

Dublin Docklands Development Authority

- The DDDA was established under the Dublin Docklands Development Authority Act 1997 with a statutory mandate to secure the social and economic regeneration of the Dublin Docklands on a sustainable basis and to secure improvements in its physical environment.
- The DDDA 1997 allowed the authority to acquire hold and manage land in that area for development redevelopment renewal or conservation - allowed the authority to “carry on any activity which appear 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”
- The DDDA has generally been self-financing, with resources generated through its property development activities in the Docklands area being re-invested in the physical, social and economic renewal of the area. However, as a result of the economic downturn and, in particular the stressed state of the property market, its financial position had been under significant strain.
- On 29 May 2012 the Government decided that the DDDA would be wound up. It was clear from a Special Report of the C&AG that a stand-alone DDDA was not considered to be a viable vehicle, financially or otherwise, to continue the regeneration of the Dublin Docklands. In July 2013, the Government further decided that Dublin City Council would be the authority under which the future regeneration of the Dublin Docklands will be continued. Significant progress has been made to date in achieving an orderly wind-up of the DDDA.
- The DDDA Executive Board devised a transition plan and one of its key elements was to oversee the orderly disposal of assets, while realising optimum value on disposal, as well as discharging the liabilities of the Authority. The crystallisation of liabilities and the disposal of assets are continuing.
- The Dublin Dockland Development Authority Dissolution Bill 2015 is currently in the process of its passage through the Houses of the Oireachtas with enactment anticipated imminently.

Responsibilities of the Board

- There is an architecture in place in relation to corporate governance for state bodies. This consists of the central department guidelines and procedures, line Department oversight and commercial body implementation. In this context the key forum for holding a body to account for its performance is the Board of the Agency.

The executive Board of the authority consisted of members from the private sector who are professionals from development, planning and finance backgrounds and a D/ECLG official. The Board members are responsible for exercising their own skill judgment and relevant professional experience to take decisions.

Representing an interest

This is not an issue peculiar to State Bodies or ministerial nominees. Directors in any type of Companies Act Company may have been voted on to a board at the behest or by the votes of one shareholder or as an employee director and be perceived to represent an interest. At the same time their fiduciary duty as director is to act and vote in the best interests of the company.

This requires the director being clear at all times that they fulfil the first duty by keeping the board informed about the interests of their nominating Minister/shareholder/employee and the second by how they then vote. It also requires that the other directors remain clear that they continue to be required to exercise their own judgment expertise and experience in making decisions in the best interests of the body.

The fiduciary duty of the civil servant on a board is to act as a member of the board in the interests of the body. Departmental rep cannot ensure good CG – this is a collective responsibility of the board. 2010

- In relation to the Board of the Dublin Docklands Development Authority no Civil Servant has sat on the Board since 1st June 2012 reflecting the need to ensure clear reporting lines from the Board to the Minister and ensuring that there is no conflict of interest between the role of a Board member and a Departmental Official.

The DDDA IGB borrowing approval process.

Section 30 (1) (as amended) of the DDDA Act 1997 provided that subject to the approval of the Minister, given with the consent of the M/Finance (now PER), the Authority may borrow money for the purposes of providing for current or capital purposes.

(2) Any moneys borrowed by the Authority may be secured on the Revenue rounds or property of the Authority or guaranteed by the M/Finance under section 31.

(3) provided that the amount of principal that the Authority may be liable to repay on foot of borrowing does not exceed €127m (Urban Renewal Act 1998 £100,000,00).

The role of Department of Finance at the time was to give its consent to the approval of M/ECLG to borrowing by the DDDA up to its legal limit. The role of D/PER in any such requests was to consider possible Exchequer impacts. DDDA was considered to be a commercial semi state with no borrowing. Any borrowings incurred were not part of GGB or GGD.

The request was made to D/Finance on **4 October 2006 (5.19pm)**.

The request from the D/ECLG was for sanction further to a request from the CEO of the DDDA to incur borrowings up to its statutory limit to acquire properties within the docklands for development in pursuance of its objectives as set out in the Authority's master plan. It confirmed that the Authority did not require a state guarantee under section 31 of the 1997 Act "presumably *sic* on the basis that the commercial value of the properties acquired would be considered an adequate guarantee by lending institutions".

The request referred to the fact that the DDDA funds its activities from its own resources and commercial activity and was not in receipt of Exchequer funding. It was indicated to D/Fin that a short window of opportunity existed in respect of the acquisition of "one or more sites in the docklands" and that DDDA would act on the approval within that period.

D/Fin responded to D/Env on 9 October confirming that DDDA is considered to be a NCSS from a GG accounting perspective ((more than 50% of its income accrues from non –Government sources and borrowing will not impact on GGB or GGD). Noted that borrowing up to the full limit in one tranche was unusual it was a matter for D/ECLG to decide if this fitted within the approved plans for DDDA.

Requested D/ECLG to confirm

- with supporting evidence that that DDDA could service the debt without recourse to the Exchequer and
- that DDA had received quotes from a number of banks for the financing.

17/10 D/ECLG write to D/Finance with further info . This time the sanction requested referred to the IGB site. Site details were provided in an accompanying note along with proposal for its development including provision of social and affordable housing. The note stated that a professional valuation of the site was commissioned and factoring in all the elements as well as a required rate of return of 15%, the site was valued at €220m. The D/ECLG referred to the fact that DDDA net worth was €110m, that it was self-financing and that it generated its revenues from property related transactions.

D/Fin was satisfied at this point that there was no code of practise issues arising.

18/10

Request from D/Finance to D/ECLG to confirm that DDDA will repay borrowings wholly from their own resources without recourse to the Exchequer. Also requested if there was any potential impact on the planned Poolbeg incinerator.

18/10

D/ECLG confirm” the unequivocal answer is yes. They understand that the question of Exchequer support does not arise and that own resources must be capable of supporting the cost of any borrowings entered into. No impact on the Poolbeg incinerator anticipated.

23 October submission to Minister. D/Finance recommended that consent be given the M/ECLG approving borrowing by the DDDA

- of the funds necessary to purchase the site and to
- in line with section 6 of the Code of Practise for the Governance of state bodies, to take a shareholding in a special purpose company to be created for the development of the site as a jv with a private developer. Sanction on the basis that DDDA :
 - Is a self- financing body with a net worth of €110m
 - It will be able to repay the borrowings without recourse to the Exchequer

23 October Min “agreed”

23 October – letter to D/ECLG confirmed that M/F had given consent to the DDDA to borrow up to its statutory limit and to take a shareholding in a spc to be created to develop the site as a jv with a private developer.

24 October

Formal letter issues from D/ECLG (MM) approving borrowing (with the consent of the M/Fin) by the DDDA to borrow up to statutory limit €127m for the purpose of property acquisition in the Dublin Docklands and to taking a shareholding in a jvc.

Subsequently in February 2007 D/ECLG wrote to D/Finance regarding a consent to the issue of a guarantee for borrowings of €26m, further to section 3 of the Borrowing Powers Of Certain Bodies Act 1996 – this consent was not issued at that time or subsequently. Note on file that D/F asked D/ECLG to investigate with DDDA if a guarantee was required.