joint Venture that the funds to be loaned to Becbay Ltd by the Dublin Docklands Development Authority for its interest contribution over the first two years was approximately €4m a year or €8m in total.

It was obvious, therefore, that the amount invested in and/or loaned to Becbay Limited by the Dublin Docklands Development Authority over the first two years was going to exceed €40m, being an initial €32.8m and subsequent loans to meet interest payments of approximately €8m. In fact the total amount invested in and loaned to Becbay Ltd as at 31 December 2008 is approximately €47m, although I understand that this amount has been reduced during 2009.

7.7 Conclusion

One conclusion is that the wording of the Shareholder’s Agreement is incorrect and that the limit of €35m in Clause 2.3 was not intended to include loans to Becbay Limited for interest for the first two years under Clause 2.1.7

An alternative conclusion is that the Dublin Docklands Development Authority, having invested €32.8m in Becbay Limited at the commencement of the Joint Venture, should have restricted further loans to Becbay Limited to a further €2.2m. If this conclusion is correct then:

(a) The additional €12m or so, bringing the investment up to €47m, should not have been loaned by the Dublin Docklands Development Authority to Becbay Limited.

(b) If Becbay Limited was not in a position to pay the full amount of interest to Anglo Irish Bank Corporation plc, as a result of this limitation of loans received from the Dublin Docklands Development Authority, then Anglo Irish Bank Corporation plc could have called in the guarantee given by the Dublin Docklands Development Authority.

Only the people involved in the decision making or negotiations involved in this Joint Venture can state which of the two conclusions is correct.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

GUARANTEES – BECBAY LIMITED

8.1 Background

As part of the financing of Becbay Limited, the Joint Venture partners agreed to provide guarantees to Anglo Irish Bank Corporation plc.

8.2 Dublin Docklands Development Authority Guarantee 9 November 2006

Clause 2.1 states:

“Maximum liability of the Guarantor hereunder in respect of:

- i. *principal amounts due by Borrower under the Facility Letter shall be €26,000,000;*
and
- ii. *interest due by the Borrower under the Facility Letter shall be equal to 26% of such interest.”*

8.3 Dublin Docklands Development Authority Guarantee 29 January 2007

This replaced the guarantee given on 9 November 2006 and clause 2.1 states:

“Maximum liability of the Guarantor hereunder in respect of:

- i. *principal amounts due by Borrower under the Facility Agreement shall be €26,000,000; and*
- ii. *interest due by the Borrower under the Facility Agreement shall be equal to 26% of such interest.”*

This guarantee did not change the exposure of the Dublin Docklands Development Authority.

8.4 Dublin Docklands Development Authority Guarantee 27 March 2009

This guarantee replaced the guarantee given on 29 January 2007 and clause 2.1 states:

“Maximum liability of the Guarantor hereunder in respect of

- i. *principal amounts due by Borrower under the Facility Agreement shall be €29,123,000; and*
- ii. *interest due by the Borrower under the Facility Agreement shall be equal to 26% of such interest.”*

Clause 2.2 states:

“... Guarantor hereby irrevocably and unconditionally agrees ... that it will pay or cause to be paid to the Borrower ... an amount equal to 26% of the amount of such Cost Overrun...”

The Facility Agreement between Becbay Limited and Anglo Irish Bank Corporation defines “Cost Overrun” as

“...any cost, expense or liability incurred or to be incurred or suffered in connection with the Works to the extent that such cost, expense or liability is not or cannot be funded from the proceeds of drawdown under Facility”

This guarantee did extend the exposure of the Dublin Docklands Development Authority in two ways:

- (a) The principal amount guaranteed increased from €26,000,000 to €29,123,000.
- (b) 26% of any Cost Overrun was guaranteed.

8.5 Conclusions

- (a) There is no financial limit on the amount of interest guaranteed.
- (b) There is no financial limit on the amount of the cost overrun guaranteed.
- (c) The partners in the Joint Venture agreed in the Shareholders Agreement to loan money to Becbay Limited to pay interest on the “Debt Financing” over the first two years. If one of the other joint Venture partners failed to provide such loans to Becbay Limited, there would have been a greater amount of interest outstanding. Accordingly, the 26% guaranteed by the Dublin Docklands Development Authority could have been a greater amount, and could have included, in effect, interest that was the responsibility of one of the other Joint Venture partners.

However, the Dublin Docklands Development Authority had two Directors on the board of Beccay Limited. These two Directors clearly provided a protection to the Dublin Docklands Development Authority, as they would have been aware immediately if this situation had arisen. Thus steps could then have been taken by the Dublin Docklands Development Authority to minimise any such exposure.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

PROJECT EXPENDITURE - APPROVAL

9.1 Tasks Undertaken

I reviewed details of the expenditure on the various projects that were undertaken during 2008 and 2009 and how that expenditure had been approved, authorised and managed.

9.2 System in Place

The Dublin Docklands Development Authority prepares an annual budget and this budget is approved by the Executive Board. This budget will include provisions for expenditure for various projects.

Once a project has been included in the budget it is given a project number and approval to spend up to €30,000. This initial expenditure is basically to fund a feasibility study.

Expenditure approval can be increased from €30,000 up to a maximum of €260,000 if a Project Approval Document “PAD” is completed. The PAD is required to be signed by the Project Director, Director of Finance and the Chief Executive.

If further expenditure is to take place a paper must be brought to the Executive Board for further approval. At that stage the Executive Board approves a specific amount of expenditure, which may or may not be the amount detailed in the paper presented to the Executive Board.

A detailed Project Pack is prepared on a monthly basis by the Finance Department recording the position on each of the projects. Amongst other information the Project Pack shows the level of expenditure approved, whether it is €30,000, €260,000 or a higher amount, and the actual expenditure incurred to that date. The Project Pack does not give a breakdown of the expenditure but simply shows the total approved and incurred.

9.3 Findings

In the case of 16 of the projects reviewed total expenditure incurred has exceeded the total expenditure approved at some time during 2008 and 2009. Of those 16, in 6 projects retrospective approval was subsequently obtained for expenditure already incurred.

In only 9 projects were PADs available and in the case of 3 of those projects only one signature appeared on the PADs instead of the required 3 signatures.

If the Project Packs show that the total expenditure incurred is less than the total expenditure approved it does not necessarily mean that the expenditure is within the correct approval limits. For instance, the expenditure incurred on one category, say quantity surveyor's fees, could exceed the expenditure approved for quantity surveyor's fees even though the total expenditure incurred for the project is less than the total expenditure approved.

It was suggested to me that in the case of a number of projects it was always known and agreed that the expenditure could take place and that the absence of the correct paperwork to approve the expenditure was an oversight which should have been rectified.

However, any financial system which allows expenditure without the completion of the correct paperwork does not provide sufficient financial control.

9.4 Recommendations

1. Project Packs

(a) The Project Packs are an excellent form of monthly report which clearly reflect pertinent details of the expenditure on the various projects. The Executive Board needs to decide who should review and approve the Project Packs monthly whether it be the Executive Board itself, the Audit Finance and Risk Committee, the Chief Executive or a combination thereof.

Part of that monthly review should be to take action where any project shows expenditure incurred that is greater than the expenditure approved.

2. Project Approval Documents

(a) All PADs should be signed by the Project Director and the Chief Executive before the expenditure is incurred. A third signature, being the Finance Director, seems excessive.

There should be at least two copies of the PAD signed, with one copy being retained in the Finance Department and one copy on the Project File.

3. Purchase Orders

(a) Purchase Orders should be completed for all project expenditure.

(b) Clearly expenditure should not be allowed to exceed the level of approval for any project. Accordingly, the Executive Board needs to confirm which of the employees has responsibility for controlling the level of expenditure incurred, and ensuring that it is not greater than the

expenditure approved.

By the time the cheque request reaches the Finance Department it is too late to prevent the expenditure as the goods and/or services have already been received, usually in accordance with a Purchase Order.

Financial control needs to be exerted at the time the goods and/or services are being ordered and the Purchase Order is being signed. That means that the responsibility in the first instance should be given to the relevant Project Director.

(c) When a Purchase Order is being presented to a Project Director for approval, a document needs to be presented to the Project Director showing both the expenditure approved for the project and the expenditure incurred to date.

This document should not simply reflect the total amount of expenditure incurred and compare it with the total expenditure approved. It should analyse the expenditure approved over the appropriate categories and compare that analysis with the actual expenditure incurred over the same categories. For instance, if the expenditure that has been approved covers say construction, quantity surveyor's fees, architect's fees etc., then the expenditure approved in each category and the expenditure incurred each category should be compared.

This document should be prepared by the Project Manager, approved by the Project Director and finally retained on the Project File.

(d) Clearly, the Project Director cannot sign a Purchase Order that increases expenditure on a project beyond the expenditure level approved. Accordingly, the presentation of such a Purchase Order to the Project Director should automatically instigate an investigation into the project and the expenditure both approved and incurred.

If necessary, this investigation could result in the preparation of the relevant documentation to increase the level of expenditure approval, whether that is a PAD or a paper to the Executive Board.

(e) The Executive Board might give consideration to deciding that Purchase Orders over a certain value need to be signed by both the Project Director and the Chief Executive.

As PADs for expenditure between €30,000 and €260,000 presently are meant to be signed by the Project Director, the Finance Director and the Chief Executive, it seems only logical that Purchase Orders over €30,000 and up to €260,000 should be signed by at least the Project Director and the Chief Executive.

For consistency, whatever the signing requirements are for PADs, whether that is two or three signatures, should be repeated for Purchase Orders.

(f) At present, if over €260,000 is to be spent on a project a paper has to be prepared for the Executive Board and the expenditure has to be approved by the Executive Board.

It seems logical, therefore, that a Purchase Order for more than €260,000 should not only be

approved by the Project Director and the Chief Executive but also be approved by the Executive Board.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

PROJECT FILES

10.1 Tasks Undertaken

I reviewed the project files for the various projects that were undertaken during 2008 and 2009.

10.2 System in Place

There does not seem to be a uniform system of project files in operation.

Each Project Manager maintains their own system whether it is electronic, paper or a combination of same.

10.3 Findings

Where a Project Manager had been in charge of a project from the commencement they knew well the history and status of the project and where to find a copy of a particular document, either electronically or on paper.

However, in the case of a number of projects, the current Project Manager was not the Project Manager from the commencement of the project, either because of a change of structure or the departure of staff. In those cases, the knowledge of the current Project Manager, either about the history of the project or particular documents, was not first hand and, therefore, not always as detailed, which is very understandable.

10.4 Recommendations

1. Filing System

(a) There should be a universal file system for certain basic information on each project. That makes sense in any organisation but is particularly relevant at present where staff are, and will be, leaving the Dublin Docklands Development Authority, leaving the staff remaining to take over projects.

(b) The universal file system should contain standard sections for a number of aspects of any project.

In the first instance the Project Managers and Project Directors would be best placed to decide the kind of information and documentation that should be included in a universal file system, as they are the people who would be using the files most regularly.

However, it seems to me that the following documents would be amongst those that would be relevant:

(i) Original Budget

(ii) PADs completed for Project

(iii) Papers submitted to the Executive Board

(iv) Copies of Purchase Orders issued on Project

- (v) Continuous summary of expenditure approved and expenditure incurred
- (vi) Tender Forms issued
- (vii) Tender Appraisal Forms
- (viii) Successful Tenders
- (ix) Schedule of Unsuccessful Tenders

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

CHEQUE PAYMENTS - APPROVAL

11.1 Tasks Undertaken

I reviewed the major cheque payments, and their supporting documentation, issued during 2008 and 2009.

All manual cheques of €10,000 and over were reviewed.

All computer cheques of €50,000 and over were reviewed.

In addition the computer cheques between €25,000 and €49,999 were reviewed.

Some, but not all, of these cheques were reviewed.

11.2 System in Place

The system has changed over 2008 and 2009.

A Purchase Order system was brought in 2008, initially for expenditure by the Social Regeneration Section and then by the other Sections.

Now Purchase Orders should be completed for all expenditure except for legal costs, utilities and facilities.

From February 2009, all Purchase Orders over €5,000 were to be approved by a Director. However, since July 2009 all Purchase Orders are to be approved by a Director.

11.3 Findings

In the case of the manual cheques of €10,000 and over, there were only four payments where documentation could not be found. Although most cheques were approved and authorised by separate employees, there were a number of payments that only had one or the other and some of those payments were large. There were no Purchase Orders in place.

In the case of computer cheques of €50,000 and over there was always supporting documentation available, being invoices on most occasions. However, there was not always a Purchase Order in place. All payment documentation was approved and authorised by separate employees. However, there were a large number of employees who were involved in approving payments.

In the case of computer cheques between €25,000 and €49,999 which were reviewed, there was always supporting documentation, being invoices. However, there was not always a Purchase Order in place. All payment documentation was approved and authorised by separate employees. However, there were a large number of employees who were involved in approving payments.

11.4 Recommendations

1. Purchase Orders - General

(a) Purchase Orders should be completed for all expenditure where goods and/or services are supplied to the Dublin Docklands Development Authority, other than utilities.

(b) The Executive Board might give consideration to deciding that Purchase Orders over a certain value need to be signed by both the Project Director and the Chief Executive.

As PADs for expenditure between €30,000 and €260,000 presently are meant to be signed by the Project Director, the Finance Director and the Chief Executive, it seems only logical that Purchase Orders over €30,000 and up to €260,000 should be signed by at least the Project Director and the Chief Executive.

For consistency, whatever the signing requirements are for PADs, whether that is two or three signatures, should be repeated for Purchase Orders.

(c) At present, if over €260,000 is to be spent on a project a paper has to be prepared for the Executive Board and the expenditure has to be approved by the Executive Board.

It seems logical, therefore, that a Purchase Order for more than €260,000 should not only be approved by the Project Director and the Chief Executive but also be approved by the Executive Board.

2. Purchase Orders – Legal Costs

(a) At present, Purchase Orders are not issued for Legal Costs. The logic is that it is usually not possible to quantify the total cost of the legal services to be provided, such as with Court proceedings.

However, substantial legal costs have been incurred by the Dublin Docklands Development Authority during 2008 and 2009 and it is, therefore, important that a system of control is implemented.

Purchase orders should be completed for all Legal Costs detailing the tasks to be undertaken, the hourly charge out rates to be applied by the Solicitors and the frequency of invoicing.

(b) Details of charge out rates of the major firms of solicitors have already been obtained by the Company so this information is readily available. Naturally, if these rates are changed by the solicitors involved they will have to notify this fact to the Dublin Docklands Development Authority and a fresh Purchase Order will have to be issued.

(c) With regard to frequency of invoicing, the Purchase Order could provide for invoicing periodically say every month or quarter. Alternatively, invoicing could take place based on the build up of fees, say every time they reach €20,000, €30,000 or €50,000.

Such regular invoicing will enable the Dublin Docklands Development Authority to monitor legal costs as they are incurred.

(d) An indication should also be obtained from the Solicitors as to the possible level of fees, whether that is under €30,000, between €30,000 and €260,000 or over €260,000. This will determine who should approve the Purchase Order, whether it is the Project Director alone, where the fees are likely to be less than €30,000, the Project Director and the Chief Executive, where the fees are likely to be between €30,000 and €260,000, or the Executive Board, where the fees are likely to be more than €260,000.

(e) All of these measures will give the Dublin Docklands Development Authority a measure of control, and a greater amount of information, on the legal costs being incurred.

3. Cheque Requests

(a) Requests for cheques should only be made where a Purchase Order has been issued and an invoice received. The exception to this will be in the case of utilities, where only an invoice will have been received.

(b) In the first instance, the invoice received should be approved by the Project Director who issued the Purchase Order. In the case of utilities, the Director of Finance should request the cheque.

(c) Where the cheque request is for more than €30,000 it should also be approved by the Chief Executive.

(d) Where the cheque request is for more than €260,000 it should also be approved by the Executive Board or one of the Directors nominated by the Executive Board.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

PUBLIC PROCUREMENT GUIDELINES – COMPETITIVE PROCESS

12.1 Key Principles

The “Public Procurement Guidelines - Competitive Process” state a number of key principles including:

“the public procurement function is discharged honestly, fairly, and in a manner that secures best value for public money”

“a competitive process carried out in an open, objective and transparent manner can achieve best value for money in public procurement”

“Essential principles to be observed in conducting the procurement function include non-discrimination, equal treatment, transparency, mutual recognition, proportionality, freedom to provide services and freedom of establishment.”

12.2 Public Procurement – Type of Service

The Public Procurement Guidelines - Competitive Process divides services in to Priority Services and Non-Priority Services.

Priority services, which are subject to the full scope of EU procurement Directives, include:

Maintenance

Financial Services
Accounting and Auditing
Advertising

Non-priority services, which are not subject to the full scope of the EU procurement Directives include:

Rail Transport Services
Legal Services
Personnel Placement
Investigation and Security Services

12.3 Contracts Under €5,000

When a supply or service is less than €5,000 it may be purchased on the basis of verbal quotes from one or more competitive suppliers.

There is no requirement to advertise or prepare tender documents for such supplies or services.

The lowest or most suitable quote should be chosen.

12.4 Contracts between €5,000 and €50,000

When a supply or service is between €5,000 and €50,000, specifications can be sent via fax or e-mail to at least three suppliers or service providers. The contract can also be advertised on etenders.gov.ie or any other relevant media, although this is not mandatory.

The offers should be evaluated using a scoring system and the most suitable selected.

The unsuccessful bidders should be notified of the outcome.

12.5 Contracts over €50,000

When a supply or service is over €50,000, tender documentation must be drawn up. The contract should then be

1. Advertised on etenders.gov.ie, or other appropriate media, and/or
2. At least five suitable tenderers should be invited to submit a tender.

The tenders should then be evaluated, based on either price or MEAT (Most Economically Advantageous Tender). If the basis is MEAT, then a scoring system should be used.

The unsuccessful bidders should be notified of the outcome.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

PROJECT EXPENDITURE – PUBLIC PROCUREMENT GUIDELINES

13.1 Tasks Undertaken

I reviewed the project files for the various projects that were undertaken during 2008 and 2009.

In total there were 24 projects. Files were presented in the case of 22 of the projects. Of those 22 projects, there was little or no expenditure in the case of 2 projects, and feasibility expenditure in the case of 5 projects.

That left 15 projects to be reviewed.

13.2 Contracts under €5,000

Docklands North Lotts, reflected 5 contracts under €5,000, ranging in value from €1,600 to €3,750. There was no evidence on the files of any written tenders or quotations for these contracts. However, under the Public Procurement Guidelines such contracts can be awarded on the basis of a verbal quotation.

Accordingly, there is no evidence of a breach of the Public Procurement Guidelines.

13.3 Contracts between €5,000 and €50,000

22 contracts were reviewed and in the case of 20 of the contracts the procurement complied with the Public Procurement Guidelines.

Docklands North Lotts, reflected 10 of these contracts which were direct appointments for one off specialist services.

In the case of Custom House Landscaping there was no documentation available in respect of one contract of €7,275.

In the case of BJ Marine JV there was no documentation available in respect of one contract of €6,833.

13.4 Contracts over €50,000

37 contracts were reviewed and in the case of 36 of the contracts the procurement process complied with the Public Procurement Guidelines.

In the case of Custom House Landscaping there was no documentation available in respect of one contract of €75,000.

13.5 Conclusion

The results detailed in this report show that the Dublin Docklands Development Authority has complied with the Public Procurement Guidelines for contracts awarded on projects during 2008 and 2009.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

NON PROJECT EXPENDITURE – PUBLIC PROCUREMENT GUIDELINES

14.1 Tasks Undertaken

I reviewed the documentation available in respect of payments made to 16 organisations during 2008 and 2009.

14.2 Documentation

Unfortunately, substantial documentation was not available for review.

It may well be that if the documentation exists, and could be located, there would be evidence of compliance with the Public Procurement Guidelines.

14.3 Conclusion

The absence of so much documentation makes it impossible to determine whether the Dublin Docklands Development Authority has complied with the Public Procurement Guidelines for non project expenditure during 2008 and 2009.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

Report on

Finance Function – Particularly Procurement and Payroll

DUBLIN CITY COUNCIL – SITE SUBSIDY PAYMENTS

15.1 Tasks Undertaken

I reviewed the documentation in respect of five Site Subsidy Payments made by the Department of the Environment, Heritage and Local Government to Dublin Docklands Development Authority via Dublin City Council between March 2007 and June 2008.

15.2 Site Subsidy Payments

Between March 2007 and June 2008 five payments were made to Dublin Docklands Development Authority. The payments were made by Dublin City Council who in turn had received the funding for same from the Department of the Environment, Heritage and Local Government.

Site subsidies were payable in respect of 108 units of affordable housing, with the site subsidy being €50,000 in respect of each unit. Site subsidies, therefore, totalled €5,400,000.

The 108 units of affordable housing were in the following locations:

15.3 Overpayment

The actual payments made by Dublin City Council totalled €5,450,800 as follows:

This was an overpayment of €50,800.

A cheque for €50,000 was issued by Dublin Dockland Development Authority to Dublin City Council in November 2007, which reduced the overpayment to €800.

15.4 Payees

The payees on the cheques issued by Dublin City Council were as follows:

Donal Barron endorsed, in favour of Dublin Docklands Development Authority, each of the three cheques made out to him and all three were lodged to the bank account of Dublin Docklands Development Authority.

The cheques issued by Dublin City Council were computer generated, rather than hand written, and consisted of one page containing a remittance advice and a detachable cheque.

In the case of the first three payments the remittance advices were addressed to:

Donal Barron
Dublin Docklands Development Authority
Custom House Quay, Docklands
Dublin 1

The three cheques were made payable to Donal Barron.

In the case of the final two payments the remittance advices were addressed to:

Dublin Docklands Development Authority
Custom House Quay
Dublin 1

The two cheques were made payable to Dublin Docklands Development Authority.

15.5 Conclusion

It would appear that when the computer generates the cheque it makes it payable to the name shown on the first line of the account.

When the account was first set up by Dublin City Council the first line was “Donal Barron” and the first three cheques were made payable to Donal Barron.

Dublin City Council then amended the account and the first line was then “Dublin Docklands Development Authority” and the final two cheques were made payable to Dublin Docklands Development Authority.

Although Dublin City Council clearly showed the wrong payee on the first three cheques, the cheques were lodged to the bank account of Dublin Docklands Development Authority.

DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY

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APPENDIX A – TERMS OF REFERENCE

Draft Specification for an Independent Review of the Functions and Structure

of the Dublin Docklands Development Authority Finance Functions and in particular the Procurement and Payroll Operations

The Dublin Docklands Development Authority wishes to conduct a comprehensive review of the Authority's Finance function in particular the Procurement and Payroll operations. A draft of the review will be submitted by end first week of October 2009.

The Authority has since its establishment developed and implemented a series of Practices and Procedures to manage its financial affairs. The purpose of this proposed review is to carry out a critical analysis of these Practices and Procedures and their implementation measured against the most up to date proper Administrative and Public Law Standards.

Where the Review identifies areas of concerns the successful tenderer will be expected to provide conclusions and recommendations as to any changes necessary to meet the most rigorous modern day Financial Practices and Procedures to Proper Administrative and Public Law Standards.