

APPENDIX 1

Review by Senior Counsel of the management by the Department of the Environment, Community and Local Government of an application by Wicklow County Council for loan approval in respect of the compulsory purchase of land at Charlesland, Co. Wicklow

Terms of reference

The manner in which this matter has been addressed by both the Department and Wicklow County Council has been the subject of public and media comment and representations by a number of Wicklow public representatives to the then Minister for Housing and Planning. The Minister's Special Adviser met with these representatives at the request of the Minister on 3 November 2011 and he was at that meeting given the annexed document dated 3 November 2011. He was subsequently sent a further document dated 7 November 2011 (also annexed).

In light of the serious allegations made in these documents, concerning the Department's¹ management of the loan applications by the Council² to fund the compulsory land acquisition, Counsel is requested to:

- I review the relevant records of the Department³ in this regard;
- II consult as necessary relevant officers of the Department;
- III establish the process followed by the Department in regard to the loan application and its consistency with the relevant legal requirements and administrative requirements or practices;
- IV identify any deviation from such requirements and practices;
- V address the specific concerns of the Public Representatives in the annexed document regarding the role of the Department and consult as necessary with these public representatives; and
- VI make such findings and recommendations as may be appropriate in light of this review, including in regard to any shortcomings that may be identified either in regard to the management of the specific loan application or more generally in regard to the processing by the Department of such applications

¹ These documents also contain serious allegations regarding the manner in which this matter was dealt with by the Council

² The Council initially sought and received such loan approval in 2008. However, this loan approval was not acted upon at that time and thus lapsed. The Council on 20 July 2011 sought a further loan approval, which remains under consideration in the Department

³ The conduct of this review may necessitate access to records or officials of the Council and the Department will, as required, seek the co-operation of the Council in this regard.

APPENDIX 2



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government



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Óifig an Ard Rúnaí
Office of the Secretary General

16 November 2011

Mr Liam O'Daly
Director General
Office of the Attorney General
Government Buildings
Upper Merrion Street
Dublin 2

Dear Liam,

I refer to my recent conversation with you concerning the involvement of this Department, in the context of a loan approval request from Wicklow County Council, in relation to the acquisition, by the Council, by way of CPO of land at Charlesland, Co. Wicklow

The manner in which this matter has been addressed by both the Department and Wicklow County Council has been the subject of representations by a number of Wicklow public representatives to Minister Penrose. The Minister's Special Adviser met with these representatives at the request of the Minister on 3 November, and he was at that meeting given the enclosed document dated 3 November. He was subsequently sent a further document, dated 7 November, which is also enclosed.

As may be seen, these documents contain serious allegations regarding the manner in which the land acquisition was pursued by Wicklow County Council and also concerning the process followed by this Department in relation to a loan application by the Council to fund the cost of the acquisition. The Council initially sought and received such loan approval, which is a routine requirement in such cases, in 2008. However, this loan approval was not acted upon at that time and thus lapsed. The Council has since then, on 20 July 2011, sought a further loan approval, in the amount of €3m, to facilitate the acquisition of the land on the basis of a settlement figure with the vendor based on legal advice available to the Council regarding its obligations in respect of a Notice to Treat issued by it on 12 July 2006. This position is



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supported by advice available from your Office, most recently by way of letter dated 11 October 2011. However, in light of the serious issues raised in the documentation submitted to Minister Penrose, the Department will not be further processing this application pending an examination of the validity, or otherwise, of the claims made in respect of the actions of the Department and Wicklow County Council

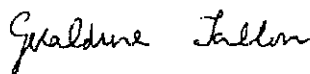
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Independent review of the actions of this Department since the making of the original loan application by the Council is now necessary before final consideration is given to the current loan application, and such review should also be enabled to pursue any associated enquiry which may be necessary in respect of the manner in which the Council has itself dealt with this land acquisition.

Minister Penrose, in consultation with Minister Hogan, recommended that Senior Counsel should be appointed to review the manner in which this loan application has been processed by this Department in the period since the original application. I understand that Minister Penrose spoke to the Attorney General in this regard. In undertaking this review it would be necessary to address the specific concerns of the public representatives and to consider whether the Department was fully compliant with relevant statutory and public policy obligations.

I am accordingly requesting the Office of the Attorney General to nominate a Senior Counsel to undertake the above outlined review as soon as possible. I will ensure that all relevant Departmental documentation is made available, and I and all relevant officials will assist the review as required.

Yours sincerely,



Geraldine Tallon
Secretary General

APPENDIX 3

Local Government Act, 2001

Borrowing and
lending of
money

106.—(1) (a) In this section—

“local authority” includes a joint body;

“appropriate Minister” means—

(i) if the relevant borrowing or lending is in respect of matters which relate to the responsibility or interest of only one Minister of the Government other than the Minister, that Minister of the Government,

(ii) if such matters relate to the responsibility or interest of 2 or more Ministers of the Government (none of whom is the Minister), such one of those Ministers of the Government as has the greater or greatest interest in the matters, and

(iii) in all other cases, the Minister

(b) If in relation to *paragraph (ii)* of the definition of “appropriate Minister” there is any doubt as to which of 2 or more Ministers of the Government has the greater or greatest interest, the doubt shall be determined by the Minister and the decision of the Minister shall be final.

(2) Subject to *subsections (3) and (8)* and any regulations made under *subsection (5)*, a local authority may borrow money in any manner which it considers suitable for the effective performance of its functions.

(3) (a) Borrowing by a local authority under this section shall only be with the sanction of the appropriate Minister

(b) *Paragraph (a)* does not apply to borrowing which the appropriate Minister may exempt for the purposes of this subsection

(4) Any application for the sanction of the appropriate Minister under *subsection (3)(a)* shall be in such format as may from time to time be specified by the appropriate Minister

(5) The Minister may, after consultation with the Minister for Finance, make regulations in relation to borrowing by local authorities.

(6) (a) A local authority may lend money to another local authority on such terms as to repayment and other matters as it considers proper.

(b) Where a sum which consists of either—

(i) a portion of a loan advanced under this section by a county council to a town council that is not a rating authority but is situated within its county, or

(ii) interest on any such loan,

and is not included in the appropriate demand under section 101, then the sum shall be deemed to have been included in the demand and section 101 (2) shall have effect accordingly.

(7) A decision to borrow or lend under this section is a reserved function.

(8) The appropriate Minister may, after consultation with the Minister for Finance, sanction borrowing by a local authority in a currency other than the currency of the State.

(9) Except in accordance with this section, a local authority shall not—

(a) borrow money, or

(b) lend money to another local authority.

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APPENDIX 4

5th March, 2012

Re: Delegation to meet Minister Penrose at Custom House on Monday 11th July 2011

- 1 At the Special Council meeting held on the 10th June, 2011, which was held to discuss the Council's Differential Rent Scheme, the members agreed to send a delegation to meet Minister Penrose on the issue of the Differential Rent Scheme
- 2 Catherine Halligan, S E O. Housing Directorate, wrote to the Minister on the 13th June 2011, asking that he meet a delegation of elected members, either on Saturday the 25th June, when he was due to meet with the Labour Party in the county, or at another time in the near future
- 3 On the 15th June, 2011 the Minister's private secretary replied to Catherine's letter and indicated that the Minister could not meet on the 25th June but that arrangements could be made to meet a delegation of Four at a later date
- 4 On the 6th July, 2011 a further letter was received from the Minister's private secretary, referring to the Council's resolution requesting a meeting with the Minister to discuss the Differential rents scheme and indicating that the Minister was available on Monday 11th July at 4pm in the Custom House to meet a delegation of Four from the Council.
- 5 I phoned the Cathaoirleach on the 6th July to inform him of the letter and to discuss the make-up of the delegation. The Cathaoirleach asked me to contact the Minister's private secretary to enquire if additional members could attend the meeting with the Minister
- 6 I phoned Aisling immediately and she agreed to check and revert back to me. She phoned me back some time later that day and confirmed that due to pressure on space, the delegation was limited to Four, and that the Director of Housing was expected to be one of the Four.
- 7 I phoned the cathaoirleach and we agreed that the best possible delegation would be him as cathaoirleach, me as Director, Cllr Nicky Kelly as chairman of the Housing S.P.C. and Cllr Pat Casey as leas-cathaoirleach of the Council
- 8 I then phoned Councillors Kelly and Casey and they agreed to make themselves available for the meeting on the Monday. Councillor Casey also agreed that if we all met at his premises in Glendalough, he would drive to the Custom house on the Monday
- 9 In relation to the meeting itself, the majority of the meeting was taken up with the rents issue and a general request for additional funding from the Department for Housing. The Cathaoirleach raised the C.P.O. issue at the end of the meeting.

Michael Nicholson-----5th March 2012