**Public Accounts Committee** 

# Report on Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Management Scheme

Together with the Minutes of Proceedings of the Committee Relating to the Report, Correspondence and the Minutes of Evidence

Ordered by The Public Accounts Committee to be printed 9 November 2011 Report: NIA 21/11-15 Public Accounts Committee

### REPORT EMBARGOED UNTIL 00:01 am on 7 December 2011

Second Report

## Membership and Powers

The Public Accounts Committee is a Standing Committee established in accordance with Standing Orders under Section 60(3) of the Northern Ireland Act 1998. It is the statutory function of the Public Accounts Committee to consider the accounts, and reports on accounts laid before the Assembly.

The Public Accounts Committee is appointed under Assembly Standing Order No. 56 of the Standing Orders for the Northern Ireland Assembly. It has the power to send for persons, papers and records and to report from time to time. Neither the Chairperson nor Deputy Chairperson of the Committee shall be a member of the same political party as the Minister of Finance and Personnel or of any junior minister appointed to the Department of Finance and Personnel.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 23 May 2011 has been as follows.

Mr Paul Maskey (Chairperson)

Mr Joe Byrne (Deputy Chairperson)

Mr Sydney Anderson Mr Michael Copeland Mr John Dallat Mr Alex Easton Mr Paul Girvan Mr Ross Hussey Ms Jennifer McCann Mr Mitchel McLaughlin Mr Adrian McQuillan<sup>1</sup>

1

With effect from 24 October 2011 Mr Adrian McQuillan replaced Mr Paul Frew

# Table of Contents

List of abbreviations used in the Report	iv
Report	
Executive Summary	1
Summary of Recommendations	4
Introduction	6
The Planning and Funding of the Scheme	7
Eligibility and Grant Uptake	15
Impact of the Scheme	17
Appendix 1:	
Minutes of Proceedings	21
Appendix 2:	
Minutes of Evidence	35
Appendix 3	
Correspondence	109
Appendix 4:	
List of Witnesses	271

# List of Abbreviations used in the Report

BMAP	Belfast Metropolitan Area Plan
C&AG	Comptroller and Auditor General
the Committee	Public Accounts Committee
DARD/the Department	Department of Agriculture and Rural Development
DFP	Department of Finance and Personnel
FNMS	Farm Nutrient Management Scheme
LPS	Land and Property Services

## **Executive Summary**

#### Introduction

- 1. With over 25,000 active farm businesses covering around 75% of the total land area in Northern Ireland, agriculture plays an important role in the protection and improvement of the environment. The agricultural industry, however, has been one of the principal contributors to a number of serious water quality problems that currently affect the groundwaters, rivers and lakes of Northern Ireland. The largest and most widespread of these is nutrient enrichment, which results in a phenomenon known as eutrophication. This causes accelerated growth of algae, excessive plant growth and consequential reduction in oxygen levels.
- 2. The introduction of the 1991 Nitrates Directive by the European Commission was intended to improve the use of nutrients on farms and, as a result, improve water quality throughout Northern Ireland. The Directive requires all Member States to prepare an Action Programme which, in Northern Ireland, includes a minimum storage capacity for manure (22 weeks for cattle and sheep) and a Closed Period during the wettest months of the year (mid-October to the end of January) when the spreading of manure is not allowed.
- 3. To help farmers comply with the Directive, the Department of Agriculture and Rural Development (DARD) introduced the Farm Nutrient Management Scheme (FNMS) in 2005. This provided 60% capital grant support, up to a maximum grant of £51,000, towards the cost of building the additional storage required. Almost 4,000 farmers proceeded with a project, at an average grant per farm of some £31,000. In 2007, the programme budget was increased to £144 million, to ensure that all applicants could be funded. Overall, the total grant paid amounted to £121 million, making this the largest capital grant scheme ever run by DARD. The Scheme was completed in December 2009.

#### **Overall conclusions**

- 4. The Committee's overall conclusion is that, in a number of key aspects, the Farm Nutrient Management Scheme was poorly planned and badly managed. As a result, it cost many millions of pounds more than should have been necessary to ensure compliance with the European Commission's Nitrates Directive. Combined with the fundamental uncertainty over the extent to which the Scheme is actually contributing to the improvement of Northern Ireland's water quality, the Committee can only conclude that the Scheme provided poor value for taxpayers' money.
- 5. The Committee acknowledges that FNMS represented a major undertaking for the Department. However, as the largest capital grant scheme it had ever managed, FNMS demanded the highest standard of planning and implementation. Instead, the Department appears to have adopted a piecemeal approach, with the Scheme being subjected to a succession of uncertainties, delays and revisions.

#### Planning and funding of the Scheme

- 6. Problems were apparent from an early stage. DARD was slow to respond to the 1991 Nitrates Directive, taking eight years to begin its designation of Nitrate Vulnerable Zones. This was despite the European Commission having set a two-year deadline. With the risk of infraction proceedings by the Commission, this was far from satisfactory. Full and prompt compliance with all Commission directives is essential.
- 7. The quality of the Department's Economic Appraisal, on which the planning of the Scheme was based, was far below the standard required assumptions on cost and uptake turned out to be significantly different from the actual figures. Part of this stemmed from the Department's reliance, when planning the Scheme, on seven to eight-year-old sample data on existing farmyard storage capacity. The lack of up-to-date data undermined DARD's planning

process and led to a number of the difficulties experienced during implementation. It is essential that the assumptions underpinning appraisals are rigorously tested and confirmed.

8. The Department has an obligation to minimise the cost to taxpayers. When designing capital support schemes such as FNMS, it should always apply the well-established principle of additionality. This ensures that public funds are only applied where necessary and that the level of support is the minimum required to bring about the desired objectives. In the case of FNMS, however, the Department failed to do so. There was widespread use of the more expensive underground storage facilities, with over four out of five farmers opting for this approach. The additional cost to the taxpayer amounted to £49 million. Moreover, DARD's declaration of a total territory approach forced those farmers in the 17% of Northern Ireland's land area that is not judged sensitive to eutrophication to participate in the Scheme. This added a further £10 million to the Department's costs. And grant was paid at a flat rate of 60%, irrespective of means or the size of a project.

#### The proposed sale of Crossnacreevy

- 9. One of the most disturbing aspects of the Department's handling of this Scheme was its £200 million valuation of the Crossnacreevy site. Although described at the time as an *"initial informal valuation"*, it was nevertheless the means by which the Department managed to secure £89 million of additional capital funding from the Department of Finance and Personnel (DFP). Subsequently, a formal valuation by Land and Property Services put the actual site value at between £2.28 million and £5.87 million.
- 10. The Committee finds this astonishing. It is highly questionable whether the potential sale of Crossnacreevy, particularly as a building development opportunity, was a realistic proposition at that time. This should have been obvious to all concerned. Crossnacreevy is situated in a greenbelt and the possibility of obtaining a change in planning permission had not even been explored. DFP's failure to effectively exercise its oversight role in this issue is very disappointing it should have insisted on a formal professional valuation, prior to ratifying the increased capital budget for the Scheme.
- 11. Following the Committee's first evidence session on 15 June 2011, additional information was requested from the Department on the Crossnacreevy issue. In reviewing this data, the Committee noted important details that had not previously been disclosed by the DARD witnesses. As a result, the Accounting Officer was recalled. In the wake of that second evidence session, the Committee's disquiet over DARD's handling of the Crossnacreevy issue has substantially increased. Particular concerns include:
  - DARD's failure to disclose key information on the Crossnacreevy valuation to DFP;
  - the unreasonable delay by DARD in establishing a proper valuation for the property and determining its potential for sale;
  - the implausibility of a number of DARD's explanations to the Committee.
- 12. Overall, the Committee's impression is that the Accounting Officer's evidence on Crossnacreevy lacked frankness, openness and credibility. This is unacceptable. The Committee expects the full co-operation of departmental witnesses in its drive to expose poor practice and highlight important lessons for future application. It should not have to engage in a cross examination. Earlier this year, in its report on Northern Ireland Water, the Committee made clear that witnesses must answer all questions accurately and not omit relevant and important facts. Regrettably, this clear and unequivocal message failed to register within DARD.
- 13. It is a matter of profound disappointment that, after such a short period of time, this issue should again have to be highlighted to an Accounting Officer. The Committee views this matter with the utmost seriousness and, in the circumstances, has decided to draw its concerns to the attention of the Head of the Northern Ireland Civil Service and the DFP Accounting Officer, through separate correspondence.

#### Eligibility and grant uptake

14. Almost 7,000 of the 11,000 farmers who had initially expressed an interest in the Scheme did not proceed. Worryingly, DARD has no information on what alternative steps, if any, these farmers have taken to become compliant with the Nitrates Directive. Given the risk of non-compliance, this is an issue which the Department must address as a matter of urgency.

#### Impact of the Scheme

- 15. Contrary to best practice, the Department failed to set performance measures and targets for the Scheme. It also failed to set up a performance information database at the outset. Poor quality management and performance information in a major programme like this is unacceptable. It weakens accountability, undermines the effectiveness of policy review and compromises decision-making. The Department must ensure that all of its programmes have effective data systems built in from the start.
- 16. There is a fundamental uncertainty over the impact of FNMS on water quality and thereby the Scheme's value for money. The Department conceded that it has no evidence to demonstrate the extent to which FNMS is making a difference to water quality in Northern Ireland. Nor can it differentiate between the impact of FNMS and that of other factors, such as restrictions on the use of phosphate-based chemical fertilizers, the development of phosphate-free fertilizers and the massive investment programme by Northern Ireland Water on projects like sewage outflows. In the Committee's view, this raises a key question as to whether FNMS was necessary on the scale laid down by the Department. The Committee is left wondering, therefore, whether a much-reduced Scheme, specifically targeting those areas where eutrophication problems were greatest, might have proved a more cost-effective option.
- 17. Despite the Department's huge investment in providing the industry with additional storage facilities, inspection visits by the Environment Agency have detected a significant proportion of farms in breach of the Nitrates Action Programme. This even includes 68 farmers who received grants under FNMS to provide additional storage. It is clear, therefore, that much more needs to be done to tackle non-compliance, through improved education and publicity and increased levels of inspections.

# Summary of Recommendations

#### Recommendation 1

1. The Department must demonstrate greater urgency in meeting its legal obligations under European regulations. The Committee recommends that DARD reviews its procedures to ensure that, in future, it complies with EC directives in a prudent and timely manner.

#### **Recommendation 2**

2. The Committee recommends that, when designing future grant schemes, the Department ensures that it establishes a comprehensive and up-to-date baseline at the outset. This will provide a firm basis on which to structure the scheme and also act as a benchmark for monitoring progress.

#### **Recommendation 3**

3. The Committee recommends that the Department re-examines its internal arrangements for the review of Economic Appraisals to ensure that, in future, the assumptions underpinning those appraisals are more rigorously tested and confirmed.

#### **Recommendation 4**

4. Comprehensive, formal interim evaluations are valuable, as they help to highlight changes and improvements that can be made to a scheme while it is still in operation. The Committee recommends that the Department puts arrangements in place to ensure that interim evaluations are completed in future. The Committee further recommends that DFP reviews its monitoring arrangements to ensure that conditions of approval are fully complied with.

#### **Recommendation 5**

5. The Committee recommends that, in any future grant scheme designed by the Department, the principle of additionality is fully adhered to. The Department must ensure that public funds are only applied where necessary and that the level of support provided is the minimum required to bring about the desired objectives.

#### **Recommendation 6**

6. The Committee recommends that, in future, the Department seeks to avoid awarding grants on a "first-come, first-served" basis. Given that public funding is almost invariably limited, the Department must actively target its financial assistance in such a way as to achieve maximum impact.

#### **Recommendation 7**

7. The circumstances surrounding the Crossnacreevy valuation are unacceptable, unprofessional and reflect poorly on the Department's financial management capability. High standards of financial management should be a feature of every well-run Government department. The Committee recommends that processes are put in place to ensure that departmental bids for funding are underpinned by a rigorous cost analysis and, where appropriate, independent professional scrutiny.

#### **Recommendation 8**

8. DFP has a vital oversight role within the public sector budgetary control process. The Committee recommends that DFP reviews its budgetary approval procedures to ensure that, in future, decisions to provide major funding packages are based on costings that have been properly substantiated.

#### **Recommendation 9**

9. The Committee recommends that the Department takes steps to identify any remaining farms which do not have the required level of storage. As a starting point, the Department should ascertain what alternative steps were taken by the 900 farms that submitted full applications for assistance but later decided not to proceed.

#### **Recommendation 10**

10. The Department's failure to set up a performance assessment system for a scheme of this magnitude is inexcusable. The Committee recommends that, in all future schemes, the Department ensures that a performance information system is established at the outset, together with a comprehensive set of outcome targets and measures.

#### **Recommendation 11**

11. The Committee considers it unacceptable that the Department has spent £121 million of public money without being able to clearly demonstrate the extent to which this has contributed to improving water quality in Northern Ireland. The Committee recommends that the Department takes steps to ensure that this type of situation — where there is no proven linkage between the Department's expenditure and the intended outcomes — will not be repeated in any future grant scheme.

#### **Recommendation 12**

12. Inspection results continue to show a substantial proportion of farms in breach of the Nitrates Action Programme. The Committee recommends that the Department works with the Environment Agency to agree a programme of enhanced education and publicity for farmers and increased levels of inspection.

# Introduction

1.

The Public Accounts Committee met on 15 June 2011 to consider the Comptroller and Auditor General's report, 'Reducing Water Pollution from Agricultural Sources: The Farm Nutrient Management Scheme', (9 March 2011). The witnesses were:

- Mr Gerry Lavery, Accounting Officer, Department of Agriculture and Rural Development (DARD);
- Mr John Smith, Director of Finance, DARD;
- Mr Brian Ervine, Principal Officer, DARD;
- Mr Michael Brennan, Central Finance Group, Department of Finance and Personnel (DFP);
- Mr Stephen Fay, Land and Property Services, DFP;
- Mr Kieran Donnelly, Comptroller and Auditor General;
- Mr Richard Pengelly, Acting Treasury Officer of Accounts.

The Committee wrote to Mr Lavery on 16 and 23 June 2011 with further queries following the evidence session. Mr Lavery replied on 4 July 2011.

- 2. With over 25,000 active farm businesses covering around 75 per cent of the total land area in Northern Ireland, agriculture plays an important role in the protection and improvement of the environment. The agricultural industry, however, is one of the principal contributors to a number of serious water quality problems that currently affect the groundwaters, rivers and lakes of Northern Ireland. The largest and most widespread of these is nutrient enrichment, which results in a phenomenon known as eutrophication. This causes accelerated growth of algae, excessive plant growth and consequential reduction in oxygen levels.
- 3. The introduction of the 1991 Nitrates Directive by the European Commission was intended to improve the use of nutrients on farms and, as a result, improve water quality throughout Northern Ireland. The Directive requires all Member States to prepare an Action Programme which, in Northern Ireland, includes a minimum storage capacity for manure (22 weeks for cattle and sheep) and a Closed Period during the wettest months of the year (mid-October to the end of January) when the spreading of manure is not allowed.
- 4. To help farmers comply with the Directive, DARD introduced the Farm Nutrient Management Scheme (FNMS) in 2005. This provided 60% capital grant support, up to a maximum grant of £51,000, towards the cost of building the additional storage required. Almost 4,000 farmers proceeded with a project, at an average grant per farm of some £31,000. In 2007, the programme budget was increased to £144 million, to ensure that all applicants could be funded. Overall, the total grant paid amounted to £121 million, making this the largest capital grant scheme ever run by DARD. The Scheme was completed in December 2009.
- 5. In taking evidence, the Committee focused on three key areas. These were:
  - Planning and funding of the Scheme;
  - Eligibility and grant uptake;
  - Impact of the Scheme.

# The planning and funding of the scheme

### Introduction

6. The Committee acknowledges that FNMS represented a major undertaking for the Department. However, as the largest capital grant scheme it had ever managed, FNMS demanded the highest standard of planning and implementation. Instead, the Department appears to have adopted a rather piecemeal approach, with the Scheme being subjected to a succession of uncertainties, delays and revisions.

### DARD was slow to respond to the 1991 Nitrates Directive

7. DARD was slow to respond to the 1991 Nitrates Directive, taking eight years to begin its designation of Nitrate Vulnerable Zones and a further five years to declare total territory. This was despite the European Commission having set a two-year deadline. With the risk of infraction proceedings by the Commission, this was far from satisfactory. Full and prompt compliance with all Commission directives is essential.

### **Recommendation 1**

8. The Department must demonstrate greater urgency in meeting its legal obligations under European regulations. The Committee recommends that DARD reviews its procedures to ensure that, in future, it complies with EC directives in a prudent and timely manner.

The planning of FNMS relied on seven to eight year-old sample data on farmyard storage capacity

- 9. When planning the Scheme, the Department's assumptions on the existing level of slurry storage were based on sample data that it had collected some seven to eight years earlier. As it transpired, however, the lack of up-to-date information undermined DARD's planning process and led to a number of the difficulties experienced during implementation. For example, the Department substantially underestimated the amount of storage capacity required to deal with "dirty water"<sup>1</sup> on farms.
- 10. In the Committee's opinion, the Department should have established a more-up-to-date and complete understanding of the nature and extent of storage under-capacity on farms, before introducing the Scheme. This could have been facilitated through technical surveys and more discussions with farmers.

### **Recommendation 2**

11. The Committee recommends that, when designing future grant schemes, the Department ensures that it establishes a comprehensive and up-to-date baseline at the outset. This will provide a firm basis on which to structure the scheme and also act as a benchmark for monitoring progress.

<sup>1</sup> 

<sup>&</sup>quot;Dirty water" is water contaminated by faeces, urine etc.

# The quality of the Department's Economic Appraisal was below the standard expected

- 12. In the Committee's opinion, the quality of the Department's Economic Appraisal, on which the planning of the Scheme was based, was far below the standard required. Important assumptions on cost and uptake turned out to be markedly different from the actual figures. For example, the average grant payable, although estimated at some £12,000 turned out to be two-and-a-half times higher at almost £31,000; and Scheme uptake, at some 3,900, was 20% lower than estimated. Overall, the final cost of FNMS to the Department was £121 million, compared with a £40 million estimate.
- 13. The Department explained that there were a number of reasons for the higher cost, including increases in raw material costs, higher construction labour rates due to greater demand, the extensive choice by farmers of the more costly underground tanks, an increase in the grant rate from 40% to 60% and an increase in the minimum storage requirement agreed with the European Commission. The Committee is not persuaded of this.
- 14. It appears to the Committee that each of these factors calls into question the quality of DARD's planning of the Scheme. The Committee notes that the duration of the Scheme was considerably longer than originally approved by the European Commission. On two occasions the Department substantially extended the timetable first, by 12 months to lengthen the application period and, later, by a further two years to cover delays in construction works. The evidence shows that the Department substantially underestimated:
  - the difficulties involved in large numbers of farmers concurrently seeking quotations from a limited number of builders for their project works;
  - the capacity necessary within the construction industry to deliver the Scheme;
  - supply line difficulties created by the surge in demand for above ground tanks and concrete slats for underground tanks;
  - the scope for price increases as a result of the above factors.
- 15. Given the substantial delays, the increase in raw material costs should not have been unexpected, nor the rise in cost of construction labour during a boom in demand. The assumption in the Department's Economic Appraisal that only 25% of farmers would opt to install underground tanks was well wide of the mark, with some 84% choosing to do so. Similarly, the 40% grant rate recommended by the Appraisal proved ineffective in encouraging the industry to apply to the Scheme and was subsequently increased to 60%.
- 16. The Committee also notes that, when FNMS was launched, the Department had not yet concluded its negotiations with the European Commission on matters such as the minimum storage requirement. As a result, FNMS was introduced before the requirements of the Nitrates Action Programme were agreed, which made it difficult for farmers to fully assess their needs and again suggests poor forward planning on the part of the Department.
- 17. The Department said that the Economic Appraisal was subjected to internal review by DARD's own economists. According to the Accounting Officer, the assumptions were "*challenged at every point*". The Committee can only conclude that either the challenge function failed or issues raised were ignored. In future, the Department must ensure that the assumptions underpinning appraisals are rigorously tested and confirmed.

### Recommendation 3

18. The Committee recommends that the Department re-examines its internal arrangements for the review of Economic Appraisals to ensure that, in future, the assumptions underpinning those appraisals are more rigorously tested and confirmed. 19. The Economic Appraisal was carried out for DARD by consultants. The Committee's impression is that there has been a tendency within Departments to opt for consultants to prepare Economic Appraisals. In the Committee's view, the involvement of consultants is often not necessary and should only be used as a last resort — for example, where there is a lack of expertise within the Department or a significant resource constraint. The Committee notes the Accounting Officer's assurance that his Minister now has to sign off on any request to use an external consultant and welcomes this additional level of control.

### The Department failed to carry out an interim review of the scheme

- 20. DFP's approval for the scheme was conditional on an interim review being undertaken after the end of the first year of the scheme (March 2006). It pointed out that this was particularly important in order to ensure the cost-effective and successful implementation of the Scheme. The Committee was disappointed to find, however, that an interim review was not carried out. The Department said that it regarded a July 2005 Addendum to its Economic Appraisal (completed only 6 months after launch of the Scheme) as an interim review in the first year and its May 2007 Business Case for further funding (completed two and a half years after the launch) as a further and comprehensive interim evaluation.
- 21. The Committee is not persuaded. Neither the Addendum nor the Business Case was in keeping with DFP's requirement for an interim review. The Committee notes, for example, how the post-project evaluation completed by DARD in 2011, highlighted a range of lessons for the better implementation and management of future schemes. A formal interim evaluation after the first year may have highlighted at least some of these points and led to the better management of FNMS. In the Committee's opinion, DFP should have insisted upon the review being undertaken.

### **Recommendation 4**

22. Comprehensive, formal interim evaluations are valuable, as they help to highlight changes and improvements that can be made to a scheme while it is still in operation. The Committee recommends that the Department puts arrangements in place to ensure that interim evaluations are completed in future. The Committee further recommends that DFP reviews its monitoring arrangements to ensure that conditions of approval are fully complied with.

### The Scheme was more costly than necessary

- 23. The Accounting Officer told the Committee that the Department had taken steps to keep down the costs of the Scheme to the public purse. This included a cap (of £51,000) on the total grant payable to any individual project, the setting of standard costs for certain works and an insistence that DARD would only pay on the costs submitted by farmers with their original applications. While the Committee acknowledges these controls, there is strong evidence to show that, in a number of other respects, FNMS was substantially more costly to the taxpayer than necessary.
- 24. The European Commission approval permitted grant to be paid at a level of "up to 60%". By contrast, the Department paid grant at a flat rate of 60% (up to the level of the £51,000 cap). No account was taken of the individual means of farmers or the size of project. Adopting a variable rate of up to 60% could have reduced the cost to the Department.
- 25. There was widespread use by farmers of the more expensive underground storage option, with 84% of farmers taking this approach. The total additional cost to the taxpayer amounted to £49 million. The Department commented that it had examined in detail whether it was feasible to insist on, or fund only, above-ground storage, but that this had been dismissed.

It said that "many" farms did not have the space or layout to suit above-ground storage, although it gave no figures. The Committee is not persuaded. Given that the Department's Economic Appraisal predicted that only 25% of farmers would opt for underground storage facilities, this would indicate that the overwhelming majority of farms did not have a problem accommodating the above-ground option. The Committee therefore considers that, in cases where above-ground storage was a viable option, the amount of grant payable could reasonably have been limited to the value of that option. If, in such cases, an applicant were to have chosen the underground option, he would have borne the additional cost.

- 26. The Department also said that there was a supply capacity issue for above-ground tanks, with the supply base being significantly smaller than that for underground tanks. It seems to the Committee that this lack of appreciation of the relevant market forces again points toward poor planning and understanding on the part of the Department.
- 27. Another issue that added to the cost of the Scheme was DARD's declaration of a total territory approach. This forced those farmers in the 17% of Northern Ireland's land area that is not judged sensitive to eutrophication to participate in the Scheme. It also added a further £10 million to the Department's costs.
- 28. The Department has an obligation to minimise the cost to taxpayers. When designing capital support schemes such as FNMS, it should always apply the well-established principle of additionality. This ensures that public funds are only applied where necessary and that the level of support is the minimum required to bring about the desired objectives. It is most unfortunate for the taxpayers that, in the case of FNMS, the Department failed to do so.

### **Recommendation 5**

29. The Committee recommends that, in any future grant scheme designed by the Department, the principle of additionality is fully adhered to. The Department must ensure that public funds are only applied where necessary and that the level of support provided is the minimum required to bring about the desired objectives.

### Use of a "first-come, first-served" approach to funding was inappropriate

- 30. From its introduction in January 2005 until June 2007, the funding of applications under FNMS operated on a basis of "first come, first served". The Department explained that this was because the budget (which started at £30 million and rose to £55 million in March 2007) was insufficient to fund all applications.
- 31. The Committee is disappointed that the Department adopted this approach, especially in a situation where funding was limited. Tight budgets make it even more important to ensure that public money is spent wisely. In the Committee's view, a more cost-effective approach would have been to target assistance where the impact on improving water quality would be greatest, rather than leaving selection to the unpredictability of a "first-come, first-served" approach.

### Recommendation 6

32. The Committee recommends that, in future, the Department seeks to avoid awarding grants on a "first-come, first-served" basis. Given that public funding is almost invariably limited, the Department must actively target its financial assistance in such a way as to achieve maximum impact.

# The means by which the Department valued its Crossnacreevy site, in order to secure additional capital funding, was fundamentally flawed

- 33. One of the most disturbing aspects of the Department's handling of this Scheme was its £200 million valuation of the Crossnacreevy site. DARD put forward the sale of Crossnacreevy in the context of a bid for an additional £89 million for FNMS. In correspondence with DFP, the Department said that an *"initial informal valuation"* suggested that, with planning permission for the whole site, Crossnacreevy would command in excess of £200 million on the open market.
- 34. On 12 June 2007, DFP approved the FNMS funding increase, on the basis that its concerns about affordability would be satisfactorily resolved by the future sale of Crossnacreevy. DFP noted that DARD was offering a potential £200 million capital receipt, an amount considerably larger than DARD was seeking for FNMS. In DFP's view, this was "an important and in the final analysis the persuasive point". Subsequently however, a formal valuation of Crossnacreevy by Land and Property Services (LPS) put the actual site value at between £2.28 million and £5.87 million. Relocation costs of up to £6 million were also identified, leaving the sale of the site unlikely to yield any net gain.
- 35. The Committee asked DARD how it had obtained the £200 million valuation. The Accounting Officer explained that, in late May 2007, at his behest, a member of his staff had elicited from Land and Property Services that development land in Greater Belfast, with full planning permission, was changing hands at up to £2.5 million an acre. The Accounting Officer said that he multiplied the £2.5 million figure by 80 acres (the approximate size of the Crossnacreevy site) and came up with a figure of £200 million<sup>2</sup>.
- 36. The Committee finds this astonishing. Crossnacreevy is situated in a greenbelt outside Greater Belfast and the possibility of obtaining planning permission commensurate with the valuation had not even been explored. Consequently, the valuation of the site as a building development opportunity could not have been regarded as a realistic proposition at that time. Indeed, having heard the Accounting Officer's explanation as to the source of the £200 million figure, it is difficult to see how it could be regarded as a valuation at all. Rather, it appears to the Committee to be a gross misrepresentation.
- 37. When the Committee asked DARD why a formal valuation had not been obtained, the Accounting Officer said that, due to the urgency of the funding situation, there had not been sufficient time. This is not convincing. The urgency of the funding situation cannot justify the presentation of a figure that is essentially groundless, as some form of credible initial valuation. Moreover, according to the Department, its £200 million "valuation" was obtained at some point between the 25 May and 31 May. DFP's approval, however, was dated 12 June. Given the importance of this matter, it seems to the Committee that LPS could have been asked to provide a credible valuation within that timeframe.

### **Recommendation 7**

38. The circumstances surrounding the Crossnacreevy valuation are unacceptable, unprofessional and reflect poorly on the Department's financial management capability. High standards of financial management should be a feature of every well-run Government department. The Committee recommends that processes are put in place to ensure that departmental bids for funding are underpinned by a rigorous cost analysis and, where appropriate, independent professional scrutiny.

<sup>2</sup> 

The current Accounting Officer was DARD's Principal Finance Officer in 2007.

#### The role of DFP in relation to Crossnacreevy

- 39. The Committee is also very disappointed with DFP's failure to effectively exercise its oversight role in this issue. It should have insisted on a formal professional valuation, prior to ratifying the increased capital budget for FNMS.
- 40. The Committee is also concerned about the opportunity cost of the £89 million additional capital funding provided to FNMS. Other projects or programmes that would otherwise have been supported, in the absence of the additional FNMS funding, are bound to have been lost or delayed. The Committee asked for details of these projects and programmes but DFP said that it is not possible to specify them.

### **Recommendation 8**

41. DFP has a vital oversight role within the public sector budgetary control process. The Committee recommends that DFP reviews its budgetary approval procedures to ensure that, in future, decisions to provide major funding packages are based on costings that have been properly substantiated.

#### Further concerns about DARD's handling of the Crossnacreevy issue

- 42. Following the Committee's first evidence session on 15 June 2011, additional information was requested from the Department on the Crossnacreevy issue. In reviewing this material, the Committee noted important details that had not previously been disclosed by the DARD witnesses. As a result, the Accounting Officer was recalled.
- 43. In the wake of that second evidence session, the Committee's disquiet over DARD's handling of the Crossnacreevy issue has substantially increased. Particular concerns include:
  - DARD's failure to disclose key information on the Crossnacreevy valuation to DFP and to this Committee;
  - the unreasonable delay by DARD in establishing a proper valuation for the property and determining its potential for sale;
  - the implausibility of a number of DARD's explanations to the Committee.
- 44. In its evidence, DARD indicated that the Crossnacreevy review process took some nine months, to March 2008, to establish the value of the property and its potential for sale. In the Committee's opinion, however, there were undue and indefensible delays by the Department in moving the process forward.
- 45. The Committee found that, on 1 August 2007, LPS had provided DARD with a detailed valuation of Crossnacreevy, amounting to £10 million. LPS also pointed out that the site lay in a greenbelt and, as such, there was a presumption that planning permission for alternative use would not be given. Crucially, however, DARD did not share this important information with DFP. This was despite it being clear from DFP's June 2007 approval (paragraph 34) that the affordability of FNMS was a key condition and one that was only deemed to have been satisfied by the anticipated £200 million receipt from the sale of Crossnacreevy. Moreover, DFP had made clear that approval was being given pending ratification of the position by the Executive, as part of the normal budgetary process in September 2007.
- 46. In the Committee's opinion, any fundamental change to the position should immediately have been signalled to DFP and the Executive, especially where realisation of the anticipated £200 million receipt was being called into serious question. The Committee found, however, that it was not until April 2008, almost nine months later, that DFP was informed of the proper valuation and even then, only on an informal basis. This was completely unacceptable.
- 47. The Accounting Officer said that, in his view, the £10 million valuation and the information that Crossnacreevy was in a greenbelt were not that important. Consequently, he did not

consider it necessary to share them with DFP. In the Committee's opinion, that is absurd. Both issues were fundamental to whether DARD would be able to fulfil its obligation to DFP and the Executive, of delivering a substantial receipt within the March 2011 deadline.

- 48. The Accounting Officer also said that he wrote to DFP on 2 January 2008 to notify them that, because Crossnacreevy was in greenbelt and the Belfast Metropolitan Area Plan (BMAP) was closed for new objections, there would be a delay in applying for a change of use for the property. He said that, by implication, he was telling DFP that the anticipated receipt from the sale of Crossnacreevy might not come in. By contrast, DFP told the Committee that they did not read into the letter that DARD was not going to get the £200 million receipt; rather, they saw it merely as articulating a delay due to logistical problems.
- 49. The Committee also asked DARD why, having been told by LPS that Crossnacreevy was in a greenbelt, it had not immediately checked the position with Planning Service. The Accounting Officer said that he had been cautious about doing so because he did not want to be seen to be improperly influential. In the Committee's opinion, that explanation is also absurd. Contacts between Government departments are a daily occurrence and enquiries of the sort that DARD needed to make could in no way be construed as seeking to exert undue influence. Indeed, despite the alleged caution, the Accounting Officer stated that he himself contacted Planning Service by telephone in October 2007 to enquire as to whether further objections could be lodged within the BMAP process. At that stage, the window for lodging objections had been closed since January 2005, some two and a half years earlier. Bizarrely, however, the Accounting Officer said that his understanding of the discussion with Planning Service was that the BMAP process remained open to objections. It was only some two months later, in correspondence with Planning Service, that DARD realised its mistake. The Committee finds this astonishing.
- 50. The LPS letter of 1 August 2007 also advised DARD that it could engage a specialist planning consultant to provide guidance on the potential for re-designation of Crossnacreevy. The Accounting Officer said that he considered this to be the most important element in the LPS letter, as he felt he had to test the planning position through the private sector. The Committee finds his explanation unconvincing, not least because it took the Department over five months to actually appoint a planning consultant.
- 51. That consultant provided DARD with a Planning Position Statement. Described as being mainly a desktop assessment and costing only £2,600, this appears to have been a relatively simple piece of work. LPS subsequently used the Planning Position Statement to finalise the Crossnacreevy valuation (paragraph 34), completing this work within five days. The evidence strongly suggests, therefore, that the work of the planning consultant and LPS, which underpinned the final valuation, could have been concluded at a much earlier juncture, probably in August 2007. In the Committee's view, the delay to March 2008 is indefensible. By that stage, the additional £89 million FNMS funding had already been ratified within the Executive's budget.
- 52. The undue delay by DARD in establishing a proper valuation for Crossnacreevy and determining its potential for sale is particularly disappointing because the Committee has serious doubts about whether the additional funding, or at least a substantial proportion of it, was really necessary (see paragraphs 68-71).

#### Poor quality of the Accounting Officer's evidence on Crossnacreevy

53. The Committee's overall impression is that the Accounting Officer's evidence lacked frankness, openness and credibility. This is unacceptable. The Committee expects the full co-operation of departmental witnesses in its drive to expose poor practice and highlight important lessons for future application. It should not have to engage in a cross examination. Earlier this year, in its report on Northern Ireland Water, the Committee made clear that witnesses must answer all questions accurately and not omit relevant and important facts. Regrettably, this clear and unequivocal message failed to register within DARD. 54. It is a matter of profound disappointment that, after such a short period of time, this issue should again have to be highlighted to an Accounting Officer. The Committee views this matter with the utmost seriousness and, in the circumstances, has decided to draw its concerns to the attention of the Head of the Northern Ireland Civil Service and the DFP Accounting Officer, through separate correspondence.

# Eligibility and grant uptake

# There is a high risk of non-compliance by a significant proportion of farmers

- 55. Before the Scheme started, the Department estimated that 42% of farms in Northern Ireland did not have sufficient storage capacity to be compliant with the Nitrates Directive. However, only 15% of farms subsequently participated in the Scheme of the 11,000 who had initially expressed an interest in the Scheme, some 7,000 did not proceed. This included around 900 farms which had actually submitted full applications but then withdrew. The Department said that, although only 15% of farms participated in FNMS, these accounted for 45% of the cattle livestock units in Northern Ireland. Worryingly, however, DARD has no information on what alternative steps, if any, non-participating farms have taken to become compliant.
- 56. The Committee notes that the Environment Agency's annual inspection reports have highlighted a number of storage-related problems on farms. This suggests that there remains a significant risk of non-compliance with the Nitrates Directive. In the Committee's opinion, this is an issue that the Department must address as a matter of urgency.

### **Recommendation 9**

57. The Committee recommends that the Department takes steps to identify any remaining farms which do not have the required level of storage. As a starting point, the Department should ascertain what alternative steps were taken by the 900 farms that submitted full applications for assistance but later decided not to proceed.

### The Department failed to confirm that applicants met the eligibility criteria

- 58. To be eligible for grant, applicants had to meet three eligibility criteria ownership of the farm, economic viability and a prescribed level of occupational skills and competence. However, DARD failed to confirm that scheme applicants met these eligibility criteria. The risk, therefore, is that some claimants may not have been eligible. The Accounting Officer accepted that the eligibility criteria should have been confirmed and the checks documented.
- 59. When eligibility criteria are set for a scheme, it is important that these are checked against each application. The Department should introduce a control procedure in future schemes to ensure that no application is approved without eligibility first having been checked and documented.

### The Department's inspection process was poorly planned and managed

- 60. DARD's pre-approval and inspection process took over three and a half years to complete, with the final pre-inspections only carried out two to three months before all construction work was meant to be completed. The Committee asked why DARD had not been geared up to complete the process much sooner, to allow construction work to get under way well before the final deadline.
- 61. The Department conceded that it had found the inspection process much more lengthy and resource intensive than it had envisaged. It said that part of the reason was that farmers' understanding of matters such as storage capacity, dealing with dirty water and suitable farmyard layouts was not what the Department had hoped for. As a result, inspection visits also had a large advisory element and most applications needed revision. The Department's post-project evaluation also highlighted problems. There were too few staff with sufficient

expertise and technical knowledge of Scheme requirements; staff had conflicting roles — that of farm inspector and farm adviser; and the Scheme evolved and changed over time making it difficult to manage, confusing to staff and farmers, and ultimately time-wasting.

62. In the Committee's view, most of these matters could have been addressed through better planning of the Scheme and by running an effective pilot stage.

# The Department failed to achieve its part-payment deadline in the majority of cases

- 63. In August 2008, the Department introduced a 50% part-payment option to alleviate hardship among farmers who had borrowed capital to undertake their projects. The Department's target was to process part payments within four weeks of receipt of a valid claim. However, of the 2,189 claims received, 1,300 payments (some 60%) missed the deadline. The Department said that there had been a late surge of claims towards the December 2008 deadline, making it difficult for staff to cope. It also commented that claims processing had not been straightforward, with a lot of follow-up with individual claimants being necessary.
- 64. It seems to the Committee that, in a situation where the Department introduces a special measure to alleviate hardship, it must commit the necessary resources to ensure that its targets and the expectations of clients are fully met. In the Committee's view, a comprehensive staff resource plan should be an essential element in every grant scheme.

# Impact of the scheme

# The Department failed to set performance measures and targets for the scheme

- 65. Contrary to best practice, the Department did not have a set 'SMART'<sup>3</sup> targets and outcome measures to assess the performance of the Scheme. It also failed to set up a performance information database. As a result, it was unable to provide an accurate picture of the undercapacity of slurry storage in Northern Ireland immediately prior to FNMS, the increase in storage capacity as a result of the Scheme and the under-capacity still remaining. Poor quality management and performance information in a major programme like this is unacceptable. It weakens accountability, undermines the effectiveness of policy review and compromises decision-making. The Department must ensure that all of its programmes have effective data systems built in from the outset.
- 66. Regrettably, this is not the first time that DARD has been found wanting in this respect. In 2001, this Committee recommended that the Department monitor the outcome of all of its anti-pollution activities against clearly defined, measurable impact indicators. The Committee wants to make clear to DARD that it will take a serious view of any further repeat of this failing.

### **Recommendation 10**

67. The Department's failure to set up a performance assessment system for a scheme of this magnitude is inexcusable. The Committee recommends that, in all future schemes, the Department ensures that a performance information system is established at the outset, together with a comprehensive set of outcome targets and measures.

# There is a fundamental uncertainty over the impact of the Scheme on water quality and whether the large scale of the Scheme was necessary

- 68. There is a fundamental uncertainty over the impact of FNMS on water quality and, thereby, whether the Scheme has delivered value for money. The Department conceded that it has no evidence to demonstrate the extent to which FNMS is making a difference to water quality in Northern Ireland. Nor can it differentiate between the impact of FNMS and that of other factors, such as restrictions on the use of phosphate-based chemical fertilizers, the development of phosphate-free fertilizers, the massive investment programme by Northern Ireland Water on projects like sewage outflows and the proliferation of the zebra mussel (a filter feeder) in our waterways. In the Committee's view, this raises a key question as to whether FNMS was necessary on the scale laid down by the Department. The Committee is left wondering, therefore, whether a much-reduced Scheme, specifically targeting those areas where eutrophication problems were greatest, might have proved a more cost-effective option.
- 69. On the issue of value for money, the Department commented that its Economic Appraisal had highlighted the prevention of destocking<sup>4</sup> as a key reason to introduce FNMS. This was to protect jobs within the industry and retain the value added in the local economy. According to the Accounting Officer, the support provided by FNMS to the 3,900 claimants prevented a loss to the local economy of some £40 million a year, that would otherwise have resulted from those farms having to reduce stock levels. The Committee notes, however, that this

<sup>3</sup> SMART – specific, measureable, achievable, realistic and time-bound.

<sup>4</sup> If a farm did not have sufficient slurry storage capacity for its herd (at the level prescribed by the Action Programme), it would either have to build additional storage, or reduce its stock levels.

assumes that FNMS was necessary in the first place to tackle the water quality problems in Northern Ireland. As explained in paragraph 68 above, the Committee is not convinced that this was in fact the case.

70. The Department also told the Committee that FNMS was necessary in order to avoid the risk of infraction fines of £50 million a year from the European Commission for non-compliance with the Nitrates Directive. This was also one of the reasons put forward by DARD in its business case to DFP, for the additional £89 million FNMS funding in 2007 (paragraph 33). However, when the Committee asked for evidence demonstrating the likelihood of infraction fines, the Department merely responded that the Commission had "indicated informally" that it intended to pursue Northern Ireland for its failure to apply the Directive to eutrophic waters. The Committee notes, however, that this "indication" appears to have been given at a stage when DARD had only designated 0.1% of its land area. In the circumstances, an informal warning from the Commission is understandable, but it falls a long way short of any evidence of possible infraction fines. Again, therefore, the Committee is left wondering whether FNMS was necessary on the scale laid down by the Department and, in particular, whether the case for the additional £89 million funding in 2007 was well founded.

### **Recommendation 11**

71. The Committee considers it unacceptable that the Department has spent £121 million of public money without being able to clearly demonstrate the extent to which this has contributed to improving water quality in Northern Ireland. The Committee recommends that the Department takes steps to ensure that this type of situation — where there is no proven linkage between the Department's expenditure and the intended outcomes — will not be repeated in any future grant scheme.

The proportion of farms found to be in breach of the Nitrates Action programme is substantial

- 72. Despite the Department's huge investment in providing the industry with additional storage facilities, inspection visits by the Environment Agency have detected a significant proportion of farms in breach of the Nitrates Action Programme. Clearly, this undermines the purpose of the Scheme. The C&AG's report shows that, in 2009, of the 369 planned farm inspections undertaken, some 38% detected a breach. Most involved shortcomings either in storage or in the handling and application of manure to the land.
- 73. While the level of breaches detected dropped to 21% in 2010 (out of 399 planned inspections), it is still much too high and remains above the 2007 and 2008 levels. Moreover, the Committee was particularly disappointed to learn that 68 of the breaches were on farms that had received grants under FNMS. It is clear, therefore, that much more needs to be done to tackle non-compliance.

### Recommendation 12

74. Inspection results continue to show a substantial proportion of farms in breach of the Nitrates Action Programme. The Committee recommends that the Department works with the Environment Agency to agree a programme of enhanced education and publicity for farmers and increased levels of inspection.



# Appendix 1 Minutes of Proceedings

# Wednesday, 1 June 2011 Room 29, Parliament Buildings

Present:	Mr Joe Byrne (Deputy Chairperson) Mr Sydney Anderson Mr Michael Copeland Mr John Dallat Mr Alex Easton Mr Paul Frew Mr Paul Girvan Ms Jennifer McCann Mr Mitchel McLaughlin
In Attendance:	Ms Aoibhinn Treanor (Assembly Clerk) Mr Phil Pateman (Assistant Assembly Clerk) Mrs Danielle Saunders (Clerical Supervisor) Mr Darren Weir (Clerical Officer)
Apologies:	Mr Paul Maskey (Chairperson) Mr Ross Hussey

2:03pm The meeting opened in public session.

# 4. Briefing on NIAO Report 'Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Management Scheme'

Mr Kieran Donnelly, Comptroller and Auditor General; Mr Robert Hutcheson, Director; and Mr Billy Fitzsimons, Audit Manager; briefed the Committee on the report.

2:48 pm Mr Frew left the meeting

2:52 pm Mr Frew entered the meeting

The witnesses answered a number of questions put by members.

## Wednesday, 15 June 2011 The Senate Chamber, Parliament Buildings

Present:	Mr Paul Maskey (Chairperson) Mr Joe Byrne (Deputy Chairperson) Mr Sydney Anderson Mr Michael Copeland Mr John Dallat Mr Alex Easton Mr Paul Frew Mr Paul Girvan Mr Ross Hussey Ms Jennifer McCann Mr Mitchel McLaughlin
In Attendance:	Ms Aoibhinn Treanor (Assembly Clerk) Mr Phil Pateman (Assistant Assembly Clerk) Mrs Danielle Saunders (Clerical Supervisor) Mr Darren Weir (Clerical Officer)
Apologies:	None

2:00 pm The meeting opened in public session.

#### 3. Evidence on the NI Audit Office Report 'Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Management Scheme'.

The Committee took oral evidence on the above report from:

- Mr Gerry Lavery, Accounting Officer, Department of Agriculture and Rural Development (DARD);
- Mr John Smith, Finance Director, Department of Agriculture and Rural Development (DARD);
- Mr Brian Ervine, Head of Environmental Policy, Department of Agriculture and Rural Development (DARD);
- Mr Michael Brennan, Head of Central Expenditure Division, Central Finance Group, Department of Finance and Personnel (DFP); and
- Mr Stephen Fay, District Valuer, Land and Property Services, Department of Finance and Personnel (DFP).

2:50 pm Mr Dallat left the meeting.

2:55 pm Mr Dallat entered the meeting.

- **3:10 pm** Mr Copeland left the meeting.
- **3:12 pm** Mr Copeland entered the meeting.
- **3:17 pm** Mr Girvan entered the meeting.

**3:35 pm** Mr McLaughlin left the meeting.

3:37 pm Mr McLaughlin entered the meeting.

3:54 pm Ms McCann left the meeting.

3:56 pm Mr Girvan left the meeting.

**3:59 pm** Mr Girvan entered the meeting.

4:00 pm Mr Frew left the meeting.

**4:01 pm** Mr McLaughlin left the meeting.

**4:10 pm** Ms McCann entered the meeting.

4:13 pm Mr Frew and McLaughlin entered the meeting.

4:14 pm Mr Easton left the meeting.

4:35 pm Mr McLaughlin entered the meeting.

The witnesses answered a number of questions put by the Committee.

*Agreed:* The Committee agreed to request further information from the witnesses.

## Wednesday, 22 June 2011 Room 144, Parliament Buildings

Present:	Mr Paul Maskey MP (Chairperson) Mr Joe Byrne (Deputy Chairperson) Mr Sydney Anderson Mr Michael Copeland Mr John Dallat Mr Alex Easton Mr Paul Frew Mr Paul Girvan Ms Jennifer McCann Mr Mitchel McLaughlin
In Attendance:	Ms Aoibhinn Treanor (Assembly Clerk) Mr Phil Pateman (Assistant Assembly Clerk) Mrs Danielle Saunders (Clerical Supervisor) Mr Darren Weir (Clerical Officer)
Apologies:	Mr Ross Hussey

1:08 pm The meeting commenced in closed session.

#### 6. Issues arising from the oral evidence session on NIAO report 'Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Management Scheme' & 'Public Accounts Committee Report on Excess Votes (Northern Ireland) 2009-2010'.

Members considered an issues paper on this evidence session.

*Agreed:* The Committee agreed to write to the Department to request some further information.

4:55 pm Mr Byrne left the meeting.

# Wednesday, 7 September 2011 Room 29, Parliament Buildings

Present:	Mr Paul Maskey MP (Chairperson) Mr Joe Byrne (Deputy Chairperson) Mr Sydney Anderson Mr Michael Copeland Mr Alex Easton Mr Paul Frew Mr Paul Girvan Mr Ross Hussey Ms Jennifer McCann Mr Mitchel McLaughlin
In Attendance:	Ms Aoibhinn Treanor (Assembly Clerk) Mr Phil Pateman (Assistant Assembly Clerk) Mrs Danielle Saunders (Clerical Supervisor) Mr Darren Weir (Clerical Officer)
Apologies:	Mr John Dallat

2:00 pm The meeting commenced in open session.

# 6. Consideration of Draft Committee Report on 'Reducing Water Pollution from Agricultural Sources - The Farm Nutrient Management Scheme'

**3:01 pm** Mr Frew declared an interest stating that he is the current Chairperson of the Committee for Agriculture and Rural Development.

Paragraphs 1 – 11 read and agreed.

Paragraphs 12 – 16 read, amended and agreed.

Paragraphs 17 – 21 read and agreed.

Paragraph 22 read, amended and agreed.

Paragraphs 23 – 34 read and agreed.

3:32 pm Mr Anderson left the meeting.

Paragraphs 35 read amended and agreed

3:34 pm Ms McCann left the meeting.

36 - 37 read, amended and agreed.

Paragraph 38 read and agreed.

3:38 pm Mr Frew left the meeting.

**3:39 pm** Mr Anderson entered the meeting.

Paragraphs 39 – 48 read and agreed.

Paragraph 49 read, amended and agreed.

Paragraph 50 read and agreed.

Paragraph 51 read, amended and agreed.

Paragraphs 52 – 58 read, amended and agreed.

3:45 pm Mr Byrne left the meeting.

3:45 pm Mr Frew entered the meeting.

3:50 pm Ms McCann entered the meeting.

3:52 pm Mr Byrne entered the meeting.

4:00 pm Mr Easton left the meeting.

4:09 pm Mr Frew left the meeting.

The Committee was briefed by the C&AG and considered the written response from the Department.

*Agreed:* The Committee agreed to seek further information from the Department and agreed to consider a further draft copy of the report once the additional information has been received.

# Wednesday, 14 September 2011 Room 29, Parliament Buildings

Present:	Mr Paul Maskey MP (Chairperson) Mr Joe Byrne (Deputy Chairperson) Mr Sydney Anderson Mr Michael Copeland Mr John Dallat Mr Alex Easton Mr Paul Frew Mr Paul Girvan Ms Jennifer McCann Mr Mitchel McLaughlin
In Attendance:	Ms Aoibhinn Treanor (Assembly Clerk) Mr Phil Pateman (Assistant Assembly Clerk) Mrs Danielle Saunders (Clerical Supervisor) Mr Darren Weir (Clerical Officer)
Apologies:	Mr Ross Hussey

2:05 pm The meeting commenced in open session.

#### Leaking of the Draft Committee on 'Reducing Water Pollution from Agricultural Sources -The Farm Nutrient Management Scheme'

The Chairperson briefed the Committee and expressed his disappointment of the leaking of the draft report.

*Agreed:* The Committee agreed a draft press release and further agreed to consider the options available to the Committee at its meeting next week to minimise a recurrence of the leaking of Committee Reports.

# 7. Consideration of Draft Committee Report on 'Reducing Water Pollution from Agricultural Sources - The Farm Nutrient Management Scheme'

**3:59 pm** Mr Frew declared an interest stating that he is the current Chairperson of the Committee for Agriculture and Rural Development.

The Committee considered correspondence received from Mr Gerry Lavery, Accounting Officer, DARD sought by the Committee at its meeting on 7 September.

*Agreed:* The Committee agreed to recall Mr Lavery to give oral evidence at a date to be confirmed in order to clarify the information contained within the response.

## Wednesday, 28 September 2011 The Senate Chamber, Parliament Buildings

Present:	Mr Paul Maskey MP (Chairperson) Mr Joe Byrne (Deputy Chairperson) Mr Sydney Anderson Mr Michael Copeland Mr John Dallat Mr Alex Easton Mr Paul Frew Mr Paul Girvan Ms Jennifer McCann Mr Mitchel McLaughlin
In Attendance:	Ms Aoibhinn Treanor (Assembly Clerk) Mr Phil Pateman (Assistant Assembly Clerk) Mrs Danielle Saunders (Clerical Supervisor) Mr Darren Weir (Clerical Officer)
Apologies:	Mr Ross Hussey

1:30 pm The meeting commenced in closed session.

# 3. Briefing on the NIAO Report on 'Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Management Scheme'

Mr Kieran Donnelly, Comptroller and Auditor General; Mr Robert Hutcheson, Director; and Mr Joe Campbell, Audit Manager briefed the Committee on the report.

Agreed: The Committee agreed to adopt a rapporteur approach to questions.

**1:55 pm** The meeting was suspended.

1:56 pm Mr Easton entered the meeting.

2:02 pm The meeting recommenced in public session.

5. Evidence on the Public Accounts Committee inquiry into 'Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Nutrient Management Scheme'

**2:05 pm** Mr Frew declared an interest stating the he is the Chairperson of the Committee for Agriculture and Rural Development.

The Committee took oral evidence on the above report from:

- Mr Gerry Lavery, Acting Accounting Officer, Department of Agriculture and Rural Development (DARD);
- Mr Brian Ervine, Head of Environmental Policy, Department of Agriculture and Rural Development (DARD);
- Mr Michael Brennan, Head of Central Expenditure Division, Central Finance Group, Department of Finance and Personnel (DFP); and
- Mr Stephen Fay, District Valuer, Land and Property Services, Department of Finance and Personnel (DFP).

2:34 pm Mr Girvan entered the meeting.

3:08 pm Mr Dallat left the meeting.

- 3:14 pm Mr Frew left the meeting.
- 3:17 pm Mr Dallat and Mr Frew entered the meeting.
- 3:45 pm Ms McCann left the meeting.
- 3:46 pm Mr Copeland and Mr Dallat left the meeting.
- 3:47 pm Mr Copeland and Mr Dallat entered the meeting.
- **3:47 pm** Mr Byrne left the meeting.
- 3:50 pm Mr Byrne and Ms McCann entered the meeting.
- 4:30 pm Mr Anderson left the meeting.
- 4:34 pm Mr Dallat left the meeting.
- **4:38 pm** Mr McLaughlin left the meeting.
- 4:43 pm Mr McLaughlin entered the meeting.
- 4:44 pm Mr Copeland left the meeting.
- 4:45 pm Mr Copeland entered the meeting.
- 4:55 pm Mr Frew left the meeting.
- 5:02 pm Mr Easton left the meeting.

The witnesses answered a number of questions put by the Committee.

*Agreed:* The Committee agreed to request further information from the witnesses.

5.22 pm The meeting went into closed session.

## Wednesday, 5 October 2011 Room 29, Parliament Buildings

Present:	Mr Paul Maskey MP (Chairperson) Mr Joe Byrne (Deputy Chairperson) Mr Sydney Anderson Mr Michael Copeland Mr John Dallat Mr Alex Easton Mr Paul Girvan Mr Ross Hussey Ms Jennifer McCann Mr Mitchel McLaughlin
In Attendance:	Ms Aoibhinn Treanor (Assembly Clerk) Mr Phil Pateman (Assistant Assembly Clerk) Mrs Danielle Saunders (Clerical Supervisor) Mr Darren Weir (Clerical Officer)
Apologies:	Mr Paul Frew

2:00 pm The meeting commenced in open session.

#### 3. Matters Arising

Committee Inquiry 'Reducing Water Pollution from Agricultural Sources: The Farm Nutrient Management Scheme'.

The Committee agreed to consider this matter in closed session.

2:52 pm The meeting went into closed session after the C&AG's initial remarks.

#### 3. Matters Arising

**Com**mittee's Inquiry 'Reducing Water Pollution from Agricultural Sources: The Farm Nutrient Management Scheme'.

**Mr Kieran Donnelly, Com**ptroller and Auditor General; Mr Robert Hutchinson, Director; briefed the Committee on the report.

**3:29 pm** Mr Girvan left the meeting.

**3:31 pm** Mr Girvan entered the meeting.

3:35 pm Mr Hussey left the meeting.

**3:37 pm** Mr Hussey entered the meeting.

3:53 pm Mr Dallat left the meeting.

**3:54 pm** Ms McCann left the meeting.

4:00 pm Ms McCann entered the meeting.

4:01 pm Mr Anderson left the meeting.

The witnesses answered a number of questions put by members.

*Agreed:* The Committee agreed to seek legal advice on the draft report for the Committee's consideration.

## Wednesday, 19 October 2011 Room 29, Parliament Buildings

Present:	Mr Paul Maskey MP (Chairperson) Mr Sydney Anderson Mr Michael Copeland Mr John Dallat Mr Alex Easton Mr Paul Girvan Mr Mitchel McLaughlin
In Attendance:	Ms Aoibhinn Treanor (Assembly Clerk) Mr Phil Pateman (Assistant Assembly Clerk) Mrs Danielle Saunders (Clerical Supervisor) Mr Darren Weir (Clerical Officer)
Apologies:	Mr Joe Byrne (Deputy Chairperson) Mr Paul Frew Mr Ross Hussey Ms Jennifer McCann

2:05 pm The meeting opened in public session.

## 4. PAC Report on 'Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Management Scheme'

The Committee noted correspondence from Mr Gerry Lavery, Accounting Officer, Department of Agriculture and Rural Development providing the additional information sought by the Committee following its evidence session on 28 September 2011.

### [EXTRACT]

### Wednesday, 9 November October 2011 Room 29, Parliament Buildings

Present:	Mr Paul Maskey MP (Chairperson) Mr Joe Byrne (Deputy Chairperson) Mr Sydney Anderson Mr Michael Copeland Mr John Dallat Mr Alex Easton Mr Ross Hussey Ms Jennifer McCann Mr Adrian McQuillan
In Attendance:	Ms Aoibhinn Treanor (Assembly Clerk) Mr Phil Pateman (Assistant Assembly Clerk) Mr Michael Greer (Clerical Supervisor) Mr Darren Weir (Clerical Officer)
Apologies:	Mr Paul Girvan Mr Mitchel McLaughlin

2:03 pm The meeting opened in public session.

### 6. Final Consideration of Draft Committee Report on 'Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Management Scheme'

The Committee considered its revised draft report on 'Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Management Scheme'.

Paragraph 7 read and agreed.

Paragraph 39 read and agreed.

Paragraphs 42 - 54 read and agreed.

Sub-header following paragraph 67 read, amended and agreed.

Paragraph 70 read and agreed.

Paragraph 21 read, amended and agreed.

Consideration of the Executive Summary

Paragraph 13 read, amended and agreed.

- Agreed: The Committee agreed the correspondence to be included within the report.
- *Agreed:* The Committee ordered the report to be printed.
- *Agreed:* The Committee agreed that the report will be embargoed until 00:01am on 7 December 2011.

### [EXTRACT]



# Appendix 2 Minutes of Evidence

## 15 June 2011

# Members present for all or part of the proceedings:

Mr Paul Maskey (Chairperson) Mr Joe Byrne (Deputy Chairperson) Mr Sydney Anderson Mr Michael Copeland Mr John Dallat Mr Alex Easton Mr Paul Frew Mr Paul Girvan Mr Ross Hussey Ms Jennifer McCann Mr Mitchel McLaughlin

#### Witnesses:

Mr Brian Ervine	Department of
Mr Gerry Lavery	Agriculture and Rural
Mr John Smith	Development
Mr Michael Brennan	Department of Finance
Mr Stephen Fay	and Personnel

### Also in attendance:

Mr Kieran Donnelly	Comptroller and Auditor General
Mr Richard Pengelly	Acting Treasury Officer of Accounts

- 1. **The Chairperson**: I welcome Mr Gerry Lavery, accounting officer for the Department of Agriculture and Rural Development (DARD), who is here to respond to the Committee. Mr Lavery, I will pass over to you to introduce your colleagues.
- 2. **Mr Gerry Lavery (Department of Agriculture and Rural Development):** Thank you. I am Gerry Lavery, accounting officer for the Department of Agriculture and Rural Development. On my immediate right is John Smith, the director of finance for the Department, and on my left is Brian Ervine, a principal officer with considerable experience in the area of the farm nutrient management scheme. On the other side of John Smith is Michael Brennan from central finance group and Stephen Fay from Land and Property Services (LPS).

- 3. **The Chairperson**: You are all very welcome.
- I remind members and people in the Public Gallery to switch off mobile phones and electronic devices. They can interfere with sound quality, and Hansard has a difficult enough job to do. It would be appreciated if those could be switched off.
- 5. Mr Richard Pengelly is here today in the capacity of Acting Treasury Officer of Accounts until Catherine Daly takes up her post. Richard, you are very welcome.
- 6. I will start off the questioning. The farm nutrient management scheme was run over a period of some five years at a cost of £121 million, making it the largest capital grants scheme ever run by DARD. What did the taxpayers get out of it?
- 7. Mr Lavery: I admit at the outset that we did not implement the scheme perfectly. That will doubtless emerge in the questioning. However, it did a lot of good for Northern Ireland. First, it helped us to avoid the risk of infraction fines, running at potentially £50 million a year, from the European Commission.
- 8. Secondly, it improved water quality in the Province. Over 75% of the sites sampled show an improvement in phosphate levels. In the last closed season, no farmers were detected spreading slurry. It helped 3,900 farmers to build additional storage capacity, and storage capacity is not now seen as a problem by the Environment Agency or us. As the Chairman said, it invested £121 million of public money, but it also leveraged out over £80 million from the private sector — from the farming community. It was an important boost to the construction industry at a time when public and private investment was tapering off very sharply.
- 9. As regards the original objective set for the scheme, it has helped to maintain

the livestock numbers in the Province and, therefore, has helped to safeguard a  $\pm 1,000$  million a year export-focused industry. Overall, I think that the public have got a very good return on the scheme.

- 10. **The Chairperson**: You reckon that it is value for money for the taxpayer.
- 11. **Mr Lavery**: We do.
- 12. The Chairperson: On page 28 at paragraph 2.38, figure 7 lists the steadily increasing range of budgets set for the scheme. It started at £30 million in 2004 and finished at £144 million in 2007. Does that not strongly suggest that the scheme was poorly planned from the start of the process?
- 13. Mr Lavery: I do not think so. I accept that the budget for the scheme increased over time. First of all, however, that reflected affordability. From the very first discussions that we had in the Department and with the Department of Finance and Personnel (DFP), we were looking for more than £30 million. It was not the case that the need was not foreseen to be greater than £30 million. What you see is a series of steps taken within the affordability available to the Executive and also, I have to admit, an increase in costs over the time. If you recall, that was a period when the construction industry was working flat out and, therefore, not only did it have the opportunity to increase its direct costs, but a lot of its indirect costs — materials such as steel and concrete — were going up by inflation at a very sharp rate. So, it was not the case that we were not planning for a major scheme, but we did have to work with changing circumstances and to be flexible.
- 14. The Chairperson: Do you not think that to have a starting point of £30 million increase by £114 million up to £144 million is some increase in the price of concrete and the other things that you mentioned? I am not sure what that percentage would be, but I would say that it was a hell of a lot.

- 15. **Mr Lavery**: It was a very significant increase. To be fair, it was also a very significant increase for investment by the private sector — by the farmers. Their costs and investment went up too.
- 16. I make the point that we were working on several strands simultaneously. When we set out on the farm nutrient management scheme, we had not, at that point, agreed the specification of the nitrates action programme with the European Commission. Therefore, the requirement was changing even as we were launching the scheme, and it was only much later that we agreed, for example, that the storage period required would be 22 weeks; we had originally envisaged 20 weeks. It was only later that we were able, with the experience of the scheme, to recognise that farmers were taking very prudent long-term decisions about the investment they were making and were more inclined to build below-ground storage than aboveground storage. Frankly, the belowground storage, although much safer for the farmer and for the public, is more expensive. So, a number of factors led to the increased budget.
- 17. **The Chairperson**: OK. I do not want to dwell on the question — other members may have similar questions later. However, it seems a massive increase. Did the Department do any forward planning to find out what the percentage increase might be? Could there have been better value for money for the taxpayer?
- 18. Mr Lavery: I would never rule out the possibility that, with hindsight, we could identify better value-for-money options. However, when we set out on that path, the initial approval from the European Commission was for a scheme that would have a 40% grant rate. We tested that, but we did not get uptake at 40%, so we had to enhance the grant rate to 60%, and that also increased costs. Therefore, with experience, we identified different factors as we went along. Good policymaking has to be flexible and outward looking, and we were taking account of changing circumstances.

- 19. **The Chairperson**: Was there good planning, or could it have been better?
- 20. Mr Lavery: Overall, the underlying concept and plan was right. In 2003, we were faced with a situation where we could have left the farmers to face enforcement and to take decisions on their own to destock their herd or. frankly, to wait until they were detected by inspection by the Environment Agency. We looked at that and said that there is better value for money for the taxpaver in protecting the level of herd size and keeping jobs in meat processing and in dairying. We proved that argument on value for money through economic appraisal, and we promoted a scheme. Between 2003 and 2008, we delivered £200 million of investment, working in co-operation with the farmers and getting to the point where, as I said, no farmers are being detected spreading slurry during the closed season.
- 21. **The Chairperson**: That has to be welcomed.
- 22. Paragraph 1.9 tells us that, when the nitrates directive was introduced in 1991, member states had two years in which to identify and designate nitrate vulnerable zones. It took your Department eight years to do so. Can you explain the rationale for the Department's taking so long?
- 23. Mr Lavery: Absolutely. I know that the Committee often has the disagreeable experience of not having the people in front of it who took the decisions, but I was working in that area in 1995. At that point, we were looking for nitrate vulnerable zones, and we could not identify them because it was like looking for a needle in a haystack. By 1999, we had identified only three nitrate vulnerable zones, and they were very small. By 2003, we had identified a total of seven, amounting to 0.1%of the land area of Northern Ireland. That is a very small area of between 100 and 200 hectares spread across Northern Ireland. It was very difficult to identify nitrate vulnerable zones, given the parameters that we understood the directive imposed.

- 24. It was only with a European Court case in 2002 that a decision was taken by Europe that the legislation extended to phosphate or phosphate-driven eutrophication. We knew that we had a problem with phosphate and eutrophication, and it was at that point that we realised that we had to get our act together and look at the designation of a much bigger area. It turned out to be either 85% or total territory designation. We went for total territory designation and, from there, moved quickly to get an appropriate grant scheme in place to incentivise farmers to comply.
- 25. The Chairperson: It took you eight years. I appreciate that you were there from the start of the scheme; it is a rarity for the person who took the decisions to appear before the Public Accounts Committee, because those people have usually moved somewhere else by the time we consider an issue. Did you have concerns about the ongoing pollution and the potential for infraction proceedings and fines for non-compliance throughout that eightyear period? A large amount of money was spent on the scheme. Why was it so difficult to source that?
- 26. Mr Lavery: In 1995-96, we were facing the nitrates directive with no view anywhere that it extended to phosphate. So, we were not concerned about infracting the nitrates directive. We believed that we were making a proportionate attempt to find anywhere in Northern Ireland with elevated nitrate levels. We were also aware around 1995-96 that inland waterways and still waters were getting a lot of algal growth, which is the green scum that you used to see in Northern Ireland on the surface of areas such as the Quoile basin. That algal growth takes up all the oxygen in the water and everything else dies, especially fish and fish fry.
- 27. We were aware of that problem, and I recall that, under the first Peace programme, we got £1.6 million to look at Lough Erne and the Erne system and to offer people advice on how to manage the escape of fertiliser into the waterways. We thought that £1.6 million

was a big scheme proportionate to the problem that we had with eutrophication. So, we were already looking at eutrophication as an issue, but we could not get anything remotely like the resources that we eventually got until it became clear, in 2003, that there was a risk of infraction and of daily fines that could amount to  $\pounds$ 50 million a year. Suddenly, the business case stacked up, and we could go for much a bigger scheme.

- 28. So, we had a problem with eutrophication, but not one that apparently concerned the European Commission. We had virtually no problem — or no identified problem with nitrates at that point.
- 29. **The Chairperson**: OK. Other members might want to follow up on some of that. I will pass the questioning over to other members now.
- 30. **Mr McLaughlin**: Good afternoon. Paragraph 2.4 states that the assumptions used in the economic appraisal on the existing level of slurry storage were based on data collected by the Department in 1996-97. That is some seven or eight years earlier. Given the problems that emerged and your admission that you had not managed it so well, do you think that it was appropriate to use such dated information when planning the scheme?
- 31. Mr Lavery: If I was doing it again, I would like to have up-to-date information. I totally accept that. However, when we started to look at the scheme in 2002-03, we had carried out that study some five years previously. We had put advisers on the ground to give advice on fertiliser use and eutrophication. We had the specific experience of the Erne system, and we had no reason to believe that the figures from the 1998 study had changed. All our knowledge suggested that that study was still valid, and, rather than delay moving forward until we carried out a further survey, we took that survey as the basis of the economic appraisal that was done by Stoy Hayward. I would like to have had better and more current information, but all the subsequent

evidence from experience of the scheme suggests that we were right in 2003 and that farming practice had not changed since the 1998 study. I accept that we could have been wrong, and, therefore, there was a risk that we did not mitigate as fully as we should.

- 32. **Mr McLaughlin**: Did your consultants comment, express concern or suggest a different approach in the conduct of their economic appraisal exercise?
- 33. **Mr Lavery**: I do not recall. Brian, do you recall anything?
- 34. **Mr Brian Ervine (Department of Agriculture and Rural Development):** No, that was the best evidence that was available at the time, and the consultants consulted with stakeholders outside the Department to determine that the data that we were supplying was in accordance with what stakeholders viewed the position to be. That indicated that stakeholders in the farming industry and on the environmental side broadly agreed with the findings and the study that the consultants subsequently based the economic appraisal on.
- Mr McLaughlin: Mr Lavery, you indicated 35. that you went for a whole-area approach — widespread concern about the issues that you were seeking to address — in constructing a business case and an operational plan. We are left with the odd conundrum that the information that the strategy was based on was already dated before the programme began. You had a target of 42% of farm properties. In the event, the programme involved 15%, yet you were unable to answer the earlier question from the Chairperson on whether that represented a value-formoney project.
- 36. **Mr Lavery**: You are right that, in 2003, there was concern about the total territory approach. That was consistent with nothing having really changed since 1998. In 2003, farmers saw slurry primarily as an inescapable waste product that they had to deal with, largely by land spreading. At the same time, they were applying large amounts of chemical fertiliser. When

we approached the farming industry with the issue of the total territory designation and the concept of a grant scheme, it was a shock to the farmers, because they did not expect to be held to invest a large amount of their money in slurry storage. They regarded their existing systems as adequate, and that is where the scheme really started to take effect.

- 37. If we had done nothing in 2003, I believe that you would now be faced with enforcement, prosecution and farmers complying only as they were inspected and found wanting. Instead of that, we have delivered a scheme that encouraged farmers to comply and which changed the mindset about slurry, so that farmers now see it as a nutrient and as a substitute for expensive chemical fertiliser. They apply the slurry to the land consistent with what the land will take up, and they benefit from that by having a reduced requirement to spend money on fertiliser, prices for which have gone through the roof.
- 38. Mr McLaughlin: We are talking about the expenditure of £121 million. We are talking about 4,000 farm holdings out of 25,000. We are talking about a continued incident of water pollution. Does that sound like a success story?
- 39. **Mr Lavery**: Without wishing to disagree, I point out that 4,000 farmers directly built additional storage and are compliant with the requirement to have a minimum of six months' storage available to them. In addition, other farmers, who looked at the scheme and decided that they could not make that investment because it was not worth their while to do so, were educated and had advice from the Department and arrived at an alternative solution.
- 40. You said that there was a continuing picture of water pollution. That is not water pollution arising from the absence of slurry storage or inadequate slurry storage. That is not being found today. The practice of spreading slurry is hugely improved. Going back 10 years, I regularly looked at issues of river pollution from slurry or fertiliser run-

off leading to fish kills up and down the country. We do not see that today, certainly not from slurry storage.

- 41. **Mr McLaughlin**: That remains to be seen. I can think of a number of fish kills in recent times where — fair enough, we have not had the benefit of an examination of the detailed investigations — I am not so confident that that connection cannot or will not be made.
- 42. My theme is accountability. Frankly, a number of issues relating to the scheme alarm me. Paragraph 2.9 outlines that DFP's approval for the scheme was conditional on an interim review being undertaken after the end of the first year of the scheme, but that was never completed. Why not? Who decided that that was not necessary?
- 43. Mr Lavery: The report makes it clear that, because we had carried out an initial economic appraisal and then had a further addendum and further economic appraisal at 12 months and at around two years, we considered that we had carried out a review and that all the facts required to make a judgement on whether it was a prudent investment were available to the Department of Finance and Personnel. The Department of Finance and Personnel made the decision in June 2007 that it was a prudent investment - good value for money — for Northern Ireland. To that extent, we are in a good position.
- 44. **Mr McLaughlin**: Given that you have accepted that it was not your finest or best-managed project — I cannot remember your exact words, but you used an interesting turn of phrase has the Department carried out a full post-project evaluation yet?
- 45. **Mr Lavery**: Yes; we have carried out a post-project evaluation.
- 46. **Mr McLaughlin**: What results have emerged?
- 47. **Mr Lavery**: As you would expect, there have been both positives and lessons to be learnt. We will also take account of the lessons to be learnt from the

NIAO report. Key recommendations from the post-project evaluation, for example, are around setting up a project board and project implementation team working from a centralised location from the outset. We should have devised a scheme manual and standard operating procedures. Importantly, we should have had sufficient resources, and a dedicated team with the necessary technical skills, to deliver a scheme of this nature. There are lessons to be learnt. In mitigation, I have to say that we are always working at the limit of the resources available to us, and that shows through.

- 48. **Mr McLaughlin**: May the Committee have a copy of the report?
- 49. Mr Lavery: By all means.
- 50. **Mr McLaughlin**: I was going to address some questions to the Treasury Officer of Accounts, but I do not know how to proceed with that. May I come back to the subject?
- 51. **The Chairperson**: The Acting Treasury Officer of Accounts is here. Before you put those questions, I will bring in Michael Copeland for a supplementary.
- 52. **Mr Copeland**: Thank you. As you know, I have been away from this place for about four years. If I remember correctly, there were no Committees the last time I was here, so this is a new experience for me. Before I begin, I congratulate the Chair on his recent success in other places.
- 53. As I understand it, the scheme benefited, or was taken up by, about 4,000 farmers. It cost about £120 million. There are more than 4,000 farmers in Northern Ireland. You had a throw-away line that not all of the farmers who were offered it took it up and others found alternatives. What other alternatives were available and how did some manage to satisfy the requirements of the legislation, which I presume they were trying to satisfy, without the necessity to participate in one four-thousandth of £121 million, or whatever the figure happened to be?

- 54. Could I dig a little deeper? Most plans and schemes have, at the outset, a limit on the amount of money apportioned to them. Inbuilt into that, most of them have milestones that flag up concerns or questions at certain stages. Did that happen in this case, or am I sensing that the thing cost an awful lot more than it was anticipated to cost? If it did, the funding or the finance to do it must have come from somewhere, which meant that that something else possibly did not get done. Where did the money that was expended come from?
- 55. **Mr Lavery:** I will take those questions in order. With regard to the alternatives, one has to bear in mind that, although this is predominately a livestock industry, there are farmers who do not have livestock and there are farmers who had adequate storage before the scheme commenced. Our target group was probably around 12,000. As you quite rightly say, Mr Copeland, of that 12,000, 3,900 benefited directly from the scheme. However, others would have decided that they could accomplish a lot by separating out more diligently the dirty water from the slurry. "Dirty water" is a technical term that means water contaminated by urine, faeces and so on. However, when you wash a farmyard, if you can separate out rainwater and so on, you can have a flow of clean water directly into a watercourse. There were mitigating solutions, such as the roofing of middens and so on, which was fairly minor work that could be done by farmers in their own capacity.
- 56. Farmers also had the option of reducing their herd size, and some will have decided simply to reduce the number of animals that they kept so their existing storage capacity was sufficient. Some farmers will have benefited from advice on renting adjacent land for spreading slurry. A whole host of options was available. Our understanding is that farmers are compliant today with the nitrates directive and that no difficulty has been detected with storage.
- 57. **Mr Copeland**: As far as you are aware, are all the farmers now compliant? The target was 12,000. We assisted

4,000, which leaves 8,000. Therefore, 4,000 were made to comply through the expenditure of  $\pm 121$  million, and 8,000 were made to comply through advice or steps that they took themselves?

- 58. **Mr Lavery**: That is what I suggest, and that is what the enforcement record by the Environment Agency suggests. Small defaults are being detected, but not significant ones.
- 59. Mr Copeland: I understand that. Was the cost of bringing about the compliance of 8,000 farmers included in the £121 million scheme, or was that from another heading? Presumably, if they were getting advice and people were looking at roofs on middens and clean water, someone was giving them that advice. Did that come out of another budget, or was it included in the £121 million?
- 60. Mr Lavery: I think that the £121 million is the direct grant cost. For instance, the administration of the £121 million would have cost around £5 million, and that might have included some of those advisory visits; it should have included those advisory visits.
- 61. **Mr Copeland**: Would it be possible to get that clarified at some stage in the future?
- 62. **Mr Lavery**: Yes, we will give you the costs of administering the scheme, which will include the advisory costs.
- 63. Mr Copeland asked three questions; I do not want to deprive him. One was about the limit that is set in beginning a scheme of this kind. Certainly, when we began the scheme, the original economic appraisal predicted that around 12,000 farmers needed to do something in the areas of slurry and herd size and that up to around 5,000 would be willing to benefit from a grant scheme. That, in a sense, is the limit within which we worked throughout that period. It was not the case that we could set a hard and fast financial limit, because the time period for operating the scheme eventually became around five years, and it was simply not possible at the outset to

predict the cost at the end of the five years. The initial decision was taken that £30 million was all that could be afforded. That was the limit and was why the scheme was originally conceived as a first-come-first-served scheme. Eventually, it became a total scheme.

- 64. **Mr Copeland**: What were the proposals for dealing with those who had money left but had not participated in the scheme or become compliant after the scheme was closed? Did you go down the route of prosecutions and detection?
- 65. **Mr Lavery**: We went down the route of inspection and enforcement, which was a demand on the Department of the Environment and the Environment Agency.
- 66. **Mr Copeland**: With an associated income stream, possibly, of fines?
- 67. **Mr Lavery**: I cannot say what happens to fines, but I do not think that they go directly to the Environment Agency.
- 68. Your third question was about the implications of funding the scheme. That is a very difficult question to answer. The decisions were taken initially by direct rule Ministers and then by the Executive, which had a robust economic appraisal that said that it was a good investment. They made that investment. Against a background of public expenditure, it is not possible to say what did not get done.
- 69. **Mr Copeland**: Was the £30 million a guillotined figure for total foreseen expenditure at some stage?
- 70. Mr Lavery: Yes, it was.
- 71. Mr Copeland: Not per annum but for the —
- 72. Mr Lavery: At that point, that was all that could be afforded. As the table shows, it very rapidly became £45 million. We then entered into dialogue that eventually led to the expenditure of £121 million.
- 73. **Mr Hussey**: You said that consultants consult stakeholders; naturally, they would. Do we know how many stakeholders they consulted?

- 74. Mr Ervine: Yes, I can explain. We set up a stakeholder group to implement the whole policy, which included the farm nutrient management scheme and the nitrates directive, and we had all the main representative bodies from the farming unions and a significant number of environmental organisations. Roughly 16 to 18 organisations were represented on that stakeholder group. Furthermore, once that economic appraisal had been put to the stakeholders, the proposals for the scheme were then subject to public consultation for a three-month period from April 2004. So, the projections that were contained in the economic appraisal were subject to public consultation, and no responses came back that disagreed with the initial findings that there was a large storage deficit and that around 4,000 to 5,000 farmers would avail themselves of a scheme.
- 75. **The Chairperson**: Mitchel McLaughlin, there is a microphone beside the Acting Treasury Officer of Accounts. You might want to direct your question to him.
- 76. Mr McLaughlin: I looked round one time, and he was not there, but Richard has that gift. You are very welcome, Richard. I am interested in the arrangements that DFP has in place to monitor compliance with the conditions for approval that it sets down. Paragraph 2.9 indicates that you:

"pointed out that 'these monitoring arrangements will be particularly important to ensure cost-effective and successful implementation of this scheme'."

- 77. How does DFP ensure that the conditions that it regards as very important to its approval are complied with?
- 78. **Mr Richard Pengelly (Acting Treasury Officer of Accounts)**: The essence of it is ongoing dialogue. Supply teams in the Department of Finance engage with their colleagues in the other Departments on a very regular basis. The important point in this context is that, as Mr Lavery pointed out, the interim review was effectively overtaken by events, namely the addendum in July 2005, which

reshaped the ground on which we moved forward. That is a specific issue.

- 79. Generally, there is clearly a lesson for DFP to learn as regards a better articulation of the exact compliance. We put in place conditionality for approval of schemes, which becomes part of very regular dialogue and stocktake with Departments as schemes roll forward and is then reflected in things like post-project evaluations. It is not a tick-box exercise in which we put forward a condition, they send a piece of paper and we tick a box. It is about a dialogue and continuing to move and shape things. As you can see, in this case, there was the initial business case in 2004, an addendum in 2005 and a revised business case in 2007. That would have been underpinned by very lively dialogue between DFP and the Department of Agriculture throughout the period.
- 80. **Mr McLaughlin**: Did the 2007 appraisal refer to the Crossnacreevy element as well? I do not intend to go into that, but I just want to know, for clarification, whether it was part of that appraisal.
- 81. **Mr Pengelly**: The conditionality of the 2007 approval concerned resolving the affordability issue. Crossnacreevy came in the week or so after the approval.
- 82. **Mr McLaughlin**: I am just trying to figure out how much weight to attach to these references. Did DFP sign off with DARD on an agreement that the addendum was sufficient for the interim review, or was it post facto?
- 83. **Mr Pengelly**: In the approval process, there is a high level exchange of letters between the Department and DFP, which is underpinned by very extensive dialogue at operational level. In that dialogue, we were very content and satisfied that that substantive addendum represented an interim review.
- 84. **Mr McLaughlin**: Right. It was in that context? It was not done after the fact? You agreed with —
- 85. **Mr Pengelly**: As part of that dialogue; yes. It was also in the context that the

interim review was to happen a year after scheme implementation. The scheme was only a rolled out in the early part of 2005, and the addendum was a few months after that. It was not post facto.

- 86. **Mr McLaughlin**: OK. So, the ongoing dialogue that underpinned the whole process did not flag up to DFP, at that stage, that there were problems with both the design and implementation of the scheme?
- 87. **Mr Pengelly**: I cannot sit here and say that it did. Clearly, we signed off on the business case and the approach that was being taken. The fact that we were dealing with the addendum meant that we recognised that we were dealing with a moving feast and a complex area. I do not suggest that all was perfect, but we certainly did not flag up to DARD any deep-rooted concerns about its methodology in handling the scheme.
- 88. Mr McLaughlin: Is there anything relating to the record at that time that would help the Committee in compiling its report? I will not to rehearse the stats again — I am sure that you are familiar with those. However, given that, of a target group of approaching 12,000, the scheme attracted 4,000 applicants who actually delivered on their project submissions, surely it was clear at an early stage that there were problems in both the methodology and design of the project?
- 89. **Mr Pengelly**: I am not aware of factual information from that time, but we will certainly go back and go through the record of the dialogue at that stage.
- 90. Mr McLaughlin: That would be helpful.
- 91. **Ms J McCann**: I have a few questions about the money that was spent and what was achieved. You said that the target group was 12,000, and that the target was achieved for about 4,000 of the targeted 12,000, and that is one third. However, the scheme was launched on a first-come-first-served basis in the initial stages, and it was not structured to target or direct the money to where it was needed. You said that

you had a total territory approach, but 17% of the land did not need it. Given that the European Union flat rate of 60% was given to everybody, no matter what size the farm or whether the farmer was rich or poor, do you think that doing it in that fashion and in an unstructured way, where you were not targeting the money where it was needed, was money well spent and a good way to approach it?

- 92. Mr Lavery: Thank you for those questions. Maybe my ambition was too modest back in 2003. However, I saw £30 million as a very sizeable amount of money. I knew that it was insufficient and rapidly went back and got it raised to £45 million, which I saw, again, as a very sizeable amount of money. At that point, that was the outworking of decisions within government about the relative merits of our expenditure and that of other Departments. It was an affordability issue. It was only as we went forward, as the case for the investment got stronger, as our knowledge of the costs involved and as the willingness of the farming industry to co-operate emerged, that we were able to get to the final amount that was spent, which was £121 million. We did not think, at the outset, that we could ever have covered 5,000 farms for a total of £30 million. In the middle stages, we were looking at options such as improving the farms that we could with the budget available. At one stage, we calculated that we would have covered only 1,200 farms, which seemed wholly insufficient to the problem. There was a development of the budget and a development of our thinking and ambition as we went along.
- 93. As regards the total territory designation, once we took the decision that it was going to be more convincing to the European Commission and that it was going to be better for the environment to designate the total territory, the rules from there on about slurry spreading applied to all the farmers in the territory; therefore, all the farmers would require whatever assistance was necessary to allow them to work within those closed periods.

- 94. As regards the flat rate, schemes operate on the basis of being fair and equitable to applicants. Therefore, we offered all applicants the same flat rate of 60%. However, not everybody got 60% of their project costs for several reasons. One reason was that we kept the costs to the public sector down. We insisted that we would pay only 60% of the first £85,000 of the cost of a project. We insisted that we would only pay on the capacity that a farmer had applied for in the first application; they were not allowed to amend their application. We insisted that we would only pay on the costs that they had submitted in their application; in some cases they were getting work done a couple of years later at a higher cost, but we did not take account of that. We also set standard costs and capped some costs at reasonable costs. All of those were downward pressures on how much a farmer got.
- 95. If you take the largest project that was carried out by a farmer, the total investment was over £200,000, and his grant aid would have been around £50,000. That gives you an idea that it was not the case that every farmer was getting the identical percentage of their actual project.
- 96. Ms J McCann: You talked about being fair. I remember watching on the television people having to queue up for the grant, which was granted on a first-come-first-served basis in the initial stages, although it changed later. Also, improvements did not need to happen on 17% of the land, and that was not fair on the people who owned that land. Do you feel that it was fair that additional costs were incurred by the taxpayer? I am trying to tease out the value-formoney aspect.
- 97. **Mr Lavery**: To be clear as regards first-come, first-served, I do not think that the scheme in 2003-04 resulted in queues. There were queues on a first-come-first-served scheme, but that was much more recent, and it was a high-volume scheme. This scheme was a relatively low-volume scheme, and applications came in by post and were

then organised according to date of receipt. It did not result in queues. I will ask Brian to say something on the issue of the total territory designation.

- 98. **Mr Ervine**: Perhaps I could explain some of the detail behind it. The 17% is made up predominately of upland areas of the Mournes, the Sperrins and the Antrim plateau, where there are very few farms.
- 99. **Ms J McCann**: Do you mean the areas that are marked in white on the map?
- 100. Mr Ervine: Yes.
- 101. **Ms J McCann**: That is south Armagh and the Ards Peninsula—
- 102. Mr Ervine: Maybe that is not the same map. The areas that would not, perhaps, have merited designation on eutrophic waters — the remaining 15% to 17%, which was, predominately, in those areas — had very little need for additional slurry storage. Due to the land type, the farming is extensive and tends to be sheep farming with less intensive cattle farming. There was very little difference with regard to the overall expenditure or the demands on the farmers. Their farming systems were already compliant. The real impact was on the more intensive cattle farms and other farms with high livestock numbers. There was an environmental reason for designating the whole area. Experience in other member states had shown that where you had a nitrate vulnerable zone where the rules and measures were applied, there tended to be a dumping of slurry in the other areas. That subsequently led to pollution in those areas, and, ultimately, those areas had to be designated anyway. It was far better to adopt that total approach.
- 103. **Ms J McCann**: I know what you are saying, but would it not have been better to target certain areas, for instance, farms near a river, where the pollution would have been felt by everyone? It would probably have been better if the scheme had been targeted and directed in certain areas.
- 104. I want to move on to my second question. Paragraph 2.31 points

out that the cost of the scheme increased because almost 80% of the farmers opted for the more expensive underground tank, rather than the aboveground tank. Why did the taxpayer have to foot the bill for the more expensive preference? Could the scheme not have been limited to the cheaper option?

- 105. **Mr Lavery**: I have already outlined some of the ways in which we kept the costs down. A farmer must decide what is best for his farmyard and how he organises his animals. It would have been very difficult for us to intervene in every case and impose an alternative solution.
- 106. **Ms J McCann**: The economic appraisal assumed that 25% of tanks would be underground; is that correct?
- 107. Mr Lavery: That was our prediction. We were not going to set a rule that only 25% of farmers would be permitted to have below-ground storage. Frankly, we anticipated that farmers would choose the cheaper option. As it turned out, more farmers were willing to invest. As I have said, in 2003, farmers had not been investing in waste storage to the extent that they should have been. It was not as seen as an attractive investment that would give a direct productivity return in the same way as a new tractor or a new harvester. We were trying to convince farmers to invest in slurry storage, which is not the most appetising subject. They were willing to invest more than we had predicted, and we were willing to walk the last mile with them, subject to affordability.
- 108. **Ms J McCann**: Can you give us a sense of how much more it cost the taxpayer? I am not talking about the cost to the individual farmer. How much more did the installation of underground tanks instead of above-ground tanks cost? May we have a note on that?
- 109. **Mr Lavery**: It is difficult to give a hypothetical answer.
- 110. **Ms J McCann**: I am not asking for it today, but could we get a note?
- 111. **Mr Ervine**: Whether it was feasible for us to insist on, or fund, only above-

ground storage was examined in great detail and evaluated as one of the options in the 2007 business case. However, that was dismissed; there were a number of reasons why it was not viable. Many farms do not have the space or layout to suit above-ground storage tanks. We also had a supply capacity issue. The supply base for above-ground storage was significantly smaller than the capacity to build belowground tanks. Therefore, had there been a shift to above-ground tanks on some of the farms that could have taken them, the scheme could not have been completed. There simply was not the capacity to deliver within the timescale.

- 112. **Ms J McCann**: I appreciate that, but all I am interested in is the cost difference. Maybe you could give us a sense of that.
- 113. **Mr Lavery**: Brian can take that from the economic appraisal and give you a note.
- 114. Mr Ervine: Certainly, I could —
- 115. **The Chairperson**: With respect, we know all the issues. You are going to go over those again, but Ms McCann has asked for some figures. We would appreciate if we could get those in writing at some stage before we compile our report.
- 116. Mr Frew: Good afternoon, gentlemen, and thank you for your answers so far. I want to talk about Crossnacreevy, which seems to be a very big issue in the report. Paragraph 2.40 indicates that, in June 2007, the Department put forward the sale of Crossnacreevy in the context of seeking increased funding for the scheme from DFP. That was to allow all the applications to be funded at that time. The Department's initial valuation was the crucial factor in obtaining the capital cover required, yet it was ludicrously wide of the mark. How can an asset worth less than £6 million be valued at over £200 million?
- 117. **Mr Lavery**: In essence, it was not, but let me explain. In early June 2007, we had a very unusual and urgent situation. There was a new Executive and a new Minister, and they were facing enormous pressure and criticism about what was perceived as a delay in getting

applications approved under the farm nutrient management scheme. We knew that, within the first fortnight of June, we would have completed all the approvals that we could afford within the existing budget of £55 million and, unless we found new funding, we would have to redeploy our inspection staff. That would have become known to the farming industry and the construction industry, and it would have diminished their confidence and, arguably, the confidence of the European Commission that we were tackling the nitrates problem and could escape the infraction fines.

- 118. We needed £10 million in 2007-08, but we needed £79 million in 2008-09. At that point, the Executive had not even begun to discuss their first Budget, which was to apply from 2008-09 forward. There was no process --there never had been a process — to pre-empt those discussions. That was a difficult situation. Our Minister at the time circulated a draft Executive paper setting out the position and the difficulty. That led to a dialogue between the Department of Finance and Personnel and us. I was a participant in that dialogue, and I was asked about what DARD could bring to the table that could assist matters and what it could do to help itself.
- 119. I was aware that, when we set up the Agri-Food and Biosciences Institute (AFBI), we reserved ownership of its assets on the basis that, eventually, there would be the opportunity to unlock some of the value. I spoke to the then chief executive, and he indicated that, in AFBI's review of its assets, it was identifying an opportunity to vacate Crossnacreevy. I told DFP, in terms, that we could vacate Crossnacreevy and put some 80 acres of land on the table. DFP said, again in terms, that it needed a figure.
- 120. I asked a member of my staff to contact Land and Property Services and find out what could be done. She came back and said that the only advice that she had from Land and Property Services was that development land in greater Belfast, with full planning approval, was changing hands at up to £2.5 million an acre. I

multiplied  $\pounds 2.5$  million by 80 acres and came up with a figure of  $\pounds 200$  million. It was only ever an indicative figure and was not specific to Crossnacreevy. That figure went into the correspondence, and it was made clear in the correspondence that, if DFP was going to proceed with that dialogue, the first thing that would have to be done would be that Land and Property Services would have to carry out a valuation. That was stated in the same letter that refers to the  $\pounds 200$ million figure.

- 121. Obviously, that was a highly provisional figure, and we had no reason to believe that it would be anything other than indicative. I did not believe then and do not believe now that the figure would have been unacceptable had it been £50 million or £30 million. DFP was not looking for £200 million, or even for £100 million, as a figure. It simply wanted some indicative value for that piece of land.
- 122. The real context underlying this is that, from 2000 onwards in Great Britain, Whitehall Departments had been sweating their assets. They had been looking at disposing their assets to fund ongoing activity. That was not a feature of how we were doing business in Northern Ireland, and I thought - I still do think — that the prize for the Department of Finance and Personnel was that we were setting a contribution clearly on the table by offering to dispose of an asset that was not a surplus asset but an asset in use. It saw that as potentially establishing a new way of doing business and one that would be possible to show as a template to other Departments.
- 123. So, that is the background. It was never a valuation, and it has never been presented as a valuation, other than in the terms in that letter.
- 124. **Mr Frew**: I understand what you say, and I understand the principles of Crossnacreevy and why we went down that road. I agree with that mode of action. However, the question was: how did we get to such a differential? You are basically saying that there was not

even an initial, informal valuation. It was not even an indicative value. Do you think that the best way to do business is to pluck a figure out of the air and try to equate it to a balance sheet? Is that what we are saying here?

- 125. Mr Lavery: Let me put it this way: looking back on it with the benefit of hindsight, I would wish to have done things with a lot more time and a lot more caution. First, one of the learning points for me, and maybe for the wider system, is that, as I said, this was not surplus land but land in use. It was in use as an agriculture research station, and the only organisations that operate agriculture research stations are the Department and AFBI. So, it has no sale value as an agriculture research station. and we had to find a value other than as an agriculture research station. It is hard to find a way of valuing an asset other than for its current use, and that was one of the issues when we started trying to put a figure to it. The only figure that we could put to it was a generalised one.
- 126. It was unfortunate that the figure of £200 million was used, but it was the only figure that had any basis at all, and it was very unfortunate that that figure gained public currency very quickly. There was an attention that I had not foreseen, and it became the subject of correspondence, including with the then Agriculture and Rural Development Committee, which took an interest in it. The initial reaction was not to say that the land was overvalued but to say that, if the land was worth £200 million and I was going to get only £79 million from the Department of Finance and Personnel, would I be sure to reserve the remaining £121 million as well. So, it was not the case that it was an incredible figure at the time. You have to remember that in 2007 we had a soaring property market; land was changing hands at unbelievable figures. Yes, I would be the first to admit that disposal is a protracted process. The market can change, and the market has changed. Figures that might have been credible in 2007 are not credible today.

That is maybe a lesson for many people in the property world as well as for me.

- 127. **Mr Frew**: I take your point on that. You talked about soaring prices that were changing every day. We are, at the end of the day, talking about pounds and pence here the public's pounds and pence. I cannot recall I certainly was not an MLA at the time but was time an issue? Did you not have the time to get a formal valuation of some description by a professional body in order that that could at least go on the balance sheet? Was there no foresight there with regard to that?
- 128. Mr Lavery: This was being conducted under enormous pressure. When this dialogue was taking place, we were down to days, if not hours, of having to pull inspection staff off. We cannot keep inspection staff idle; they are a very precious and scarce resource. If we pulled them off, the entire area of work was going to collapse: it was as simple as that. And with that would have gone our credibility with the construction industry, which, at that point, had alternative work available to it, and the farming industry. We were under very heavy pressure from the Assembly. All of that was saying,

"This needs to be resolved now. We need an exchange of correspondence now."

- 129. In fact, the then permanent secretary wrote to the permanent secretary of DFP on 1 June and got his reply, following an Executive process, by 12 June. By 11 June, we had already formally contacted Land and Property Services to ask it to begin the work to value Crossnacreevy. It was not the case that we were behind doors in trying to get it off the ground. A proper valuation, for a purpose other than we held the land, was going to take time, and so it proved. We only got the final, proper valuation from Land and Property Services in March 2008.
- 130. **Mr Frew**: Perhaps it was unfair of me to talk about plucking a figure out of the air. You referred to the market value of comparable land in Belfast. However, Crossnacreevy is located in a green belt. Was that given any consideration? You

talked about not knowing exactly how much ground is worth when it is not known what it is to be used for, but was no consideration given to the fact that Crossnacreevy was in the green belt?

- 131. Mr Lavery: Let me put it this way: no such consideration was given in the first 24 hours. However, very rapidly, we started to get a better feel for the issues involved. By 1 August 2007, the advice from Land and Property Services was that we needed to employ a planning consultant and, through the planning consultant, to engage with the planning process for the Belfast metropolitan area plan, within which the land was not zoned for development. At that point, the impression was that a negotiation could take place. We were quite cautious about approaching the Planning Service because we did not want to be seen to be unduly or improperly influential. Nevertheless, we employed a planning consultant, and we were informed by the Planning Service by 18 December that the Belfast metropolitan area plan was closed for objections, that it was considering a number of objections that had been received before 2007, and that it would reopen at a date in the future. That is how the issue of the green belt was dealt with. As far as I know, we are still in the position that the Belfast metropolitan area plan is closed for objections, but we continue to regard ourselves as under an obligation to engage with it when it does reopen.
- 132. **Mr Frew**: What do you think DFP would have done if the figure had been worked out at £70 million or £80 million?
- 133. Mr Lavery: First, let me say that we only ever indicated to the Department of Finance and Personnel that there was the prospect of getting a capital receipt at the end of the Budget period in 2010-11. It was never going to directly fund the £79 million that we needed in 2008-09. That was always going to be funded by the Executive from their normal capital-planning cycle. If we had said that it was worth £80 million, the Department of Finance and Personnel and the Strategic Investment Board

would have built that figure into their capital projection. As it was, they built a figure of £200 million into their capital projection for 2010-11. When it did not materialise, there were other capital projects that were not proceeding and were running slow, so they were able to offset one against the other.

- 134. Mr Michael Brennan (Department of Finance and Personnel): I will add to Mr Lavery's final comment. DFP was advising the Executive on the construct of its first Budget. The 2010-11 year was the third year of that Budget, which is what we term the indicative year. We constructed the capital side of the Budget in a very conservative fashion. Most of the risks, for example, were on the downside. Mr Lavery flagged up earlier the important principle that the new Executive were keen that an example should be shown that Departments should sweat their assets, realise assets and bring their receipts to the table for the Executive to reallocate. DARD set an important precedent by bringing the principle of Crossnacreevy to the Executive. However, it was an indicative value that DARD brought to the table.
- 135. As regards DFP approval, we were quite clear then that a formal valuation process should commence, and that did happen. The £200 million was an indicative value that was factored in. From a DFP perspective, we were always conscious that there were significant downside risks in the capital budget. For example, £300 million of capital that was built into that same year for two projects alone, namely the Royal Exchange and the strategic waste infrastructure fund, did not materialise. With the benefit of hindsight, in many ways, it is just as well that Crossnacreevy did not materialise with the Treasury unilaterally taking away the end-year flexibility scheme in 2010-11, that £200 million would have been surrendered to the Treasury.
- 136. **Mr Frew**: OK. Thank you for your answers.
- 137. **The Chairperson**: Before you move on to your next question, I will bring in Ross, Jennifer and Mitchel for

supplementary questions. I ask that both supplementary questions and answers are kept brief. The answers need to be succinct, without missing the point or failing to actually answer the question.

- 138. Mr Hussey: I have written a few comments on what has been said. It is true that money is a precious and scarce resource, and, yes, there has to be credibility with the construction industry and farming community. However, there also has to be credibility with this Committee. I am afraid that I find the answers very vague. I find it very amateurish that a figure such as £200 million can be just plucked out of the air. I do not see how that can be accepted in a professional organisation, particularly a government organisation. I find that answer incredible; I really do.
- 139. **Ms J McCann**: How can DFP take a decision on the future direction of a scheme such as this based on an informal, rather than a proper, valuation?
- 140. Mr Brennan: The two central concerns in a business case are value for money and affordability. From the DFP perspective, it was clear when the business case came in that the value for money concerns were addressed, which left the remaining affordability concerns. The DARD accounting officer wrote to the DFP accounting officer stating his initial valuation of the asset to be £200 million. In the wider scheme of things, as regards the construct of the Budget, we were aware where the capital envelope was going. A number of conditions were put in, but part of the approval was for DARD to go out and bring professional valuation expertise to that site. It could then be brought into play to take the project forward.
- 141. **Ms J McCann**: Is it normal practice for DFP to base the future direction of a scheme on an informal valuation?
- 142. **Mr Brennan**: As I mentioned, this was quite an unprecedented scheme. The new Executive were keen for Departments to think innovatively about bringing assets such as this to

the Executive in respect of disposal and realisation values. It was a novel experience for the Executive. It was a signal that DFP was keen to encourage other Departments to pursue such action. The valuation was put forward by the DARD accounting officer. At that point, we had nothing to suggest that it was fundamentally flawed.

- 143. Mr McLaughlin: The report tells us that the argument being made about the £200 million valuation was, for DFP, an important and, in the final analysis, the persuasive point. We have been back and forward over the credibility of that exercise. However, another important issue arises when we look at the budget for this scheme. In March 2007, it was £55 million; by June 2007, it had jumped to £144 million — £89 million of a difference. My concern is about what schemes were knocked aside to allow that to happen. In monitoring round exercises, there is an opportunity for all Departments to put forward bids, some of which are very important. Some of them can be met; many of them cannot. Here we have a project that appears to have been based on quite spurious rationale being accepted by DFP. It cites as persuasive the fact that the Executive were going to be in pocket with additional receipts while able to support the scheme, but that did not happen. So, the £89 million was denied to other, perhaps more substantive, applications. I wonder whether the treasury officer would comment on that; and, if possible, with regard to compiling a final report on this, we could identify the projects that lost out on that occasion.
- 144. **Mr Pengelly**: It would be very difficult to come up with a definitive list of projects coming to that amount because the nature of a Budget process is that we do not hypothecate the money. We look at all projects that are viable.
- 145. As Michael mentioned, we need to clearly separate the value for money and the affordability arguments. Valuation very much goes to the affordability argument. By the time we were debating affordability, the value-for-money case was proven. We were also in the

context, as Mr Lavery mentioned, that, in the absence of this scheme going ahead, the Executive would have faced infraction fines over a number of years. So, the case for the investment was made. We had a separate debate about how we financed that. It was slotted into the 2008-09 year. Absolutely, some projects did not happen in 2008-09 that may have happened. It is difficult to define those. However, as regards the upside of those projects, I suspect that they would not have had the same benefit as heading off tens of millions of pounds of infraction proceedings.

- 146. To go back to the affordability issue: there was nothing, ultimately, that did not happen in 2010-11 as a consequence of this receipt not materialising. I accept absolutely that that may be rather fortuitous, but it is not all solely fortuitous in the context of us having some experience of managing capital programmes over a number of years and balancing both sides of the risk equation.
- 147. **Mr McLaughlin**: Presumably, we could go back to the records of that time of the various scrutiny Committees, the report to the Finance and Personnel Committee, and the Assembly discussion on the monitoring round outcomes. Are you saying that there would be no additional material that would give us an indication of what choices the Executive made, or what recommendations were made to the Executive for consideration?
- 148. Mr Pengelly: It may be possible to get a list of illustrative projects, but what tends to happen in the Budget process is that the Finance Minister receives bids from ministerial colleagues and makes a recommendation about those projects that he proposes to fund. There is no ranking or prioritisation of everything else that is below the line. Certainly, we could give you a sense of some of the projects for which Departments sought but did not get funding. The difficult piece of the jigsaw is what would have been the first £80 million of those.

- 149. **Mr McLaughlin**: I suggest that we follow this line of inquiry, wherever we have to go to get the material. I assume that we will receive support from within the system for getting the information that I think may turn out to be quite relevant.
- 150. **Mr Copeland**: Mr Lavery has illustrated roughly where the figure of £200 million arose from. How did it come to be that that figure was accepted for inclusion as an indicative figure in the Budget? What was the mechanism for that? In other words, who accepted it?
- 151. **Mr Brennan**: The Executive accepted it in terms of its incorporation into the Budget that was agreed in January 2008.
- 152. **Mr Copeland**: Was the mechanism for that a recommendation of acceptance from the Finance Minister?
- 153. **Mr Brennan**: The Finance Minister would have put a recommendation to the Executive on the construct of the budget for each Department.
- 154. **Mr Copeland**: Which officials would have advised the Finance Minister that the £200 million figure was robust?
- 155. **Mr Brennan**: The central finance group in DFP would have advised him.
- 156. Mr Copeland: Who are they?
- 157. **Mr Brennan**: It includes me, the budget director, the supply divisions and the central expenditure divisions. There are a number of teams in that group. They all have separate responsibilities, but it is all brought together and integrated under a budget.
- 158. **Mr Copeland**: There is a transaction here of one form or another between two sets of people — one is the vendor, and one is the purchaser — for an asset that has a value, and they are transferring the asset in return for money. Was there a notion that it might be safe to seek a second opinion? I know building land, and I know what it costs. I live in the area, and I am a Castlereagh councillor. So, I am familiar with it. £200 million is an incredible amount of money. Maybe it is not in here; I have been away for four years. However, I had a constituent this

weekend who was driven to the point of almost taking her own life by four letters from the Inland Revenue — one from England, one from Scotland, one from Wales and one from Northern Ireland that all related to an alleged £750 debt. She nearly killed herself. I do not get it. There is a valuer sitting beside you from Land and Property Services. Could I ask him: would you ever on a rainy day on a Sunday have placed a value on that land of over £10 million, possibly closer to £5 million?

- 159. Mr Stephen Fay (Department of Finance and Personnel): Ultimately, we valued the land at between £2.28 million and £5.87 million, reflecting the various planning assumptions that were outlined in the planning consultant's report.
- 160. **Mr Copeland**: In your view, would that value have changed dramatically between when you actually did it and when you might have done it earlier on?
- 161. Mr Fay: Mr Lavery has already raised the point that, during 2007, the property market was booming and we were at the pinnacle of house prices and land values. It might help if I explain the way that we carry out an assessment. The market looks to the size of the site; the ground conditions; the services; the access; the level of demand for property in that area; the type of development, if any, that will be placed on the property; the density; and the development timescale, particularly for sites such as Crossnacreevy, which is a very large site that extends to some 86 acres. So, in determining the value of land, the market will look at the completed units that will be placed on that type of site, the cost of construction, the fees and the profit that the developer will take. The market would not take the headline figures that were in the press around 2007, particularly if those figures were extrapolated from very small sites, and apply them to a very large site. particularly if the site is in the green belt.
- 162. **Mr Copeland**: Those figures were based on central Belfast as I understand it. How much do you think a bank would have lent you on it?

- 163. **Mr Fay**: I would have thought that the bank would look at a development appraisal-type scenario to determine value from the end product, such as the number of units that you could place on the site.
- 164. **Mr Copeland**: What would a bank have lent you on it as it was?
- Mr Fay: We ultimately came to the conclusion that it was £2.2 million to £5.87 million, reflecting the various planning options that were available.
- 166. Mr Frew: The point has been raised today that the property market was all over the place. It was rising and soaring, and then, the next minute, it crashed. However, it did not crash in the time that elapsed between the figure of £200 million being first estimated and the valuation. Of the £200 million, the report states:

"In DFP's view, this was 'an important and in the final analysis the persuasive point'."

Land and Property Services completed its valuation in March 2008, so how can we fall from a valuation of £200 million to one of £6 million in that time? It is not as though it is being valued today at £6 million. That might be a wee bit more realistic, but how could we come to such a big differential in that space of time? To me, that is just amazing.

167. Mr Lavery: That quotation in the report is from a letter from the DFP permanent secretary to my then accounting officer. As you said, it states that the valuation of £200 million was, in the final analysis, the persuasive point. However, in the letter, the requirement on my Department was that, in the comprehensive spending review (CSR) period, we would:

"seek to maximise the capital receipt arising from the Crossnacreevy site".

That was the undertaking that we gave and that we saw as the most important contract between the two Departments. We have done our level best to deliver on that contract, and we will continue to do our level best to deliver on it. That is why I said that, in the event that the Belfast metropolitan area plan (BMAP) opens for objections, we will go back to that subject.

- 168. The Committee has made the point cogently that that figure was never a proper valuation, because we would have needed much longer to carry out the valuation. As it was, getting a proper valuation took until March 2008, and it was only then that we could see the full picture. We were not in the position of having a vendor and a purchaser; we were in the position of simply putting an indicative figure. A learning point for me and, I hope, for others, is that, whenever an indicative figure was allowed to enter first the investment strategy and then the Budget, we should have flagged up a concern that that initial indicative figure was simply not robust enough to bear that future potential pressure.
- 169. However, having been present in that dialogue, I know that we had no alternative figure to put on the table. Therefore, the point that those who were compiling the Budget and the investment strategy made was that that was the only figure that we had. They said that we could either have valued the site at book value or at potential indicative value, which we had stated was £200 million. At that point, the dialogue should have been deepened, and I accept that as a learning point.
- 170. **Mr Frew**: Are there any other areas throughout the Budget process from that day to now where that has occurred again? Are any more situations going to come out where we are budgeting for something that is not there? I will leave that point there.
- 171. I will ask the Acting Treasury Officer of Accounts whether it is the practice that DFP makes decisions on those sorts of valuations. Why did DFP not insist on a proper valuation?
- 172. **Mr Pengelly**: As Mr Lavery indicated, the Department of Agriculture insisted on a proper valuation. It put forward an indicative valuation based on all the information that was available to it as part of the very time-pressurised

dialogue in the early part of June 2007. The Department immediately commissioned a formal valuation from LPS. Due to the complexity of the issue and the unique nature of the site, that process was not concluded until, I think, March 2008. In the meantime, the Budget process was concluded, and, for the necessity of the Budget process, our indicative figure was used. I do not want any Committee members to think that nothing further happened until 2010-11 and that the asset was not sold. The reality is that colleagues in the Department of Agriculture, myself and colleagues in DFP were in continuous dialogue about this. We knew at a very early stage in the Budget process that realisation of that level of receipts from that site was not going to happen. However, as an immediate response, the Department of Agriculture stepped ahead of all the other Departments in the pack to look at an asset management strategy. It has worked closely with us on that, and it continues to work with colleagues in the Strategic Investment Board. We are nearly at the stage where that has been an exemplar practice for other Departments where rationalising assets is concerned.

- 173. As regards Mr Brennan's point, at an early stage in the Budget process, we realised that there were two fundamental risks against capital expenditure, in excess of £300 million in 2010-11. That was the counterbalance to this issue. In a sense, we knew that those issues were there, that they were not upsetting planned capital expenditure in any way, and that they were not causing the prevention of the delivery of any other services. I absolutely accept that there is an issue about valuation practice going forward, but the issues were being monitored and did not fundamentally cause us any significant problems.
- 174. **Mr Copeland**: As I understand it, the £200 million valuation enjoyed some degree of acceptance. What was the consequence of that acceptance, and what flowed from it?

- 175. **Mr Pengelly**: As regards the June 2007 exchange of letters and the indicative valuation of £200 million, the work on what we called the Budget 2007 process was completed towards the latter part of 2007. That set departmental allocations for 2008-09, 2009-2010 and 2010-11. I cannot remember the exact date, but I think that the Budget was signed off late in 2007 or early 2008. That happened in advance of the formal valuation. Therefore, that £200 million was planned in as an assumed receipt in 2010-11.
- 176. Mr Copeland: An assumed receipt —
- 177. **Mr Pengelly**: An assumed receipt, based on —
- 178. **Mr Copeland**: that did not materialise.
- 179. **Mr Pengelly**: It did not materialise, but likewise, over £300 million of expenditure planned for 2010-11 did not materialise. Part of the Budget process is about managing the subtleties and nuances within that broad portfolio of risk.
- 180. **Mr Copeland**: Does the ownership title, for want of a better term, of the piece of property or land at Crossnacreevy still reside where it was before this process started, or has title, of any description, been transferred from the Agriculture Department to the Department of Finance and Personnel?
- 181. **Mr Pengelly**: It sits with the Agriculture Department.
- 182. **Mr Dallat**: Mr Lavery, at the very beginning of the meeting, which was almost two hours ago, you spoke a degree of truth when you said that the Department was facing millions of pounds of infraction fines and that you needed to rob the kitty in some way.
- 183. **Mr Lavery**: I do not think that I used those words.
- 184. Mr Dallat: If I had been listening to a damage limitation exercise, I would have been kinder, but I have not. I have experienced a great degree of arrogance. To me, this is the great drain robbery, but Ronnie Biggs brought only

£1 million to Leatherslade Farm; you managed to bring £200 million. That money might have gone to health or education services or to somewhere else. Even though this session has been long, the issue is very serious.

- 185. You drew parallels between the private sector and yourselves. If you had been in the private sector, would you now be part of the National Asset Management Agency (NAMA), or would you still be sitting there unscathed and untouched? I do not think so.
- 186. I know that property valuations in Castlereagh fluctuate quite a bit, but I do not think that you have answered sufficiently the question of how on earth the valuations could have been so wide of the mark, given, as Paul said, that this was a green belt that could never be built on and that it was a research station. In all honesty, was there ever any intention to dispose of the asset?
- 187. Mr Lavery: I can say categorically that there was an intention to dispose of the asset, and there remains an intention to dispose of it if it is good value for money to do so. Our economic appraisal at the moment shows that it would become good value to do so only if the value of the site were to exceed some £14 million, which would allow for the relocation of the activities on the site. However, we remain committed to looking at disposal as and when the Belfast metropolitan area plan re-opens.
- 188. **Mr Dallat**: Did I pick you up correctly when you said that you had considered going to the planners to get them to change the Belfast metropolitan area plan so that you could get planning permission for that green belt?
- 189. Mr Lavery: Our advice was that we should employ a planning consultant, who would advise on the best way to derive the maximum value from the site. That might have included, for example, obtaining planning permission for part of the site. For instance, part of the site is already occupied by residential property, and part is occupied by buildings. So, we

were looking for the best possible return for the public sector.

- 190. As I also said, we were scrupulous to hold back from directly approaching the Planning Service in case an allegation was made that we were exerting undue or improper influence. I should say that part of the site is occupied by residential property that is occupied. Obviously, we were concerned that, in any transactions to do with the site, we would have regard to the rights of the individuals occupying property and that we would never be seen to have exerted undue influence.
- 191. **Mr Dallat**: Chairperson, you know, probably better that I do, that, down through the years, "planning" has been a bad word. There have been all sorts of cases of people trying to abuse the system by switching green belts to development land for profit, and here we have a government Department even thinking about doing that. Was that not absurd?
- 192. **Mr Lavery**: With respect, Mr Dallat, we were thinking about relocating the activities carried out at Crossnacreevy to elsewhere on either cheaper land or on our own estate, that is, on land that we already owned. That would release an asset that remains not surplus today — it is still in use as an agricultural research station. The very essence of what we were trying to do was to come up with a way to get the maximum value from the asset for the taxpayer.
- 193. **Mr Dallat**: You said that you might still consider disposing of Crossnacreevy. Would you not agree at this stage that it was a major mistake to become pretend property developers? Would you not accept that that was almost an unscrupulous way to try to get money to fund a nitrate scheme on farms?
- 194. **Mr Lavery**: I would not, first, because we did nothing improper, and we have certainly abided by the terms of the exchange of correspondence between the two accounting officers, and, secondly, because it was never intended that we would fund the nitrate-related work directly from the sale of this property. It was

always intended that the farm nutrient management scheme would be justified by its own economic appraisal.

- 195. **Mr Hussey**: I am sure that I heard an answer to this question, but I want to hear it again. Did you say that money had already been spent looking into the relocation of the unit at Crossnacreevy? If so, how much?
- 196. **Mr Lavery**: We assessed the requirement for relocation. We have not spent any money on actually relocating. The assessment will have cost a nominal amount. We carried out an economic appraisal into the disposal, as well as into ascertaining the point at which it would be worthwhile to vacate the Crossnacreevy site. We can get you a figure for how much the appraisal cost.
- 197. **Mr Copeland**: I think that Mr Hussey is referring to the figure of £14 million.
- 198. **Mr Lavery**: That is the figure at which it would become good value for money to the taxpayer to relocate. Obviously, relocating a research station would mean relocating grass trials and crop trials. That would take time and money.
- 199. **Mr Copeland**: I am having difficulty with that, because if it is only worth £2-and-a-bit million —
- 200. **Mr Hussey**: Minus 12. That goes back to the school of non-accountancy. It does not add up.
- 201. **Mr Copeland**: I do not follow the figures, but I will not push it any further at this stage.
- 202. **Mr Dallat**: The proper term for this is "creative accountancy" because that is all it was. You mentioned consultants. For our report, I would like to see who the consultants were and how much they were paid. You also mentioned a couple of permanent secretaries. I am certainly interested to know who they are, because, at the end of the day, in these austere financial circumstances, every individual needs to be accountable for their actions. I notice that you did not tell us who they were. Perhaps we will get their names for our report.

- 203. If I return to the report, paragraph 3.8 tells us that 15% of farm businesses proceeded with the scheme, even though your research suggested that 42% of farms did not have sufficient storage capacity. That adds up to 6,750 farms and is shown in paragraph 4.7. Does that mean that as many farms are unable to comply with the nitrates directive?
- 204. **Mr Lavery**: No. As I explained, farmers have taken a variety of means to comply with the directive. As set out in the annexes to the Audit Office report, enforcement by the Environment Agency is not showing a high level of noncompliance; quite the contrary.
- 205. **Mr Dallat**: Paragraph 3.13 tells us that 424 applicants withdrew from the scheme after pre-inspection and approval. Did the Department subsequently follow up those cases to see what action they took to become compliant?
- 206. **Mr Lavery**: No, I do not think that we did, because of pressure on resources in the Department. It would not have been our responsibility —
- 207. **Mr Dallat**: Mr Lavery, my heart really goes out to you: the pressures that you must have been under, handling that £200 million project. Did you follow up and ascertain the reasons why they withdrew?
- 208. Mr Lavery: Brian can come in on that point.
- 209. **Mr Ervine**: To accompany the scheme, we provided advice through the College of Agriculture, Food and Rural Enterprise (CAFRE), and those advisers were available to farmers to help them to evaluate their options. So, 2,800 farmers received a personal consultation to decide whether investing through the scheme was their best option. Of those, only 2,000 moved through to the stage of applying. That indicates that about 800 of 2,800 found other ways of addressing their storage needs. Subsequently, the inspections by the Environment Agency and the compliance with the closed period indicate that, by and large, the actions that those farmers took have addressed their storage need. In the last closed period from

October to January, no breaches were detected. In about 23,000 farms with livestock, there were no breaches of the closed period, and no farmers were so short of storage that they had to spread slurry. Moreover, we engage quite regularly with the Environment Agency, and its farm inspection programme shows that lack of storage capacity is not a significant issue.

- 210. **Mr Dallat**: I would question that, Chairperson. However, that is for another day. We were told, just in case you have forgotten, that farmers had to meet three eligibility criteria: ownership, viability, occupational skills and competence. I think that adds up to four. However, the report notes that the Department did not request any supporting evidence to check whether successful applicants met those criteria. Why were the criteria not confirmed for each applicant?
- 211. **Mr Lavery**: I agree that they should have been confirmed. What happened was not what should have happened. I will not go over the ground about scarcity of resources again, but among other reasons, they were not confirmed, because people took pragmatic views. We were talking about a scheme where a farm was going to have to invest a significant amount of capital in that area. It could not do so unless it was viable. It could not meet the technical requirements and conditions unless it was viable. The level of advice and inspection that we applied to the scheme meant that every farm was inspected, and the inspector had the opportunity to gauge pragmatically whether farms were complying in their ownership and viability. As I said, I agree that those criteria should have been both set out and tested clearly. If it had not been intended that they would be tested, they should not have been in the scheme literature, which they were.
- 212. **Mr Dallat**: That is a fairly honest answer, but what is the point in setting criteria if you then fail to confirm them?
- 213. **Mr Lavery**: I am not going to try to defend the indefensible. I agree fully

that, when you set criteria, you must expect to test them and to document the response. That did not happen. In fact, if we look at a test that says, for example, that a farm business should be viable, that places a potentially demanding and onerous burden on a farm to prove from accountancy records, for instance, that it is a viable business. It should not have been there, frankly.

- 214. **Mr Dallat**: Finally, do you agree that there is a risk that some claimants were ineligible?
- 215. Mr Lavery: Where the test of eligibility is concerned, it could have happened that we had an approach from a landowner who wanted to improve a holding by having slurry capacity even though they had no animals. We would have resisted that, and that is perhaps why having those criteria would have been of assistance in that dialogue. However, generally, the criteria were not tested and the responses were not documented. I can remember only one case where we had to rule someone ineligible, and I think that it was on those grounds.
- 216. Mr Ervine: I will just add to that by saying that the inspection process was particularly detailed. For example, if a farm were ineligible with no livestock, that was picked up before it even got through to claim stage. There was a two-stage inspection process, and, before grant aid was offered, there was a detailed inspection to check all the details and the technical aspects of the project. Typically, that will have taken an inspector at least half a day on a farm. Once the project was completed, there was a pre-payment inspection to check all the details of the project on the farm. So, it was inspected in guite some detail both before the offer of grant was issued and before any grant was paid, and the details were recorded and are on file.
- 217. **Mr Dallat**: Given the comedy of errors that we have heard today, what assurances can you give to the Committee that that will not happen again?

- 218. **Mr Lavery**: We aim to pay attention to reports of this Committee. We aim to learn lessons both from those reports and, as I said, post-project evaluations. Tomorrow, I will be relaying my initial appreciation for this Committee to the senior civil servants in my Department. I will be very prompt in making them aware of my degree of discomfiture.
- 219. **Mr Dallat**: I agree totally with Mr Lavery. He should never again have to appear before this Committee to answer questions, which, no doubt, were raised by others who are not here. That is where I feel sorry for Mr Lavery.
- 220. **Mr Easton**: The pre-approval inspection process took over three-and-a-half years to complete, and the final preinspections were carried out only two or three months before all the construction work was meant to be completed. Why were you not geared up to complete the process much sooner to allow the construction work to get under way well before the final deadline?
- 221. **Mr Lavery**: There are several points to that. As we explained, initially we went out and invited applications but received only about 400. We then took the decision to increase the grant rate on the foot of a proper addendum to the economic appraisal. That brought in around 11,000 initial applications, which we had to work our way through.
- 222. In working our way through the application process, we were conscious that we always had to have regard to the amount of money that was available. This was a necessarily complicated scheme that required farmers to get quotations and to assess their slurry storage capacity and the condition of their existing facilities. We were putting farmers to enormous difficulty, so we had to make sure that we had a realistic opportunity to offer them grant aid. That, in fact, was the position in June 2007 when we could not continue unless we had access to additional funding. Is that fair, Brian?
- 223. **Mr Ervine**: Yes. I would add that, looking at the scheme in retrospect, we found that the inspection process turned

out to be more lengthy and resource intensive than we had envisaged. Part of the reason for that was that farmers' understanding of matters such as storage capacity, issues with dirty water, the most suitable yard layout and the most cost-effective way to deal with the issue was not what we had hoped for, although we did provide advice and training through CAFRE. The result was that the inspection visit also had a large advisory element. At that stage, most applications needed revision, with the inspector liaising with the farmer to work out the best way to tackle the project. It did take more resources, yes.

- 224. **Mr Easton**: Did you find that it became more and more complicated as you went along?
- 225. **Mr Lavery**: Yes, I think that that is a fair summary.
- 226. **Mr Easton**: The Department introduced a 50% part-payment option in August 2008. The target was to process those part payments within four weeks of receipt of a valid claim. However, of the 2,189 claims, 1,300 payments — some 60% — missed the deadline. Why was there such a high failure rate when the purpose of the initiative was to alleviate hardship?
- 227. Mr Lavery: That was in the final stages of the scheme. We had to have all works completed by December 2008. In August 2008, the Assembly Committee was very keen that we afford farmers some part payment in recognition that many of them had borrowed the necessary capital to invest. We went out with the part-payment option on that basis. In the event, however, very few farmers availed themselves of that option until December. At that point, we got a large volume of claims on which we were able to make full payment after December. Therefore, it did not operate guite as we might have hoped and expected, but it did afford some relief to some farmers.
- 228. **Mr Easton**: Did the 60% who missed the deadline still get the 50% part payment?

- 229. **Mr Lavery**: Can you remember back to the first half of 2009, Brian?
- 230. **Mr Ervine**: Yes. The part payments went out, but they did not go out within the timescale that we had envisaged, because of the sheer surge of claims at the closure of the scheme.
- 231. **Mr Easton**: Given all the problems, mounting bureaucracy and extra work that you had, do you feel that you maybe did not have enough staff to cope with demand?
- 232. **Mr Lavery**: I would have liked to have had more staff. Frankly, all the time, we work at the limit of the resources that are available, particularly where skilled staff are concerned. That is not a plea for an intervention.
- 233. **Mr Ervine**: Processing the claims was not straightforward because of the detail and the requirements for engineer certificates, receipts, invoices, and such like. There was a lot of follow-up in going back to farmers. Very few of the claims that came in went through the system cleanly without a query that needed a follow-up with the farmer for an engineer certificate and those details. That added to things.
- 234. Mr Easton: OK. Thank you.
- 235. **Mr Copeland**: Paragraph 4.5 states that the Department did not have a set of outcome measures or 'SMART' targets for the scheme. Was there a reason for that? Would it not be reasonable to expect that having those might be standard practice for such schemes in a Department such as this?
- 236. **Mr Lavery**: I think that it would be standard practice. In the event, people went with a very bald, summary objective of getting the maximum number of farms to comply with the nitrates directive by increasing their slurry storage. The evidence is that they did comply and the scheme achieved its objective. However, it would have been far better to have a much more detailed set of output and outcome indicators and to have those available today. On the outcome side, we can say with confidence that the levels

of phosphate in the Lough Neagh and Lough Erne systems are significantly down and are coming down more quickly than we expected. Lough Neagh is down 20%, and the Erne system is down 14%. Those are good figures, but they are not a suite of performance indicators that the Committee has the right to expect.

- 237. **Mr Copeland**: I also make reference to paragraph 1.23. This Committee seemingly recommended, 10 years ago, that the Department should monitor the outcome of all its anti-pollution activities against clearly defined, measurable impact indicators. Has that just fallen by the wayside? Is it a work in progress after this time? Where are we with that?
- 238. **Mr Lavery**: Obviously, we have completed a post-project evaluation, which will be available to the Committee, and we have commissioned the Agri-Food and Biosciences Institute to carry out research in the area of the practice of slurry spreading and the measures that we are undertaking. Yes, I accept that that recommendation has not been implemented in the way that it should have been, particularly in this scheme.
- 239. **Mr Copeland**: Paragraph 4.6 indicates that the information systems at that time could not provide accurate data on the under-capacity of slurry storage in Northern Ireland immediately prior to the scheme being launched, the increase in storage capacity as a result of the scheme, and the under-capacity still remaining. Without that, what tools can you use to assess the situation then, the current situation, and the consequential change?
- 240. **Mr Lavery**: We have looked a bit further at the capacity that has been created and have compared it to the amount that was envisaged in the economic appraisal. However, we did not have a database as we should have had. Brian, do you want to say something about where we actually are with this?
- 241. **Mr Ervine**: We have analysed what storage capacity has been installed under the scheme, and we estimate it to be approximately 2·4 million cubic

metres of slurry storage. The projection in the original economic appraisal had been 1.8 million cubic metres. Therefore, more storage has been installed under the scheme than the economic appraisal envisaged.

- 242. As regards the overall storage undercapacity in Northern Ireland, we have analysed the farms that participated in the scheme. Although approximately 16% or 17% of the overall number of farms in Northern Ireland were in the scheme, the farms in the scheme hold 45% of the cattle livestock units in Northern Ireland. So, they are bigger farms — on average, 76 hectares. The average farm size is around 40 hectares. It is the bigger, intensive farms that largely have the slurry storage issues, and they have been in the scheme and now have the capacity.
- 243. As regards the overall storage that is out there, the Northern Ireland Environment Agency (NIEA) is finding with inspections that farmers are complying with the closed period. The evidence of inadequate storage capacity is farmers not being able to comply with that.
- 244. **Mr Copeland**: I wind you back slightly to the economic appraisals. Paragraph 2.8 notes the predictions in the Department's economic appraisal that 5,000 farmers would or could avail themselves of the scheme, at an average grant of just under £12,000, with an expected total cost of £40 million. That was used to justify and plan the scheme, as we have discussed.
- 245. Figure 13, on page 48 of the report, compares those estimates with the actual outturn. As it turned out, the uptake was 20% lower than anticipated, yet the cost was three times higher. Reference was made earlier to the private sector. Those are fairly substantial variations. Was anything intrinsically wrong in the economic appraisal for the predictions to be so vastly out?
- 246. **Mr Lavery**: The signal issue in the economic appraisal was maintaining the Northern Ireland herd size and getting

the benefit of retaining jobs in the meat processing and dairy industries. That has been achieved, and we calculate that the value added to Northern Ireland of this scheme is around £40 million a year. So, in terms of a £120 million investment, it is paying for itself in three years, and it is showing a positive return over the 20-year lifespan of the tanks that have been constructed.

- 247. With regard to something being wrong with the initial projections, the surprise is, perhaps, that right from 1998 we were predicting that there could be 12,000 farms that would need additional storage capacity and that 5,000 may be interested in a grant. That has remained a constant, and we have delivered for 3,900 against full applications from 4,900. So, I do not think that there was anything intrinsically wrong in the thinking or in the concept.
- 248. **Mr Copeland**: It was just in the conclusions.
- 249. **Mr Lavery**: No. The experience was that we had much higher unit costs per tank arising from construction price inflation, materials inflation, decisions by farmers to go for a below-ground tank, and negotiated decisions between us and the European Commission on the length of capacity that would have to be created. That was a further inflating or increasing factor in that we ended up with a longer closed period than we initially thought.
- 250. **Mr Copeland**: Did the Department at any time challenge any of the assumptions made in the economic appraisal, such as the likely inflation, the cost of doing it, and the possibility of people going for the underground option? Were those recognised, and were the problems that may have arisen from that recognition factored in, or did it just sort of emerge as it went along?
- 251. **Mr Lavery**: In practice, we challenged at every point. We worked with the construction industry, but we also recognised the temptation for the construction industry to inflate costs. Therefore, we capped costs, as I said,

at the initial prices that farmers had obtained by quotation, and we capped capacity at the initial capacity. The economic appraisal had an area on risk. There was challenge within that, and challenge from the Department of Finance and Personnel. These economic appraisals have to go through our own economists' quality assuring, and the Department of Finance and Personnel economists interrogate them. None of this was done in a casual way.

- 252. **Mr Copeland**: I was not suggesting that. How much did it cost?
- 253. **Mr Lavery**: I cannot remember a figure for the cost of the economic appraisal.
- 254. **Mr Ervine**: The original economic appraisal by the consultants cost approximately £43,000.
- 255. **Mr Copeland**: Was that over or under the budget that was apportioned for it?
- 256. **Mr Ervine**: It was somewhere around what had been allocated at the time.
- 257. Mr Copeland: Did you say £43,000?
- 258. Mr Ervine: Yes.
- 259. **Mr Copeland**: Was that for external consultants?
- 260. **Mr Ervine**: Yes, it was at that stage. The second business case, in 2007, was completed in-house, and that was probably a more detailed analysis.
- 261. Mr Copeland: How much did it cost?
- 262. **Mr Ervine**: We would not have a cost for that. It was staff time. We went into great detail at that stage because we had found that there was an issue with the costs escalating. We looked into that in that economic appraisal and business case, and we identified the issues that Mr Lavery has outlined.
- 263. **Mr Copeland**: You initially had an economic appraisal carried out by an external consultant, and, when it sort of became apparent that it was not watertight and 100% robust, you decided to conduct an in-house economic appraisal.

- 264. **Mr Lavery**: No. You have to bear in mind that, with the initial economic appraisal, there was an addendum when we wanted to change the grant rate. When we were looking at a significantly greater amount of expenditure, it would have been quite improper for us to rely on the original appraisal. We had to satisfy ourselves that the original estimate on the herd size would still provide good value for money. It convinced us that it did, and, today, we remain convinced. Our experience is that it is good value for money.
- 265. Mr Copeland: I appreciate your answers and the forbearance that you have displayed in the face of what I admit must be a difficult afternoon. You have gone through the process of an economic appraisal through an external consultant, and you have paid £43,000, perhaps plus VAT, for that. That is not a large amount of money in the scheme of this, but, to go back to my constituent and her four letters from the Inland Revenue about £750, it is still a substantial amount of money. If you get an economic appraisal, on which you base certain assumptions, for a project from a consultant who you may or may not have used in the past and the passage of time proves that their work was not what you might have expected, does that make it more or less likely that you will go back to that consultant in the future?
- 266. Mr Lavery: As you know, employment of any service is dictated by procurement rules, and it would be exceptional for us to remove someone from a select list. It has happened, but it is exceptional. It is not the case that we are criticising the original economic appraisal. The economic appraisal that was conducted in 2007 had to deal with a much greater weight of scheme. We were looking at much larger expenditure.
- 267. **The Chairperson**: Is the expertise to do the economic appraisal in your Department?
- 268. **Mr Lavery**: It can be, and, on occasion, we carry it out.

- 269. **The Chairperson**: Given that the expertise was in the Department, who made the decision to take the first economic appraisal outside the Department?
- 270. **Mr Lavery**: As I said earlier, an economic appraisal has to pass our own economists' scrutiny. Obviously it is difficult, but not impossible, for us to take one or more of our economists and separate them by a Chinese wall and tell them to do the economic appraisal.
- 271. **The Chairperson**: Who made the decision to have the first economic appraisal outside the Department? You have said that the expertise was already in the Department.
- 272. Mr Lavery: Frankly, I cannot say who took the decision. I am accountable for that decision, and I am explaining how that decision will have been taken. We have an obligation to have an independent economic appraisal, which is then scrutinised by our economists and by economists from the Department of Finance and Personnel. It is difficult, but not impossible, to complete that process by putting a Chinese wall between some of our economists and other economists in the Department. We have done that on occasion. For instance, in 2007, because of the urgency of the issue and because we needed the work done by people who were knowledgeable about the farm nutrient management scheme, we did that in-house. It was done in an effort to be helpful.
- 273. **The Chairperson**: You talk about the Chinese wall. With the amount of expenditure that is given to external consultants, you could probably rebuild the Chinese wall. So, we have to get realistic about this, because £43,000 might seem a small amount of money in a very large scheme, but £43,000 multiplied by how many outside consultants you got in all adds up. This is a time when we need to make sure that there is value for money and that every single penny goes as far as it can go.
- 274. The expertise is in your Department. You are saying that you do not know who

made the decision. As the accounting officer, you could maybe find that out and write to us about who made the decision to give the £43,000 the goahead. That is not good enough when the expertise is there. It is too easy for people like you to give the go-ahead and to let someone else do it. The Audit Office has put out a report again this week, and the Audit Office has put reports out in the past. In fact, the PAC carried out an inquiry into that as well. It is very easy for civil servants to get someone else to do it, either because the Department cannot be annoyed doing it or because it does not have the expertise. However, you have already admitted that it does have the expertise. So, what is it?

- 275. Mr Lavery: I am happy to give you further information in writing. The position today is different from that in 2003. Quite properly, in line with this Committee's concern, our Minister has indicated that she will have to sign off any request to use an external consultant. Her bias is against using external consultancy, as was that of her predecessor. Our strong desire, therefore, is to maximise the amount of work done by our own skilled staff in the Department. I am happy to give the undertaking that, if the issue arose today, that piece of work would not go outside the Department.
- 276. **Mr Copeland**: How many economists are employed?
- 277. **Mr Lavery**: We have a small team of economists. It does not run into double figures. I am happy to come back with a number.
- 278. **Mr S Anderson**: Good afternoon. Paragraph 4.8 indicates that participation in the scheme was limited to those who could afford it, and that has been touched on slightly in some of the earlier supplementaries. How do you know that the problems with water pollution will not persist because farms that needed help could not afford to make the required investment?

- 279. **Mr Lavery**: In this instance, we have to rely on the inspection and enforcement activity of the Environment Agency. The position today is that the Environment Agency not only carries out water quality inspections but keeps us in contact with the implications of those for farmers' subsidy payments. So, people know that to cause a pollution incident or to fail a pollution inspection will have financial consequences for them. There is a very robust framework within which we do not see a high level of problem.
- 280. **Mr S Anderson**: Does the internal procedure have the resource to go out and look for all those incidents or possible incidents that may occur? How confident are we that the number of inspections taking place is adequate?
- 281. **Mr Lavery**: I can give you the assurance that, in our cross-compliance framework for the farm subsidy scheme, there is a requirement for the Environment Agency to carry out a preset percentage of inspections, and it is meeting that objective. It has the resources to carry out the level that Europe would require it to carry out.
- 282. **Mr S Anderson**: It is good to know that one agency has resources in this age that we are in.
- 283. Figure 14, on page 51 of the report, shows that more than one in three some 38% — of planned inspections by the Environment Agency in 2009 detected a breach of the nitrates action programme. Can you tell us why, in the wake of the £120 million grant scheme to facilitate adherence to that action programme, such a level of noncompliance exists?
- 284. **Mr Lavery**: The reasons for nitrates action programme breaches are not to do with the storage capacity. The reasons tend to be the maintenance of stores, specifications for manure storage and spreading distances from waterways. A lot of it is around management issues rather than capital investment issues. To that extent, I think that is consistent with what I have said throughout the afternoon; we are not

seeing issues around the capacity to store effluent. We are seeing continuing, but not very high, levels of default in the management of effluent.

- 285. **Mr S Anderson**: I take your point. However, all breaches relate to the protection of water against nitrates pollution. Surely that is the point of the farm nutrient management scheme? Would you agree?
- 286. **Mr Lavery**: First, the purpose was, among other things, to achieve compliance with the directive, which we have done. There will always be someone somewhere who has an accident or who neglects their duty. Secondly, I agree that we want farmers to be 100% compliant, and we are encouraging them in that direction through advice and inspection and by the application of penalties where appropriate.
- 287. **Mr S Anderson**: Do you know whether any of the farms in breach had received a grant under the farm nutrient management scheme?
- 288. **Mr Lavery**: One of the pieces of communication between the Environment Agency and us relates to the farms where it detects any poor management. We would look at that, but, primarily, from the point of view of whether those farms still have their capacity and are operating it properly. I am not aware that we have checked those figures against participants in the scheme.
- 289. Mr Ervine: No: we do not do crosschecks. However, we have supplied the Environment Agency with a list of farms that participated in the scheme. We discuss regularly with the Environment Agency — we meet with it on a quarterly basis - risk assessment, how implementation is going, and how we address any breaches. DARD may provide more advice on things that are causing problems. The Environment Agency factors into its risk assessment farms that are in the farm nutrient management scheme when it is selecting farms. Those farms are factored in as lower risk because

they have been through the process. We cannot guarantee that a farmer who has installed a tank will not fall down and get a non-compliance notice for not keeping adequate records or for spreading fertiliser too close to a waterway or something like that. We cannot guarantee that, but farms in the scheme are deemed by the Environment Agency to be lower risk.

- 290. **Mr S Anderson**: Surely, if farms have participated in the scheme and have got grants to do so, is it not the case that you should do follow-up checks? Could that be done, and can we have those if there are any breaches?
- 291. **Mr Ervine**: Certainly, if any farms are found to have caused serious pollution, they are referred to us by the Environment Agency, and our advisers go out to those farms and follow that up.
- 292. **Mr Lavery**: We will look at the 2009 and 2010 Environment Agency inspection results and whether any of those farms participate in the farm nutrient management scheme and will give the Committee a figure for each year.
- 293. **Mr S Anderson**: Many grant schemes are followed up. Those who administer the grants follow them up to see how they perform. I think that that should be done in this case. Hopefully, we can get some report back on that.
- 294. Finally, the report that we are dealing with contains figures from 2009. We are now in 2011. What is the present position in relation to compliance or non-compliance?
- 295. **Mr Lavery**: We are still compliant with the nitrates directive.
- 296. **Mr S Anderson**: What is the performance, up to the present day, in relation to the checks on those who fail to comply? 2009 was two years ago we are now in 2011.
- 297. **Mr Ervine**: 2011 is ongoing, but we have the 2010 figures. The number of farms breaching the directive has come down 22% since 2009.

- 298. **Mr S Anderson**: Do you find the figures acceptable or unacceptable? A lot more work needs to be done to ensure compliance.
- Mr Ervine: It is an ongoing process. The 299. nitrates action programme contains a lot for farmers to take on board, and it requires a change to farming practice. A lot of the main things have been done, and we see that in the compliance with the closed period for slurry spreading. However, other things, such as keeping the required farm records, have been an issue in the past. We have focused advisory effort on that, and the numbers of record-keeping issues, problems and non-compliances are coming down. Non-compliance may be due to a recordkeeping issue rather than actual farm performance or environmental impact.
- 300. The action programme has many factors. Admittedly, it is difficult for farmers to comply with the nitrates directive, and that is common in all member states. However, we continue to provide advice, guidance documents, online calculators, and training courses through CAFRE to raise awareness.
- 301. **Mr S Anderson**: So, there is a lot more work to be done.
- 302. **Mr Ervine**: Yes; it is a continuous process.
- 303. Mr Lavery: To be fair, the demands on farmers continue to progress. Brian referred to the need to keep documentation. What we are talking about now is farmers keeping documentary evidence of what fertiliser was bought; when; from whom; where it was applied on their farm, not simply that it was applied on the farm but which field it was applied to; and what happened. They should also have a record of the nutrient balance on that field. So, we are asking them to take a very technical approach to fertiliser spreading. That is not easy for the industry, and I have sympathy with farmers. We require them to do it, because Europe requires us to have this degree of rigour. That is the background to what may present as a

level of breaches. However, the number of breaches was down to 176 in 2010, so we are talking about fairly small numbers.

- 304. **The Chairperson**: OK. Before I bring in Paul, I ask all members for a bit of respect: their mobile phones are interfering with the sound system and making it hard for people to take a recording.
- 305. **Mr Girvan**: I appreciate that a lot of the programme was brought about because of the potential threat of infraction. If we did not meet with the European Commission's directives, we would be non-compliant and receive fines. What is the potential for Northern Ireland to receive fines at this stage? Have any fines been issued?
- 306. Mr Lavery: We have not been fined in respect of the nitrates directive, and we have no reason to expect a fine. However, as is very clear from the Audit Office report, in 2002-03, there were a number of directives that Northern Ireland had not implemented fully or on time. We — and by "we" I mean the entire Administration, not the Department of Agriculture — were very concerned about the risk of infraction and the fact that it could hit any particular area, of which the nitrates directive was one. The evidence is that. between 2003 and today, a number of member states have infracted the nitrates directive, including the United Kingdom. It is not a theoretical risk by any means.
- 307. Mr Girvan: You said that we are unlikely to have infraction proceedings taken against us. Is that on the basis that we never really had a nitrates problem in Northern Ireland? Granted, there has been a phosphates problem, but that is not necessarily what this programme was intended to deal with. If you look at how phosphates have been reduced in our inland waterways, it might be due to the proliferation of the zebra mussel. which was identified in 2005 and which has improved the water quality. It has caused a lot of other problems, but it has improved the water quality. The

nitrates directive was intended, among other things, to improve water quality, but the nitrate problem never existed to the level that we should have to spend such sums. England, Scotland and Wales spent only a fraction of the money that we have spent on driving forward a programme for which we have no measurable outputs. We cannot tell whether the programme will achieve anything.

- 308. I want to find out whether a business case was ever made that this programme would have had any major impact or led to any improvement? The nitrates problem might never have existed. There might never be infraction proceedings against Northern Ireland, considering the amount of water that we get and the run-off that we have. We have invested a large amount of money, and all we have done is encourage farmers to spread slurry in a smaller window, which means that they must put out a lot more in a shorter time. That creates its own problems, and farmers tend to cover fields doubly at certain times to ensure that they get their slurry out. That also creates problems; the land cannot properly breathe, as it is sealed up. I apologise for going on a bit, there. That is the first part.
- 309. **Mr Lavery**: That is the first part? [Laughter.]
- 310. Let me deal with the first part. As I said earlier, we did not have a nitrates problem. I am happy to have an area of agreement with a member of the Committee. The difficulty arose when the European General Court ruled in 2002 that, even if you do not have a nitrates problem, if you have eutrophication for any reason, all the land draining into that eutrophic water has to be designated. In our case, there was no question about the eutrophic state of Lough Neagh, the hypertrophic state of Lough Erne and the issues that we had with the River Quoile. All those pointed to our having eutrophication arising from excess phosphate. We could have infracted at that point. The European Commission could have taken infraction proceedings against us on the

basis that now it had a clear ruling from the European Court that this directive applied in what was an unforeseen way.

- 311. **Mr Girvan**: Can I come back on that? Is there not potentially a natural reason why the level of nitrates has reduced over a period of time? There are other aspects. Farmers' use of fertiliser has reduced in the past few years, primarily because of the cost. Artificial fertiliser has doubled in price in the last three and a half years. A farmer will use what is cheapest; I understand that. Would that not be one of the contributing factors to that reduction?
- 312. Mr Lavery: There have been a number of contributing factors, and I take your point about the introduction of the exotic zebra mussel and the fact that it is a filter feeder. As well as that, as you will be very well aware, Northern Ireland Water's massive investment programme, which vastly dwarfs what we spent, has improved sewage outflows, particularly those into Lough Neagh. Therefore, lots of factors may have brought it down. However, I am not sure whether farmers would have reduced the rate of application of chemical fertilizers by as much had our Department not engaged in dialogue with the fertilizer companies to get phosphate-free fertilizer, which took us several years, and had they not had the benefit of our advice and encouragement to see slurry as a nutrient rather than a waste product. It is very difficult to add in all those factors, but I am absolutely convinced that the scheme has made a major contribution, and it is justified to some extent by the argument around infraction and destocking.
- 313. You made the very good point that England, Scotland and Wales have not invested at the rate that we have, but that reflects the fact that in England and Wales, for instance, there are large areas of arable land, with relatively few intensive farms. We have the opposite. We have predominately a livestock industry, with very little arable land available for sacrifice slurry spreading. Farmers here have a shorter window in which to spread slurry, and that window

is, by and large, in the wettest part of the year, when slurry should not be spread because it runs straight off into watercourses. That is the argument. I sincerely hope that we do not get the sort of summer that we had in 2007 and 2008, which would disprove my contention that the slurry-spreading closed season occurs at the wettest part of the year. It should be the wettest part of the year.

- 314. **Mr Girvan**: My other point relates to identifying farms that have the potential to pollute or create a problem. What mechanism is in place to identify those farms and to ensure that they are flagged-up and inspected, not only by your Department but by the Department of the Environment?
- On that point, the Department of the 315. Environment claims that it will inspect a certain number of watercourses located in farming areas. What areas have they identified? Some farms have not received the grant, so perhaps they should be targeted to see if there is a difference. The point is that, given all the money that we have put in, we need measurable outputs. That is what brought all this about. We have put an awful lot of money in, so we need be sure that we are getting the right results. I am not necessarily saying that we are not; however, if the Department of the Environment and the Department of Agriculture and Rural Development do not take a joined-up approach to inspections, it will be impossible to say for any given area how many farms received a grant, so it is imperative that you identify and compare differences between areas.
- 316. **Mr Lavery**: First, I reassure the Committee that we do indeed have a joined-up approach with the Department of the Environment. Information flows both ways. As Brian said, we have quarterly meetings, and we are looking for a joint assessment of where there is risk. We believe that the risk from farms that have participated is lower, and the Environment Agency accepts that, although it carries out the risk assessments. Uptake for the

scheme was fairly level throughout the Province or Six Counties, although it was marginally higher in Tyrone, where you would expect to see a heavier concentration of livestock farming. I am not sure whether there is much more that I can say on that.

- 317. **Mr Ervine**: As regards the risk assessment, we do factor things in with the Environment Agency, and it has access to data from us to select the areas to inspect. That data includes livestock numbers, as that is a factor, along with farms that are in our agrienvironment programme. We have about 12,000 farms in that programme, and they have all been visited by DARD inspectors. Therefore, the Environment Agency would attach a lower risk weighting to those and look to the other farms.
- 318. **Mr Girvan**: I am very sceptical about the benefits of this programme. I appreciate that you put the figure of £40 million as a net benefit, and I would dearly like to see where that figure came from because I know what the industry is worth and how much it costs to run the Department. However, that is beside the point.
- 319. We had 27 incidents in 2007, 74 in 2008 and 141 in 2009, and you alluded to the fact that we had 176 in 2010. There has been in increase of incidents and breaches over that period. Is that simply because more people are doing inspections?
- 320. **Mr Lavery**: It is partly due to the fact that the requirements of the nitrates action programme have come in progressively. We are now inspecting against more requirements, and that is certainly a factor. We said all along that we would see an improvement in water quality over 10 years. Frankly, I am surprised at the improvement that we are now seeing in a much shorter time.
- 321. Mr Girvan: Are you attributing all of that —
- 322. **Mr Lavery**: I am not. However, if an indicator is going the right way, there will be many factors in it. It is very good that it is not going the wrong way and that we are not seeing increasing levels of serious breaches, issues around slurry storage or increasing levels of

phosphate loading in the Lough Neagh and Lough Erne systems. A positive picture is emerging. I am not going to claim that all credit belongs to this scheme.

- 323. Mr Girvan: What work has been undertaken to ensure that spraying does not take place at the wettest time? I appreciate that we are very much driven by Europe, but it is not a case of one size fits all. It should have been more targeted to identify exact areas. Northern Ireland is probably one of the wettest parts of the United Kingdom. Therefore, there is no point in identifying the same criteria in the south-east of England, which has a completely different climate.
- 324. **Mr Lavery**: We negotiated directly with the European Commission around the requirements of Northern Ireland and achieved the best result that we could for the specific —
- 325. **Mr Girvan**: On the dangers of spreading?
- 326. **Mr Lavery**: Yes, very much so. That was a hugely contested area at the time for the farming industry.
- 327. **Mr Girvan**: I appreciate that a lot of that has more to do with the Department of Agriculture, as opposed to going into detail. Whether it stacks up or not, I still remain to be convinced that the £120 million spend has delivered the value that it should have.
- 328. **The Chairperson**: Thank you. We may have other questions for you and request more information. We will write to you next week.

## 28 September 2011

# Members present for all or part of the proceedings:

Mr Paul Maskey (Chairperson) Mr Joe Byrne (Deputy Chairperson) Mr Sydney Anderson Mr Michael Copeland Mr John Dallat Mr Alex Easton Mr Paul Frew Mr Paul Girvan Ms Jennifer McCann Mr Mitchel McLaughlin

#### Witnesses:

Mr Brian Ervine Mr Gerry Lavery	Department of Agriculture and Rural Development
Mr Michael Brennan	Department of Finance and Personnel
Mr Stephen Fay	Land and Property Services

### Also in attendance:

Mr Kieran Donnelly	Comptroller and Auditor General
Mr Richard Pengelly	Acting Treasury Officer of Accounts

- 329. **The Chairperson**: Mr Lavery, you are very welcome. I will allow you to introduce your colleagues.
- 330. Mr Gerry Lavery (Department of Agriculture and Rural Development): Thank you very much. I am Gerry Lavery, the acting permanent secretary for the Department of Agriculture and Rural Development (DARD). I am joined by Brian Ervine, who is the principal officer charged with environmental policy in the Department; Mike Brennan, who is the head of the central expenditure division in the Department of Finance and Personnel (DFP); and Stephen Fay, who is the district valuer with Land and Property Services (LPS).
- 331. **The Chairperson**: You are all welcome. This is the second evidence session

in our inquiry. That is down to the fact that the Public Accounts Committee is not yet satisfied that it has got to the bottom of the issues surrounding the valuation and proposed sale of the site at Crossnacreevy.

- 332. Before we start, I want to make it clear to the witnesses that the Committee expects full and frank responses to questions. Normal procedure, as you will know from the previous evidence session, is that I will ask some questions, after which members will come into the discussion in order.
- 333. Who in DARD took the lead on the Crossnacreevy issue?
- 334. **Mr Lavery**: The lead in the Department changed at different times, but essentially I was responsible as the then senior finance director. My finance director took the lead on the Crossnacreevy issues until March 2008.
- 335. The Chairperson: March —
- 336. **Mr Lavery**: March 2008.
- 337. **The Chairperson**: That was your finance director?
- 338. Mr Lavery: Yes.
- 339. **The Chairperson**: What was the time frame of your being in charge of the issue, Mr Lavery?
- 340. **Mr Lavery**: I would have been responsible throughout because John Smith, who gave evidence at the earlier session, reported to me throughout on the issue of Crossnacreevy and on all his other responsibilities.
- 341. **The Chairperson**: Were you the lead person?
- 342. Mr Lavery: Yes.
- 343. **The Chairperson**: A copy of a letter from LPS dated 1 August 2007 provided DARD with a detailed valuation of

Crossnacreevy amounting to £10 million. Did that not show at a very early stage that the £200 million valuation was entirely unrealistic?

- 344. Mr Lavery: With respect, Mr Chairman, I do not think that it did. In our letter of 11 June 2007 to Land and Property Services, we asked a number of specific questions. One of those questions was whether the Department could sell the site based on its hope value, rather than waiting for planning approval and having to go through an entire process. The advice from Land and Property Services on 1 August 2007 was that if the holding were to be placed on the market, the market value was considered to be in the region of £10 million. That was the amalgam of values for the plant testing station as it existed and the potential for redevelopment or sale of the dwellings as they were. Therefore, a judgement would have had to be made by a developer as to what he might be able to do with the site, and we did not see that as a limit if we continued to pursue planning approval and to try to get the best possible value for the asset.
- 345. **The Chairperson**: I may want to go into planning issues later. You received a letter from LPS that stated that the value of the site was £10 million; that is the issue. Who in DARD's senior management was made aware of that valuation, and who was shown that letter?
- 346. Mr Lavery: I was certainly aware of it. I cannot say who else had seen the letter, but it would have been widely known about in the Department. However, the important points in the letter were LPS's advice that we should proceed to appoint a planning consultant and that it would be premature to furnish values beyond the current market value that were not based on professional guidance. We followed that advice, and we went on to seek to appoint a planning consultant and to complete the exercise to determine the best value that the land could command.
- 347. The Chairperson: Was that in 2007?

- 348. Mr Lavery: Yes.
- 349. **The Chairperson**: When did the Belfast metropolitan area plan (BMAP) close?
- 350. **Mr Lavery**: In late 2007, it emerged that BMAP was still in draft form and that it was closed to new applicants — that is, those who had not lodged an objection prior to 2005.
- 351. **The Chairperson**: Had you lodged an objection?
- 352. **Mr Lavery**: We had not lodged an objection, because at that point there was no question of disposing of Crossnacreevy. As I said, we realised that BMAP was closed only around December 2007.
- 353. **The Chairperson**: Were no phone calls made?
- 354. Mr Lavery: I explained during the earlier evidence session that we were very scrupulous about contacting the Planning Service. However, we did contact it on 8 October 2007, and the advice that we received was that the BMAP process had a considerable time to run. We took that to mean that there was still an opportunity to raise issues within BMAP. In fact, what the person on the other end of the phone meant was that the process was dealing with the objections that were lodged prior to 2005, the Planning Appeals Commission would have to rule on those objections and that BMAP would have to be adopted before it could be opened to new objections. Several years later, the draft BMAP is still in draft and is still not open to objections. That is a source of regret to us.
- 355. **The Chairperson**: It might be a source of regret, but the point is that BMAP had been closed since 2005. Mr Lavery, you said that the letter from LPS was widely known about in the Department. Was DFP notified of that letter?
- 356. **Mr Lavery**: No, we did not notify DFP. The process with the project, as with many other issues, was for us to give undertakings to DFP on how we would progress a project and carry out those

undertakings. We do not involve DFP at every stage of the process because that would simply be a waste of effort on both sides.

- 357. The Chairperson: A waste of effort? The valuation that you put on the site was £200 million, and LPS then valued the land at £10 million. That is a difference of £190 million. Would it have been a waste of time to have notified DFP of that?
- 358. **Mr Lavery**: As I said, the valuation was for the hope value. The valuation, therefore, had many constraints.
- 359. **The Chairperson**: Let us talk about real value, which I assume would be represented by the LPS valuation. However, you did not show that to DFP. In hindsight, do you not think that it was a silly decision not to show that valuation to DFP?
- 360. Mr Lavery: No. The important issue for us was that, in December 2007, when we knew that there was a strong possibility that we would not be able to achieve the original receipt, we notified DFP by my letter of 2 January 2008 that problems were emerging. We subsequently ensured that that was known within the Executive's Budget process.
- 361. **The Chairperson**: The Executive's Budget process was discussed at an Executive meeting in September 2007. Were the Executive made aware of the letter?
- 362. **Mr Lavery**: No, because the matter was not seen as a major setback. If anything, it simply encouraged us that we should appoint a planning consultant and make efforts to redeem our commitment to DFP. That commitment was to achieve the best possible value for the asset.
- The Chairperson: A letter dated January 2008 does not mention the £10 million at all.
- 364. **Mr Lavery**: The key point that we were trying to get across at that time was that we were being made aware that if the land were to achieve residential development approval, there would be an obstacle if we could not find a way

through the draft Belfast metropolitan area plan.

- 365. **The Chairperson**: I will put it to you: were you hiding that letter?
- 366. Mr Lavery: No, we were not hiding it. In fact, we disclosed the letter as early as 23 January 2008 to the Committee for Agriculture and Rural Development, which had asked to see all papers.
- 367. The Chairperson: That was six months after the Executive had taken the decision and six months after you had discovered that the real value of the land was £10 million rather than £200 million. Why did it take you six months before you sent the letter to the Committee for Agriculture and Rural Development?
- 368. **Mr Lavery**: With respect, the Committee for Agriculture and Rural Development was, at that point, scrutinising everything to do with the matter very closely. It was keen to see all the papers. I am simply making the point that there was no question of concealing the letter. We considered it a part of normal business. As I say, we disclosed it, in effect publicly, on 23 January 2008.
- 369. **The Chairperson**: Yes, but that was six months after you received the letter. We had an evidence session a short while ago, but we were not told about the £10 million valuation in the letter.
- 370. **Mr Lavery**: I certainly mentioned in oral evidence that we had received advice in August 2007 that we should employ a planning consultant. That is in my oral evidence. We took that as the main point of the letter. We saw the issue of putting land on the market without planning approval as being less than achieving best value.
- 371. The Chairperson: Other members may want to ask questions about that issue. However, the LPS letter of 1 August 2007 to DARD pointed out:

"All lands within the Crossnacreevy holding are designated in the Draft Belfast Metropolitan Area Plan 2015 as being within the Greenbelt ... The presumption therefore is that planning permission for an alternative use other than the existing use will not be given."

Did that not make it clear, at a very early stage, that there was no prospect whatsoever of that situation changing?

- 372. **Mr Lavery**: Let me put it like this: from my point of view, I could not take the recitation of the rules of the green belt as defining how far we could press the matter. I needed to press it to the point at which I had taken the best possible professional advice, including professional advice from outside the public sector — namely, from a planning consultant — otherwise, I would not have been pursuing to a conclusion my obligation to seek to achieve the best possible value.
- 373. **The Chairperson**: Did you share that information with DFP?
- 374. **Mr Lavery**: We certainly shared with DFP the fact that we were pursuing the appointment of a planning consultant.
- 375. **The Chairperson**: The point that I am making I think that you know the point that I am making relates to the draft Belfast metropolitan area plan and the quote that I have just read out to you:

"All lands within the Crossnacreevy holding are designated ... within the Greenbelt."

- 376. Did you point that out to DFP when the value was raised to £200 million?
- 377. **Mr Lavery**: At that point, we did not know that it was within the green belt. What you have to bear in mind is that back in June —
- 378. **The Chairperson**: There was a letter on 1 August 2007, so I suggest that you did know.
- 379. **Mr Lavery**: In August 2007, we had that piece of advice that we then wanted to test; that is what we did. We tested that advice by further discussion and correspondence with the Planning Service, followed by the appointment of a planning consultant. All that eventually led to the LPS valuation in March 2008.
- 380. **The Chairperson**: When you were looking at the massive gap between values, did

alarm bells not ring in your head? You were the lead person. Did alarm bells not go off to indicate that something was wrong?

- 381. Mr Lavery: No. In late 2007, some members may recall that there were concerns in government around realising assets. Indeed, the Executive appointed a capital realisation task force (CART). We were all becoming interested in how to get best value. It is also relevant that, in late 2007, the Public Accounts Committee was looking at the transfer of surplus land in private finance initiative (PFI) deals by the education sector. The Committee issued recommendations that we should seek to achieve best value. In early 2008, DFP accepted those recommendations. In early 2008, in the wider finance community, members may recall the QinetiQ and Ministry of Defence deals of that time and issues about the way in which QinetiQ was disposing of land and the clawback to the Ministry of Defence of land for which QinetiQ subsequently gained planning approval. In all that, my principal motivation was to ensure that we did not dispose of publicly owned land at less than the best price that a private sector developer could get for it. That was why I had to take the advice about the green belt and what might happen to residential planning approval. I had to put in somebody from the private sector to ensure that we would test that and be able to say that, if we did dispose of the land, nobody would have benefited more than they should. That was the background to our concern.
- 382. **The Chairperson**: You do have concerns, and you do have to get the best value and the best price. There is no doubt about that. We would not expect anything less. You were going to employ someone to take you through it. You were the lead person. Could you not have made a quick phone call to the Planning Service to ask whether there was a chance, given that BMAP had closed for further correspondence or information two and a half years earlier?
- 383. **Mr Lavery**: I attempted to do that in early October. As I said, the advice

that we were given was that the BMAP process had some time to run. Our misapprehension was that we took out of that that it had some time to run and that objections could still be made. We are not very familiar with that process. It turned out that it meant that the BMAP process was still dealing with objections lodged prior to 2005.

- 384. Even around that time, we all expected the draft plan to be adopted in 2008, and we would have an opportunity to make further objections after 2008. It has not been adopted to this day, which is regrettable and disappointing.
- 385. **The Chairperson**: However, it is still not open, as it was not open then. Did your Department submit any correspondence or feed into the BMAP process when it was going through?
- 386. Mr Lavery: I would have to check back into 2005 for that. I am not aware that we did because it is not a process that would concern us directly.
- 387. **The Chairperson**: It is not a process that would directly concern you, yet it is a considerable piece of land.
- 388. **Mr Lavery**: Until we had a disposal, or a potential disposal, within scope.
- 389. **Mr McLaughlin**: The hope value of the land is an interesting point. At what point did you consider that you had a formal response to that on which you based further decisions?
- 390. **Mr Lavery**: The professional valuation on which we have based our process is now the value placed on the land by LPS in March 2008. That was the outcome of the process within which it was able to draw on the advice of the Planning Service and the planning consultant, and on its own knowledge of the site, and carry out a professional investigation. Until that point, we were always proceeding on less than comprehensive information.
- 391. **Mr McLaughlin**: In the meantime, you were processing a bid with the Department of Finance and Personnel for additional resources for the farm

nutrient management scheme. We have the figure of £200 million, which DFP correspondence indicates was a significant and persuasive element in its decision. You asked Land and Property Services for the hope value. I presume that the reason for that question was that you recognised, from your own experience, that the site value as it stood was a long way short of £200 million and, indeed, a long way short of the quantum of the bid that you were making to DFP. Your query was about the hope value.

- 392. You received a response on 1 August 2007, less than two months after making that request or corresponding with personnel in Land and Property Services. LPS answered the question on hope value by giving you a definition of hope value — namely, the uplift between the existing value and the open market, which it estimated to be £10 million not £200 million. That in itself was important and formal advice about the value of the site and, I imagine, of interest to you and the Department of Finance and Personnel.
- 393. LPS explained the uplift between the existing value and the open market value that would arise from the market's view of potential development. I assume that the market, for anybody who was going to put anything remotely resembling £10 million on the table, let alone £200 million, would have included certain reassurances about the planning and development potential of the site. In other words, people were putting that sort of money on the table would have asked the questions that you appear not to have asked until you had secured commitments from DFP. Is that a fair reading of the short two-month period between 11 June 2007 and 1 August 2007?
- 394. **Mr Lavery**: I will put it this way: our correspondence of 11 June 2007 was very open. We did our level best to find out what the site would be worth, and we raised the issue of hope value, on the basis that a strong, positive response would allow us to look at a disposal process that would be less fraught with difficulty.

- 395. **Mr McLaughlin**: What if you had got less than a strong response? Would that not have caused you to go back and do your sums again on the back of whichever envelope you had used the first time?
- 396. **Mr Lavery:** At that point, the letter raised two issues. First, it advised us to get professional advice. Secondly, it raised issues of title and tenure, about which a developer might have asked for reassurance. Planning was not an issue. Planning would be the risk that developers would take on, and one that would have depressed their assessment of the land's value. Therefore, I dealt with that risk by pursuing to a conclusion the planning advice issue. Keeping that risk in the Department's control should, in theory, have resulted in an increased valuation.
- 397. **Mr McLaughlin**: I will get a further opportunity to ask questions, but, to finish for now, did you immediately share with DFP the letter that you had received?
- 398. Mr Lavery: No, because we were on a clear path and had given an undertaking to seek to achieve the best possible value for that disposal, within the comprehensive spending review (CSR) period; that is, by 2010-11. We did not have a view from DFP that we needed to bring in the receipt in the first year of the Budget. We did not have a requirement from DFP to complete a valuation process by a particular date. In fact, we completed the professional valuation within 10 months of the issue arising, which, I think, is a very prompt response.
- 399. Mr McLaughlin: Yes, but you received £10 million of a reallocation and a further award of £79 million, although you had a letter from Land and Property Services telling you that the site value stood at £10 million.
- 400. **Mr Lavery**: To deal with the reallocation issue first, that was a reallocation from resources in the Department.
- 401. Mr McLaughlin: It was in your budget, yes.

- 402. **Mr Lavery**: Therefore, it simply transferred from other budgets in the Department to fund the farm nutrient management scheme (FNMS). That showed the goodwill of the Department in trying to meet our requirement and to prioritise our expenditure so that we funded what was an inescapable demand.
- 403. Secondly, the £79 million was always justified by its own economic appraisal. There was an economic appraisal for the scheme as a whole that showed that it was clearly in the best interests of the Executive to invest in the scheme. First, because we would infract and risk fines of £50 million a year; and, secondly, because, if we did not invest in that slurry storage, farmers would have to destock, and we would lose £40 million a year of production. Those factors combined made the case for investment overwhelming. The case for investment was never based on the availability of a capital receipt.
- 404. **Mr Dallat**: I will go back to give some balance to the record from earlier.
- 405. Mr Lavery, you quoted this Committee as supporting the disposal of surplus assets. I was surprised at that remark, and I need to get on record that this Committee has stood very much against the corruption of green belt areas. For example, we put an enormous amount of energy into the Knock Golf Club case. Were someone to read the record in 100 years' time, I would not want this Committee to be depicted as promoting the desecration of green belts. We will leave that at that.
- 406. However, Mr Lavery, you are the custodian of the Department of Agriculture and Rural Development. Did you not feel a bit compromised getting involved, almost lining up with dodgy speculators who were tearing BMAP apart by trying to pull it in every direction to get a brick in every corner of Belfast? Was that an example of what someone who headed up a Department dealing with agriculture should be involved in, whatever the merits of doing so?

- 407. **Mr Lavery**: First, I have certainly not alleged that the Committee said that it was in favour of disposing of surplus assets. I said that the Committee recommended that, if we were disposing of surplus assets, we should do so very professionally, seeking to secure best value.
- 408. **Mr Dallat**: Do you agree, Mr Lavery, that the last thing on that list would be green belts, which people need to preserve their health, for recreation and for everything else?
- 409. **Mr Lavery**: If we had arrived at the position to dispose of Crossnacreevy, we would have looked at all the issues and made a considered decision that would have taken account of the green belt issue. Bearing in mind that our commitment from the outset, which was given by the then Minister of Agriculture and Rural Development, was that there would be no disruption to the research that was being done at Crossnacreevy, we would always have been looking for land elsewhere of comparable size that we would have been designating for agricultural trials. Therefore, we might have ended up securing land elsewhere, outside the green belt. It is hard to argue the hypothetical case when we never reached the point of disposal. We never sold any land, and, therefore, we never reached the point of weighing up the benefit of retaining green belt land and the benefit of bringing other land into agricultural trials.
- 410. **Mr Dallat**: Not for one moment do I want to suggest that Mr Lavery should take total responsibility for this madcap scheme. Who else was involved? Who inspired this?
- 411. **Mr Lavery**: Happily, sir, I am responsible and accountable to the Committee, and I have the benefit of having been acquainted with all of this from the outset. As I said on a previous occasion, I know that the Committee is keen to approach issues in appropriate time so that the people who appear before it have a personal interest and a personal recollection to share. I am happy to do that.

- 412. **Mr Dallat**: You will know that it is the Committee's function to get behind what we are told. I find it difficult to accept that you as an individual would take on your shoulders a responsibility of that magnitude, which involved valuing green belt land at 20 times its value to get a grant to provide for storage space for slurry. That does not add up.
- 413. Mr Lavery: Indeed it does not, Mr Dallat. The responsibility that I took on my shoulders was the responsibility to place an asset on the table. The asset was 80 acres of land. We gave an undertaking that we would seek to dispose of that land at best value during the comprehensive spending review period. I was happy to give that undertaking, and we have honoured it by the process that we engaged in. No one in government finance circles has said that we have not honoured that undertaking. I was happy that I discharged my responsibility and that the Department discharged its responsibility.
- 414. **Mr Dallat**: It may be my simple way of thinking, but I am amazed that, when figures of £200 million were floating about, you had no conversation with the Minister of Finance and Personnel. Did you not run it past him to see how he felt about it?
- 415. Mr Lavery: I do not normally move in those circles, Mr Dallat. The figure of £200 million rapidly became public knowledge. As I said, the Committee for Agriculture and Rural Development was keen to scrutinise the decision. I appeared before that Committee on a number of occasions, and the point was not made that the land could not possibly command that value. In fact, the point was made that, if the land did command that value, the Department should try to ensure that any balance of the proceeds of disposal also went to agriculture, as it was seen as a very important site. Indeed, it is still a very important site for the Department's work.
- 416. **Mr Dallat**: I suggest that it is a most important site, in its present form.
- 417. You have an e-mail dated 13 December 2005 from a Mr Al Adair in the Planning

Service that basically tells you that it was a no-hoper. Why on earth did you pursue it for then?

- 418. **Mr Lavery**: If you look through the entirety of the correspondence, Mr Adair was following up on a meeting that my finance director had had with him and was commenting on John Smith's note of that meeting. Mr Adair's advice is, as you said, very direct.
- 419. **Mr Dallat**: It could not be more direct.
- 420. Mr Lavery: John Smith wrote to the divisional planning officer on 2 November 2007 seeking advice. He replied on 18 December 2007, and his was a more considered and nuanced reply, in which he did not say in such peremptory terms that the land would not achieve planning approval. In fact, he said quite the contrary. He set out the constraints on the land and how it might be utilised, pointing out that the bulk of the land would be classified as already being in business use and that it could, for example, be used for another business use within that classification. Therefore, the advice from the Planning Service was not quite as blunt, if I may say so, as Mr Adair's advice. The advice from the Planning Service on 18 December was nuanced, and we proceeded to work forward on that using a professional planning consultant to head off future criticism that we had allowed land to go to sale without having first assured ourselves that no developer could benefit unduly from it.
- 421. **Mr Dallat**: I do not want to harp on too much about this issue, but who first raised the madcap idea that Crossnacreevy could be flogged off to the private sector?
- 422. **Mr Lavery**: If we go back to the last week in May 2007, it was obvious to us that, within a fortnight, we would have to stop inspecting farms. At that point, we had to find a way of breaking through the financial process to get a capital allocation in the first year of the Budget, even though the Executive had not opened the Budget process. We began by putting around a draft Executive

paper, which put the issue on the table, and DFP agreed to discuss it with us. In discussions, DFP asked what we could put on the table. I had been working since around February 2007 in that area of assets, and I knew that when we set up the Agri-Food and Biosciences Institute (AFBI), we had retained control of the estate, because we believed that, in the longer term, we would be able to dispose of some of the assets in that estate.

- 423. I spoke to the chief executive, and he indicated that, at that point, he believed he could find a way to vacate the Crossnacreevy site. That is when we said to DFP in terms that we would put the Crossnacreevy site into the deal; that is, we would seek to dispose of 82 acres of land at Crossnacreevy. DFP said that although it welcomed that and saw it as a very positive step, it needed a figure. That last part is the reason that the Committee is taking issue, quite properly, with what then happened.
- 424. **Mr Dallat**: OK. Let us discuss the LPS letter to the Department of Agriculture and Rural Development of 1 August 2007 regarding the potential for the redesignation of all or part of the Crossnacreevy site. You were told then that you should

"secure the services of a specialist planning consultant"

— bless us — but you did not bother doing anything about that until 10 December 2007. Is that not more evidence of a laissez-faire approach to a scheme that, at the end of the day, was designed to do nothing more than get you  $\pounds79$  million for a project for which you did not have the money, and it did not matter whether that money came out of education, health or wherever else?

425. **Mr Lavery**: There are two points there. First, on the appointment of the planning consultant, it is not that we did nothing. A working group, including members from Land and Property Services, our financial management branch and the Agri-Food and Biosciences Institute sponsor branch met monthly throughout that period to progress the issues surrounding Crossnacreevy.

- 426. The issues were not straightforward because we had to look at how we would relocate grassland trials. We also had the emerging issue of the tenants of Houston Road, as four people have homes on the land. We also had issues with researching the leases for the land and buildings.
- 427. In line with best practice, we engaged Central Procurement Directorate (CPD) on 10 December 2007 to guide us through the tendering process for the use of external consultants, and, subsequent to that, we were able to appoint the most economically advantageous tenderer.
- 428. **Mr Dallat**: In view of what happened the disastrous development process and the coming into existence of the organisation called the National Asset Management Agency (NAMA) — would you have done this differently if you had to do it again, or would you still line up with all the madcap people who put crazy valuations on property that were never realistic?
- 429. **Mr Lavery**: There are lessons for us to learn here about trying to value land and buildings for a purpose other than their current use; about the protracted nature of disposal; and about the expertise needed in managing a disposal. That expertise does not consist simply of asking within government for advice from Land and Property Services on value; rather, it has to reach into the private sector. We have learnt those lessons. We would approach those things with a greater state of knowledge.
- 430. Mr Dallat: We have to accept that you were successful you got £79 million. Are you happy that all the tanks, and so on, were built to the proper specification and will stand up to all the scrutiny? Can you answer all the questions that are being about them?
- 431. Mr Lavery: First, as I have said of the £79 million, the entirety of that scheme £121 million is justified by economic appraisal, not by the capital receipt and the disposal of Crossnacreevy.

- 432. Secondly, we believe that the scheme was necessary and a good scheme. We believe that it has saved the economy money and safeguarded the farmers' production. It has stopped farmers from going out of businesses. We believe that the tanks were properly built and have been inspected. The technical advice given to farmers was very good. The tanks are built to a high standard, and each should last 20 years. Therefore, we believe that the scheme will stand up to scrutiny.
- 433. The Chairperson: Can I take you back to the question of the date of the letter that you brought to the Agriculture and Rural Development Committee? You said that you brought it on 23 January 2008. However, the Executive had agreed to provide the capital cover on 21 January 2008, so you went to the Committee two days after the Executive had agreed to include the £200 million valuation in the draft Budget. Did you not think of bringing the letter to the Committee prior to that date?
- 434. **Mr Lavery**: At the time, as I mentioned, the Agriculture and Rural Development Committee was asking for all correspondence on Crossnacreevy, and we were releasing a large volume of papers. That letter was one of the papers released. Dialogue between us and the Committee was ongoing.
- 435. **The Chairperson**: When did the Agriculture and Rural Development Committee ask for all the papers?
- 436. **Mr Lavery**: I would have to check that, because I do not have the precise date.
- 437. **The Chairperson**: That is a very important piece of information. It is important for us to know when that Committee asked for all the papers.
- 438. **Mr Lavery**: I am happy to try to give you more detail on that.
- 439. **The Chairperson**: We need it as soon as possible. My point is that that Committee was not told until after the Executive made their decision. Were you challenged at that Committee on that issue?

- 440. **Mr Lavery**: The Committee was, at that time, under the robust chairmanship of Dr William McCrea, and I was challenged fairly repeatedly on that transaction.
- 441. **Mr Copeland**: Hello again, Mr Lavery. Prior to 1 June 2007, do you or your Department have any record or knowledge of any enquiries made by any person, persons, individuals or group of individuals acting as bodies, whether incorporated or unincorporated, that were seeking to establish or change the nature of the planning potential for Crossnacreevy?
- 442. **Mr Lavery**: I certainly have no knowledge of it. I can check with the Department to see whether there is anything, but I do not think that there is. I was not aware of it.
- 443. Mr Girvan: Apologies for arriving late, but I had another engagement in Ballyclare. I want to tease out some detail on the timing and choreography of events. I have difficulty in understanding at what stage the Department of Agriculture and Rural Development was aware of the major difficulties in achieving the valuation that it predicted and when that was imparted directly to DFP which, in turn, would have fed in that information. We appreciate that the final figures all had to be timed together so that everybody knew when the budgets were being set. The paperwork indicates that, prior to the Executive's final decision on the Budget, the Department of Agriculture and Rural Development was aware of the difficulties in achieving the figure that it had put on that piece of land because of its lack of involvement in the Belfast metropolitan area plan consultation and submission stages and, ultimately, because it had not asked for any official or unofficial rezoning of that land.
- 444. I have a difficulty in seeing that the Department made DFP aware of all the details before the decision was made, because, if that is the case, there is evidence of a willingness to mislead.
  I am being careful with my words, because I want to be sure that all the facts are on the table this afternoon.

I want to be sure that DFP was made aware, right from the outset, of the difficulties in achieving the figure that was put on the piece of land so that, ultimately, it could set spend in that Department. We dealt with it recently in the Excess Votes issue, and, at this stage, I will not go into the nutrient scheme that it funded at this stage. However, I want to tease out the detail and the choreography of events.

445. Our correspondence gives some indication that DFP was not aware at the time of your concerns. You did not feed directly to DFP that there was a difficulty in achieving the magical £200 million valuation. In the letter, the Department said that it would not exceed the requirement that the Department needed to deliver the programme. Therefore, ultimately, it would be looking for some moneys back. Therefore, the £200 million was nowhere near what it required for the programme. That is stated at paragraph 11 in a letter dated 1 June 2007 directly from your Department. It states:

> "At this stage, we would want to keep open some of the issues raised by this solution".

#### 446. The letter also states:

"In certain circumstances, therefore the anticipated receipt would greatly exceed the requirements of the Department".

- 447. Therefore, you had already made that judgement and were spinning that story to DFP, which, in turn, was presenting your case to allow you to get the additional money. I want to know exactly when you let DFP know. I do not want to go any further at this stage, but I want a straight answer on that, Mr Lavery.
- 448. **Mr Lavery**: We corresponded with DFP on two occasions to make it aware of what was happening. First, my letter of 2 January 2008 stated that there were emerging difficulties and that there appeared to be no opportunity for us to lodge objections in the draft Belfast metropolitan area plan.
- 449. Secondly, in the June monitoring round after the Budget was agreed, DFP asked

all Departments for their views on the realisation of the capital receipts that were against them. We indicated at that time that we did not believe that we would be able to bring in a capital receipt of £200 million. The fact that it was a year 3 issue meant that that was left standing against the Department until year 3. However, that is when DFP was definitively aware of the difficulty.

- 450. Mr Frew: I hear what you say about making DFP aware on 2 January 2008. In the letter, you went into BMAP in some detail. However, at no time in that letter do you make DFP aware of the lowering in the valuation from £200 million to £10 million, a valuation that you received from Land and Property Services on 1 August 2007. From what I hear — I could be wrong — DFP did not know that information at that point. Given that, in the letter, you went into so much detail on the BMAP issue and the fact that there would be no opportunity to seek to have the property rezoned under the draft BMAP, do you not think that it would have been better to have raised with DFP the fact that the valuation had gone down from £200 million to £10 million? That valuation was not pie in the sky but came from Land and Property Services. Why was that not raised with DFP so that it could make a difference to the Budget?
- 451. In this Committee on 15 June 2011, I asked Mr Pengelly:

"Are there any other areas throughout the Budget process from that day to now where that has occurred again?"

452. In his answer, he said:

"The Department immediately commissioned a formal valuation from LPS. Due to the complexity of the issue and the unique nature of the site, that process was not concluded until, I think, March 2008. In the meantime, the Budget process was concluded, and, for the necessity of the Budget process, our indicative figure was used."

453. That indicative figure was £200 million, so there was opportunity from 1 August 2007 until the Budget process began to tell DFP, "The valuation is not £200 million, guys; it is £10 million. Land and Property Services is telling us that."

- 454. The fact that that information was not forthcoming had a major effect on the Budget process. Will you respond to that?
- 455. Mr Lavery: Certainly. First, I will explain the difference between the £200 million figure and the £10 million figure. The £200 million figure was a very informal estimate of what the land might command if every single acre of it received residential planning approval. The hope value figure was a figure for 82 acres of land with none of it having residential planning approval, only the possibility that the four existing dwellings could be rolled over into residential dwellings. That is the difference between the £200 million and the £10 million.
- 456. The issue then was, if planning approval could be secured, the valuation would be somewhere above £10 million. We were determined to pursue that.
- 457. **Mr Frew**: There was no chance of pursuing that because the Belfast metropolitan area plan was closed. There was no chance of you ever being able to build on that land unless BMAP was reopened. Even today, it has not been reopened. Surely you could have had an effect on the Budget process that year.
- 458. We went through this issue in the previous evidence session, but the fact that you could have influenced the Budget process by letting DFP know that, instead of £200 million, you were looking at £10 million with the hope of getting more if the area plan opened up and you were able to influence it. Surely it would have been better to tell DFP that so that it could place that information in the budgetary review process. In that way, we would have been looking at a much more realistic budget.
- 459. It is difficult to recall things after such a period of time. However, on the day that you gave evidence to the Committee for Agriculture and Rural Development and the papers were presented, did any Committee members question the

fact that the letter of 1 August 2007 mentioned £10 million? You referred to the scrutiny role of the Chairperson. Obviously, the figure of £200 million would have been in members' minds. Did no one raise the issue of the £10 million, which is down on paper from Land and Property Services?

- 460. **Mr Lavery**: I do not recall it becoming a subject of discussion, but we will check that.
- 461. Hope value is selling land without planning approval. The hope lies with the developer, not with us. With respect, the situation would not have been, as you described, us saying to DFP that the land was worth £10 million with the hope of fetching more. We would have been saying that we proposed to dispose of this land now on the basis that it did not have planning approval and leave it to the private sector to determine whether it could get planning approval. That was never part of our processing game plan.
- 462. In our mind, the real obstacle to achieving a significant capital receipt was the fact that we were being advised that the draft Belfast metropolitan area plan would not be open to objections, which was a potential difficulty. We were still being advised that it could be concluded in 2008, after which we would be able to object. Our view was that, although we could lodge an objection, it could take some time for that to feed through. Therefore, we were alerting people to a potential difficulty but not moving from the capital receipt that was against the Department.
- 463. What would have happened had we changed our valuation? It would not have impacted on year 1 of the Budget or, therefore, on the funding for the farm nutrient management scheme, which was all in year 1. It would have meant that, in year 3 of the Budget, there would no longer have been a £200 million capital receipt and that the Executive would have had to depress year 3 and reject some further capital expenditure proposals. That would have removed an ambition from the Budget.

- 464. What actually happened was that, in 2010-11, a number of major capital expenditure projects did not materialise. Therefore, the system righted itself without any further intervention. If we had brought in the receipt, and those projects had not materialised, we would have had £200 million of capital to surrender. To that extent, the system righted itself.
- 465. **Mr Frew**: I hear what you are saying, but on 2 January 2008, you sent a letter that went into great detail about BMAP and the Planning Service. The last two sentences read:

"I will of course keep you updated as this project develops. I am copying to Richard Pengelly who may wish to consider implications for the final Budget."

However, that letter did not state the differential in monetary terms. I apologise, but I have not yet got my head around why you did not think that it would be useful to alert DFP and the people who would be processing and shaping the Budget, or why you did not think that it would be important to provide them with the information that the figure was not £200 million but £10 million? That would have to have been factored into the Budget. You mentioned that you needed to consider the Planning Service and the fact that there would be no opportunity to seek rezoning, yet you make light of the money aspect.

466. DFP has previously stated that the £200 million figure:

*"is an important and in the final analysis ... persuasive point."* 

- 467. If the figure was then £10 million, would that not have had a major bearing? It was a persuasive point, but the £200 million had shrunk to £10 million, so there should have been a complete reevaluation, not only of what DARD was asking of DFP and the Executive but also of the whole Budget process.
- 468. You said that the situation squared or righted itself naturally, but that would not have been known at that point.

It seems to me that it was simply by chance or by luck that projects did not go ahead as hoped. I still cannot get my head around why you did not feel that it was important to tell DFP about the £10 million valuation in the letter dated 1 August 2007.

- 469. **Mr Lavery**: The letter dated 1 August 2007, which responded to specific questions from us, said that if we had put that land on the market that same day with vacant possession and without planning approval, in the view of Land and Property Services, it would fetch £10 million. We did not have vacant possession, and we were not about to do that. That valuation was not relevant to the Budget process. The issue for the Budget process was a capital receipt of £200 million in year 3, and it was the judgement of DFP and the Executive around that issue that had to be worked through. The £10 million valuation was not going to be relevant because the land was not vacant. We could not put it on the market on 1 August or in the subsequent six months.
- 470. Mr Frew: At our previous evidence session on 15 June, we were told that you had to make a decision and get a valuation quickly, and that is how you came across the figure of £200 million. You told us about the multiplication sum done with one acre that produced the figure of £200 million. The question has been asked as to whether you had time to get a proper valuation, and now DFP tells us that the site was not evaluated properly and finally until 18 March 2008, which was after the Budget process.
- 471. Therefore, there was a period of time between you making the £200 million judgement and the receipt of the letter from Land and Property Services — it should know — which stated in black and white that the site was worth £10 million. You should have raised that with DFP and told officials that the last time that you had looked at the issue, you were under time pressure, had to sort it and put in a value of £200 million but that you had now received a letter from Land and Property Services that highlights the fact that the land is worth

only £10 million. That should have been factored in.

- 472. For the life of me, I do not see how you did not feel that that was important information. It would have made a difference to the judgement calls made by DFP in the Budget process, and everyone else around the Executive table would have found it useful. I cannot understand why that £10 million valuation was not passed on to DFP.
- 473. **The Chairperson**: Gerry, in your letter to which Paul referred, it states:

"I will of course keep you updated as this project develops. I am copying to Richard Pengelly who may wish to consider implications for the final Budget."

What implications were you thinking of when you wrote that letter?

- 474. **Mr Lavery**: The implication was that the receipt might not come in. I can understand why members believe that the £10 million valuation should have been disclosed, and I can see a strong argument for doing so. However, the issue that I raised was the increasing possibility that a receipt would not come in. It was not that the site might not be worth £200 million, but that we might not achieve a receipt.
- 475. **The Chairperson**: You were trying to give DFP a heads-up. It is strange that you did not give DFP that information when you had it, you did not show it the letter from LPS, and you did not take it to the Committee until two days after the Executive had made their decision.
- 476. **Mr Byrne**: We are all looking at the same period in the second half of 2007 and in early 2008. Obviously, in the second half of 2007, it was common knowledge in DARD that the valuation of the land was, in reality, about £10 million for agricultural purposes. That valuation was confirmed in the letter of 1 August 2007 from LPS to Carol Hetherington, which stated categorically that the land was within the green belt. If that was the case, why was a planning consultant hired at all, or was that done to provide a fig leaf to cover what had

been a gross exaggeration of the land's notional value?

- 477. **Mr Lavery**: With respect, the land was not worth £10 million for agricultural purposes, and had it been valued as agricultural land, it might have been worth £1 million. As a research station with four houses and in its current condition, the land was valued at between £2 million and £6 million, which was subsequently borne out in March 2008. It was never worth £10 million for agricultural purposes. The valuation of £10 million was based on the site being placed on the open market with vacant possession, and with the possibility of a developer taking on the job of getting a change of use for residential or other development.
- 478. On 2 January 2008, I was not disclosing the letter of 1 August 2007, which was some time in the past. Rather, I disclosed the advice of John Cummins. the divisional planning manager, of 18 December 2007. In that correspondence, he stated that the land was in the green belt, was covered by BMAP and that there were difficulties in the path of getting development approval for it. That is what I was disclosing. I was saying that difficulties were emerging. As I said, the considered advice of 18 December 2007 stated, for instance, that the Planning Service would take account of BMAP. It did not state that planning approval would never be given; it just said that it would take account. It is a more nuanced position, which I reflected to the Department of Finance and Personnel by saying that there were difficulties that might mean that we would not bring in a capital receipt.
- 479. The position was uncertain, and DFP took that into account moving forward. The Budget included a £200 million capital receipt against the Department. I had to deal with that position and did so by accelerating our work on the estate management plan. We shifted to try to get all our assets on a comprehensive database and to create an estate management strategy, the draft of which is out for consultation until 7 November 2011. That strategy will allow us to do

our level best to bring in capital receipts that will arise from making our estate more efficient.

- 480. **Mr Byrne**: Do you accept the fact that the £10 million was also an exaggerated figure because the land was being valued beyond agricultural use? How much did the planning consultants cost?
- 481. **Mr Lavery**: In correspondence dated 4 July, we disclosed a figure of some £2,600. It was not a vast sum.
- 482. **Mr Byrne**: When DARD provided the Committee with a copy of the LPS letter to the Department of 6 March 2008, the three appendices relating to the planning position were not attached. Why not? Were they deliberately withheld?
- 483. **Mr Lavery**: Never. Since they strengthen my hand, I wish that they had been attached in the first instance. We were happy to attach them when the Committee Clerk brought the omission to our attention.
- 484. **Mr Copeland**: I will rewind a bit, Gerry. You repeatedly referred to the hope valuation. I would go so far as to suggest that, in some respects, hope and desperation are close cousins. Was the possible option of selling the land subject to planning permission being achieved considered? That took place in substantial tracts in greater Belfast.
- 485. You also said that the site, as it was, was not in vacant possession, which would have precluded its sale at the £10 million valuation. Do you know of any restrictive covenants that are in place on that land? I think that I am right in saying that there is more than one piece of head title. In other words, there might have been a number of complications. I think that the title is resident in two head rents. I am really trying to understand how serious the Department was in the operation on which it had embarked. Was it, perhaps, an exercise in dotting the i's and crossing the t's? Do you have any knowledge of the money that the Department eventually received? In the absence of a receipt, you got what, in some respects, might be called bail-out

money. Where did that come from, and what other Department suffered as a consequence?

- 486. **Mr Lavery**: I have not seen any particular consideration of land being sold subject to planning approval being achieved. I am not aware that we followed through on that idea. The issue of whether we were serious is linked to that, which is why I had to pursue the issues to a conclusion and had to take advice transparently from the private sector.
- 487. If that had been a viable option, I would have expected our planning consultant to present us with that option in order to achieve greater value. I do not think that that is in there, and I assume, therefore, that our professional advice was deficient or that he made a judgement that by 14 February 2008, when he submitted his advice, that was not an option.
- 488. **Mr Copeland**: You raised the issue of the nature of the planning consultant. You said "our" planning consultant. Is that the planning consultant from the private sector?
- 489. **Mr Lavery**: Yes, the planning consultant whom we employed.
- 490. Mr Copeland: How was he selected?
- 491. **Mr Lavery**: We engaged the Central Procurement Directorate. It guided us through the tendering process for the use of external consultants. It was decided that the estimated contract value of about £2,500 was so low that a secondary tendering exercise would not be required. The commission was awarded to the most economically advantageous tenderer. That turned out to be, as the Committee knows, DTZ, the Paul Hogarth company. We followed best procurement advice.
- 492. You asked about restrictive covenants. I have no particular knowledge of them, but I referred earlier to the fact that at that time we were researching the leases and the issue of the tenants on the land. It was a sensitive issue because people have homes there, and we must respect that.

- 493. With regard to the money that we received and the impact on other Departments, the fact remains that ours was an inescapable piece of expenditure with an overwhelmingly positive return to the taxpayer. We avoided infraction; we safeguarded production; and we safeguarded the meat-processing industry and the throughput of livestock. That was always going to be funded. However, in June 2007, there was no process to pre-allocate funding in 2008-09.
- 494. It was in that context that the commitment to use our best endeavours to bring in a capital receipt was pivotal in getting pre-approval. It was not pivotal in justifying the scheme. It was pivotal in getting pre-approval. The pivot was that we were seen to be putting our best foot forward, putting something into the deal ourselves in addition to the reallocation that was referred to of £7.5 million in 2007-08, when we did go round other areas of the Department and squeeze them dry.
- 495. **Mr Copeland**: I realise that. I read the post-project evaluation and, with the Chairperson's permission, will raise one or two questions about that later.
- 496. **Ms J McCann**: You said that the system righted itself and then went on to say that a number of capital build projects did not happen. Were those capital build projects in your Department?
- 497. **Mr Lavery**: No, they were not. They were not under our control.
- 498. **Ms J McCann**: Have you any idea what capital build projects did not happen because the system righted itself?
- 499. **Mr Lavery**: I think that we previously mentioned the Royal Exchange project.
- 500. Mr Michael Brennan (Department of Finance and Personnel): The most obvious one that comes to mind for 2010-11 is the Department of the Environment's (DOE) strategic waste infrastructure fund, which had £170 million set against it. However, there was always a risk, so that was factored into the construction of the Budget position. However, that project did not materialise.

- 501. Ms J McCann: I will go back to Mr Copeland's question. If the system righted itself, it must have balanced out. Therefore, there must have been implications for other Departments. If you had a £200 million capital receipt to go to whomever with, you would have a better bartering position than you would have had if you had a £10 million capital receipt. What other Departments were affected by the receipt of £79 million for the farm nutrient management scheme? What were the implications for other Departments and projects?
- 502. Mr Brennan: Perhaps I can shed some further light on what happened in 2010 as a consequence of the £200 million receipt not materialising. The Executive constructed a capital position in that year in which they allocated an extra £200 million in capital spend to all other Departments, so £200 million additional spend happened not only in DARD but elsewhere. During 2010-11, Departments could not spend the capital that they had, and significant reduced requirements came in from them. Members will remember that, in February, at the spring Supplementary Estimates stage, the Executive made frantic efforts to try to spend as much money as possible on capital expenditure because the Treasury announced that it had abolished the end-year flexibility (EYF) system. Therefore, any capital that was left over at the end of 2010-11 will have gone automatically to the Treasury. The Executive and the Assembly were left with £6 million of capital that could not be spent, which went back to the Treasury. In effect, we had £200 million of extra spend because of the Crossnacreevy receipt. If Crossnacreevy had not happened, and we went on the original budget position for 2010-11, a significantly greater amount of capital would have had to have been surrendered back to the Treasury.
- 503. **Ms J McCann**: That is not the point that I am making. We are not saying that the scheme was not a good one, although we have criticisms of its outworkings, but £79 million was given to the

Department as a result of bartering on the basis that Crossnacreevy was worth  $\pounds 200$  million, not  $\pounds 10$  million. If that  $\pounds 79$  million had not been given to the Department, where would it have gone? What other Departments were affected by that? You said that the situation righted itself, so it must have balanced itself out.

- 504. Mr Brennan: We do not have a counterfactual position on the £79 million that was allocated in 2008-09, so we do not know what would have happened if it had not been given to the Department of Agriculture and Rural Development. When DARD submitted a bid for £79 million in 2008-09 as part of the monitoring round process, the numbers to justify that bid in an economic appraisal will have been quite stark. For example, the Executive and the Assembly would have avoided £50 million a year infraction costs and the £40 million costs to the agriculture and construction sectors. When the Executive were constructing where that £79 million would go. I suspect that the DARD bid would have ranked pretty highly.
- 505. **Ms J McCann**: Michael, what I am asking is: what other Departments made bids in that monitoring round that were not granted?
- 506. **The Chairperson**: Are you able to share that information?
- 507. **Mr Brennan**: We can look back at the bids that were submitted in 2008-09 as part of the monitoring rounds. That will give you a feel for the unsuccessful bids.
- 508. **Mr Girvan**: Earlier, a comment was made that there was a worry that the capital might not be realised in the three-year period. The issue is not whether the money was realised because, if the asset was worth the money, it would still be carried forward on a balance. The issue is whether the asset was worth the money. Whether it was realised or not, it had a value that could have been put down and used as a lever to draw money. The point is not whether the asset was sold but that we were told that it was worth a certain amount

of money, which it was not worth. I caution against using the argument that the Department was unable to sell it, because many banks have lent money to people who own property that they have been unable to sell, and they have done so on a commercial basis. As a Government, we would have had a similar approach. We would have drawn the money towards it and said that it was still worth that amount, irrespective of whether there was a write-down in the property market.

- 509. Even if we say that there was a 20% reduction, that brings us down to £160 million. Whatever the figure might be, it would have been worth an awful lot more than what was being said, and it would still be worth an awful lot more than the actual valuation. However, it comes back to the point being made about infraction costs. Perhaps we will want to deal with that issue separately or perhaps we will want to conclude this line of questioning on Crossnacreevy before we go on to the nutrients scheme issue, but I prefer to put a marker down about the fact that I would not have been worried if what I had was worth the money that was there. It was not up to me to make sure that it was sold. Put it on the market and let the market decide at that stage, but that was not going to be an issue.
- 510. **Mr Frew**: I go back to the letter of 2 January 2008, in which you, Mr Lavery, as senior finance director, wrote to DFP's Supply officer flagging up planning limitations at the Crossnacreevy site. You specifically noted that the site "lies in the green belt" with

"no opportunity to seek to have the property rezoned under the draft BMAP in the short term."

We touched on this before, but was that DARD's first notification to DFP that the BMAP issue was closed?

- 511. Mr Lavery: I believe that it was.
- 512. **Mr Frew**: OK. As I said, you said in that letter that there was

"no opportunity to seek to have the property rezoned under the draft BMAP in the short term."

513. What is meant by "short term"? The e-mail from Al Adair in DOE states:

"The review of BMAP might be quicker than 3-4 years but only if Planning Service can secure a more efficient process by then".

- 514. Therefore, what do you mean by "short term"? Is that the period that you mean or is it a different period? What was in your mind when you used the words "short term"?
- 515. **Mr Lavery:** By referring to the short term, I meant that we were being advised that the draft BMAP process was considering objections lodged prior to 2005 and that the draft BMAP was awaiting adoption. We understood that it could be adopted in 2008. That was what we meant by "short term". I expected that, by the second half of 2008, we might have been in a position to put in an objection and to test the designation. However, I was also conscious of the fact that if, in 2008, the Planning Service was still considering objections lodged prior to 2005, I could not expect that any objection that we lodged would get a quick return of serve. Therefore, I started to say that it could all be a much longer, slower process than we had hoped for and that we would not realise a capital receipt in the Budget period. However, it was still a possibility, reflecting the advice of 18 December 2007.
- 516. **Mr Frew**: Therefore, is it fair to say that the short term was certainly within the new Budget period?
- 517. **Mr Lavery**: Yes, that was my expectation.
- 518. **Mr Frew**: It did not mean before the Budget period or before the Budget was finalised?
- 519. **Mr Lavery**: No, I did not expect that we would get any further signal.
- 520. **Mr Frew**: The e-mail was sent from Al Adair on 13 December 2007, and you wrote to DFP on 2 January 2008. I know that there is a significant holiday

between those dates, but why did it take three weeks for you to tell DFP about the lack of opportunity?

- 521. **Mr Lavery**: I hesitate to say it, but, first, I think that the correspondence from Al Adair was simply commenting on a draft note that John Smith had done of a meeting. The more considered advice was the 18 December advice. There are two considerations. The first is that that every year around 25 December there is an important event that tends to distract even senior civil servants.
- 522. However, secondly, we were in the middle of a Budget. It is as simple as that. It was the first Executive Budget, and it was a very difficult one. We were developing efficiency delivery plans, which required us to identify areas in which we could improve performance. Unusually, the Department of Finance and Personnel, under the direction of the then Minister of Finance and Personnel, had indicated to Departments that they could expect broad increases but had not actually met specific bids. Departments had to have an internal process to prioritise their bids and determine where to allocate them. Our senior management group met at least once a week to do exactly that and to offer the Minister our best advice. Therefore, all of that was going on at the same time. It is not an excuse or a special pleading, but that played into the period that it took for us to adjust that.
- 523. Furthermore, we were working to try to realise a capital receipt in 2010-11, and, therefore, a matter of days did not, at that point, appear as important as it perhaps appears to the Committee when it looks back at the Budget process.
- 524. **Mr Frew**: Yes, I understand that. We are asking questions now in hindsight, and it is sometimes very difficult to put the position in context with the day-to-day pressures at a certain time. I will turn to the minutes of evidence from the Committee's hearing on 15 June 2011. In response to a question from me on the day, you stated: "A proper valuation, for a purpose other than we held the land, was going to take time,

and so it proved. We only got the final, proper valuation from Land and Property Services in March 2008."

- Apart from the actual valuation, what 525. was the difference in format between the information that you received in March 2008 and the information that you received on 1 August 2007? I ask that because, at the previous evidence session, you were able to tell us very quickly that, after the pressurised time placed on you to get a first valuation. you then submitted the £200 million valuation. You went on to tell us about the pressures that guickly materialised with the Planning Service, and I recall that you went into detail in that evidence session. However, at no time during that session did you mention that you had received other information about the £10 million valuation on 1 August 2007.
- 526. I will ask a serious question that, I feel, has to be asked and answered: could your response to the Committee on that day in June be interpreted as grossly misleading or, at least, a case of withholding information from us? You did not mention the £10 million valuation that you received from LPS on 1 August 2007 at all.
- 527. **Mr Lavery**: Let us be clear about one thing: we are all on the same side in this room, and we are all looking for improvement in managing public money. I welcome an adversarial challenge as much as anyone, and it is frequently the best way to find out what exactly has gone on.
- 528. As I said, we are on the same side. There is no question of my misleading the Committee or being less than comprehensive in evidence. The valuation of 1 August 2007 was not a major factor in our decision-taking. That much is apparent from the evidence that I have given today. The Committee may take the view that it should have been, but it was not. Therefore, it does not have the same resonance in my memory as the advice to go and employ a planning consultant does. That is the point that I made to the Committee. I referred very openly to the fact that

I had advice from Land and Property Services and that that advice was in writing from August 2007, so I directed the Committee to the correspondence.

- 529. The difference between that advice and the advice in March 2008 is that the two valuations were on very different bases. One is a valuation without any attempt to gain planning approval. The other is a valuation with the knowledge that any attempt to gain planning approval was likely to be defeated by the BMAP process. The advice in March 2008 had the benefit of the Planning Service correspondence, from both Mr Adair and the divisional planning officer. It had the benefit of advice from a private sector planning consultant and of being informed by Land and Property Services' own internal process. It set out the situation much more fully and included a view on what was happening in the broader context of the residential housing market, which was very volatile at that stage.
- 530. That is the difference between the two pieces of advice. I regarded the advice in March 2008 as definitive and effectively putting beyond the CSR period the ability to deliver the capital receipt that we wanted to deliver.
- 531. **Mr Frew**: What was the period between your receiving the information from Land and Property Services in March 2008 and DFP getting it?
- 532. **Mr Lavery**: We would have to confirm that. What I can say is that DFP was putting in place the new Budget at that stage. In preparation for the June monitoring round, it was asking us and all Departments for a return that asked the likelihood that we would bring in our capital receipt. We replied in that context. Therefore, DFP had that information fairly quickly in the new financial year.
- 533. **Mr Frew**: You provided that information through the yearly mechanisms or structures?
- 534. **Mr Lavery**: Yes, and in the June monitoring return, we disclosed our correspondence with DFP to the

Committee for Agriculture and Rural Development.

- 535. **Mr Frew**: Was a similar mechanism around in 1 August 2007 to enable you to implant the £10 million valuation in the system?
- 536. **Mr Lavery**: No, that would have to have been done by a specific letter. As I said, it did not seem to me relevant. However, if the £10 million valuation was relevant to anything, it was relevant to a capital receipt that might appear in 2010-11, which is obviously outside any 2006-7 monitoring round.
- 537. **Mr Byrne**: To go back to that letter from LPS in August 2007, how do you regard LPS in relation to the valuations that it makes? Do you have faith in LPS?
- 538. **Mr Lavery**: I certainly have faith in LPS, if I may say so. As a colleague, I say that we rely on LPS.
- 539. **Mr Byrne**: Therefore, would you have regarded the £10 million figure as the maximum possible valuation and were alarm bells now ringing?
- 540. **Mr Lavery**: No. I regarded £10 million as a valuation that reflected the constraints and assumptions set out in the letter.
- 541. Mr S Anderson: I do not know where to start. It is mind-boggling, to say the least. I go back to the 1 August letter and advice from LPS: in the previous evidence session, you stated that DARD's impression was that negotiations could take place regarding the rezoning of Crossnacreevy. It was green belt land from the outset, as has been said here today. When we read part of the letter, we learn that you, Mr Lavery, said that you were quite cautious about approaching the Planning Service in case you were seen to be swaying one way or another about green belt land. Does your caution not tell us that there was not much of a chance from the very beginning of rezoning that land?
- 542. **Mr Lavery**: May I give two facts? First, on 1 June 2007, I did not know that that was green belt land. Perhaps I should have known, but I did not. That is a

simple fact. Secondly, as regards being cautious with the Planning Service. the reason for my caution was first that, as one Department approaching colleagues in another, we would be seen as wielding undue influence. That is precisely the point that Mr Dallat made — we would be seen as attempting to get special treatment of our concerns about planning approval. As I said, early in October, I spoke to the divisional planning office and was reassured on two points. One was that the BMAP process had a long way to run, while the other was that it would be quite normal for a Department seeking to dispose of land to approach the divisional planning office for advice, to supply that office with accurate maps and to seek to know what constraints, and so on, applied to the asset. On foot of that reassurance, we wrote to the divisional planning office and sought its advice, which came on 18 December 2007. To that extent, my caution was not about the possibility of rezoning — a subject about which I know very little, and much less than Committee members who have been councillors.

- 543. **Mr S Anderson**: You admit that you did not know that the land was green belt land. Was not finding that out a failing on your part?
- 544. **Mr Lavery**: It would have been better if I had known more about the asset at the point where we put it in play, yes.
- 545. **Mr S Anderson**: I am sure that you agree that, at the time, there was a lot of interest in land from developers, speculators, call them what you will. What you tried to achieve at Crossnacreevy played into that game. Anyone who worked in such circles would agree with me that you should have known whether the site was green belt.
- 546. **Mr Lavery**: To go back to my earlier point, faced with my own ignorance, I was determined that, going forward, I would take the best possible advice and secure the best possible value for the public from the disposal of the asset. I knew that I did not know enough about it. Therefore, I asked people to

work on finding out, to employ planning consultants and to achieve the best possible value.

- 547. **Mr S Anderson**: Based on LPS advice, DARD's impression was that negotiation could take place on the rezoning. What gave you that impression?
- 548. Mr Lavery: We simply —
- 549. **Mr S Anderson**: Did LPS tell you that that was the way to go? Did it say that that was perhaps something that you should do?
- 550. **Mr Lavery**: With respect, I do not think that Land and Property Services commented on planning matters.
- 551. **Mr S Anderson**: However, you are saying that, from the LPS correspondence, you got that impression.
- 552. **Mr Lavery**: The advice to employ a planning consultant implied that, yes, there was work to be done, but there was no direct assertion that the land should be rezoned, and I have not said that there was.
- 553. **Mr S Anderson**: Mr Lavery, do you not think that that was taking it a bit far? It was one thing to employ a planning consultant to assess the potential for the land but another to get to the ultimate goal of taking the land out of the green belt to allow it to be much more financially beneficial. Are you saying that that was the impression that you were getting? You used the word "impression".
- 554. **Mr Lavery**: There was work that could be done to realise best value, and I have put that in the context that, at that time, there were a number of public sector property deals in which planning approval was an issue. There was the QinetiQ case in England, as well as the issue of PFI surplus land in Northern Ireland. Therefore, it was prudent to employ a planning consultant rather than proceed on our own knowledge.
- 555. **Mr S Anderson**: Planning consultants can work only within the plan itself. I would have seen whether the land could have been encompassed in BMAP.

Given that BMAP had been closed since February 2005, how could you reach that impression from that particular correspondence?

- 556. **Mr Lavery**: At that point, I did not have that last piece of knowledge that BMAP was closed.
- 557. **Mr S Anderson**: Did no one in your Department have it?
- 558. **Mr Lavery**: We do not dispose of land inside the Belfast metropolitan area often, or possibly at all. It was not part of our general knowledge.
- 559. **Mr S Anderson**: You did not have that knowledge to create that impression?
- 560. Mr Lavery: No.
- 561. **Mr S Anderson**: In hindsight, will you now accept that the valuation of £10 million should have been disclosed to the Department of Finance and Personnel?
- 562. **Mr Lavery**: That would have saved me the embarrassment of the past hour and a half.
- 563. **Mr Dallat**: You are not as embarrassed as we are.
- 564. **Mr S Anderson**: There is more to come. [Laughter.]
- 565. **Mr Lavery**: Thank you for that reassurance. I am not able to say that doing that would have led to a different outcome for the Budget process or the Department.
- 566. **Mr S Anderson**: It may not have led to a different outcome for the Budget, but, in hindsight, should you have informed DFP?
- 567. **Mr Lavery**: On the one hand, if such a disclosure had been made, it would have given the Committee reassurance. On the other hand, I run the risk of drawing DFP into every step of the process. The importance of that is that we have our job to do and DFP has its job to do. When an issue is remitted to our Department, DFP properly expects us to do our job and not to run back to it and cover our backs by involving it

every step of the way. It would send out a bad message if we were to end up in the position of seeking to disclose everything to DFP. I am being totally frank.

- 568. **Mr S Anderson**: In hindsight, should you have disclosed the £10 million valuation to DFP in this case?
- 569. **Mr Lavery**: Given the dialogue that we have had, I think it would have been better to have disclosed that valuation. I do not attempt to say whether it would have changed the process, and I do have concerns that if I were to apply that approach widely, I would undermine not just the relationship between the two Departments but also the way in which we look to civil servants to take responsibility. It is as simple as that. When I ask a senior civil servant to take on a job, I do not expect him to bring every decision back to me. I want him to take responsibility and do it, and DFP has the same view that it wants DARD to take responsibility. I suspect that the Committee wants us to take responsibility as well.
- 570. **Mr S Anderson**: Even when there is a variance of £190 million.
- 571. **Mr Lavery**: I do not accept that. The £200 million figure is based on the idea that there are 82 acres with residential approval. The hope value is based on putting the land on the market with no approval and saying to speculators, "You take the risk, and, on that basis, what would you pay?" The answer in LPS's view was £10 million. A real risk then would be that a speculator could, by whatever means, secure development approval, and the public would, therefore, subsequently lose out.
- 572. **Mr Dallat**: Obviously, when you were sizing up how much money you would get for the site, you relied on the report from DTZ that suggested that there was a requirement for land for new cemeteries in the Belfast metropolitan area, but no data was provided to confirm the requirements. To get to the dead centre of this, can you tell us, please, where that idea came from? Who came up with that?

- 573. Mr Lavery: Happily, not us. There is a reference in that report to a demand for land for a cemetery or the extension of a cemetery. People will be aware that our land is near Roselawn, and it has been a subject of widespread comment that the amount of land at Roselawn is now limited and that Belfast City Council may need to acquire additional land. No evidence was provided to us of demand for a cemetery. Subsequently, I think in 2010, some approach was made to the Department about whether we could make land available in exchange for land that would be sold to Belfast City Council. However, there was no advantage to the Department in doing that, and the idea was not pursued. I do not think that it was ever a serious proposition.
- 574. **Mr Dallat**: You are not aware of any individual in private or public life who floated that idea.
- 575. **Mr Lavery**: Not at that time. There was some talk in 2010 about a landowner selling land but only if that landowner could acquire land from us. In that chain, there was some proposition, but it was not going to be of benefit to us.
- 576. **Mr Dallat**: That has unearthed that.
- 577. **The Chairperson**: Three Committee members want to ask supplementary questions. I will take Alex first.
- 578. **Mr Easton**: Mine is not a supplementary. It is my question.
- 579. **The Chairperson**: I will call you at the end, then. I call Paul and then Michael. I will let both of you ask your questions before they are answered.
- 580. **Mr Frew**: You said that you felt that you did not need to employ the mind of DFP for every decision. You felt that your Department had to take decisions itself. In the previous evidence session, I raised the point that it was DFP's view that the figure of £200 million was:

*"important and in the final analysis the persuasive point".* 

I must keep harping back to that. You answered:

"That quotation in the report is from a letter from the DFP permanent secretary to my then accounting officer. As you said, it states that the valuation of  $\pounds$ 200 million was, in the final analysis, the persuasive point. However, in the letter, the requirement on my Department was that, in the comprehensive spending review (CSR) period, we would:

'seek to maximise the capital receipt arising from the Crossnacreevy site'."

Therefore, you would have been aware of DFP's view. When was that letter sent from the permanent secretary of DFP to your then accounting officer? I take it that it was before 1 August 2007.

- 581. **Mr Lavery**: It was sent on 12 June 2007.
- 582. **Mr Frew**: Therefore, you would have known that that valuation was the most important and persuasive point. That should have triggered you to take the view that, if anything changed, you would need to notify DFP. I take your point that you did not want to be ringing DFP every day to provide officials with different information that they did not need, but surely they needed to know that the valuation of £10 million was floating about.
- 583. Mr Copeland: I want to hark back to something that Mr Dallat said a few moments ago. On 15 September 2011, the Chair of the Committee wrote to the accounting officer in the Department of Finance and Personnel, and, with uncharacteristic rapidity, he received an answer the following Wednesday, 21 September. That response included some information that I presume was resident in your Department with regard to what Mr Dallat said about the cemetery. The last paragraph in the response appears to indicate that Belfast City Council had seemingly approached DARD out of the blue to discuss the possible use of the site for a cemetery. However, it then appears that an approach had been received by the council from a private landowner and that that private landowner professed to have knowledge of the council's requirements for a cemetery and the requirements of your Department to dispose of the Crossnacreevy site. According to that response, that

individual was in a position to put forward the view that DARD might be willing to become involved in such a transaction. Have you any idea how such a state of affairs could have arisen?

- 584. **Mr Lavery**: By mid-2007, it was generally known that we were minded to dispose of the land at Crossnacreevy, which gave rise to a number of concerns. We received a considerable amount of correspondence from our neighbours at Crossnacreevy, who were concerned that they might wake up to find an 80-acre housing development beside them.
- 585. Mr Copeland: Or a cemetery.
- 586. **Mr Lavery**: We also received a considerable amount of correspondence from our tenants, and we tried to treat them sensitively. What you referred to was another piece of correspondence, but it was not something that we actively pursued.
- 587. **Mr Copeland**: What would persuade a private individual that a Department might be willing to enter into such negotiations? Is that normal? Has it happened before?
- 588. **Mr Lavery**: I assure you that we gave no indication —
- 589. **Mr Copeland**: I am not saying that you did. Has it happened in the past?
- 590. **Mr Lavery**: I responded to newspaper reports that we were minded to dispose of the Crossnacreevy site. I cannot remember the details, but if that individual's land was adjacent to Roselawn cemetery and fulfilled the requirements of drainage, and so on, for a cemetery —
- 591. **Mr Copeland**: How far is the Crossnacreevy site from Roselawn cemetery?
- 592. **Mr Lavery**: The site is at least a mile from Roselawn cemetery. Our land is not adjacent to the cemetery, but that is not to say that people with land between those two parcels of land would not be willing to dispose of that land, if they could secure agricultural land in

exchange or as part of the overall chain. However, we have never gone into that.

- 593. **Mr Copeland**: Your view is that there would have been sufficient knowledge in the public domain to lead someone to the level of knowledge that they apparently had.
- 594. **Mr Lavery**: I think that the word in the letter is "speculatively". It was not something that we encouraged.
- 595. Mr Frew: I am trying to tease out the timeline. You are quite right about not wanting to go to DFP with every issue. However, you would have had sight of the wording in the letter and known at that point how important the issue of the £200 million was for DFP. Surely there should at least have been a line of communication if there was any tolerance or change in that £200 million, no matter how small or large. The £200 million figure was, if you like, on the hoof. You were going through a proper final re-evaluation that came in the winter of the following year. Surely, in the meantime, you should have kept DFP involved. I ask that again after the point that was raised by Mr Anderson. If you had seen fit to give DFP the information from the Planning Service, combined with the fact that BMAP was not to be opened again, and there was no opportunity to seek rezoning, surely you should have been giving DFP information on the financial aspect at least.
- 596. **Mr Lavery**: I think that I have already conceded that, in this instance, I would be better placed had I disclosed that valuation at the time.
- 597. **Mr McLaughlin**: In the timeline from June 2007, we had the June monitoring round, the autumn monitoring round and the Budget preparations through to the eventual definitive evaluation. We had references in correspondence by very senior Civil Service officials to the benefits and persuasive influence of the £200 million, which clearly represented more than the bid from the Department to be able to conduct the farm nutrient management scheme, and a net receipt to the Executive. In that same timeline,

there was an indication from LPS that the hope value was around £10 million. You eventually got a figure that was, at best, half of that and, at worst, 25% of that valuation. During those critical discussions about the overall financial issues and the negotiation between Departments or the bids, counter-bids and competition among Departments for additional support, did you find it necessary to indicate that the £200 million was a wholly unreliable figure? Bear in mind the fact that a £10 million evaluation was the hope value, and I doubt whether it fitted the category of being even a hopeful estimate.

- 598. However, you were looking for much more than that, and in fact you got much more than that. Therefore, the £10 million valuation, let alone the actual final valuation, was in no way supportive of the quantum that you were seeking — namely, £79 million. Does that not indicate that people who should have been asking questions of you were for some reason not asking them or that you, as the senior finance director, had a responsibility to share that information, given that if you got money that was not going to be realised from the disposal of assets, another Department was not going to get it?
- 599. **Mr Lavery**: With regard to the £10 million valuation, we have agreed that, in hindsight, it would have been better to disclose that to DFP at the time. My letter of 2 January 2008 alerted the system to the possibility that we would not achieve the capital receipt, as did the DFP advice in the Budget process. Therefore, we shared that information generally. Even then, it was not the case that we were saying definitively that we could never achieve a receipt: we were saying that it was starting to look very difficult.
- 600. It is not the case that we got £79 million as some sort of "barter"— that word was used earlier. The £79 million figure was justified by an economic appraisal and was justified in competition with other bids. It was never going to be a difficult decision. It was always going to be a

wise investment to put the money into the farm nutrient management scheme.

- 601. **Mr McLaughlin**: I do not know whether you are misunderstanding me or whether you are diverting me. I am asking a question about the actual receipt that you could have achieved. The best LPS estimate was £10 million: that was the hope value and was the best that was available to you. However, you were looking for much more than that. I am quite prepared to discuss the benefits of the scheme, but not yet.
- 602. **Mr Lavery**: I beg your pardon. As I explained earlier, my understanding of hope value is that it is not my hope that is at stake but the hope of a developer and speculator that he can secure planning approval. Therefore, it is his judgement. Obviously, a speculator will pay the minimum possible price for a piece of land.
- 603. Mr McLaughlin: Your assessment was £200 million. That was worked out on the back of a piece of paper over coffee. That was your hope value. LPS came back with a much more realistic figure, which also turned out to be inflated. I do not need the definition of hope value. I am as much interested in why other people were not challenging you or asking questions as the fact that you were not volunteering information.
- 604. You needed £89 million: you got £10 million from your own resources and £79 million additional, which was money that somebody else did not get. That happened on the basis of a proposition that was described by very senior civil servants as being a persuasive argument: £200 million was persuasive in making that decision. I am going to come back to that point, because you have not addressed the point that I wanted to be addressed, but I have another line of questioning.
- 605. Mr Fay, you are probably feeling a bit neglected, so I am going to put a question to you. You are very welcome. Can you help us to understand why it took from 11 June 2007, when DARD first wrote to what was then the

Valuation and Lands Agency (VLA), until 6 March 2008 to produce the final valuation, which was between £2.28 million and £5.87 million? Could that not have been done much more quickly, given the urgency and importance of the situation? We heard from Mr Brennan about the significance of the infraction fines that were avoided. That was clearly a factor and was in people's heads: I think that the sum of £50 million was mentioned, and I would certainly have regarded that as an urgent matter. Will you explain why it took so long to come back? There were, as I said, monitoring rounds and Budget preparations ongoing in the same time frame that it took you to respond formally with a final evaluation.

- 606. **Mr Stephen Fay (Land and Property Services)**: It is important to point out that our role was to provide DARD with advice and guidance on the potential disposal of the site. Our original instructions were on the bases that were received on 11 June 2007. At that point, we were basically investigating the details of the property and its various aspects.
- 607. It must be remembered that, at that time, the property market was in the most incredible state of boom. From 2005 through to the middle of 2007, house prices basically doubled and land values, particularly for residential land, traded at incredible prices.
- 608. We provided a valuation on 1 August 2007, which is not a terribly long time from 11 June. That valuation set out two principal issues, the first of which concerned the pivotal nature of planning. We recommended to DARD that it needed to take clear advice on planning matters so that, if the property were ever to go forward for disposal, it would do so on certain grounds. We clarified the exact planning position. We then waited until we received the planning report on 14 February 2008, and we provided a draft valuation to DARD five days later. We provided the final valuation on 6 March 2008. Therefore, the delay was because we were awaiting that planning report to clarify that pivotal matter.

- 609. **Mr McLaughlin**: Who was that planning report from?
- 610. **Mr Fay**: The planning consultant.
- 611. **Mr McLaughlin**: The private sector planning consultant who was working for the Department?
- 612. Mr Fay: Yes.
- 613. **Mr McLaughlin**: That is very interesting because, of course, that came after the Budget settlement. Were you given a deadline?
- 614. **Mr Fay:** No. We were asked to provide advice and guidance on the possible disposal of the asset and on the timing and method of that disposal.
- 615. **Mr McLaughlin**: I assume that the planning consultant was not there to help you to do your job but to help a client to explore all the options for maximising the value of the property that the client owned?
- 616. **Mr Fay**: The role was twofold. It was to assist DARD to ensure that we were taking all reasonable steps to make sure that we got the best price for that public asset when it eventually came to market. However, the role was also to provide advice on what was acceptable or reasonable in the planning regime and what planning permission could be anticipated.
- 617. **Mr McLaughlin**: Did the VLA become LPS in July or August?
- 618. **Mr Fay**: No. We were LPS at that stage.
- 619. **Mr McLaughlin**: The correspondence in June was to the VLA, and the response from you was from LPS. Can you clear that up for us?
- 620. **Mr Fay:** LPS was in the process of moving. Initially, the Valuation and Lands Agency and the Rate Collection Agency (RCA) merged.
- 621. **Mr McLaughlin**: I know that, and you did a remarkable job in change management in a very tight timetable. I am trying to understand — it is only a detail, but it is important — whether the VLA, as it was about to go out of existence, was

involved in the correspondence at all or whether that was a mistake in the description.

- 622. **Mr Fay**: I will check the dates, but my understanding is that, at the beginning of April 2007, the VLA and the RCA merged to create LPS.
- 623. **Mr McLaughlin**: That is relevant to my next question. Was formal or informal advice given that there was no need to expedite the process until after the Budget process?
- 624. **Mr Fay**: Not that I am aware of. Our clear instructions in the instructing letter from DARD on 11 June 2007 was to provide a valuation, advice and guidance on the possible disposal of an asset.
- 625. **Mr McLaughlin**: Was there any advice, formal or informal, that, given the ongoing budgetary processes and the pressures and threat of infraction, it was urgent to get a response from you?
- 626. **Mr Fay:** No. Our role was to advise on the possible disposal of a publicly owned asset. LPS was not party to any of the discussions on the funding of the farm nutrient management scheme. We were unaware of those discussions.
- 627. **Mr McLaughlin**: In your professional opinion — I do not know whether you were involved in the project, so when I say in "your" opinion, I am talking about LPS — was there a realistic prospect, in mid-2007, of rezoning Crossnacreevy as building development land?
- 628. **Mr Fay**: That, ultimately, is why we recommended obtaining specialist advice.
- 629. **Mr McLaughlin**: Yes, I know. However, I need to know whether you believe that that was possible, in which case you should, as you said, have sought professional advice about how to steer your way through the planning process. Alternatively, in your experience of area plans and the BMAP situation, was there not a pup's chance in hell of getting building development permission?
- 630. **Mr Fay**: There are two elements: the BMAP element and the possibility of rezoning, and also clarification of

what planning, within existing planning arrangements, could be obtained for the site. Was there a possibility with regard to the four houses already on the site of permission being granted for some form of additional residential use? Was there a possibility of the plant testing station being used for an alternative purpose? The use of the land as a cemetery has also been mentioned. That is what we were seeking planning clarification about, and our valuation of March 2008 was based on the detail of the various scenarios that had been identified.

- 631. Mr McLaughlin: Yes, and your valuation maxed at that time at a hope value of £10 million but, more credibly and realistically, at £2.28 million to £5.87 million the following year.
- 632. Mr Fay: Yes.
- 633. **Mr McLaughlin**: I think that that is clear. Were we to explore the issue, how long is the rezoning process likely to take? Realistically, might it have been started and finished in time for the sale to be completed and moneys received in 2010-11? Could that have been done?
- 634. **Mr Fay**: I have no expertise or knowledge of rezoning. I really do not know the timescales involved.
- 635. **Mr McLaughlin**: Has BMAP been reopened for any reconsideration?
- 636. **Mr Fay**: My understanding is that it has not.
- 637. **Mr McLaughlin**: That is also our understanding.
- 638. Mr Brennan, you and I keep meeting each other in our different roles. When DARD put forward the sale of Crossnacreevy as a potential £200 million receipt, was DFP supply aware that the Belfast metropolitan area plan had been closed since 2005?
- 639. **Mr Brennan**: No. From 12 June 2007 until 2 January 2008, DFP supply had a series of engagements at official level. There were also bilateral engagements at ministerial level. That issue was not flagged up. We first became aware of the planning issue on 2 January 2008.

- 640. **Mr McLaughlin**: People will be amazed at that, given that DFP supply is at the core of financial planning and management. At that time, we were in the middle of a discussion about such assets, central to which was how to maximise their potential. I would have thought that every parcel of land being considered would have come with a ticket that stated "possible", "not possible", blah, blah, blah.
- 641. **Mr Brennan**: Yes. As you would probably appreciate, there was wideranging and detailed discussion on the construct of DARD's strapped budget position. A range of issues were discussed. This issue was not flagged up. Indeed, we looked, for example, at DARD's submissions to the Agriculture Committee during that time, and the record should show that the presumption was always that the £200 million receipt would materialise.
- 642. **Mr McLaughlin**: I am struggling to get my head round how this could happen. I know that Richard is here. Is it in order for me to ask him to help us to understand why no one could pick up on the necessity of adding that information into the mix?
- 643. Mr Richard Pengelly (Acting Treasury Officer of Accounts): BMAP? It is interesting. With regard to development beyond this, the Executive recently agreed to increase the central asset management unit. The creation of a unit to deal with future disposals is a recognition of the fact that the day job of civil servants is managing policy; if they have an asset that is available for disposal, that is not their day job. They do not know when a lease may be up, and so forth. Mr Lavery made the point that they do not know the various intricacies of the issue. We will come back to where we are with this scheme. but, moving forward, we need a centre of expertise. We need a group whose day job is about site assembly, dealing with planning issues and looking at potentials for disposal. The ball was just dropped on this matter. The key issue is around DARD and questions that DFP could legitimately have asked.

Our perspective was that DARD put its hand up and said that it owned the property and was going to sell it and had an informal valuation through which at least £200 million in excess of three years from now could be generated. It said that it would take that, assume the responsibility and deliver it. That was the agreement.

- 644. In a sense, it goes back to the point about DFP sitting solo as a Department, because we oversee and scrutinise; we physically do not sit beside people every step of a journey such as this. That is what we were doing in reality.
- 645. Mr McLaughlin: My point is that civil servants who are not dealing with these market issues on an ongoing basis, and you in particular, Mr Lavery, did not compare the price of development land. You compared it with prices in the middle of Belfast, which are the most expensive. You knew that much. You were market-aware in calculating how to maximise the 84-acre site in your bid for additional resources. You did not go into the Bogside and compare the prices there. You knew that Belfast city centre had the most expensive real estate in this region, and you did your sums on the back of the proverbial envelope. The current head of the Civil Service is quoting this £200 million figure. I am not sure, but I think that Richard may feature in correspondence referring to it. It is quite interesting how it takes legs.
- 646. **Mr Lavery**: I explained to the Committee that we looked at the price that development land with full residential approval was fetching in greater Belfast. I frequently drive past Crossnacreevy, and I assure you that it can be caught within the greater Belfast area by any stretch of the imagination. It is literally just out the Castlereagh Road.
- 647. I said to the Committee previously that I believe that the real persuasive point was not the fact that it was £200 million; it was the fact that we were putting a significant asset in play in order to help to fund the Department's requirements. It was never going to fund the farm nutrient management scheme

directly, because the two processes could never match in time.

- 648. **Mr McLaughlin**: When you got the correspondence that stated that it was a persuasive point, did you write back and say that it was not?
- 649. Mr Lavery: No.
- 650. **Mr McLaughlin**: The situation is that you are now the accounting officer by virtue of the fact, as I understand it, that your then accounting officer was transferred to the Department for Regional Development (DRD) over the Paul Priestly suspension, and you then stepped into his shoes. Has this process ever been critically reviewed, and have you been criticised rather than promoted? I just cannot understand.
- 651. **Mr Lavery**: I feel as if I have been criticised. The process has had a number of beneficial outcomes so far. First, we secured the farm nutrient management scheme, which we will come to in due course. Secondly, we allowed for the ambition of Departments to put forward a capital expenditure programme that was larger than it otherwise would have been.
- 652. **Mr McLaughlin**: And all of that was done in an entirely professional, best-practice fashion? Was it all fortuitous?
- 653. **Mr Lavery**: No. I am not going to say that there are not things that we could not have done better or more transparently. I have already conceded several points. However, I genuinely do not think that the Department took some covert, malign or irregular action. For example, before we received the letter that referred to the disposal of Crossnacreevy as the most persuasive point, we both met and wrote to Land and Property Services specifically to ask it to embark on valuation.
- 654. We were committed to the disposal of the asset and were proceeding down that road as quickly as we could. Obtaining a hope value was part of that process and part of our commitment. We behaved with integrity. We may well have misjudged the likelihood of

the land ever commanding residential planning approval in its entirety. We may well have misjudged the apparent weight that should have been attached to the  $\pounds 10$  million valuation. However, we behaved with integrity in trying to bring this to a conclusion and get best value for the asset.

- 655. **Mr Copeland**: Thank you for your perseverance, Gerry. You will be glad to hear that it is Michael's turn now.
- 656. Stephen Peover's letter to the Committee of 21 September 2011 stated that the Department of Finance and Personnel's

"Central Finance Group (CFG) can find no record"

- That is an interesting phrase -

"of any notification by DARD to DFP of a valuation of the Crossnacreevy site by Land and Property Services (LPS) at £10m prior to the Executive agreeing the Budget on 21 January 2008."

- 657. Can you confirm that the central finance group had no knowledge, which is a different word from "record", of the £10 million valuation between 1 August 2007 and 31 January 2008?
- 658. **Mr Brennan**: Yes, I can certainly confirm that we had no knowledge or record of the £10 million figure. The first formal notification of it that we received was in the June 2008 monitoring submission from the Department of Agriculture and Rural Development. Informally, our Department of Agriculture and Rural Development colleagues alerted our Supply colleagues in the Department of Finance and Personnel on 21 April 2008 that the Crossnacreevy receipt would not materialise.
- 659. Mr Copeland: What date was that?
- 660. Mr Brennan: It was 21 April 2008. From reviewing the records, we had no knowledge of a £10 million figure between 12 June 2007 and the sign-off on the Budget.
- 661. **Mr Copeland**: DARD wrote to DFP Supply on 2 January 2008 flagging up

that there was no opportunity to have Crossnacreevy rezoned under BMAP. Was that drawn to the attention of the Executive prior to its acceptance of the £200 million valuation in the Budget on 21 January 2008?

- 662. Mr Brennan: The letter of 2 January 2008 did not cause any undue alarm. because it referred to seeking an "independent second opinion" and stated that the draft BMAP had to be addressed in the short term. In subsequent correspondence and before the Budget was signed off, the then Minister of Agriculture and Rural Development, for example, gave a commitment to the £200 million. There was a ministerial exchange. Ministers were aware that there was an issue around planning, but we were not told that the £200 million receipt would not be delivered.
- 663. **Mr Copeland**: Were those exchanges were between the Minister of Finance and Personnel and the Minister of Agriculture and Rural Development?
- 664. **Mr Brennan**: Yes.
- 665. **Mr Copeland**: Do you think that that figure should have been left in the Budget?
- 666. Mr Brennan: That goes to the heart of my earlier point. With the benefit of hindsight, it is just as well that it was left in the 2010-11 Budget, because to take it out would have meant a significant surrender of resources out of Northern Ireland. Effectively, capital spend in Northern Ireland was £200 million higher than it would have been otherwise. As you know, when the Executive and the Assembly construct a Budget each year, they have what is called an overcommitment, in which they actually allocate more money than they have. The same principle applies here. In hindsight, the figure's inclusion was effectively the same as an overcommitment of £200 million.
- 667. **Mr Copeland**: Do you agree that the defining moment of the £200 million valuation was not when it was given to the Department of Agriculture and Rural Development, when it was mooted in

that Department or even when it was discussed by the that Department and the Department of Finance and Personnel, but when it was accepted and included in the Budget? That was when it became something tangible.

- 668. Mr Brennan: When the Executive signed up to the Budget in January 2008, they knew that there was a degree of risk, upwards and downwards, associated with major capital projects. I gave the example of the strategic waste project earlier. Constructing a Budget is always a case of constructing a portfolio of risks. That was an element in it, but, when it got to that stage, we did not know that the £200 million would not be delivered. We knew that there were planning issues, but ministerial guidance stated that the value would be maximised.
- 669. Mr Copeland: You operate with levels of money that are pretty much incomprehensible to most mere mortals. Is £200 million a lot of money?
- 670. Mr Brennan: Yes.
- 671. **Mr Copeland**: Even on the scale on which you operate? It is not a blip here and there but a substantial amount of public money?
- 672. Mr Brennan: It is.
- 673. **Mr Copeland**: Finally, you will be glad to hear, DARD's —
- 674. **The Chairperson**: May I bring in Jennifer to ask a supplementary?
- 675. Mr Copeland: Sure.
- 676. **Mr J McCann**: Was DFP involved in the capital assets realisation task force at the time of the valuation of the capital assets?
- 677. **Mr Brennan**: Sorry, the central finance group?
- 678. Ms J McCann: Yes.
- 679. **Mr Brennan**: Yes, there would have been engagement with the capital assets realisation task force at the time.

- 680. **Ms J McCann**: Therefore, you would have had some sort of knowledge of what properties were worth? Surely you would have had some knowledge of what a certain property or piece of land would be worth, given that you were involved in that.
- 681. **Mr Brennan**: We did not have that expertise at all in the central finance group, but a portfolio of capital receipts was constructed as part of the Budget position, and it would have been provided to CART. No one came back and told us that, for example, the Crossnacreevy receipt was illogical or undeliverable.
- 682. Ms J McCann: That was my next question. Would there not have been economists there or people who sensed that and had the skills to know that there is such a big difference between £200 million and £10 million, and even that £10 million was pushing the boat out a bit?
- 683. **Mr Brennan**: I am not that close to how CART in the Office of the First Minister and deputy First Minister (OFMDFM) worked then or know what degree of expertise that it had internally. The aggregated receipts across the Budget period were quite significant. It goes back to the point that Mr Lavery made earlier: the Executive very proactively encouraged Departments and Ministers to try to maximise the receipts that they drew in.
- 684. **Mr McLaughlin**: Can we ask for the information on that site?
- 685. **Mr Brennan**: We will liaise with colleagues in OFMDFM to see what the staffing of CART was at the time.
- 686. **Mr McLaughlin**: I suggest that the Committee ask in writing for that information.
- 687. **Mr Copeland**: If we accept that the Department of Agriculture and Rural Development's bid for additional capital was to fund the FNMS, the DFP accounting officer's letter of 12 June 2007 stated that the "key outstanding issue is affordability".

Given that Crossnacreevy was ultimately valued at between £2.28 million and £5.87 million, in what way was DFP's affordability requirement met?

- 688. Mr Brennan: In June 2007, the Department of Agriculture and Rural Development was looking for comfort to progress the scheme into 2008-09. It could not go down that route unless it had confirmation from DFP that its capital requirements would be covered. DFP, however, would have had to wait until the June 2008 monitoring round to see the bid come in for the £79 million. The value for money of the bid was quite stark, which was the point that I was making earlier. Given my knowledge of monitoring rounds, I suspect that that bid would have been at or very near the top of bids that were submitted by all Departments in respect of the return that the Executive and Assembly would have received.
- 689. **Mr Copeland**: Forgive me for this last point, but DFP's letter of 12 June 2007 referred to the potential £200 million capital receipt as "an important and"

- and, as I have said -

"in the final analysis the persuasive point".

Given that the  $\pm 200$  million valuation was completely unfounded, as it turned out, do you feel that it would be too strong to say that DARD got the additional capital cover under a degree of false pretences?

- 690. **Mr Brennan**: I do not think that we can say that. Looking specifically at the £79 million that was needed in 2008-09, I think that DARD would have got that money regardless of whether it put the Crossnacreevy receipt on the table.
- 691. **Mr Copeland**: DARD would absolutely have to have had it; otherwise there might not have been money to pay wages. The Department effectively would have run out of money. Is that not correct?
- 692. **Mr Brennan**: In the following year, yes.
- 693. **Mr Byrne**: I have listened to Mr Lavery and Mr Brennan over the past

hour. The sum of their proposition is that this overvaluation led to a very exciting capital investment project in DARD. It almost seems that that is being advocated as a desirable way of operating. Is that right?

- 694. **Mr Lavery**: No. That would be too summary. If you —
- 695. **Mr Byrne**: All that I have heard about over the past hour is the advantages that have accrued from the FNMS happening that otherwise might not have happened.
- 696. **Mr Lavery**: Let me put it this way: there are two events here, and there is a link between them, but that link is not straightforward. One event is the farm nutrient management scheme, which, I maintain, was very desirable, endorsed by farmers and very necessary for the economy. It was a good outcome.
- 697. The second event is that we sought to dispose of an asset to bring in £200 million, and we have failed.
- 698. Mr Byrne: A bogus exercise?
- 699. **Mr Lavery**: No. I do not accept that. We failed, having done the work, and we have not retreated. We have said that when BMAP reopens for objections, we will return to the matter, but we have failed in the task that we set ourselves to dispose of the asset within the comprehensive spending review period.
- 700. It is not a good outcome for the Department to fail at any task to which we put our minds. Fortuitously, and it is fortuitous, that failure has not done any harm. In fact, it had some beneficial consequences, in that it raised the bar in for capital expenditure ambitions in Departments. However, I do not defend it. We failed to deliver what we set out to do, which was to bring in a receipt. In mitigation, the exchange of correspondence at the outset referred to our commitment to seek to dispose of the asset. We delivered on that, because we sought to dispose of the asset. We have not disposed of it. I will not posture on the head of a pin and say that we have delivered on seeking

to dispose of it, so we are all right. We are not all right. Our commitment at the outset was that we would dispose of the asset and bring in a significant capital receipt. I am not trying to fudge that by saying that the exchange of letters gives me wriggle room. I would far rather be sitting here today and saying that we had disposed of it. Even if we did not bring in £200 million but a sizeable receipt, I would be much more comfortable.

- 701. The Chairperson: I will bring in the Treasury Officer of Accounts (TOA) at this stage. Richard, you were overseeing part of the preparation for the Budget. Let us look at the letter from DARD to DFP Supply, dated 2 January 2008. Why did the £200 million estimated receipt from the proposed sale of Crossnacreevy remain in the budget? Why was it still in the Budget in that way? The correspondence, from Mr Lavery especially, states that there could be implications.
- 702. **Mr Pengelly**: It goes back to the June 2007 correspondence between the then DARD accounting officer and the then DFP accounting officer. We had formal correspondence then. The DARD accounting officer said that, based on an informal valuation, there was an expectation that the site could generate well in excess of £200 million, I think his words were. I will quote from that letter, dated 1 June 2007:

"an initial, informal valuation suggests that with planning permission for the whole site, it would command in excess of £200m".

That was a formal piece of correspondence from the accounting officer. We considered that to be legitimate, and we engaged with our Minister. Our accounting officer responded to the Minister of Finance and Personnel, who accepted that we move forward on the basis that that land disposal would be factored into the Budget.

703. The 2 January 2008 correspondence has been well rehearsed here. It did not fundamentally change the assumption. There was no figure work in that correspondence. It did not say that £200 million was not attainable or reference the £10 million figure that had come from LPS in the interim. As Mr Brennan said, there was a further exchange in mid January at ministerial level. Again, nothing in that correspondence at ministerial level suggested that £200 million was not achievable or that that valuation should be replaced with a £10 million valuation. The £200 million valuation was then put to the Executive, and I think that it was a matter of public record at that time that the Budget was agreed unanimously by the Executive.

- 704. **The Chairperson**: The letters that you talk about are from June 2007. The letter that I was talking about, which I mention because of its implications, was written in January 2008, which is some six months after.
- 705. Mr Pengelly: It is six months later, but, it certainly highlights that there were emerging difficulties. However, the letter did not say that £200 million was not achievable. It did not reference a different valuation or that the Department was seeking to substitute the £200 million valuation. It also specifically mentions various difficulties and that the Department sought an independent second opinion on the advice.
- 706. It is not a major point, but Mr Frew made the point that we were in the middle of a Budget and were dealing with similar levels of correspondence from all 12 Departments. We do not get to spend a huge amount of time on it. There was nothing in that correspondence that sounded the sort of alarm bells that possibly mature reflection on the valuation might do.
- 707. **The Chairperson**: Did you or anybody write back to Mr Lavery to find out about the implications that he was talking about?
- 708. **Mr Pengelly**: There is no formal correspondence. Our reading of the situation at the time was that it meant considering the implications of any delay. Mr Lavery made the very valid point that we were talking about a planned disposal that, at that stage,

was still three years away. There was therefore still ample time once we got the Budget out of the way to return to that and address timing issues.

- 709. The Chairperson: I thought that Mr Lavery said that they knew at that stage that they probably would not be getting £200 million. Is that not the implication? I ask because that figure was still in the Budget at that stage. Should the figure not have been pulled out of the Budget?
- 710. Mr Pengelly: When I read the letter on 2 January 2008, I did not read into it at that stage that the Department was saying that it was not going to get £200 million. I have to concede that nothing that I have heard from Mr Lavery today —. I have heard him say that, when he wrote the letter, his view was that he was not going to get £200 million. He was articulating difficulties and logistical problems.
- 711. **The Chairperson**: Fair enough. I will now turn to Mr Lavery. I will not rehearse all the arguments that we have had today, because you have said the same thing quite a number of times. However, do you not believe that there was a lack of urgency on your part in stating the fact to even the Department of Finance and Personnel, and was the reason for that that you were trying to prolong the entire process so that you could get the outcome that you needed?
- 712. Mr Lavery: No. I do not accept that we were prolonging the process to achieve an outcome. In a sense, we achieved the outcome that we needed it was over. Once the 12 June 2007 letter arrived, we had approval to spend up to £79 million. More importantly, we had approval to commit. Therefore, our inspectors went to farms, and we continued to approve tanks. As a result, we incurred debts. It is as simple as that.
- 713. By January 2008, we were over the brink. We were committed on the basis of the letter of comfort we had that said that our capital undertakings would be honoured come the Budget. There was no way back from that. Had I been in

possession of a piece of a paper on 2 January 2008 that said, as the March 2008 valuation did, that we were not going to be able to get planning approval and that the exercise was not going to give us a receipt, I could have disclosed that quite happily, and would have done so, because we had already committed the capital expenditure. That was the whole reason for such urgency and why I raised the issue of June 2007 with the Committee. In June 2007, I needed comfort that we could continue to inspect. By inspecting, we were entering into commitments to pay. There was no way back once we went over that brink. That was the whole point. With respect, that was why that was an innovative solution that jumped the rails of the financial process. The Executive did not ---

- 714. **The Chairperson**: The £200 million valuation was not innovative.
- 715. Mr Lavery: No. Committing to a disposable is normal practice. What was innovative was the fact that, in 2007, I needed a letter of comfort that allowed our inspectors to go on farms on the basis that, in 2008-09, the Executive would honour an undertaking to pay for the tanks that they were now approving. That was innovative. Now, I fully appreciate that, in the dialogue around that, DFP, through its accounting officer, indicated that, in the final analysis, a pivotal point was the Crossnacreevy receipt. That remains on the books. What was really innovative was that we needed approval in 2007 to go on inspecting. We got that approval, so we went on inspecting, and, by January 2008, there was no way back from paying out the vast bulk of £79 million. As it transpired, we did pay that in 2008-09.
- 716. **The Chairperson**: That was because the Department was innovative.
- 717. **Mr Lavery**: The Department was committed to doing that work, and so were the farmers. There was enormous pressure in May and June 2007 to get on with the work before we lost the confidence of the construction industry and the European Commission, and triggered infraction proceedings that the

farmers would have no way of dealing with. They were going to end up having to destock.

- 718. Mr Frew: On that point, are we putting too much emphasis — we could well be — on the "persuasive point" on which DFP came to its decision? Are you saying, Mr Lavery, that, by suggesting that that was a persuasive point, DFP is actually missing the point? At the time, there was severe pressure on the agricultural world, and, as you just relayed to us, the issue needed to be resolved quickly. You feel that you dealt with that issue appropriately and that, therefore, the dialogue today about valuations and the persuasive arguments used to get the funds that you required misses the point. Did DFP miss the point in the first place, when it used that as the persuasive point, and are we then missing point here in our line of questioning?
- 719. Mr Lavery: I will put it this way: it is not for me to say that this Committee ever misses the point. The fact is that, in June 2007, the Department of Finance and Personnel had to convince its Minister and, thereby, the Executive that that was a pressure point for the agriculture industry that required an intervention. The issue of having a significant capital receipt in prospect was a persuasive point in convincing Ministers. That is why I said, before we even saw the letter, that we were off and running to try to deliver against that mandate, and it is a source of regret and disappointment that we have not been able to do it.
- 720. Mr Easton: The good news, Mr Lavery, is that everybody else has asked my questions. The bad news is that I have a few simple ones for you. You seem to be taking all the responsibility, and that is very commendable. The £200 valuation going down to £10 million and then to £2 25 million, or whatever, is quite a depreciation, even in today's market. Did you feel let down at any stage by any information or advice that you were given during the process that put you in that position?

- 721. Mr Lavery: I am not trying to lay this off on any advice received by the Department, let alone by me. We went into the process with a lack of experience in that type of transaction, and Mr Pengelly has indicated that that is perhaps a common failing in the system and something to which we have to find a structural solution. We acted on the advice that we got, and, only with the benefit of the scrutiny that we are under at the moment, we see some additional actions that we could and should have taken to be more transparent with information and to build a stronger bridge into the Department of Finance and Personnel. At the time, we judged the situation differently, and the Committee has a right to take a view on that.
- 722. **Mr Easton**: Have you learnt lessons from that?
- 723. Mr Lavery: I think that we have. We have learnt a lot about how to approach a major capital asset and how to seek advice. We have learnt a lot about the constraints on disposing of an asset, and we carry that forward with us. It is a joy of my life that I occasionally get to talk to the young people who come into the Civil Service, and, in the past week, I brought in a young fast-track graduate. The recommendations of this Committee are very important and are taken very seriously by all of us. It will be of concern, particularly for younger people who have careers in front of them, if we end up driving out the measurement and the management of risk. I want to put that on the table as something to bear in mind.
- 724. Frankly, it would have been possible in June 2007 for the Department and Ministers to say that they have their processes and that there is nothing that they can do. They could have told the agriculture industry to deal with its own slurry problems and to destock because it is the polluter. We did not do that. We took a risk and, in retrospect, aspects of that risk have not worked out for us. If we were to end up driving out the management of risk as a concept and issue for young people coming into the Department, I would be genuinely disappointed.

- 725. **The Chairperson**: On a number of occasions, we said that we support Departments taking a risk, as long as it is a well-calculated risk. We are not averse to that, but it has to be well managed.
- 726. **Mr Girvan**: I appreciate that this has been quite a long session. Various pressure points were brought on a Department or the Executive to bring about funding of the farm nutrient management scheme as it was presented. To deal with that, Northern Ireland spent 1,000%, or 10 times, more than the amount spent in England and Wales to deliver the same scheme.
- 727. According to the reports that I have read, there is no statistical evidence of where the scheme was targeted to identify areas with a problem. It was run as a lottery, in that those who submitted their grant application had an opportunity to have a shout at it. Major lessons must be learned about that process, because it was not necessarily targeted in the proper way.
- 728. I appreciate the fact that the Department of Finance and Personnel will have had no knowledge of the threat of £50 million of infraction charges. It will have accepted that infraction proceedings could have been taken against Northern Ireland should it did not meet certain targets. What indication was there that Northern Ireland's waterways were ever going to exceed an acceptable level of nitrate pollution? I can see that a lot of pressure was brought to bear on the Executive to spend the money to save paying out £50 million. Anyone would decide to spend money to make a saving in the future, but the business case had to be 10 times better than the one that was presented for England, where £13 million was spent, whereas we spent £150 million. That is my key point.
- 729. I appreciate the fact that we have taken a very serious line of questioning on Crossnacreevy. The Crossnacreevy issue was part of the pressure that was brought to bear, but the other part was to ensure that we delivered this hare-

brained scheme. People say that there are benefits to the scheme, and there are. The same amount of slurry needs to be dispensed of in a smaller window, and I appreciate all of those aspects, because we have to deal with that.

- 730. Why did the pressure have to be brought to bear, and where was it identified that there were major problems? Why, when the scheme was delivered, did it not identify the farms that would derive the greatest benefit? On some of the farms that needed it most, the farmers funded it themselves rather than going through the scheme. I am aware of that, and I could give you a list of names of farmers to whom that applied. They did not use the scheme because it was so bureaucratic. Was that a good way to spend money?
- 731. I appreciate the fact that I went off a bit on that issue, but I believe that a full business case was never conducted to evaluate whether it was necessary to extend the scheme to the level that it was. Without the carrot of the £200 million receipt from the sale of Crossnacreevy, it would never have been extended to such a level. We would have had to have cut our cloth accordingly long before that, and, in that year's budget, instead of £79 million being put forward, it would have been a similar amount to that which was put forward in Scotland, which was around £24 million or £25 million.
- 732. Mr McLaughlin: I share Paul's evaluation of how the scheme was designed, brought forward, financed and implemented. There are many lessons to be learned from that, which I hope will happen. Given that Paul covered that ground, more or less, I will move on to the other issue that I want to discuss, which emerged in the early days of the re-establishment of the institutions. The capital assets realisation task force probably emerged subsequently and was not already in position and functioning. However, I am interested to know what guidance existed at that time. I am talking about mid-term in 2007. What guidance existed for the disposal of assets? What is different now?

- 733. Mr Lavery: I will take Mr McLaughlin's comment first and then come to Mr Girvan's point. I have no specific recollection of the guidance that existed mid-2007, but the critical distinction is that, in general terms, when an asset is surplus within government, our obligation is to dispose of it at best value. As I said, the Committee gave very good guidance that people should know their market and look at whether the asset can be used elsewhere in the public sector or whether it would be better to dispose of it in a commercial transaction. [Interruption.] If I may finish my ----
- 734. **Mr McLaughlin**: I am sorry for interrupting you. Did you have a central resource? Did you take that forward in your departmental silo?
- 735. Mr Lavery: I will finish my point. The critical distinction is that we did not have a surplus asset. We had a research station that was, and is, performing very well. We were making an asset available, and that was the prize for DFP. This was going beyond normal practice. I realise that your point relates to whether we took it forward. We did: we did the heavy lifting of asking how we should go about this. First, we contacted Land and Property Services and gave it a specific list of questions, which are contained in the correspondence that we have given to the Committee. Subsequently, we went through a process of setting up a working group, employing a planning consultant and trying to take best advice.
- 736. Mr Pengelly has already indicated that our experience in this area is limited. It would be better if there were a structural solution within which we could have access to that sort of multidisciplinary approach on a regular call-off basis, instead of having to tender and to ask ourselves whether we can properly approach the Planning Service, as in my case, or whether that would be seen as disproportionate influence. I hope that I have answered that point.
- 737. I come now to Mr Girvan's points, which are many. He mentioned benchmarking with other member states and territories. The most valid comparison

is with the Republic of Ireland, which also has a total territory approach to the implementation of the nitrates directive and a similar focus on livestock production. That is the big difference between us and England and Wales. There is a lot of arable land in England. You can spread slurry on arable land, and it can take it up. For historical reasons, Northern Ireland has had more intensive stocking, we have much more grassland-based agriculture, and, unfortunately, we have been applying phosphate-rich fertiliser to that land for a very long time. The phosphates built up in the land, and the very bad run-off in the late 1990s led to eutrophication. We could have put forward a targeted nitrate-vulnerable-zone approach. We estimate that it would have covered the vast bulk of the land in Northern Ireland. Given that the South had total territory, it would mean asking the European Commission to accept a map of Ireland with nitrate-vulnerable zones covering the vast majority of land, except for tiny pockets in Northern Ireland. It would not have accepted that.

- 738. Mr Girvan: I disagree with that. I have a reason to do so because of the funding of the Republic of Ireland scheme, how it was presented and how it got additional funding under the EU to deliver that scheme, which was specifically earmarked, unlike our scheme, which was funded totally differently. I appreciate the fact that there are slight differences in the way in which we manage our pasture land, but from my understanding, the facts of the matter were that there was no clear indication that we were going to incur infraction charges. I have been told and the statistics show, that we would not have had to pay infraction charges. If you are willing to present me with different data, I am happy to accept it, but I need to see it. I have heard about it. but I have not seen it.
- 739. **Mr Lavery**: I am happy to bring forward additional information on the phosphate and nitrate loading. Our advice was that we ran a strong risk of infraction. That was based on scientific research that

was conducted on behalf of the DOE and DARD. The issue that you raised about the same amount of slurry being spread in a smaller window is absolutely true, but the whole point is that we have seen a massive cultural change. When I worked in this area in the mid-1990s, farmers treated slurry as waste and spread it on what was termed "sacrifice" land. Now they treat it as a nutrient and apply it during the window in a measured way in accordance with soil sampling. I am sure that Mr Girvan knows that we offer a service that allows farmers to bring soil samples to our offices for an assessment of just how much phosphate and nitrate capacity there is in the land. I advise Mr Girvan that we did carry out a robust business case that ran to some 85 pages with about 14 appendices. We updated it when we went back for the additional funding. That was accepted by DFP in June 2007. I do not know whether Brian wants to add anything to that.

- 740. **The Chairperson**: We need to start involving members. I do not want this to be a two-way conversation; others want to ask questions. I need you to be brief, Mr Ervine.
- 741. Mr Brian Ervine (Department of **Agriculture and Rural Development):** The original economic appraisal looked primarily at the options for implementation and whether to go for designation or total territory. The total territory approach went out to consultation and was overwhelmingly supported by stakeholders. It was a very robust economic appraisal. The consultants from BDO Stoy Hayward who were commissioned to carry out that appraisal had the relevant experience, but they subcontracted a consultancy company called Environmental Resource Management (ERM), which had worked for the European Commission for several years and had highly relevant experience in that area. The total territory approach has not been questioned by farming organisations, nor has it been questioned in the South. There was an overall problem with eutrophication, and the solution was

an overall package. Whether the issue is nitrates or phosphates, the problem is eutrophication. The solution is the same: manures, slurries and fertilisers need to be managed carefully. The only way to manage slurry and maintain livestock numbers is to increase storage capacity.

- 742. **Mr Girvan**: That would allow farmers to use slurry as opposed to phosphate-generated fertilisers.
- 743. **Mr Ervine**: Yes, indeed. That is part of our package. It is because manures are being used more efficiently that the use of chemical fertiliser and phosphate has come down. We have placed restrictions on chemical phosphate fertiliser.
- 744. **Mr Girvan**: Do you agree that we had a phosphate problem as opposed to a nitrate problem, primarily because we were using more phosphate-based fertilisers? A relaxation of the rules and allowing farmers to use more of their slurry has reduced phosphate levels in Lough Neagh and Lough Erne.
- 745. **Mr Ervine**: Yes, and there are two sources of the phosphate: fertiliser and slurry.
- 746. **Mr Girvan**: To a lesser degree.
- 747. **Mr Ervine**: We could look at the figures, but —
- 748. **Mr Lavery**: We are more comfortable talking about agricultural matters than about financial matters.
- 749. **Mr Copeland**: I stress that our role is to check and to ask questions. Sometimes, that places us in uncomfortable positions. You will be aware of the Department of Agriculture and Rural Development's post-project evaluation document. What is that for?
- 750. **Mr Lavery**: Post-project evaluations are designed to draw out lessons that we can apply when we run similar schemes in the future. That is where we aim to learn both from our mistakes and from our best practice.
- 751. **Mr Copeland**: Does a lot of work go into those evaluations?

- 752. **Mr Ervine**: A significant amount of thought goes into them.
- 753. Mr Copeland: I am at an advantage, because I have a post-project evaluation in front of me, whereas I do not think that you have. Under the section "lessons learned" is a statement, which I presume is a statement of fact. I always learned that facts were things that could be examined. This evaluation seems to suggest that the summer of 2007, which is described as the wettest on record, had a significant effect on construction progress. It states that foundations were dug and flooded and that the wet weather delayed the installation of the aboveground tanks. However, 2007 was not the wettest summer on record — it was not even the fourth wettest.
- 754. **Mr Ervine**: It was 2008.
- 755. Mr Copeland: So the document is wrong.
- 756. **Mr Lavery**: I remember 2008, because I was involved in dealing with the very severe flooding of agricultural land at that time.
- 757. **Mr Copeland**: Instead of being the wettest summer on record, it turns out it was actually the fourth wettest, behind 1958, 2008 and 2002. So it was not even close. That is not a criticism, but at some stage someone will read a document that is on the periphery of this entire fiasco — forgive the word and consider it as evidence. It is not a big mistake, but it is significant. It may be that that is indicative of the change from direct rule to local scrutiny, but I trust that it is safe to say that lessons will be learned from that as well.
- 758. **Mr Lavery**: Indeed, it is a benefit of devolution that Ministers and Assembly Members bring local knowledge to issues, and we benefit from that.
- 759. **Mr Copeland**: Writing accurately about whether it was wet or not does not require local knowledge; that is down to a good memory and common sense.
- 760. **Mr Lavery**: We used to turn over Agriculture Ministers at such a rate that they probably would not have

remembered what happened in Northern Ireland two years previously.

- 761. **Mr Copeland**: Is that the current position or the direct rule position?
- 762. **Mr Lavery**: That was the direct rule position.
- 763. **The Chairperson**: If we get today's meeting over, we might actually get home to see the weather forecast.
- 764. Richard, the Crossnacreevy site was never going to realise £79 million for the Executive, so why was that level of funding for the farm nutrient management scheme retained in the 2008-09 budget?
- 765. Mr Pengelly: There are two very different issues there: the issue of funding the scheme and the issue of Crossnacreevy. Between 2007 and 2009, as Gerry mentioned, the business case and economic appraisal for the scheme were the subject of much dialogue and scrutiny by DFP with DARD. On the reference to the word "persuasive" in the DFP accounting officer letter, Gerry talked about an innovative approach. My take on that, without have spoken to the accounting officer, is that the persuasive element was the fact that this was an allocation in June 2007, several months ahead of a strategic Budget process being undertaken by the Executive. Therefore, it gave the Agriculture Department certainty that that money would be available. The alternative was to wait for a budget process that may not conclude until December or January.
- 766. Interestingly, at that stage, our colleagues on the Strategic Investment Board were charged with developing capital plans for further years. They had developed a range of scenarios to look at the capital allocations for 2008-09 onwards. Every single one of their scenarios included that funding for the farm nutrient management scheme. Therefore, at no point in any scenario was that money not available. The persuasive element was the Finance Minister being prepared to confirm in June 2007 the certainty of the allocation. Colleagues in the Department

could get on with processing the applications so that there was no pause. To have tried to restart it several months later would have caused difficulty.

- 767. **The Chairperson**: Has DFP learned any lessons?
- 768. Mr Pengelly: The key and most strategically important lesson has been the establishment of the central asset management unit, which the Executive have endorsed. Of fundamental importance is the capital asset realisation task force, which was referred to and is quite a mouthful. The subtlety is "asset realisation". The emphasis was on selling assets. Now the emphasis is on the asset management unit.
- 769. Gerry made the point about looking at sites such as Crossnacreevy, which we might not want to sell, and asking whether we are driving out best value. Could we use a site for an alternative purpose? It is also about making sure that any consideration of disposals is done centrally so that we do not have a situation in which Department A sells a piece of land to a developer only for Department B to seek to buy it back a couple of years later with some hefty profits for the developer. That is the key point.
- 770. The other point about the management of Crossnacreevy is that we need to be careful about the difference between the financial accounting and an accurate reporting of transactions that happened in the past and budgeting techniques that are two or three years in the future. The nature of the beast is that there is a reliance on estimates and forecasts and, as Michael mentioned, managing a portfolio of risk. I am comfortable that we got that bit right. We gave back £6 million to the Treasury. Last year, Northern Ireland's capital underspend was 0.5%, when the UK average was 2.9%. We got that right. The Executive, to their credit, did that very well.
- 771. **The Chairperson**: Thank you, Richard. You will be glad to hear that there are no further questions. You are free to go. We hope that we do not have to

bring you back again. If some of that information had been provided in the previous evidence session, we would not have been back here today. That is unfortunate. We want as much information as possible, especially from senior civil servants, when they come to our inquiry. That is very important. We do not want to have to revisit issues, and not having to do so would save your time and ours. On that note, thank you very much.



# Appendix 3 Correspondence

## Chairperson's letter of 16 June 2011 to Mr Gerry Lavery

Room 371 Parliament Buildings Ballymiscaw Belfast BT4 3XX

Tel: (028) 9052 1208 Fax: (028) 9052 0366 E: pac.committee@niassembly.gov.uk aoibhinn.treanor@niassembly.gov.uk

Mr Gerry Lavery Accounting Officer Department of Agriculture and Rural Development Dundonald House Upper Newtownards Road Belfast BT4 3SB

16 June 2011

CC Treasury Officer of Accounts DL

Dear Gerry,

#### **Evidence Session on Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Management Scheme**

Thank you for your participation in the Committee's evidence session.

As agreed the Committee would be grateful if you could provide the following information:

- 1 A copy of the post-project evaluation undertaken on the farm nutrient management scheme.
- 2 A breakdown of the costs incurred in the administration of the scheme, including advisory costs.
- 3 A summary of the number, and grant for each, of farms which were not sensitive to eutrophication but received funding through the scheme.
- 4 An analysis of the additional costs incurred as a result of farmers opting to install underground tanks instead of above-ground tanks.
- 5 The rationale for the scheme being structured on a first-come, first-served basis against that of a targeted approach focusing on farm locations that could deliver a more positive impact.
- 6 The cost of the assessments carried out in regard to relocation from and change of use of the Crossnacreevy site.
- 7 A copy of the letter sent by the Accounting Officer for the Department to the Accounting Officer at the Department of Finance and Personnel dated 1 June 2007 which cites the indicative figure of £200 million for Crossnacreevy.
- 8 Documentation of the decision to appoint an external consultant to conduct an economic appraisal of the scheme, and who the successful consultants were.
- 9 The number of economists employed by the Department at that time.

10 Please liaise with the Northern Ireland Environment Agency to obtain: a copy of the inspection and breach severity results for 2010 to update figures 14 and 15 of the Audit Office report; and confirmation as to whether any of the farms in breach of the nitrates action plan received funding from the farm nutrient scheme.

I would also be grateful if you could co-ordinate with the Treasury Officer of Accounts to provide the following information to the Committee:

- 1 A detailed chronology of the "dialogue" and any written correspondence between DARD and DFP on the indicative valuation for Crossnacreevy subsequent to the letter of 1 June 2007, in regard to its promotion by officials as valid for budgeting purposes, and regarding the condition of an interim review being conducted.
- 2 Factual information to supplement the evidence before the Committee in terms of the process, controls and methodology followed throughout the scheme (including Crossnacreevy) such as planning, compliance with risk management, green book processes and gateway review.
- A summary including values of the projects which might have been dispensed with in favour of supporting the scheme to the value of £200 m against Crossnacreevy; or of all projects that were put forward for funding and of those which were subsequently dispensed with.

#### Excess Vote

4 Please outline the procedures DFP use to monitor expenditure generally with the aim of preventing Departments overspending and give your assessment of how effective these procedures will be as we enter a period of restricted funding.

I should appreciate your response by 1 July 2011. Please liaise with the Committee Clerk if you wish to clarify any of the above points.

Yours sincerely,

and Maskey

**Paul Maskey** Chairperson Public Accounts Committee

### Chairperson's letter of 23 June 2011 to Mr Gerry Lavery

Room 371 Parliament Buildings Ballymiscaw Belfast BT4 3XX

Tel: (028) 9052 1208 Fax: (028) 9052 0366 E: pac.committee@niassembly.gov.uk aoibhinn.treanor@niassembly.gov.uk

Mr Gerry Lavery Accounting Officer Department of Agriculture and Rural Development Dundonald House Upper Newtownards Road Belfast BT4 3SB

23 June 2011

CC Treasury Officer of Accounts DL

Dear Gerry,

# Evidence session on reducing water pollution from Agricultural Sources – The Farm Nutrient Management Scheme

At its meeting yesterday the Committee agreed to ask you to co-ordinate with the Treasury Officer of Accounts in order to provide the following additional details:

- What official advice was given to Ministers about the use of the indicative figure of £200 million for budgeting purposes, and by whom?
- You said in the evidence session that when DFP asked you for a figure, you asked an official to get an valuation, which you then multiplied by 80. On what date was the official asked for that valuation?

I would appreciate your response by 1 July.

Yours sincerely,

aul Masker

Paul Maskey Chairperson Public Accounts Committee

## Correspondence of 4 July 2011 from Mr Gerry Lavery



#### From the Senior Finance Director

Wendy Johnston Dundonald House Upper Newtownards Road Ballymiscaw Belfast BT4 3SB

Tel: 028 9052 4608 Fax: 028 9054 4813 Email: wendy.johnston@dardni.gov.uk

Mr Paul Maskey Chairperson Public Accounts Committee Northern Ireland Assembly Room 371 Parliament Buildings Ballymiscaw BELFAST BT4 3XX

4 July 2011

Dear Mr Maskey

# Evidence Session on reducing water pollution from Agricultural Sources – The Farm Nutrient Management Scheme

I refer to your letters of 16 and 23 June to Gerry Lavery in which you sought additional information in relation to the above scheme. Gerry has asked me to reply to you in his absence from the office. Please accept my sincere apologies for not getting this in the post on Friday.

For ease of reference I have set out the information in the order that it appeared in the two letters.

#### Letter of 16 June 2011:

1

2

A copy of the post project evaluation undertaken on the farm nutrient scheme.

A Copy of the post project evaluation is attached at **Annex A**.

A breakdown of the costs incurred in the administration of the scheme, including advisory costs.

FNMS Administration Costs	£million
DARD Scheme Administration	2.25m
DARD Inspection and Technical staff	Зm
CAFRE Advisory farmer consultations	1.6m
Total	6.85m

3 A summary of the number, and grant for each, of farms which were not sensitive to eutrophication but received funding through the scheme.

A 'total territory' policy to implement the Nitrates Directive was adopted to address the widespread eutrophication of rivers and lakes. Consequently, detailed scientific work to define the exact boundaries of Nitrates Vulnerable Zones (NVZ's) and areas sensitive to eutropication was not necessary. Therefore, it is not possible to provide a definitive list of farms which were in areas not sensitive to eutrophication.

However, based on the data available, GIS analysis by the Agri-Food and Biosciences Institute (AFBI) indicates that approximately 317 farms funded under FNMS are in areas that may not have been designated as NVZs due to eutrophication.

The average FNMS grant paid to these farms was  $\pm 30,202$ , with FNMS grant totalling  $\pm 9.57$ m.

It should be noted that any farm has the potential to cause eutrophication if livestock manures or chemical fertilisers are not appropriately managed and applied to land. This was one of the reasons why a 'total territory' policy was adopted.

An analysis of the additional costs incurred as a result of farmers opting to install underground tanks instead of above-ground tanks.

If farmers had opted to install only above ground tanks, the total cost is estimated to be approximately £120 million. This would have comprised of £72 million FNMS grant aid and £48 million of farmer contribution.

Therefore, the additional cost of farmers opting to install below ground tanks is estimated to be  $\pm$ 92 million. This is comprised of  $\pm$ 49 million in FNMS grant aid and  $\pm$ 43 million of farmer contribution

However, there are a number of fundamental points that should be considered along with this estimate:

- Above ground tanks could not be installed on all farms.
- The limited supply capacity for above ground tanks would have meant that sufficient numbers of tanks could not have been constructed under the scheme.
- The additional costs are likely to be an overestimate, because the data available on the cost of above ground tanks relates to farms where they were the most suitable option.

A detailed analysis of these factors is attached at Annex B.

The rationale for the scheme being structured on a first-come, first-served basis against that of a targeted approach focusing on farm locations that could deliver a more positive impact.

The Scheme was open to all livestock farms as a total territory policy to implement the Nitrates Directive had been adopted in 2004. Therefore, the Nitrates Action Programme Regulations would apply to all farms in Northern Ireland.

The aim of the scheme was to assist those livestock farms which wanted to invest in improved livestock manure storage facilities in order to comply with the Acton Programme requirements for livestock manure storage and spreading.

The total territory policy to implementation was determined based on scientific data, an independent Economic Appraisal of the policy options, detailed engagement with key stakeholders through regular meetings of a stakeholder group and the outcome of a 3 month public consultation in 2004.

Given that agricultural activities affect water quality in all areas, it is appropriate that similar standards/principles are applied in all areas. Therefore, a total territory policy would deliver the most positive impact.

4

5

The scheme was structured on a first-come first-served basis to limit the liability in the event that financial resources available would not be sufficient to fund all applications.

6 The cost of the assessments carried out in regard to relocation from and change of use of the Crossnacreevy site.

The costs of assessments carried out in regard to the proposed relocation from and change of use of the AFBI Crossnacreevy site are as follows:

- Planning Position Statement Report offering planning advice with regard to the land use potential of the Crossnacreevy site. Produced in February 2008 by external planning consultants cost £2,731.88
- Valuation Report on the Crossnacreevy site produced by Land and Property Services in March 2008. The notional cost of this report was £7,477.13.
- Costs involved in the preparation of the Crossnacreevy Relocation Business Case include:
  - £6,711.77 CPD professional fees for advice
  - £3,000 external consultant fees for input to business case
  - We are unable to provide actual costs of DARD/AFBI staff time in developing the business case. However it is estimated that such costs were in the region of £27,000.
- 7 A copy of the letter sent by the Accounting Officer for the Department to the Accounting Officer at the Department of Finance and Personnel dated 1 June 2007 which cites the indicative figure of £200million for Crossnacreevy

A copy of the correspondence is attached at **Annex C**.

8 Documentation of the decision to appoint an external consultant to conduct an economic appraisal of the scheme, and who the successful consultants were.

External consultants were commissioned by DARD and DOE to conduct an economic appraisal of the policy options for implementation of the Nitrates Directive in 2003. The scope of the appraisal was therefore much wider than the FNMS.

The tender process was conducted by DFP Procurement Service under the GPA Consultancy Services 2001 Framework. The relevant extract from the Terms of Reference and a summary of the tender process are attached at **Annex D**.

At the time in 2003, it was often practice to appoint external consultants to conduct appraisals of this scale and nature. Given the significant implications for the farming industry and the contentious nature of the issue, the appointment of consultants brought independence to the evaluation of the policy options. It was considered that this independence of government would help to secure support from both farming and environmental stakeholders. A further consideration was the urgency of the appraisal and the capacity within government to carry it out the volume of work required within the timescale.

The appointment of external consultants was consistent with the DFP and DARD Guidance on the Engagement of External Consultants which applied.

BDO Stoy Hayward, in association with Environmental Resource Management (ERM) were appointed. A factor in this was the specialist expertise and significant experience that ERM had of EU Environmental directives on water quality.

ERM were technical advisors to the European Commission from 1997 to 2001 and had undertaken work that was directly relevant to the Economic Appraisal. This included technical studies on the Nitrates Directive involving verification of the Nitrates Vulnerable Zones (NVZs) in 10 Member States, eutrophicaton, assessments of Action Programmes and evaluation of Codes of Good Agricultural Practice. Documentation of the formal procurement and appointment process is recorded. However, there is no formal record of the initial decision to procure external consultants for the economic appraisal.

#### 9 The number of economists employed by the Department at the time.

There were 10 Economists employed by DARD in 2003. Of these, 3.25 full-time equivalents were in Resource Economics Branch which works on Business Cases/ Economic Appraisals. The other economists were in the Farm Surveys and Agricultural Economy Branches which provide economic advice and statistical services.

10 Please liaise with the Northern Ireland Environmental Agency to obtain: a copy of the inspection and breach severity results for 2010 to unpadte figures 14 and 15 of the Audit Office report; and confirmation as to whether any farms in breach of the nitrates action plan received funding from the farm nutrient scheme.

The updated 2010 figures for tables 14 and 15 of the Audit Office report are below. NIEA report that 68 farm businesses in breach of the Nitrates Action Programme received funding under the FNMS.

1. Planned Inspections	2010
Number of planned farm inspections	399
Farms in breach of NAP	84
Percentage of farms inspected in breach of NAP	21%
Number of NAP breaches detected	126
2. Reactive Inspections	
Number of reactive farm inspections	98
Farms in breach of NAP	
Percentage of farms inspected in breach of NAP	94%
Number of NAP breaches detected	
Total farms detected in breach of NAP	
Total number of NAP breaches detected	266

# Farm inspections and total breaches of the Nitrates Action Programme (NAP) detected in 2010

**Source**: Northern Ireland Environment Agency

#### Severity of nitrate breaches 2010

Severity of breach	Number of NAP breaches 2010
High	33
Medium	51
Low	182
Total breaches	266

The number of Low severity breaches increased in 2010 as a result of a change in the penalty regime whereby the breach severity categories were reduced from for four to three.

This meant that the previous warning letter category was not applied in 2010 and a low severity breach applied instead.

The above figures can be reduced to 27 High, 48 Medium & 180 Low (total 255 breaches) if nitrates derogation record-keeping breaches are removed.

Source: Northern Ireland Environment Agency

Responses co-ordinated with the Treasure Officer of Accounts

1 A detailed chronology of the "dialogue" and any written correspondence between DARD and DFP on the indicative valuation for Crossnacreevy subsequent to the letter of 1 June 2007, in regard to its promotion by officials as valid for budgeting purposes, and regarding the condition of an interim review being conducted.

A detailed chronology is attached at Annex E.

3

2 Factual information to supplement the evidence before the Committee in terms of the process, controls and methodology followed throughout the scheme (including Crossnacreevy) such as planning, compliance with risk management, green book processes and gateway review.

The supplemental information sought is attached at Annex F.

A summary including values of the projects which might have been dispensed with in favour of supporting the scheme to the value of  $\pounds 200$  m against Crossnacreevy; or of all projects that were put forward for funding and of those which were subsequently dispensed with.

The allocation made in the Budget 2008-11 in respect of the Farm Nutrient Management Scheme (FNMS) was in the 2008-09 financial year. The receipt in respect of the sale of land at Crossnacreevy was attributed to the 2010-11 financial year. Therefore the FMNS allocation was not directly funded from the anticipated proceeds from the sale of the Crossncreevy site.

The case for an allocation in 2008-09 in respect of FNMS was compelling. There was a legal imperative to comply with the Nitrates Directive with a risk of infraction proceedings from non-compliance. The economic appraisal that considered how farmers could respond to the Nitrates Directive concluded that creating additional storage capacity would be the lowest cost outcome for the Northern Ireland economy. The appraisal also concluded that the combination of a grant scheme to encourage the necessary investment combined with rigorous enforcement with a clear system of penalties for non-compliance should mitigate the risk of infraction proceedings

There were also wider social benefits in relation to rural communities and rural employment associated with the scheme. It was considered that the additional funding provided by the scheme would prevent the de-stocking of livestock and consequent loss of value to the Northern Ireland economy. Retaining stock numbers would not only maintain farm employment but would also sustain employment in the meat and diary processing sectors.

Given that the decision to fund the FNMS was based on policy decisions it is not possible to conclude that an allocation would not have been made in 2008-09 in the absence of the anticipated receipt for Crossnacreevy in 2010-11.

In terms of projects that could have been funded had an allocation not been made to FNMS, **Annex G** sets out the view of the Strategic Investment Board (SIB) which was responsible for bringing advice forward to Ministers on capital allocations for period 2008-09 to 2010-11.

Turning to 2010-11, the anticipated capital receipt of £200 million from the sale of Crossnacreevy increased the expected capital funding envelope. This allowed an additional £200 million of capital allocations to be made for that year in ISNI/Budget 2008-11 than would otherwise have been the case.

**Annex H** shows the capital projects identified for 2010-11 in the final Budget 2008-11. It is impossible to say, at this point, which of these projects would not have been funded if the Crossnacreevy receipt had not been included in the Budget 2008-11 plans. However, the overall level of gross capital would have been £200 million lower without its inclusion.

#### **Excess Vote**

4

Please outline the procedures DFP use to monitor expenditure generally with the aim of preventing Departments overspending and give your assessment of how effective these procedures will be as we enter a period of restricted funding.

The responsibility to monitor and control departmental expenditure rests with the departmental Accounting Officer. It is his/her responsibility to plan and control the resources and net cash allocated to his/her department to ensure that these do not exceed the amounts approved by the Executive and authorised by the Assembly.

Departments routinely provide DFP monthly Forecast Outturn with information which shows actual outturn to date and forecast outturn to the end of the year financial year. Whilst this is not a control mechanism it does provide DFP with information that can be used as the basis of dialogue between DFP Supply teams and their respective departments.

The in-year monitoring process provides a mechanism for individual departments to identify any emerging pressures which they feel cannot be managed within existing allocations.

In terms of cash management, within the Department of Finance and Personnel, Government Accounts Branch (GAB) monitors departments' cash drawdown against allocation and will inform them if it appears that they are reaching the limit of their allocation. The system used by GAB will automatically produce an 'alert' with a notification of "do not pay" when the department exhausts its allocation. It should be noted however that while this will prevent issuing money (cash) to a department, it will not prevent a department incurring a liability. This control measure is used irrespective of the quantum of funding allocations to departments.

#### Letter of 23 June 2011:

What official advice was given to Ministers about the use of the indicative figure of £200 million for budgeting purposes, and by whom?

The decision to include the anticipated  $\pounds$ 200 million receipt in 2010-11 was taken by the Executive during the course of the Budget 2008-11 process.

As the Committee will be aware, in accordance with long standing convention, we do not disclose official advice to Ministers.

You said in the evidence session that when DFP asked you for a figure, you asked an official to get an valuation, which you then multiplied by 80. On what date was the official asked for that valuation?

This occurred on or subsequent to the 25 May and prior to the issue of the letter of 1 June.

Yours sincerely

Wandy Shota

Wendy Johnston Senior Finance Director

### Annex A

### Department of Agriculture and Rural Development Post Project Evaluation

# For The Farm Nutrient Management Scheme

June 2011

#### Contents

- 1. Executive Summary
- 2. Introduction
- 3. Comparison of Projections with Out-Turns for the Farm Nutrient Management Scheme
- 4. Non-Monetary Factors
- 5. Cost Effectiveness and Conclusion on the Value For Money of the Scheme
- 6. Management of Scheme
- 7. Lessons Learned
- 8. Recommendations

#### Glossary

AFBI	Agri-Food and Biosciences Institute
DARD	Department of Agriculture and Rural Development
DOE	Department of Environment
EC	European Commission
FNMS	Farm Nutrient Management Scheme
NAP	Nitrates Action Programme
NI	Northern Ireland
NIEA	Northern Ireland Environment Agency
NVZs	Nitrate Vulnerable Zones
ROI	Republic of Ireland
SMRs	Statutory Management Requirements
SWG	Scientific Working Group
UK	United Kingdom

### 1. Executive Summary

This report evaluates how the Department of Agriculture and Rural Development (DARD) implemented the Farm Nutrient Management Scheme (FNMS). The Scheme was the key support measure for implementation of the EU Nitrates Directive in Northern Ireland

On 1 January 2007 the Nitrates Action Programme Regulations (Northern Ireland) 2006<sup>1</sup> (the NAP Regulations) came into operation. These Regulations implement the requirements of the Nitrates Directive and apply to all farmers across Northern Ireland, apart from some transitional arrangements on closed spreading periods and manure storage requirements. The Regulations require farmers to observe rules to reduce nitrate and phosphorous pollution. The Action Programme is reviewed, and if necessary revised, every four years.

Key measures include: a minimum storage capacity for slurry/manure, a closed spreading period for slurry/manure during the winter months, limits on the amount of slurry/manure and chemical fertilisers that can be spread, land application restrictions and record keeping.

The Farm Nutrient Management Scheme (FNMS) was introduced by DARD to help farmers comply with the Nitrates Action Programme and the Silage, Slurry and Agricultural Fuel Oil (SSAFO) Regulations, and to make more efficient use of the nutrients in manures. The aim of the Scheme was to increase storage capacity for slurry and manures on livestock farms.

The Scheme opened to applications on 26 January 2005 with a closing date of November 2006, which was set by EU State Aid rules. Original projections were that a 5 year scheme would be required. Subsequently, when EU State Aid rules were revised, the Scheme was extended to 31 December 2008 for completion of works and submission of claims. Grant payments were completed by 31 December 2009.

The FNMS provided 60% capital grant support towards the cost of building slurry and manure storage facilities, up to a maximum grant limit of  $\pm 51$ k per farm business. Some 4900 applications were received and 3,933 farmers completed works under the Scheme. The average investment per project was approximately  $\pm 51$ k, and the average grant approximately  $\pm 30,841$ . Facilities are built to British Standards set by the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Northern Ireland) Regulations 2003 (SSAFO Regulations) and have a minimum 20 year design life, with maintenance.

The original budget allocated to the FNMS was £45m. However, this was increased to  $\pm$ 144m in 2007 to ensure that all applicants could be funded. The FNMS allowed 3,933 projects to be completed. This wide-scale upgrading of farm slurry storage infrastructure involved a total investment of some  $\pm$ 212m, of which  $\pm$ 121.3m grant aid was paid under the Scheme. This investment was essential in ensuring farmers comply with the requirements of the NAP, avoiding EU infraction fines, and will maintain livestock production by supporting environmentally sustainable farming practice and improved water quality.

1

http://www.doeni.gov.uk/nitrates\_action\_programme\_regulations.pdf

# 2. Introduction

#### 2.1 Introduction

Eutrophication is considered to be the most widespread threat to good water quality in Northern Ireland. A large proportion of surface waters in Northern Ireland, both freshwater and marine, are now impacted by eutrophication. This is caused by nutrient enrichment arising from too much nitrogen, largely in the form of nitrate, and phosphorus entering the water. Where eutrophication occurs, there can be algal blooms and increased growth of nuisance plant species. This is evident in rivers and lakes that are clogged with weeds and covered in a green scum. Eutrophication leads to a decrease in biodiversity, a loss of fish habitats and deterioration in the aesthetic standards of water bodies. There can also be taste and odour problems associated with algal blooms that can lead to higher treatment costs where drinking water sources are concerned.

In Northern Ireland, agriculture is the largest source of nutrients found in surface waters, although discharges from wastewater treatment works also make a significant contribution. The joint DOE/DARD scientific report entitled 'Report on the Environmental Aspects of the Nitrates Directive', published in August 2002, concluded that agriculture accounted for approximately 75% of the nitrate loadings into Lough Neagh and Lough Erne. A subsequent report, 'An Evaluation of Nitrogen Sources and Inputs to Tidal Waters in Northern Ireland', published in March 2004, also found a similarly large agricultural contribution to the nitrate loading in other rivers throughout Northern Ireland. This report also confirmed that agriculture and wastewater treatment works respectively were the major contributors to phosphorus loadings.

The agricultural activities which give rise to water pollution are mainly:

- a) Inadequate farmyard management in relation to provision of slurry and manure storage facilities of adequate capacity, interception of soiled water, diversion of unsoiled surface water;
- b) Application of fertilisers (organic and chemical) to land in an inappropriate manner (e.g. on wet or frozen land, too close to watercourses etc.) or at an inappropriate time of year (e.g. when crop uptake is low) or in excess quantity.

Remedial action on eutrophication is required under the Nitrates Directive. The Nitrates Directive (91/676/EEC) aims to improve water quality by protecting water against pollution by nutrients (nitrogen and phosphorous) from agricultural sources. In particular, key objectives are to promote better management of animal manures, manufactured fertilisers and other nitrogen-containing materials spread onto land. The Directive allows Member States to either designate discrete areas of land as Nitrate Vulnerable Zones (NVZs) or establish an Action Programme to be applicable to the whole territory. The Action Programme requires farmers to observe rules to reduce nutrient pollution, with measures on storing manure and restrictions on the spreading of manure and chemical fertiliser to land.

The Directive defines three situations where agricultural pollution must be controlled:

- 1. surface waters that exceed or are likely to exceed concentrations of 50mg NO<sup>3</sup>/1;
- 2. groundwaters that exceed or are likely to exceed concentrations of 50mg NO<sup>3</sup>/1; and
- 3. waters that are or are likely to become eutrophic.

The measures required by the Directive are principally designed to control nitrate leaching. However, they will also make a significant contribution to reducing phosphate run-off, which is the most significant cause of eutrophication (nutrient enrichment) of rivers and lakes in Northern Ireland.

#### 2.2 Economic Appraisal

In 2003, DARD and DOE commissioned BDO Stoy Hayward consultants to produce an economic appraisal (EA) on how to implement the Nitrates Directive in NI.

The EA had three main objectives, as follows:

- 1. NI should adopt total territory designation to manage eutrophication through a Northern Ireland Nitrates Action Programme (NAP).
- 2. Measures which should be included in the NI Nap. One of these recommendations that was likely to most significantly impact farmers was that organic manure must not be applied to land during the winter months, October to January (defined as the "closed period")
- Capital grant support should be introduced to help farmers invest in additional slurry storage facilities, which would allow them to comply with the 'closed period' for slurry spreading.

It was anticipated that the achievement of these objectives would eventually improve water quality and achieve a verifiable impact on soil and water nutrient levels.

#### 2.3 Achievement of EA Objectives

The recommendations made within the original BDO Stoy Hayward EA were implemented as follows:

#### **Total Territory**

It was originally anticipated that all of NI would be designated as a NVZ by 30 June 2004. A 3 month consultation on the proposed total territory approach concluded in July 2004. The Department carefully considered the responses to the consultation before putting recommendations to Ministers. Subsequently, regulations implementing a total territory approach came into operation on 29 October 2004, thus establishing the area to which an Action Programme would be applied under the Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) 2004.

#### **NAP Measures**

On 1 January 2007 the Nitrates Action Programme Regulations (Northern Ireland) 2006<sup>2</sup> (the NAP Regulations) came into operation. These Regulations implement the NAP measures recommended within the BDO Stoy Hayward EA. They apply to all farmers across Northern Ireland from that date, apart from some transitional arrangements on closed spreading periods and manure storage requirements.

Implementation of the NAP took longer than initially envisaged due to detailed negotiations with the European Commission. As a result, significant additional work was required in the area of nutrient efficiency, which had not been envisaged in the initial economic appraisal. This required a local scientific evidence base, and a joint Departmental/Industry scientific group was set up to develop proposed measures.

Agreement with the EU Commission on the final content of the Action Programme was reached in autumn 2006. The Action Programme Regulations subsequently came into operation on 1 January 2007.

The NAP is subject to review every four years on an ongoing basis. As such, it was reviewed, and a report submitted to the European Commission, as required by the Directive, in 2010. The review concluded that the NAP measures for 2007-2010 should be carried forward into the NAP for 2011-2014 with minimal change to allow time for the existing measures to

2

http://www.doeni.gov.uk/nitrates\_action\_programme\_regulations.pdf

"bed-in" and for sufficient data to be collected to determine environmental response to the measures. As a result, only minor revisions were made and Regulations to implement the NAP for 2011-2014 came into operation on 1 January 2011.

A summary of the main NAP measures can be found at Annex A.

#### **Capital Grant Support**

Capital grant support was provided through the Farm Management Nutrient Scheme (FNMS).

The initial economic appraisal had envisaged that the FNMS would be introduced at the same time as the Action Programme. This is often the case in other Member States as certainty on the Action Programme requirements help farmers to fully assess their need or otherwise for additional for additional slurry storage and make an application for grant aid.

As outlined, the Action Programme was in not introduced in 2004 due to detailed negotiations with the Commission and its content. However, DARD proceeded to launch the Scheme ahead of the Action Programme when there was a reasonable degree of certainty on the relevant key areas of the Action Programme. If the FNMS had not been introduced until the Action Programme was finalised in autumn 2006, there would mot have been sufficient time to implement the Scheme and complete the construction works by the end of 2008.

#### 2.4 Post-project Evaluation

While the original EA appraised the overall implementation of the Nitrates Directive, it also recognised that it would take up to ten years before the benefits of the NAP measures would be recognised in NI waters (section 11.4, page 84). However, it did anticipate there would be a "scientifically verifiable impact on soil and water nutrient levels within the first four year evaluation period, i.e. by 30 June 2008".

This has not been possible, as there was slippage in the designation of NI as an NVZ, in the launching of the NAP, and in the launching of the capital grant support scheme – the FNMS, as discussed above. It is recognised that the investment in manure storage capacity which facilitates farmer compliance with the 'closed period' for manure application to land is one of the most important mechanisms in reducing nutrient run-off from agriculture. As the slurry storage investments were not all completed until end of 2008, this impact objective could not be met, and it remains too early to assess the impact of the NAP on water quality.

The NAP is reviewed every four years. A review of the NAP 2007-2010 was carried out by a Scientific Working Group (SWG) in 2009<sup>3</sup>. However, as the storage was only in place from the end of 2008, the NAP measures for 2007-2010 have been carried forward to 2011-2014 with minimal change to allow time for the existing measures to "bed-in" and for sufficient water quality data to be collected to determine environmental response. This review process is also subject to scrutiny by the EU Nitrates Committee, which comprises representatives from all member states.

Given this ongoing monitoring and review mechanism for the NAP, and as it is too early to measure the success of the NAP, this Post-project Evaluation evaluates the outturn of the FNMS against projections for it only. The FNMS is the only element of overall Nitrates Directive EA on which public money has been spent on grant aid, and this evaluation also outlines the lessons learned from operating a capital grant scheme of this nature.

3

http://www.doeni.gov.uk/nap\_review\_final.pdf

### 3. Comparison Of Projections With Out-Turns For The Farm Nutrient Management Scheme

#### 3.1 Background

The FNMS was introduced by DARD to help farmers comply with the Nitrates Directive, and in particular the 'closed period' for slurry spreading. The aim of the Scheme was to increase storage capacity for slurry and manures on livestock farms and make more efficient use of the nutrient value of manures.

Any installations under FNMS had to meet the Silage, Slurry and Agricultural Fuel Oil (SSAFO) Regulations. The purpose of the SSAFO Regulations is to minimise the risk of water pollution from silage, slurry and agricultural fuel oils by setting minimum standards for the construction and maintenance of structures used to store these substances. Therefore, installations are designed to last a minimum of 20 years, with maintenance.

There were three documents which achieved approval for the FNMS at various stages. The key elements of these documents are outlined below:

Document:	Date:	Storage Required by NAP	Grant Aid Rate	Projected FNMS Uptake (No. of farms)	Projected investment in Storage	Projected Grant-aid Budget Required	Budget available
Economic Appraisal	Mar 04	20 weeks on cattle and sheep and pig and poultry farms	40% (with eligible expenditure cap of £85k; hence grant cap of £34k)	5,000	£98.7m	£39.5m	£30m initially, which was increased by DFP to £45m in Oct. 2004
Addendum to Economic Appraisal to increase grant-aid rate from 40% to 60%	Jul 05	22 weeks on cattle and sheep farms, and 26 weeks on pig and poultry farms	60% (with eligible expenditure cap of £85k, hence grant cap of £51k)	5,000	£124m*	£71m	£45m (addendum said if this amount was not sufficient, additional bids for resources would be made.)
Business Case seeking additional funding to allow all applicants to be funded.	Jun 07	As above	60% (with eligible expenditure cap of £85k, hence grant cap of £51k)	4,700	£251m*	£144m	Up to £144m

Document:	Date:	Storage Required by NAP	Grant Aid Rate	Projected FNMS Uptake (No. of farms)	Projected investment in Storage	Projected Grant-aid Budget Required	Budget available
Out-turn	As at Dec 09	Storage Required by NAP	Grant-aid rate	No. of farms assisted	Investment in storage under the scheme	Grant-aid Spent	
		As above	As above-60%	3,933	Est. £212m⁴	£121m	

Projected total investment on storage includes expenditure which is above the £85k eligible expenditure cap per project. On approximately 19% of projects, the total expenditure was £85k or more and the farmer funded 100% of expenditure above £85k.

#### 3.2 Number of applications to FNMS and grant-aid rate

Projection: 40% grant-aid rate and 5,000 farms funded under FNMS.

Considering the storage capacity likely to be required by the draft NAP (i.e. 20 weeks for cattle and sheep and pig and poultry farms), the EA projected that approximately 12,000 farmers in NI were likely to have some deficit in storage capacity. It was anticipated that the operation of a capital grant scheme providing a 40% grant-aid rate (which was introduced to be consistent with the rates of aid available for similar schemes in other parts of the UK) would attract 5,000 farmers to apply.

**Out-turn**: 60% grant-aid rate (20% higher than originally anticipated) and 3,933 farms funded under FNMS (20% lower than originally anticipated).

#### Grant-aid rate – discussion of variance:

Consultations with farming representatives suggested that there would be very low levels of interest with a 40% grant scheme. In October 2004 DARD submitted proposals to the European Commission for an increase in the grant rate to 60%. The submission highlighted the higher cost of providing storage tanks, caused by an increase in the cost of materials, particularly steel and concrete.

While the Commission was considering the case to increase the grant-aid rate, the FNMS opened for applications on 26 January 2005, offering financial assistance at a rate of 40% on the first £85,000 of eligible expenditure, providing a maximum capital grant of £34,000. However, uptake to the scheme while it had a 40% grant-rate was very low.

In June 2005, the Commission gave DARD permission to apply a 60% grant-aid rate on the first £85,000 of eligible expenditure, providing a maximum capital grant of £51,000. An addendum to the EA was completed in July 2005 which justified increasing the grant-aid rate from 40% to 60% and it was submitted to DFP. By this time, it was clear that very few farmers were going to invest in storage under FNMS at a 40% grant rate, as the scheme had been open from Jan 05, yet only approx. 100 applications had been received by July 05. Therefore, at 40% grant-aid, it was likely that the majority of farmers would either risk non-compliance, or destock to become compliant (which would have a knock on impact on the value added generated by the agricultural industry within the NI economy). The increase in grant-aid rate from 40% to 60% was approved by DFP in July 2005.

<sup>4</sup> 

For the 4,694 applications submitted, they had a total investment of £251 million (before cap applied), and grant aid (using 60%) of £144 million. Therefore, grant-aid was 57% of total investment on average. Applying this to final grant spend of £121m, yields an investment of £212m.

A similar scheme operating in the ROI provided grant aid of 60% in regions with a 16 or 18 week slurry storage requirement. In regions with a 20 or 22 week storage requirement, Counties Cavan, Leitrum, Monaghan and Donegal, the grant rate was 70%. There was also a top up grant for young farmers of 10% in LFAs and 5% in other areas.

#### Number of applications – discussion of variance:

While it was originally envisaged that there would be 5,000 projects completed under FNMS (at 40%), by July 05 it was acknowledged that the achievement of this level of uptake might only be possible if the grant-aid rate was increased to 60%. The 60% grant-aid rate was in place by July 2005.

The original closing date for the scheme was November 2005, however by this stage only 386 applications had been received by DARD. The closing date was extended to March 2006. This was because farmers were having difficulty finding builders and obtaining quotations due to the high demand on the construction industry at that time. A total of 4,899 applications were submitted by 31 March 2006, which was close to the projected level of 5,000 farms participating in the scheme. However, some of these were subsequently withdrawn by the applicant, or rejected by DARD because they did not meet the rules of the scheme, and the final outturn was that 3,933 applications were funded under FNMS.

#### Breakdown by farm type

Of the 3,933 applications funded, 45% were dairy farms - which means that more than half (55%) of the NI dairy farm population was grant-aided under the scheme. 47% of farms funded were cattle and sheep (i.e. 1,848 farms funded, from a NI cattle and sheep farm population of 18,274).

#### **Breakdown by location**

65.5% of farms funded were located in the LFA (whereas 70% of the NI farm population is in the LFA), and 34.5% were located in the lowland (whereas 30% of the NI farm population is in the lowland).

#### Farm size

The farms claiming grant were also much larger than average, for example, the average land area farmed is 75ha, whereas the average farm size in NI is 40.6ha.

#### Farms which did not avail of FNMS funding

Farmers were initially asked to notify the Department if they were interested in applying to the scheme, and 11,191 expressions of interest were received. As only 3,933 were eventually funded, there are some 7,000 which possibly identified a current, or potential future storage deficiency who did not apply to the scheme in order to invest to become compliant.

It is likely that these farms were smaller than those who eventually claimed under the scheme (which are much larger than average), and considering that they are not being picked up as non-compliant in NIEA inspections, or through reported breaches of the closed period, it is possible that these farms pursued other options in order to become compliant, e.g. such as low-level destocking, adjusting farming systems or the installation of guttering/drainage etc. in order to reduce levels of rain water entering slurry tanks and unnecessarily using up storage capacity.

#### 3.3 FNMS Timelines

The following table shows the FNMS key events and the original, and final deadlines associated with FNMS are highlighted in bold:

Mar 04	FNMS receives DFP approval
Jun 04	FNMS receives EC approval
Jan 05	FNMS opens for applications with 40% grant-aid
Mar 05	Closing date for preliminary applications (11,191 preliminary applications received)
June 05	EC approves grant rate increase from 40% to 60%
July 05	DFP approves grant rate increase from 40% to 60%
Nov 05	Original closing date for full applications (386 full applications received)
Mar 06	Revised closing date for full applications (4,899 full applications received)
	······································
Nov 06	EC deadline for completion of all works
Nov 06 Dec 06	
	EC deadline for completion of all works
Dec 06	EC deadline for completion of all works       EC approves a 2-year extension to the scheme

#### **Closing date:**

It was originally anticipated that the application window to FNMS would close in November 2005. However, by that stage only 386 applications had been received as farmers were having difficulty finding builders and obtaining quotations due to the high demand on the construction industry at that time. The closing date was extended to end of March 2006 in order to address these difficulties and ensure sufficient uptake.

#### Completion of works, and claims paid deadline:

The EC required all works to be completed by Nov 06, however, considering that 70% of the 4,899 applications received by the end of March 2006 were received in just the last 3 weeks, it was clear that not all of the works could be completed in only eight months. Therefore, DARD requested that the EC grant a two-year extension of the scheme, to the end of 2008. This would:

- enable capacity in the construction industry to meet demand for storage tanks;
- control the increase in prices caused by the short-term imbalance between supply and demand;
- drive up levels of voluntary compliance with the Nitrates Directive Action Programme; and
- minimise potential short-term disruption arising from destocking and ensure the sustainability of the agriculture industry.

This proposal was subsequently approved by the Commission in December 2006.

There was a further year, until 31 December 2009, to process claims and make payments. The Statutory Powers relating to these changes are discussed in Annex C.

#### 3.4 Cost of works under FNMS, and implications for grant-aid paid

**Projection**: £98.7m investment on 5,000 farms, and £40m grant (i.e 40%)

The EA had made the following assumptions regarding the cost and grant-aid projections for the FNMS:

- 1.8 million cubic metres of storage to be installed (4.27 million cubic metres for 12,000 farms reduced to that required for 5,000 farms pro-rata);
- £46/m3<sup>5</sup> for storage, and hence a storage cost of £81.9m, where cost per m3 was based on the assumption that 75% of installations would be above ground tanks, and 25% would be below ground tanks;
- £16.8m for ancillary works on dirty water/rain water separation and middens. (£40.4 million required on 12,000 farms converted to cost for 5,000 farms pro-rata);
- Hence, a total cost of works of £98.7m for 5,000 farms;
- With grant at 40%, grant-aid paid would be £40m.

**Outturn**: over £200m investment on 3,933 farms, and £121m grant paid.

The addendum submitted to DFP in July 2005 seeking approval for an increase in the grantaid rate from 40% to 60% already acknowledged that the cost of works to be carried out under FNMS would be higher than anticipated, and that this, along with the increase in grantaid rate, would result in a higher grant-aid cost than originally anticipated – it was estimated that  $\pounds$ 71m grant-aid would be paid to 5,000 farms. However, once the applications came in (the majority of which were submitted in March 2006), it was clear that, if all applications were to be funded, grant-aid would have to be increased significantly to approx.  $\pounds$ 144m to fund almost 5,000 farms. Some applicants subsequently withdrew their application, and some applications were rejected by DARD, and the final outturn was that 3,933 farms received  $\pounds$ 121m of grant-aid, and hence the grant-aid budget spent was 200% higher than the  $\pounds$ 40m originally anticipated.

The following table outlines the variances between projections and out-turns at the farm level:

	Original EA	Addendum Jul 05	Business Case Jun 07	Outturn
Av. Cost of investment per farm	£19,738	£23,750	£53,485	£54,107 <sup>6</sup>
Av. Grant-aid per farm	40%: £7,895	60%: £14,250	60%: £30,612	60%: £30,841

#### **Reason for variances:**

(1)

- The cost per cubic metre of storage installed was significantly higher than originally anticipated, for example, in the original economic appraisal, the consultants had estimated the average cost of slurry storage to be £46/m<sup>3</sup>. However, an analysis of actual FNMS applications found the average cost to be approximately £78/m<sup>3</sup>. This was due to:
  - Increases in raw material costs;
  - A booming demand in construction both locally and further afield which raised labour rates;
  - The types of tank that were constructed differed from projections (i.e. completed projects actually comprised 16% above-ground storage (cheaper) and 84% below-ground storage
- 5 2003 cost per cubic metre projection was based on £47-£70 p/m<sup>3</sup> for below ground tanks, & £30-£35 p/m<sup>3</sup> for above ground tanks, with 75% of farmers estimated to install above ground tanks, & 25% of farmers installing below ground tanks.

<sup>6</sup> Estimated as we know av. grant-aid per farm, and that grant-aid was 57% of total project cost on average due to the fact that some farms invested more than £85,000 which was the ceiling for expenditure on works eligible for grant-aid.

(more expensive), whereas cost projections were based on the assumption that 75% would be the cheaper above ground installations, and 25% below ground, which therefore led to cost projections being underestimated).

- (2) The increase in grant rate from 40% to 60% increased the budget requirements from the original projections.
- (3) The increase of the minimum storage requirement from 20 weeks to 22 weeks for cattle and 26 weeks for pig and poultry farms increased the cost of capital works required.
- (4) In the original projections, there was an underestimate of the amount of storage required to deal with "dirty water". The key factor here was that dirty water needs to be collected and stored due to its polluting potential. The Nitrates Action Programme defines "dirty water" and requires that it is landspread. It cannot be allowed to run into waterways and this required changes to how some farmyards are managed, and resulted in additional works being required.

All funded farms meet the required 22 week (26 weeks for pig/poultry farms) slurry storage capacity, and the installations meet the SSAFO Regulations which require a minimum 20 year lifespan with maintenance.

#### 3.5 Evaluation of FNMS, as per original EA

The following table, which was included in the original EA, lists the framework to be used to evaluate the FNMS. The final column details the actual Scheme results.

Factor	Responsibility for Data Provision	Method of Evaluation	Results
Uptake of grant scheme by farm type	DARD	<ul> <li>Review of application forms submitted to DARD</li> <li>Review of letters of offer issued</li> </ul>	<ul> <li>3,933 FNMS projects funded. 45% dairy, 47% beef &amp; sheep, 8% mixed; 65.5% LFA, 34.5% lowland.</li> </ul>
		Review of grants issued	<ul> <li>FNMS funded farms account for 44% of total cattle numbers and 30% of NI land area.</li> </ul>
Storage capacity on farms	DOE/DARD	<ul> <li>Review of NIEA records</li> <li>Review of returns submitted by farmers</li> </ul>	All funded farms meet the required 22 week (26 where appropriate) slurry storage capacity
Record keeping on farms Additional spreadlands required by farms (by type and size)	DARD DARD/DOE	<ul> <li>Review of returns submitted to DARD</li> <li>DARD to liaise with DOE to ensure that this information is recorded for farms by type and size</li> </ul>	<ul> <li>Farmers are required to keep a range of records which are inspected by NIEA.</li> <li>Records include slurry import/export and additional spreadlands</li> </ul>
Instance of enforcement procedures	DOE	<ul> <li>Review of NIEA records detailing enforcement measures, procedures and outcomes</li> </ul>	<ul> <li>5 breaches of closed period during the 09/10</li> <li>Nil breaches of closed period during the 10/11</li> <li>Appropriate enforcement measures taken</li> </ul>

Factor	Responsibility for Data Provision	Method of Evaluation	Results
State of repair of storage facilities on farm	DOE	<ul> <li>Review of NIEA records in terms of the state of repair of slurry storage facilities (details on compliance with SSAFO Regulations will assist)</li> </ul>	<ul> <li>All funded projects meet SSFAO Regulation standards</li> </ul>
Water nutrient levels and trophic status	DOE	Review of NIEA records on water nutrient and trophic status	<ul> <li>Initial trends indicate that nutrient levels are declining</li> </ul>

### 4. Non-Monetary Factors

#### 4.1 Identified Non-monetary Factors

The original appraisal assessed the following non-monetary factors when evaluating which option to progress:

- Impact on addressing eutrophication impact on bio-diversity
- Impact on amenity value of waterways
- Farmer response

#### 4.2 Evaluation of Non-monetary Factors

The first two of these factors relate to the overall impact on water quality of the NI Nitrates Action Programme, and therefore cannot yet be fully measured.

However, the key to impacting on water quality is for farmers not to spread organic manure during the wet winter months (i.e. during the "closed period"). The capital grant scheme assisted farmers with insufficient storage to install additional capacity so that they could comply with the closed period requirement of the NI NAP. Therefore, the farmer response to the Action Programme can be partly measured through compliance with the slurry spreading closed period.

During the closed spreading period 15 October 2009 to 31 January 2010 there were 5 breaches, and during the spreading period 15 October 2010 to 31 January 2011 there were no breaches.

Considering that at June 2010, there were some 23,367 NI farms with livestock, this low incidence of breaches over two years signifies a high degree of compliance with the closed period. This indicates that farmer response to the closed period is positive, and that the FNMS has assisted with this high level of compliance.

#### 4.3 Other Realised Benefits

With regard to the FNMS, other realised benefits include:

- Assisted Northern Ireland in addressing the EC's Nitrates Directive.
- Assisted farmers in meeting SSAFO Regulations standards.
- Brought about the necessary upgrading of farm infrastructure to support improved management of slurry/manures and ensure more sustainable farming practice.
- Ensured a collaborative approach between government, farmers and environmental stakeholders to improving water quality.
- Improved management of slurry and manures will contribute to reducing greenhouse gas emissions from Northern Ireland agriculture through lower use of chemical fertilisers.
- Enhanced DARD's credibility within the agri-food industry

## 5. Cost Effectiveness and Conclusion on the Value for Money of the Scheme

#### 5.1 Effectiveness of the Scheme

In order to assess the effectiveness of the FNMS in helping farmers to comply with requirements under the Nitrates Directive, DARD has used the following indicators:

- 1. Compliance with the closed period;
- 2. Livestock numbers in farms supported through the FNMS;
- 3. Water quality data and trends in nutrient use; and
- 4. Analysis of farms which did not avail of FNMS funding.

These indicators are discussed within this section.

#### 5.2 Compliance with the Closed Period

In terms of FNMS compliance, no breaches of the closed period were recorded in 2007 and 2008. This is because the closed period was phased in and only applied fully from 1 January 2009. Farmers had until 31 December 2008 to have the required slurry storage in place.

Until then, slurry could be spread during the closed period, if farmers did not have adequate slurry storage, provided other requirements of the Nitrates Action Programme Regulations relating to weather and ground conditions were observed.

The closed period therefore applied to all farmers from 1 January 2009. During the first full closed period for the land application of organic manure, from 15 October 2009 to 31 January 2010, 5 breaches were detected by NIEA.

In the closed period 15 October 2010 to 31 January 2011, no breaches were detected.

At June 2010 there were 23,367 NI farms with livestock. This low incidence of breaches over two years therefore signifies a high degree of compliance with the closed period and indicates that adequate slurry storage capacity is now in place.

#### 5.3 Livestock Numbers in Farms Supported Through the FNMS

Analysis shows that the 3,933 farms funded under the FNMS account for 291,849 ha of total NI agricultural land. This equates to 29% of the total area of NI farmed.

663,994 cattle are held on the funded farms, which equates to approximately 42% of total NI cattle. When cattle numbers are converted into Livestock Units (which convert animals of different ages/types into a standard Unit) 468,942 livestock units are held on the funded farms, which equates to 44% of total NI livestock units.

#### 5.4 Water Quality Data and Trends in Nutrient Use

The NAP aims to lower nutrient losses from agricultural land. For Northern Ireland where the main water quality problem is eutrophication of rivers and lakes, this essentially means tackling high phosphorus losses. As discussed in Section 2.4, the storage facilities installed under FNMS are the main mechanism to tackle nutrient losses to water, and these, in the main, were only completed towards the end of 2008. Therefore, it is too early to comment on the impact of FNMS on water quality.

However, some of the water quality monitoring results provided to date are encouraging. For example, they show that nitrate losses in rivers and lakes in Northern Ireland remain well

below threshold levels that will cause problems. All rivers and lakes are within the Directive limit of 50 mg N03/L.

Phosphorus losses can reflect long term imbalances in phosphorus use on farms and so it will take some time for improvements to be seen in water quality. For a lake such as Lough Neagh, recovery is further slowed by the phenomenon of phosphorus release from the lake sediments. Currently this sediment release during the summer is roughly similar in size to loading of soluble phosphates to the Lough from the catchment

However results to date with respect to phosphorus are encouraging.

- There has been a widespread decrease in soluble phosphorus concentrations from the river NIEA monitoring network with 75% of sites showing a decline. The strength of trends can be assessed statistically to determine the probability that the trend is just by chance.
- At 65% of sites the downward trend was strong with a 99% probability that it was not due to chance. For 10% of sites the trend was judged significant at the 95% probability level (i.e. with only a 1 in 20 chance that it occurred by chance).
- The median rate of decline of phosphate in the rivers was 2 micrograms P/L/year. It should be noted that prior to 2000 trend was for concentrations to increase with time.
- Annual concentrations of phosphate are declining quite rapidly in rivers to the north of the Lough Neagh catchment (Main, Sixmile, Moyola, Ballinderry) where the rate of decline is 4 micrograms P/L/year. In the south of the catchment there is no obvious decline to date. This divergence may reflect soil type as soils to the north have a high capacity to fix or immobilise phosphorus.
- Translating these declines in river phosphate concentrations into river loadings of phosphate to Lough Neagh is complicated by the high flows observed over recent years. High runoff rates that underpin high flows, tend to increase loadings of P to rivers.
- To allow for the flow effect, current phosphate loads can be compared with those predicted using historic data collected before measures to curtail phosphorus losses were implemented. In this case data collected from 1980 to 2004. Using this model indicates that phosphate loads from all the major rivers that flow into Lough Neagh measured and over the last 3 years were lower by an average of 97 tonnes per year than predicted (range of reductions -61 tonnes P to -151 tonnes P/year) a reduction of 28%.
- Both Lough Neagh and Lough Erne also show clear downward trends in lake total phosphorus. If we compare over a one year average concentration before FNMS with most recent data (May 2005- April 2006 with May 2010 April 2011), the mean total phosphorus in Lough Neagh declined from 147 to 118 micrograms P/L; which is a decline of just under 20%. For the Lough Erne the trend is similar with mean TP declining from 64 to 55 micrograms P/L over the same period a decline of 14%.
- Mini-catchment monitoring undertaken by AFBI and funded by DARD of small rural streams shows a more complex picture. In County Fermanagh/Tyrone (Colebrooke River) there has been a marked reduction in phosphorus levels. In County Down (Upper Bann), while stream phosphorus levels are lower than 15 years ago there is less evidence for a more recent decline.
- Reasons for these differences are under investigation, but may partly reflect a natural difference between recovery times due to differing soil types. It is also likely that competing increased phosphorus loadings, in this case from septic tanks from new rural dwellings that have been built in the Upper Bann catchment in the past decade, are a factor.

Monitoring of both Loughs and mini-catchments are continuing and results are considered when the effectiveness of the Action Programme is reviewed.

#### 5.5 Conclusion on Value for money

DARD inspected, approved and paid 3,933 FNMS claims. The total amount of grant paid was  $\pm 121.3$  million, which is an average of  $\pm 30,857$  per claim.

Although actual scheme uptake was approximately 20% lower than estimated, total investment was substantially higher (+200%) for the reasons detailed in Section 3.4 of this evaluation.

While actual costs surpassed projected costs, it may still be contended that the Scheme represented value for money, for the following reasons:

- The Scheme helped ensure that NI complied with the Nitrates Directive. It has been estimated that infraction fines imposed by the EC against NI for failing to comply with the Directive would have equated to £135k per day, or £50m per year.
- The average investment per project was approximately £51k. Facilities are built to British Standards set by the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Northern Ireland) Regulations 2003 (SSAFO Regulations) and have a minimum 20 year design life, with maintenance. This investment will maintain livestock production by supporting environmentally sustainable farming practice and improved water quality.
- The FNMS Business Case of 2007 demonstrated the cost effectiveness of funding of all applications. At that point additional budget was required to fund 2,780 applications. The Business Case demonstrated that if grant aid was not extended to these applicants, and none of the applicants therefore invested in slurry storage but instead chose to destock for compliance, it was estimated that they would have to destock approx. 50% of their livestock units, resulting in a loss to the economy of £27.6m of value added per annum.

2780 applications equates to approximately 70% of the 3,933 applications that were paid through the Scheme. This being the case, and using the same rationale that was used in the Business Case, it may be calculated on a pro rata basis that the absence of FNMS funding for 3,933 farms would have resulted in an approximate loss to the economy of £40m of value added per annum due to destocking.

It may therefore be contended that the funding of 3,933 FNMS projects resulted in cost effectiveness, as it saved £40m loss to the economy per annum and £800m over the 20 year life of the storage installations. This estimate is only for the primary production sector and takes no account of the additional losses that would have resulted in the meat processing, agri-food and supply sectors. Hence, this scale of potential destocking and contraction of the agricultural sector would have been extremely detrimental to the NI economy.

## 6. Management of Scheme

#### 6.1 Introduction

The Scheme was managed at two levels. A Senior Civil Service implementation board managed the Scheme at the top level, and an implementation team managed the Scheme at operational level.

Scheme applications were processed by DARD Grants and Subsidies Payment Branch. Inspections were carried out by DARD Grants and Subsidies Inspection Branch.

#### 6.2 Adminstrative/Management Projections:

The original EA projected that the following would be spent on the FNMS:

Scheme costs to DARD were projected as follows:

Enforcement costs £2		
<ul> <li>Grant scheme admin costs</li> </ul>	£4m	
<ul> <li>DARD staff-farmer advice &amp; guidance</li> </ul>	£1m	
<ul> <li>DARD staff - preliminary farmer consultation</li> </ul>	£2m	
Total projected cost: £9m		
The actual costs were as follows:		
Grant scheme admin costs £2.25m		
<ul> <li>DARD staff-farmer advice &amp; guidance £3m</li> </ul>		
<ul> <li>DARD staff - preliminary farmer consultation £1.6m</li> </ul>		
Total actual cost: £6.85m		

Enforcement costs are not included in the 'actual costs' table as they relate to enforcement of the Action Programme overall, and not the FNMS. Therefore, actual Scheme costs of  $\pounds 6.85m$  more or less matched projected Scheme costs of  $\pounds 7m$ , when enforcement costs are not included.

### 7. Lessons Learned

#### 7.1 Lessons Learned

The following lessons can be learned in relation to the administration of the FNMS.

- All construction within the Scheme was due to be completed by 31 December 2008, however the summer of 2007 proved to be the wettest on record and this had a significant affect on construction progress. When many foundations were dug out for underground tanks (which proved to be the most popular choice of tanks), they simply filled with water due to the high water table. The wet weather also delayed the installation of above ground tanks. This had a major impact on the momentum within the scheme and meant that the planned increase in construction during the 2007 building season could not be achieved, which in turn put in doubt the ability of farmers to meet the construction deadline. There were also unforeseen delays in gaining planning permissions. While EC approval of this Scheme dictated the construction deadline of 31 December 2008, it may, in future unrelated schemes, be prudent to recognise that setbacks are a possibility and to allow sufficient time to guard against such stumbling blocks.
- Another setback experienced within the Scheme was a shortage of concrete slats, required as part of the construction process, due to a surge in demand from the Republic of Ireland, where a similar scheme took place. Manufacturing within Ireland took time to increase production to meet demand, which resulted in a further delay in the completion of projects. While there had been engagement with the consultation sector prior to and during the Scheme, there was a limit to how much production capacity for slats could be increased. Slat producers did introduce shift-work to increase production capacity. However, given the short timescale and one-off nature of the Scheme, it was not viable for them to make significant capital investment in further slat production facilities.
- In the original appraisal it was estimated that 75% of projects would have involved aboveground storage, which cost less to finance than below-ground storage, of which 25% was projected within the Scheme. However, completed projects actually comprised 16% aboveground storage and 84% below-ground storage, therefore distorting financial projections. In future similar schemes, therefore, it may be beneficial to conduct more detailed technical surveys and discussions with farmers to ensure a more accurate projection of the Scheme costs.

#### 7.2 Positive Factors

The FNMS is the largest capital grant scheme ever run by DARD. Through FNMS, over  $\pm 200$  million has been invested in upgrading farm infrastructure. The average investment per farm was some  $\pm 50$  k.

The achievement of 3933 completed projects demonstrates the cohesive effort made by farmers, the construction industry, the farming unions and the Department.

Construction of additional storage has enabled farmers to observe the closed spreading period. In 2009 there were only 5 breaches of the closed period. In 2010 there were no breaches. By storing slurry over the winter and spreading when weather and ground conditions are optimum, farmers are now able to maximise the nutrient/fertiliser value of slurry. This protects water quality in rivers and lakes and supports environmentally sustainable farming practice.

Effective interdepartmental teamwork across a wide range of disciplines and effective communication both within DARD and externally with industry representatives ensured the successful outcome of the Scheme. The management style gave flexibility to staff to work on their initiative and encouraged team work and development and sharing of ideas. The

services of an independent Structural Engineer provided valuable independent technical input to the Scheme.

#### 7.3 Negative Factors

Feedback from DARD staff involved in the Scheme was as follows:

- Too few staff resources with sufficient expertise and technical knowledge of the requirements.
- One member of staff was responsible for technical advice and policy decisions. This was a high risk factor.
- DARD staff had conflicting roles that of farm adviser and farm inspector roles need to be clearly established.
- Scheme rules were too flexible. Farmers had scope to change their initial specifications. The Scheme evolved and changed over time. This meant that the scheme was difficult to manage, was ultimately time wasting for the inspection team and lead to confusion for staff and the industry.

### 8. Recommendations

#### 8.1 FNMS

The FNMS has met its objective of helping farmers comply with the Nitrates Directive and Silage, Slurry and Agricultural Fuel Oil (SSAFO) Regulations whilst also making efficient use of the nutrient value of manures.

All farms that participated in the scheme have been verified to have storage facilities which comply with the Nitrates Directive and the SSAFO Regulations.

The objectives of the scheme have been met and there is currently no need for a future FNMS.

#### 8.2 Key Recommendations

The following recommendations can be made:

- A Project Board and a Project Implementation team working from a centralised location are needed for future projects of this nature. This would help to ensure effective planning, communication, accountability, leadership and delivery of the scheme.
- A Scheme Manual, Standard Operating Procedures and clear staff instructions setting out roles and responsibilities should be put in place in advance of the roll out of future schemes.
- Need to have sufficient resources and appoint a dedicated team with the necessary technical skills to deliver a scheme of this nature
- Consider introducing an independent advisory service to help farmers with applications to future schemes

#### 8.3 Dissemination of PPE

Following approval of this PPE by DFP, it will be disseminated to all sections in DARD that are considering development of capital grant schemes.

### Annex A

This Annex sets out the key measures included in the Nitrates Action Programme Regulations (Northern Ireland) 2011 and the Phosphorus (Use in Agriculture) (Northern Ireland) Regulations 2006, which came into operation on 1 January 2007

Minimum Storage	26 weeks for pig and poultry farms.
Requirements	22 weeks for all other livestock enterprises.
Closed spreading	Chemical fertiliser must not be applied 15 September–31 January.
periods	Organic manure must not be applied 15 October–31 January.
Fertiliser application limits	A limit of 170 kilograms per hectare per year of total nitrogen from livestock manure.
	A limit 272 kilograms of nitrogen per hectare per year of chemical nitrogen fertiliser on dairy farms.
	A limit of 222 kilograms of nitrogen per hectare per year of chemical nitrogen fertiliser on other farms.
	Chemical phosphorus can only be applied where soil analysis shows a crop requirement.
Land application	All chemical and organic fertilisers not to be applied:
restrictions	$\cdot$ on waterlogged soils, flooded land or land liable to flood
	<ul> <li>on frozen ground or snow covered ground</li> </ul>
	• if heavy rain is forecast
	on steep slopes
	Chemical fertilisers must not be applied within 2 metres of any waterway; organic manures must not be applied within 20 metres of lakes, or 10 metres of a waterway other than lakes.
Record Keeping	Annual records on land area, livestock numbers and fertiliser details, including the import and export of slurry, to be kept and retained for inspection.



Review of 2007-2010 Action Programme for the Nitrates Directive Northern Ireland; Conclusions and Recommendations

The NAP Regulations came into operation on 1 January 2007. The Regulations contained some transitional arrangements on closed spreading periods and manure storage requirements and therefore all measures have only been operational from 1 January 2009.

Surface freshwaters and groundwaters in Northern Ireland continue to have nitrate levels well below the 50 mg NO3/I limit. Comparing data between the periods 2001-2004 and 2005-2008 indicates that the majority of sites are showing stabilisation in nitrate concentrations. There are still a very small number of groundwater sites with average concentrations greater than 50 mg NO3/I situated in areas which were previously designated in 1999 and 2003 as NVZs.

Long-term seasonal trend analysis showed that the monthly trends in average nitrate concentrations in rivers in Northern Ireland were predominantly decreasing or stable over the 15-year period, 1994-2009. The most significant decreasing trends occurred in the winter months December to March. Seasonal trend analysis also showed that the direction of monthly trends of average phosphorus concentrations in rivers in Northern Ireland was predominantly decreasing or stable over the nine year period, 1999-2009. The most significant decreasing trends occurred between April and September.

Since the adoption of the WFD in 2000, new methodologies and criteria for assessment of trophic status in rivers, lakes and marine waters have been developed.

Overall WFD assessment for all three trophic indicators together indicates that eutrophication continues to be a problem in rivers in Northern Ireland. This is in agreement with previous assessments under the Nitrates and UWWT Directives and is borne out when considering each trophic indicator separately. Despite the majority of water bodies being classed as High/ Good for phosphorus, both macrophyte and diatom classifications suggest that the plant and algal communities in the majority of river water bodies continue to show signs of response to nutrient pressures with a large proportion being Moderate or Poor status suggesting enrichment to some degree. It is possible that biological components within rivers may not yet have responded to reductions in nutrient loading to river water bodies, and changes in trophic status will need to be monitored over a longer time period.

The assessment of 27 surveillance lakes under the WFD in 2006-2008 confirms that the majority (70%) of lakes in Northern Ireland continue to display trophic conditions indicative of nutrient enrichment, including the three largest lakes, Lough Neagh and Lower and Upper Lough Erne. This is in agreement with previous assessments carried out in 2000-2005 using the OECD classification. The lack of change in lake systems may not be unexpected for a variety of reasons including differences highly related to individual lake typologies e.g. flushing times of these systems and the release of phosphorus reserves already built up in sediments.

The assessment of coastal and transitional waters under the WFD in 2007-2009 broadly aligns with previous assessments under both the Nitrates and UWWT Directives. The sites that are definitely at Moderate or worse for trophic status are Belfast Harbour, Quoile Pondage and the Tidal Lagan. Sites which have failed the DIN criteria but passed the biological criteria will invoke the 'checking procedure' to refine classification before further measures are required. As the marine receiving waters are at the very end of the catchment, it is anticipated that improvements will be slowest to manifest in these areas.

The results of water quality assessments are not unexpected, given that nearly all assessments are based on water quality up to 2008 i.e. prior to operation of all measures within the NAP Regulations on 1 January 2009.

Northern Ireland farming continues to be a predominantly grass-based system. In general the numbers of sheep and pigs on farms in Northern Ireland are declining, whilst cattle numbers remain stable and poultry numbers are increasing.

Fertiliser purchases in Northern Ireland have significantly declined in recent years. The level of sales of nitrogen and phosphate-based fertilisers in 2008 were at their lowest since 1975 and 1938 respectively. Nitrogen inputs to farms in Northern Ireland have decreased while outputs increased, therefore increasing the gross efficiency of nitrogen use. Whilst the increase is modest historically it is large compared to the levels throughout the period 1975 -2000.

Compliance with many measures has been very good. There are some key areas of noncompliance including record keeping, farm yard manure storage and P balances for derogated farms. Other measures such as applications near waterways or using inappropriate techniques show lower levels of non-compliance. It is recommended that awareness of these issues continues to be raised through the media and training.

A comprehensive programme of research has been put in place in recent years to address some outstanding issues in relation to a number of the measures and to provide additional information as to how soils and water quality are responding to the measures.

Stakeholder engagement has played a key role in the development and implementation of the NAP to date in Northern Ireland. A stakeholder event was held on 24 November 2009 presenting the findings of the review to date and seeking input from stakeholders of their experiences of the Action Programme. Overall the event was considered to have been a success and all present agreed that continued stakeholder engagement is vital. Stakeholders were content that the majority of issues raised are being addressed by the current NAP. The Departments will consider the suggestions made by stakeholders on how to improve the implementation of the NAP during the ongoing review and consultation process.

The SWG has considered all of the information in this Report and the following are the key conclusions and recommendations of the Group:

- the NAP Regulations have been in place from 1 January 2007, and all measures have been operational from 1 January 2009;
- nitrate levels in surface freshwaters and groundwater appear to be generally stable;
- long-term trend analysis shows that the monthly trends in average nitrate and phosphorus concentrations in rivers in Northern Ireland are predominantly decreasing or stable;
- there is still evidence of eutrophication in rivers, lakes and marine waters;
- it will take longer for a response to be detected in biological indicators of trophic status and in lakes and marine waters;
- trends in fertiliser use and improved use of manures are very encouraging;
- compliance with measures is generally good;
- some keys areas require further awareness and training to improve compliance;
- the research programme should continue to be funded over the next NAP period to inform the next review;
- the NAP measures for 2007-2010 should be carried forward into the NAP for 2011-2014 with minimal change to allow time for the existing measures to "bed-in" and for sufficient data to be collected to determine environmental response;
- the values for pig excretion rates should be updated in the NAP Regulations for 2011-2014;
- the authorities in Northern Ireland should review proposals for the sustainable use of poultry litter;

- stakeholder engagement should continue to play a key role in the development and implementation of the NAP 2011-2014; and
- the development and implementation of the NAP 2011-2014 should continue to incorporate Better Regulation principles.

Annex C

#### **Statutory Powers**

The legal basis for the Scheme was within Article 16 of the Agriculture and Fisheries (Financial Assistance) (NI) Order 1987.

The Farm Nutrient Management Scheme (Northern Ireland) 2005 - SR 2005 No. 5 – was made on 10 January 2005 to come into operation on 16 January 2005. The deadline for receipt of claim for grant by DARD was 30 November 2006. These Regulations allowed for 40% available rate of grant on the first £85,000 of eligible expenditure.

The Farm Nutrient Management (Amendment) Scheme (Northern Ireland) 2005 - SR 2005No. 407 – was then made on 25 August 2005 to come into operation on 29 September 2005. These Regulations increased the available rate of grant from 40% to 60% on the first £85,000 of eligible expenditure.

The Farm Nutrient Management Scheme (Northern Ireland) 2006 – SR 2006 No. 537 – was then made on 21 December 2006 to come into operation on 21 December 2006. This extended the deadline for the completion of works, and input of claims, to 31 December 2008.

## Annex B

## Analysis of Costs of Above Ground and Below Ground Tanks

If farmers had opted to install only above ground tanks, the total cost is estimated to be approximately £120 million. This would have comprised of £72 million FNMS grant aid and £48 million of farmer contribution.

Therefore, the additional cost of farmers opting to install below ground tanks is estimated to be £92 million. This is comprised of £49 million in FNMS grant aid and £43 million of farmer contribution.

However, there are a number of fundamental points that need to be considered along with this estimate:

- Above ground tanks could not be installed on all farms.
- The limited supply capacity for above ground tanks would have meant that sufficient numbers of tanks could not have been constructed under the scheme.
- The additional costs are likely to be an overestimate because the data available on the cost of above ground tanks relates to farms where they were the most suitable option.

In order to make a comparison of the costs between Above Ground Tanks (AGT) and Below Ground Tanks (BGT) it is necessary to estimate the cost of all 3933 projects in the scenario that the average cost per m3 of AGT storage was  $\pounds 40/m3$ . This was the average cost of an AGT where they were actually installed on farms in practice. However, it should be noted that this cost probably significantly under estimates the costs in practice if only AGTs were eligible for FNMS grant-aid.

For instance, as based on the information provided by DARD farm inspectors and included in the 2007 FNMS Business Case, logistically the layout of many farms meant that it would be difficult (and sometimes impossible) to accommodate an AGT. Therefore, if cognisance was taken of the additional pumping, piping, collection tanks etc. required, then the actual average cost of installing AGTs on all farms in reality is likely to be higher per cubic metre than the £40/m3 actually recorded on farms where it was feasible to install AGTs. That said, £40/m3 is the only figure we have at our disposal in order to carry out the comparison – but the results must be reported with this caveat.

It should also be borne in mind that an FNMS that only permitted investments in AGTs to be considered eligible for grant-aid would unfairly disadvantage farms whose existing layout and logistics are not suited to AGT installations. This could result in them having to find alternative means of complying with the Nitrates Directive, such as destocking, or otherwise risk non-compliance.

Storage of any kind, whether BGT or AGTs, involves famers undertaking a significant level of investment (av. cost of more than £50k per farm), with the farmer having to fund a minimum of 40% of the cost. Therefore, before committing such an amount of money, it is reasonable to assume that each farmer applying had already weighed up the most value for money long-term storage option that delivers compliance for their particular farm layout.

In addition, a move to restrict grant-aid to only AGTs would have met with severe opposition from farming unions, politicians and other stakeholders. Both the ROI and GB schemes gave applicants the flexibility to decide which type of storage facility was the most suitable long term solution for their particular farm circumstances.

ROI officials confirmed that the proportion of applications to their scheme seeking grant-aid for AGTs was 20-30% and therefore similar to the proportion applying to the FNMS for AGTs.

A scheme that only allowed AGTs to be eligible for grant-aid would have met with supply capacity problems. There was a more limited supply capacity for AGTs which are pre-fabricated off site by a number of specialist firms. BGTs could be installed by builders generally, who constructed tanks using shuttered concrete techniques.

Soundings with the AGT supply industry at the time of completing the 2007 FNMS Business Case indicated that these firms were operating at full capacity due to demand from NI and ROI customers. They were at full capacity even though a limited proportion of applicants to FNMS anticipated using AGTs.

Therefore, many applicants would not have been able to meet the requirement to install the storage and submit the claim in the time-period allowed. This would have resulted in them having to look at other ways of becoming compliant with the Nitrates Action Programme, and possibly significantly destocking.

FROM THE PERMANENT SECRETARY Dr Malcoim McKlbbin

SENIOR MANAGEMENT IN CONFIDENCE COMMERCIAL IN CONFIDENCE

FROM: MALCOLM MCKIBBIN

1 JUNE 2007

**BRUCE ROBINSON** 



Dundonald House Upper Newtownards Road Belfast BT4 3SB Tel: 028 9052 4608 Fax: 028 9052 4813 Email: malcolm.mckibbin@dardnl.gov.uk

cc Leo OReilly Richard Pengelly Roy McClenaghan Gerry Lavery

#### FARM NUTRIENT MANAGEMENT SCHEME - TOWARDS A SOLUTION

 The issue facing us can be stated succinctly. By 8 June, we will have completed all work that can be done on processing and approving applications within the existing budget of £55m, and will have to redeploy our staff involved with the Farm Nutrient Management Scheme (FNMS). This will seriously undermine our objective of fostering confidence in the construction and farming industry, and keeping up a steady flow of processing applications to ensure that farmers have the necessary time to build storage capacity ahead of the cut-off point in the scheme of 31 December 2008.

#### Need

- 2. The Business Case details the justification for increasing the budget for the Farm Nutrient Management Scheme from the current level of £55m to £144m. This is reinforced by Michelle Gildernew's Draft Executive Paper Version 2 (see Annex 1) which presents the views of other Ministers and outlines the consequences of failing to secure additional funding.
- 3. In brief, loss of confidence by the European Commission that we are doing sufficient to tackle the nitrates' issue could trigger infraction proceedings against the Member State with fines of up to £50m a year. Failure to comply with the Nitrates' Action Plan would necessitate enforcement action by DOE which would have resource implications. Such action would inevitably be controversial, leading to prosecutions, fines and loss of Single Farm Payment entitlements. Additionally, destocking would necessitate job losses in both primary production and meat and dairy processing industries.

#### The current position

4. There are 4,708 live applications under the scheme, of which 1,888 applications, received up to 9 March are being processed. Of these 1,378 have been approved resulting in a DARD commitment of £43.5m. The remaining applications comprise 101 awaiting approval, 114 being processed for approval, 232 awaiting farmer responses to queries and 62 awaiting farmers organising visits.

5. There is not enough work within FNMS for the Inspectorate staff, unless additional monies are allocated within the next few days. Fifty per cent of applications received on 10 March have already been consulted through a desk based exercise and completing this exercise will take one week. We will then be unable to commence any new inspection work and will have to redeploy staff. This will rapidly become known to the industry and the Assembly, which will undoubtedly result in vociferous and sustained criticism.

#### Accessing additional spending power

- 6. Peter Robinson's note of 23 May to Executive colleagues sets out the difficulties of accessing additional spending power. In 2007/08, the budget has been set and endorsed by the Executive; there is a significant over-commitment, which needs to be clawed back; and as a consequence, funds are not available for reallocation between Departments. Funding for 2008/09 is a matter for the CSR, when all spending pressures can be judged one against another, and a decision taken in the round by the Executive.
- 7. We have considered what can be done from within our own resources. DARD's investment baseline leaves very little room to manoeuvre in 2008/09, 2009/10 and 2010/11. In these years, capital grant provision is negligible (less than £4m a year). The capital baseline in the last 2 years falls away rapidly to comprise only Rivers Agency capital, and ongoing capital connected to our accommodation and specialist estate. In 2008/09, this is enhanced by one-off provision for DARD Direct, VSD Building and a replacement Fisheries Enforcement Vessel.
- 8. Within 2007/08, we expect the work done under FNMS to exceed its baseline by at least £10m. DFP has indicated that in June Monitoring it will not accept bids, but will permit internal reallocation. Unless capital shortfall emerges for reallocation from other Departments, DARD would propose the following:
  - Reallocation of £0.9m Processing and Marketing Grant (07/08).
  - Reallocate £0.2m EFF National baseline
  - Reallocation of £0.3m Harbour Grants (07/08)
  - Reallocation of £0.4m Harbour s Grant EYF
  - Reallocation of £1m Rural Development Capital Grant (07/08)
  - Reclassification and Reallocation of £0.6m CAFRE Capital
  - Reclassification and Reallocation of £3.5m EFCS DARD Direct (07/08)
  - Bringing Forward, Reallocation and Reclassification of £1.2m AFBI VSD (08/09)
  - Reclassification and Reallocation of £0.4m and £1m EYF of Accommodation Baseline (07/08)
  - Reallocation of £0.5m Computer Equipment (07/08)
  - Reclassification and Restoration in 2008/09 of the above Capital but not Capital Grants
  - A key underlying assumption is that the Department will receive its full EYF entitlement, including as set out above and £1.5m already allocated to FNMS.

DARD capital baselines are attached for your information in Annex 2.

9. This leaves us with the problem in 2008/09, when there is no provision for FNMS. To allow us to continue processing applications this year, following the commitment of the £10m identified in para 7, we require access to £79m of spending power in

2008/09 now. The capital cover available to the Department during the CSR is insufficient to cover this additional demand, and it would be imprudent to do more than is set out in paragraph 8 above. For instance, making no provision for forward capital for the Rivers Agency would invite criticism, and could be seen as irresponsible.

- 10. DARD has, however, identified a possible way forward. When we created the Agri-Food and Biosciences Institute, we retained ownership of the estate which they, occupy. We committed with them to a review involving the Strategic Investment Board of their assets' utilisation. The initial study on the Crossnacreevy site has just been received. This site comprises 84 acres of which approximately 5 acres is occupied by buildings and 5 tied cottages. The land is used for a range of experimental field trials. We believe that it will be possible to vacate the site and dispose of it within the period of the CSR, probably in 2010/11. An initial, informal valuation suggests that with planning permission for the whole site, it would command in excess of £200m on the open market. In certain circumstances, therefore the anticipated receipt would greatly exceed the requirements of the Department, and it seems prudent that DFP could take this anticipated receipt into account in determining the Department's forward investment expenditure.
- 11. At this stage, we would want to keep open some of the issues raised by this solution - the need to cover the costs of moving and re-establishing the important work conducted at this site; the potential for use of some of these capital receipts to accommodate the needs of the intensive sector, and the possibility that some of these receipts could be eventually used for other departmental capital grant expenditure. Obviously we would only take this forward as the quantum and certainty of the capital receipt were developed.
- 12. If the above proposal is to work, the following needs to occur:
  - 4 June: DFP final approval of the Business Case (of which you have a copy).
  - 5 June Initial meeting with VLA to discuss how we might progress the valuation and disposal method for Crossnacreevy.
  - 6 June: Meeting of DFP and DARD to agree
    - action at para 8 above is accepted and can be assumed ahead of monitoring round outcome allowing a reallocation of £10m to FNMS in 2007/08; and
    - DFP will take into account, as at para 10 above, the anticipated capital receipt and agrees to release now the required spending power of £79m in 2008/09.

Letter from DARD as part of its June Monitoring Round return seeking internal reallocation of a capital receipt to offset the costs of FNMS in 08/09. I look forward to a reply as soon as possible.

Malulm

MALCOLM McKIBBIN (Dr)

## Annex D

DARD and DOE sought tenders for the completion of an Economic Appraisal of the options which could be introduced for implementation the Nitrates Directive in Northern Ireland. The tender process was conducted by DFP Procurement Service.

The Terms of Reference (TOR) for the Economic Appraisal were drawn up by DARD in collaboration with DOE and DFP. The TOR focussed on the need for a detailed appraisal to:

- (i) assess the costs, benefits and value for money of the options to address the legal requirements under the Directive, whether to do nothing, the targeted designation approach or the total territory approach;
- (ii) identify the options available to achieve the required outcome, ranging for example from farmers bearing the full cost of compliance, through limited support, right up to Government bearing the full cost of compliance;
- (iii) assess the costs, benefits and value for money attaching to each of the 3 options at (i) above, including the impact of different levels of public sector contributions;
- (iv) advise on the implications for the farming industry, rural communities, the wider economy and the Northern Ireland Block, and on the consequent implications for the effective implementation of the Directive in terms of successfully controlling nitrate pollution from agricultural sources; and
- taking account of all financial and non-monetary factors, advise on the preferred option.

Procurement Service issued invitations to tender to 18 consultancy firms on 30 July 2003, under the Consultancy Services 2001 Framework.

Only two tenders were received from Consultants. These were assessed under Procurement Service procedures and scored against an evaluation marking frame. Marks were awarded against the criteria Pricing Schedule, Methodology and Personnel.

The contract for the provision of the Economic Appraisal was awarded to the highest scoring tender, which was from BDO Stoy Hayward. The work was awarded on 27 August 2003 under the terms of the GPA Framework for the Provision of Consultancy Services.

## Annex E

#### Crossnacreevy Timeline from 1 June 2007 (In response to TOA Question 1)

- 1/6/07 DARD Permanent Secretary writes to DFP Permanent Secretary formally advising him about FNMS and the Crossnacreevy disposal – initial, informal valuation suggests that with planning permission for the whole site, it would command in excess of £200 million.
- 5/6/07 Initial meeting with Valuation and Lands Agency (VLA), DFP, to discuss how DARD might progress the valuation and disposal of Crossnacreevy.
- 6/6/07 DARD Permanent Secretary meets with DFP Permanent Secretary to discuss FNMS etc.
- 11/6/07 Facilities Management Branch (FMB) (DARD) formally writes to VLA, DFP as follow up to the 5th June 2007 meeting to seek advice.
- 12/6/07 DFP Permanent Secretary writes to DARD Permanent Secretary about FNMS and Crossnacreevy confirming that DARD will be provided with the capital DEL cover required to allow the Department to continue approving FNMS applications subject to DARD maximising the capital receipt for the disposal of Crossnacreevy.
- 1/8/07 Land and Property Services (LPS), DFP, replies to FMB letter of 11/06/07. LPS letter advises that planning issues were pivotal to any disposal and recommended that DARD should engage planning consultant to advise on planning matters.
- 31/08/07 DARD Finance Director meets with LPS Senior Valuer, DFP, to discuss issues raised in letter of 11/06/07.
- 7/9/07 DARD Finance Director writes to LPS Senior Valuer, DFP, confirming outcome of meeting of 31/08/07. DARD Letter advised that the facility could not be declared surplus at this point and sought LPS assistance in taking forward and developing a strategy for the property over the Comprehensive Spending Review period.
- 10/12/07 DARD Finance Director writes to Central Procurement Directorate, DFP, initiating process for engaging Planning Consultant.
- 2/1/08 DARD Senior Finance Director writes to Supply Officer, DFP, flagging up planning limitations in respect of Crossnacreevy and specifically that the site lies in a greenbelt and that there is no opportunity to have the property rezoned under the draft BMAP in the short-term.
- 14/2/08 Planning Position Statement from Planning Consultant supplied to LPS
- 19/2/08 Draft LPS valuation report issued to DARD for consideration
- 6/3/08 DARD receives final valuation report from LPS, DFP. Report advises that the value of the Department's holding, reflecting the planning options identified and the planning controls currently in place ranged from £2.28m to £5.87m.
- 21/4/08 DARD informs DFP informally about latest position.
- 4/6/08 DARD June monitoring letter to DFP detailing latest position.

6/08/09 DARD Senior Finance Director writes to Treasury Officer of Accounts providing DFP with final version of Crossnacreevy Relocation Business Case and outlines DARD's commitment to help resolve the budgetary deficit created by the non-realisation of the Crossnacreevy receipt.

## Annex F

The Economic Appraisal (EA) on policy options to implement the Nitrates Directive in March 2004 included a recommendation that DARD should introduce a capital grant scheme to assist farmers improve slurry storage capacity. The EA was assessed by DARD Economists as meeting the Green Book standards. It was reviewed by DARD Finance with respect to regularity and propriety and budget implications then submitted to DFP. The EA was the basis for DFP approval of the scheme.

After the scheme opened in 2005, scheme uptake was less than anticipated and clarity on the Nitrates Action Programme requirements was emerging as a result of negotiations with the European Commission.

In July 2005, DARD completed an addendum to the EA which reviewed progress and the original options for the scheme, and submitted it to DFP for approval. The EA addendum identified increasing costs of construction, an increased minimum storage requirement of between 22 weeks - 26 weeks and a consequent inability of many farmers to finance the necessary investment. Therefore, a grant rate of 60% was recommended and this was approved by DFP.

After the scheme closed for full applications in March 2006, progress with processing applications and issuing approvals was closely monitored and weekly management reports produced. DFP were updated through regular liaison between DARD Finance and DFP supply and were provided with the weekly FNMS management reports. These weekly progress report included detail on the values of expenditure of works, number of approvals issued, total grant approved, claims received, and the amount of grant paid on a weekly basis.

When applications began to be analysed, the cost of constructing storage was found to be significantly higher than originally projected. This meant that the budget available was insufficient to fund all applications. In light of this finding, DARD then conducted a detailed business case to examine the reasons for this and analysed the value for money case using the actual cost data available from the applications.

The business case considered a number of options and was completed in May 2007. It was assessed independently by other DARD Economists to verify that it met Green Book standards and reviewed by DARD Finance with respect to regularity and propriety and the budget options, then submitted to DFP. The Business Case concluded that funding all applications was the preferred option and this was subsequently approved by DFP.

The planning, implementation and risk management of the scheme within DARD was managed by a project board and an implementation team which consisted of representatives from delivery, policy and finance. The project board was at senior level chaired by a Grade 3 and the implementation team was managed at operational level by a Grade 7.

Operational risks were managed by a series of measures including; 100% inspections of projects at both pre approval stage and before final payment stage, a requirement for Engineers Certificates, interim inspections during construction, administrative checks on applications and claims, and a fraud risk assessment.

Regular weekly budget monitoring ensured that the applications processed and approved were within the budget available. The scheme included mechanisms for constraining costs namely through the setting of maximum guide prices, standard costs, capping of maximum grant per farm business and no provision for inflationary increases. The guide prices and standard costs were set independently by a Chartered Quantity surveyor from DFP. In relation to the valuation of the Crossnacreevy site; following the informal valuation, DARD exercised due diligence in seeking a formal valuation report from Valuation and Lands Agency (now Land and Property Services), which provides professional expertise in this field. This report was provided in March 2008.

In addition, DARD sought advice from VLA on the disposal process and associated issues and this was provided in writing on 1 August 2007. The advice indicated that the Crossnacreevy site was designated in the Draft Belfast Metropolitan Area Plan (BMAP) 2015 as being within the Greenbelt and outside the settlement limit. It was recommended, by VLA, that DARD seek the assistance of a specialist planning consultant to advise on planning matters. DARD subsequently engaged a planning consultant who provided a report in February 2008 on the planning issues.

DARD engaged with Planning Service on a number of occasions in autumn of 2007 in order to seek planning advice in respect of the lands at the Crossnacreevy site.

The preparation and completion of the Crossnacreevy Relocation Business Case which examined a variety of options for the Crossnacreevy site, including relocating the services provided there elsewhere, was undertaken in accordance with the NI Guide to Expenditure Appraisal and Evaluation (NIGAE). The project of developing the business case was managed by a Chairperson (an AFBI senior manager) and the project team consisted of other senior AFBI staff, an external consultant and a professional DARD economist to provide challenge and ensure compliance with NIGAE. Where professional expertise was required, this was contracted in. The project team met on 15 occasions from 25 October 2007 until 18 November 2008. The project complied with normal conventions in relation to managing projects such as working to a project plan and the production of minutes of meetings etc. The business case was subject to independent internal scrutiny by DARD before submission to DFP Supply.

## Annex G

#### SIB Response

- As part of the ISNI process, SIB invited departments to put forward capital investment plans covering the period 2008-18. The value of the bids received consistently outweighed the funds available across the planning period and in relation to 2008-09 specifically, departments put forward bids totalling £2.8bn against a funding envelope of £1.8bn.
- 2. As a means to prioritise the allocation of limited funds, funding was first allocated to projects and programmes with pre-existing commitments, and second to those projects/ programmes that were compliance related and therefore unavoidable due to legislation or EU Directive. The FNMS was an example of such a scheme and an allocation was made towards the FNMS programme, as informed by discussion and information provided by DARD.
- 3. The PAC has asked for a list of projects that were not funded as a result of funding being allocated to the FNMS. It is not possible to provide a definitive list of the projects that would have received funding if FNMS had not for two reasons:
  - Firstly, during the preparation of the Investment Strategy a number of different scenarios were produced, all of which included funding for FNMS for the reasons set out in paragraph 2. The eventuality that FNMS remained unfunded was not considered as a separate option.
  - Secondly, the FNMS allocation represents a relatively small proportion of the actual funding envelope (2.8% of £1.8bn) and also a relatively small proportion of the unmet bids put forward by departments (5% of £1bn) in 2008-09. Therefore, had additional funding been available this could quickly have been 'consumed' by those rolling-programmes (e.g. water and waste-water, roads maintenance). Similarly, it is also possible that a recommendation would have been made that would accelerate the delivery of a single project, or alternatively, accelerate the delivery of a number of projects running in parallel.
- 4. In summary, it is not possible to specify, after the event, how capital allocations may have differed in the absence of a decision not to fund FNMS.

# Annex H

### Revised Budget 2008-11 - Gross Capital

		£million 2010-11
AOCC	Rolling Replacement	0.0
DARD	AFBI Plant Testing Station	0.3
	Agri-Food Waste Challenge	3.0
	Agri-food & Biosciences Institute	1.3
	CAFRE Recurrent Capital	0.5
	CAFRE Renewable Energy	1.2
	DARD Direct	3.3
	Drainage Infrastructure	1.5
	Ex Millitary Bases	1.0
	FMB Accommodation	1.4
	Fisheries Grants	4.2
	Flood Alleviation	3.8
	Flood Risk Management	0.9
	Forest Service	3.8
	Foyle Carlingford Irish Lights Commission	1.1
	ISB Computer Equipment	2.1
	Manure Efficiency (METS)	1.3
	NI Rural Development Programme Axis 2	2.5
	NI Rural Development programme Axis 1, 3 & 4	11.0
	RDD Anti-Poverty	0.4
	Renewable Energy Technical Transfer	0.1
	Research Non Food Crops Capital	0.1
	Rivers Agency Plant, Vehicles & Machinery	0.5
	Rural Development Capital Grants	0.5
	Veterinary Portal Facilities	0.5
	Woodland Grant Scheme	0.8
*Total DARD		47.0

		£million 2010-11
DCAL	2012 Sports Facilities	6.0
	50M Pool	4.0
	Armagh O & P Operation	0.1
	Armagh Ob Library	1.5
	Arts Council Minor Capital	0.0
	Arts Infrastructure	4.4
	Cultra Manor	3.4
	Inland Fisheries Recurrent Capital	0.2
	Inland Waterways Recurrent Capital	0.1
	Libraries Minor Capital	0.5
	Libraries Vehicle Replacement	0.3
	Lyric Theatre	2.5
	Metropolitan	2.0
	Multi Sports Stadium	30.4
	NMNI Capital Maintenance	0.8
	NMNI Collections Resource Centre	10.0
	NMNI Minor Capital	0.2
	NMNI Resurfacing Car Park	0.3
	New Library Authority	13.2
	North Belfast Learning	0.1
	North West Challenge Fund	0.6
	PRONI Accessing & Connection Collections	0.0
	PRONI Digital Preservation Repository	0.1
	PRONI General Equipment & Refurbishment	0.2
	PRONI New Accommodation	1.7
	SCNI Capital	0.1
	Safe Sports Grounds	2.4
	Tollymore	1.0
	W5 Renewals	0.4
	Waterways Ireland	1.0
*Total DCAL		87.4

		£million 2010-11
DE	CCEA	0.4
	CCMS	0.1
	Colaiste Feirste Belfast	0.0
	DE Departmental Capital	0.1
	Development of Specialist Schools Initiative	1.0
	Early Years - Health Boards	2.5
	Minor Works - ELB	23.5
	Minor Works - Vol	16.0
	Nursery, Primary & Special Schools - ELB - PPP	9.2
	Nursery, Primary & Special Schools-ELB-Conventional	12.5
	Nursery, Primary & Special Schools-VOL-Conventional	3.9
	Post Primary Schools - ELB - Conventional	25.5
	Post Primary Schools - ELB - PPP	43.1
	Post Primary Schools - Vol - Conventional	32.7
	Post Primary Schools - Vol - PPP	35.1
	Schools Transport	1.6
	Staff Commission	0.0
	Youth Services - ELB/Statutory	2.8
	Youth Services - Voluntary	2.8
*Total DE		212.6

		£million 2010-11
DEL	Belfast Metropolitan College - PPP	3.3
	Belfast Metropolitan College - Springvale E3	5.0
	Capital Programmes - Minor works/H&S/SLDD	4.5
	Industry Standard Training - Equipment	1.3
	Learning & Teaching Capital	8.5
	Minor Works - DEL Capital Estate	0.2
	North West Regional College - Clondermott	5.4
	Northern Regional College - Antrim	2.7
	Northern Regional College - Causeway	0.1
	Research Capital Investment Fund	5.0
	Research Capital Investment Fund (FFI)	2.0
	South Eastern Regional College - East Down - PPP	2.7
	South Eastern Regional College - Lisburn -PPP	1.9
	South Regional College - Armagh	0.1
	University College Strategic Capital Fund	1.5
	University Strategic Capital Fund	12.5
*Total DEL		56.6

DETI	Broadband Stimulation	1.0
	Departmental Working Capital	0.5
	Enterprise Support (Invest NI)-Shares & Investment	8.0
	Enterprise Support(Invest NI)-Capital Grant to Bus	32.0
	Enterprise Support(Invest NI)-Property Services	26.1
	Enterprise Support(Invest NI)-Property-Capital gra	1.0
	Environment & Renewable Energy	4.0
	European Programmes	2.1
	International Connectivity	2.4
	Next Generation Networks	6.0
	Renewable Energy	0.9
	Tourism Capital Grants (TDS)	1.5
	Tourism Signature Projects	29.0
*Total DETI		114.5

		£million 2010-11
DFP	Account NI Programme	0.1
	Central Energy Efficiency Fund	2.0
	IT Assist Programme	7.3
	LPS ICT Systems Business development programme	1.1
	LPS ICT Systems Maintenance & development	1.0
	NICS Residual Office Estate Capital Building works	3.0
	NISRA Digitisation of Records	1.0
	Network Maintenance	0.3
	Procurement ICT Systems	0.3
*Total DFP		16.0
DHSSPS	Ballycann Mental Health & Dementia Unit	5.9
	General Capital	35.0
	Gransha Mental Health Unit	2.4
	Health & Wellbeing Centres	6.4
	Hine Review	4.4
	Hospital Modernisation (Equipment & ICT)	7.8
	ICT	26.0
	Knockbracken Site Development	5.0
	Maintaining Existing Services	31.2
	NIAS Equipment & Estate	4.5
	NIFRS Strategic Development Plan	29.0
	Omagh Local Hospital	1.5
	Patient Safety - Pandemic Flu	17.0
	Primary & Community Care Infrastructure	20.0
	RGH - Phase 2 B Critical care	34.5
	Regional Adolescent Pyschiatric Unit	5.5
	SW Acute Hospital Enniskillen	1.0
	Trauma & Orthopaedics	0.6
	Ulster Redevelopment Phase A	3.5
	Ulster Redevelopment Phase B	2.0
*Total DHSSPS		243.2

		£million 2010-11
DOE	DVA - Recoupment from DVLA	0.3
	DVA Enforcement Function Projects	0.2
	IRTU Purchase of Scientific & laboratory Equipment	0.3
	IT Exp - Purchase of line of business equipment	0.5
	NIEA Access to countryside	0.3
	NIEA Land Aquisition	0.6
	NIEA Purchase of vehicles, plant & equipment	0.2
	Planning IT Equipment	0.1
	Smoke Control Grants	0.3
	Waste Management - ARC21	180.2
*Total DOE		182.9

DRD	Bus - Infrastructure	2.3
	Bus - Replacement Vehicles	15.4
	Bus - Workshops & Garages	2.3
	Capital Grants to Northern Ireland Water	1.0
	DBFO 2 (PPP)	187.5
	Local Transport & Safety Measures(LTSMs)&Other	29.0
	Net Lending to Northern Ireland Water	132.5
	Plant and Depot	2.5
	Rail - Infrastruture	32.0
	Rail - New Trains	32.3
	Rapid Transit	6.0
	Strategic Road Improvements (SRIs)	25.7
	Street Lighting	4.0
*Total DRD		472.5

		£million 2010-11
DSD	Decent Homes	49.0
	Disabled Adaptions	11.8
	Girwood	0.8
	Modernisation Fund	1.0
	Modernisation of Service Delivery Arrangements	2.9
	NICHA Funding	30.0
	NIHE Urban Renewal	5.2
	Neighbourhood Renewal	1.6
	New Build Funding	171.0
	North East Quarter Development	233.0
	Other NIHE Programmes	4.6
	Peace III Creating Shared Public Spaces	1.2
	Public Realm	1.0
	Renovation Grants	35.1
	SHDP Small Adaptations	2.5
	Voluntary Purchase Grant	1.5
	Warm Homes/Fuel Poverty	19.6
*Total DSD		571.7

FSA	FSA Capital	0.1
NIA	NIA Replacement Hardware / Software	0.3
NIAO	Miscellaneous Capital Items	0.0
	Replacement Hardware & Software	0.1
	Voice Over IP	0.1
*Total NIAO		0.3

NIAUR	NIAUR Capital	0.0
OFMDFM	Community Relations	0.5
	Crumlin Road Gaol	14.3
	Ebrington	5.3
	IT/Core Capital Equipment	0.2
	North Belfast City Learning	0.1
*Total OFMDFM		20.3
Total		2,025.3

# Chairperson's letter of 7 September 2011 to Mr Gerry Lavery

Room 371 Parliament Buildings Ballymiscaw Belfast BT4 3XX

Tel: (028) 9052 1208 Fax: (028) 9052 0366 E: pac.committee@niassembly.gov.uk aoibhinn.treanor@niassembly.gov.uk

Mr Gerry Lavery Accounting Officer Department of Agriculture and Rural Development Dundonald House Upper Newtownards Road Belfast BT4 3SB

07 September 2011

Dear Gerry,

#### PAC inquiry into the Farm Nutrient Management Scheme

At its meeting today the Committee considered your response of 4 July 2011.

The Committee found the timeline at Annex E of this response most helpful and agreed to request copies of the letters listed of 11.06.2007; 12.06.207; 1.08.2007; and 6.03.2008.

I would be grateful to receive the above correspondence by 9 September 2011.

Yours sincerely,

Taul Maskey

Paul Maskey Chairperson Public Accounts Committee

# Correspondence of 9 September 2011 from Mr Gerry Lavery



#### From the Permanent Secretary Gerry Lavery

Dundonald House Upper Newtownards Road Ballymiscaw Belfast BT4 3SB

Tel: 028 905 24638 Fax: 028 905 24813 Email: gerry.lavery@dardni.gov.uk

Mr Paul Maskey Chairperson Public Accounts Committee Northern Ireland Assembly Room 371 Parliament Buildings Ballymiscaw BELFAST BT4 3XX

9 September 2011

Dear Paul

#### PAC Inquiry Into The Farm Nutrient Management Scheme

Thank you for you letter of 7 September.

Please find attached the requested copies of the letters listed of 11.06.2007; 12.06.207; 1.08.2007; and 6.03.2008.

Yours sincerely

Darky Lauteky

**Gerry Lavery** Permanent Secretary

Facilities Management Branch Room 451A, Dundonald House, Upper Newtownards Road, Belfast BT4 3SB Telephone 02890 378555 E Mail: <u>carol.hetherington@dardni.gov.uk</u>

R Ian Wort Senior Valuer Valuation and Lands Agency Bangor District Crown Buildings Hamilton Road BANGOR BT20 4LQ

11 June 2007

Dear lan

### CROSSNACREEVY PLANT TESTING STATION

I am writing as a follow up to our meeting of 5 June 2007 at which we discussed the possible disposal by the Department of the Crossnacreevy Plant Testing Station.

Since our meeting, work has progressed within the Department to firm up on a decision to dispose and I expect to receive confirmation that the Department wishes to proceed within a relatively short timeframe.

As discussed, the Agri Food and Bio-Sciences Institute (AFBI) occupy this and a number of other DARD owned sites. Senior management within AFBI are in liaison with senior Departmental staff on the probable disposal. However, staff at the site have not yet been informed of future plans. When the decision is made and communicated to staff, it will allow you to make a visit to the site. I will contact you when I have confirmation that the staff have been briefed, again with a relatively short timeframe.

In anticipation of a firm decision to dispose, I would ask you to examine the issues we discussed so that the Department has

relevant information to allow it to decide how to dispose and at what point in time.

The key information the Department requires at this time is as follows:

- The categorisation of the land within the site is the land all agricultural land or is there development land? What is the area of each category?
- If the land is solely or mainly agricultural, is there a possibility of part or all of it being reclassified as development land. If so, what is the potential value of the area or each area that could be developed?
- What method of disposal would be most beneficial to the Department in terms of securing the highest possible value? Should the Department apply for planning permission and for what areas and over what timeframe? Can the Department sell based on "hope" value as opposed to current replacement value?
- There are four properties on the site occupied by employees of AFBI. Your guidance on handling this situation would be appreciated.
- Assuming a decision to dispose, what is your best estimate of how long the process would take if we adopt the approach that will ensure a maximum return for the Department?
- Again, assuming a decision to dispose, can you advise when the best time would be to start the process and what the first steps should be?

I have enclosed a map showing an outline of the site for your information.

If you wish to discuss or require any further information please contact me. I would appreciate it if you would provide any other relevant information that would assist the Department in this matter. This is now a pressing issue for the Department, with the Principal Establishment and Finance Officer driving it forward. As such, I would ask for an early response.

Yours sincerely

**Carol Hetherington** 

#### FROM THE SECOND PERMANENT SECRETARY Bruce Robinson

Rathgael House Balloo Road BANGOR, BT19 7NA Tel No: 028 9185 8001 Fax No: 028 9185 8184 E-mail: <u>bruce.robinson@dfpni.gov.uk</u>



Malcolm McKibbin Department of Agriculture and Rural Development Dundonald House Upper Newtownards Road BELFAST

12 June 2007

#### **Dear Malcolm**

### FARM NUTRIENT MANAGEMENT SCHEME

- 1. Thank you for your letter of 1 June 2007 in relation to the Farm Nutrient Management Scheme (FNMS) and the proposal to allocate additional funding of £89m to allow DARD to meet in full the potential outstanding commitments. We had a useful meeting on this subject on 6 June and I will build on that discussion in this letter.
- 2. Clearly, this is a complex issue and we recognise the challenges that DARD have faced in managing the volume of applications received and identifying the associated projected costs of the scheme. We also understand the importance of the issue for DARD, for the farming and the wider rural community and for the wider management of environmental issues in Northern Ireland. Jack Layberry has been working closely with Gerry Lavery on the business case and gave DFP approval on 4 June to the proposal, subject to a number of important conditions.
- 3. The key outstanding issue is affordability, given that the proposal, as it was couched in the draft Executive paper which your Minister circulated on 21 May, has significant financial implications. Peter Robinson wrote to his Executive colleagues on 23 May about the proposal and its wider implications for the Executive's approach to the management of public expenditure pressures identified by Departments. He has since written in a similar vein about other proposals for new public expenditure. In that note he set out his view that the financial implications of this issue needed to be dealt with in the context of other departmental issues and spending priorities.

DF1/07/59791

However he also acknowledged the immediate difficulties faced by DARD and by your Minister on this issue and asked us to work with you and your team to find ways of addressing these immediate issues.

4. Against that background, your letter of 1 June is a welcome demonstration of DARD's commitment to find a constructive and corporate solution to this problem. In that context, I believe your proposals in relation to capital reallocations and the disposal of assets provide a basis for achieving resolution of this matter. However, there are one or two points about which we would need to be very clear in reaching agreement on the way forward.

### **Capital Reallocations**

- 5. You have indicated that, unless capital shortfall emerges for reallocation from other departments, you intend to seek approval for a number of internal reallocations as part of June monitoring. DFP wishes to be flexible and helpful in this regard, but there are some restrictions attaching to your proposals which I will summarise here:
  - i. Reallocation of EYF from 2006-07 (£1.4m) EYE will be granted only for the purpose for which the spend was originally intended. Therefore the proposals to reallocate £0.4m Harbour grant EYF and £1m Accommodation baseline EYF from 06/07 to FNMS cannot be recommended.
    - **Reclassification and restoration in 2008-09 of £5m capital.** As you know, there is no automatic entitlement to EYF and instead our approach is to recommend access where it is clear this is necessary to ensure the continuity of capital spending programmes. Therefore our recommendation to reclassify and reallocate £5m capital would have to be on the clear understanding that DARD would accept the risk that, while DFP would be prepared in these circumstances to recommend EYF, there can be no guarantee that it would be granted.



ii.

Reallocation of £2.4m capital grant. This can be recommended.

iv. Bringing forward, reallocating and reclassifying £1.2m from 2008-09.

Again, this has been reprofiled for a particular purpose so this cannot be recommended.

 In summary, DFP will recommend reclassifying/reallocating £7.4m (plus the £1.5m already allocated to FNMS) from the proposals which you have tabled. This would be on the basis that there can be no guarantee at the moment in relation to EYF.

DF1/07/59791

#### **Disposal of Assets**

- 7. Your proposal in relation to disposal of assets is very helpful, particularly because you are offering to put on the table for consideration and deployment by the Executive a potential £200m capital receipt (net of the costs of disposal) which is considerably larger than the amount which DARD would seek approval to utilise. This is an important and in the final analysis the persuasive point, but again we must be clear that there can be no guarantee in relation to deployment of the balance of the receipt. While DARD would be free to put forward proposals along with other Departments as part of the normal budgetary process, it is for the Executive to decide on the allocation of resources in the context of its strategic priorities.
- 8. In these circumstances, and given an assurance by DARD that you will seek to maximise within the CSR period the capital receipt arising from the Crossnacreevy site (provisionally estimated to be a potential £200m), I have secured the agreement of my Minister that DFP will provide your Department with an assurance that you will be provided with the Capital DEL cover that you will require to allow you to continue approving applications and covering the associated liabilities incurred over the next few months pending ratification of the position by the Executive as part of the normal budgetary process in September. This will allow you and your Minister to give assurances to MLAs and the farming community that you have received the necessary financial assurances from DFP to enable you to continue to process the applications received for the scheme uninterrupted.

#### **Conclusion**

I hope that this response is helpful and provides a constructive basis for moving forward on this issue.

Yours sincerely

Bina Rosif-

**BRUCE ROBINSON** 

cc Leo O'Reilly David Thomson Gerry Lavery Ronnie Jordan CFG HODs Paul Donnelly Richard Bullick

DF1/07/59791



Mrs Carol Hetherington Facilities Management Branch Room 415A Dundonald House Upper Newtownards Road Belfast BT4 3SB Land & Property Services Crown Buildings Hamiliton Road BANGOR BT20 4LQ

Telephone: 028 9127 9111 Minicom: 0800 197 0612 Fax: 028 9147 1644 Email: bangor.valuation@lpsni.gov.uk www.lpsni.gov.uk

Disconited vacant possession Valuetion

Date: 1 August 2007. (Car 3/8/07

Our ref: 6013682.

Dear Carol,

### Re: Crossnacreevy Plant Testing Station, 50 Houston Road, Crossnacreevy, Belfast.

I refer to your letter dated 11 June 2007 regarding the above and note your instructions in this matter,

The subject property is located at Crossnacreevy, approximately 5 miles south of Belfast City Centre and fronts the main Belfast to Ballygowan road. The holding extends to a total of 86.86 acres / 35.15 ha or thereabouts held in fee simple together with a further 70 acres occupied on a conacre basis. The entire complex is currently in use as a plant testing station with associated offices, laboratories together with ancillary agricultural buildings plus 1 vacant and 4 occupied bungalows. The boundaries are as in your instructing letter.

The holding naturally falls into the following subdivisions.

 The major part of the holding extends to circa 47.68 acre / 19.29ha and is located immediately east of Houston Road and west of Ballygowan Road. The southern boundary in the main is formed by Knochbracken Road while to the north is Ilford Road together with Portion 2 described below. Clustered roughly in the middle of this area is the administrative accommodation and laboratories together with the associated service accommodation for vehicle maintenance and general agricultural storage plus a vacant bungalow. The offices and laboratories extend to circa 9,526 sq ft / 885m2 NIA, and the workshops / agricultural storage to 16,710 sq ft / 1,552 m2. The dwelling is 92m2 / GEA. It is assumed that all main services are connected, the buildings are in good repair and condition throughout and they meet all current statutory requirements to enable them to be occupied for there current use. The postal address is 50 Houston Road and the access is from a number of points on Houston Road. The lands surrounding the central complexed sevaluate to partment of



Finance and Personnel agricultural use, fields are interconnecting with good access and I am informed water is available throughout. The lands undulate gently and offer good quality grazing and cropping. It was noted that high and low level electricity transmission lines cross east to west close to the northern boundary.

- 2. Located to the immediate west of Houston Road are 4 interconnecting fields extending to a total of 24.07 acres / 9.741 ha and accessed from Houston Road by agricultural entrances. The surrounding lands are in agricultural use with the exception of the northern boundary which abuts a residential development known as Ilford Park. The lands offer good quality grazing and are currently in use for plant testing. It was noted that high and low level electricity transmission lines cross east to west close to the northern boundary.
- 3. Close to the northern boundary and accessed directly from Houston Road are 4 detached bungalows extending each to circa 82me GEA and appear to be good repair and condition. It is assumed they all benefit from the availability of main services. The properties, known as 34 to 40 Houston Road, are serviced by a private road and occupy an elevated site overlooking the Ballygowan Road. Immediately north of 34 Houston Road is a potential single residential development site, subject to planning permission. The total area is circa 0.40 acre /0.16ha.
- 4. Located at the Merrylands Cross Roads, at the junction of the Ballygowan and Gransha Road, is a single good quality agricultural field extending to 14.71 acres / 5.952 ha. This part of the holding is physically separated from the remainder by the Ballygowan Road.

Within your letter dated 11 June 2007, a number of key information issues were raised and I would comment as follows.

All lands within the holding are designated in the Draft Belfast Metropolitan Area Plan 2015 as being within the Greenbelt and outside the settlement limit of Crossnacreevy. The presumption therefore is that planning permission for an alternative use other than the existing use will not be given.

Regarding the way forward and the potential for redesignation of all or part of the lands for some form of alternative development, the most appropriate course of action that can be recommended by this office is that the Department should secure the services of a specialist planning consultant, who will be able to provide comprehensive professional advise in relation to all planning matters. This office upon receipt of same would be able then to furnish you with values and a disposal strategy to achieve the best consideration. As can therefore be seen, the consultant's advice is pivotal in the disposal process and it would be premature to furnish valuations beyond the current market value that are not based upon professional guidance. Should the Department wish to pursue the appointment of this type of consultant we would of course be willing to assist in the process. It is noted that 4 dwellings are occupied by AFBI employees. To date I am unaware of the terms and conditions under which they occupy the properties, though I understand I is a caretaker of the plant testing station buildings and the remaining 3 are employees who have rights of occupation arising from their employment. I would recommend that legal advice is sought however it maybe when the facility is relocated alternative accommodation will be made available and through this action vacant possession will be obtained.

You have asked if the Department could sell based upon hope value as opposed to current replacement value. Were the holding to be placed upon the open market the market value is considered to be in the in the region of £10,000,000(ten million pounds), this valuation being the amalgam of values of the plant testing station as existing, the potential for redevelopment or sale of the dwellings as is and an element of hope value. The Hope Value element is the uplift between the existing value and open market value that would be arise from the market's view of any potential development the holding may have at some future date and based upon currently available parameters and information and forms the speculative element of the value.

This valuation is based upon the assumptions and parameters contained below. Should any be found to be incorrect or require amendment the valuation as stated may require revision.

#### Title.

- It is assumed the lands are held in fee simple or long leasehold at a nominal consideration free from any onerous or restrictive covenants.
- It is assumed the title includes proper and appropriate means of access and there are no rights of way over the lands or easements or wayleaves in favour of a 3<sup>rd</sup> party, though it was noted that a number of high and low level electricity supply lines run roughly east / west through the northern section of the holding.
- It is assumed there are no rights of support or any obligations within the title against or in favour of the subject.
- It is assumed that all title details have been disclosed prior to preparation of this report.
- It is recommended the Department satisfies itself with regard to the above.

#### Tenure.

- The valuation stated in this report assumes that vacant possession can be given of the property unless specifically stated, and the value stated is the vacant possession value. The value assumes that no persons have or will lay claim to all or part of the lands by adverse possession or otherwise and no person has tenure over the property.
- It is assumed that the occupiers of the 4 dwellings at 34 to 40 Houston Road will vacate the properties upon receipt of notice to vacate and will have no pre-emptive rights to purchase and the Department will not be liable to pay compensation upon vacation.

172

- It is noted that AFBI occupy the entire site and the DARD are the registered owners of the holding. As far as I can establish at this time there in no lease or transfer to AFBI from DARD and I have assumed therefore that AFBI and DARD are one of the same in legal entity terms. Should vacant possession of the whole or part of the holding be required it is assumed AFBI will give up possession at the date specified and will not seek any compensation from DARD in any form.
- It is recommended the Department satisfies itself with regard to the above and that the assumptions made are acceptable.

#### Valuation Date.

• The valuation is operative for a period of 6 months from the date of this report following which revision will be required.

#### Purpose.

- The valuation is for internal financial planning purposes only and should not be released to a 3<sup>rd</sup> party without prior consent of this office.
- The valuation is an estimate only and no consultation or discussion has been undertaken with any potential purchaser.

#### **Planning Permission and Existing Use.**

- No approach has been made to the Planning Service with regard to alternative uses of the property. The valuations are based upon planning information currently available in the Belfast Metropolitan Area Plan (BMAP) 2015 Draft Plan, published November 2004. At this stage no approach or challenge has been made by the Department to have the holding in part or in its entirety redesignated for an alternative use other than the existing or designated use.
- The holding is shown in BMAP as being outside the settlement limit of Crossnacreevy and within the Greenbelt.
- It is assumed that the current planning permission is as an agricultural plant testing station comprising agricultural activities on the lands together with a range of associated agricultural buildings for the storage of crops and agricultural equipment. The holding includes offices and laboratories and it is assumed that planning permission would be granted for either a change of use or their redevelopment to free standing office accommodation at the same location not associated with the land holding.
- Currently the holding includes 4 detached bungalows at Houston Road and a further detached bungalow at the edge of the stations' building complex. For the purposes of this valuation it is assumed that planning permission would be granted for the redevelopment of all 5 dwellings within 50m of the existing site, the maximum size of each replacement property would be 150m2. It also assumed that the services currently servicing the dwellings will be available and capable of servicing replacement dwellings. It is also assumed that the area of land immediately north of the existing houses at 34 40 Houston Road would be granted planning permission for the development of a similar dwelling.

2.

 It is also assumed that the granting of Planning Permission and all other Statutory Approvals for any alternative uses would not contain any onerous or adverse conditions.

#### **Property.**

It is assumed the property is: -

- Free from all forms of contamination including asbestos and radon.
- Free from flooding and the surrounding area is not subject to subsidence.
- Ground conditions and load bearing capacities are adequate to allow development (subject to all approvals being granted) to proceed within normal and accepted cost limits.
- All services are available to the site and no above normal connection costswill be encountered.
- All and any sightline provision will be made available at no cost to the purchaser.
- The valuation process has not included the undertaking of a structural survey or soil investigations on the property and it is recommended that you satisfy yourself in this regard.

#### Access.

• It is assumed the lands have direct uninterrupted and unconditional access from the public highway as found on site during recent inspections.

### **Boundaries.**

• The boundaries of the property are as found on site and no action has been taken to verify the correctness or accuracy of same.

I trust the above is of assistance in this matter and if I can be of any further assistance please do not hesitate to contact us.

Yours sincerely

R Ian Wort Senior Valuer.

# FLE ON CROSSNACREEVY



Land & Property Services Crown Buildings Hamiliton Road BANGOR BT20 4LQ

Telephone: 028 9127 9111 Minicom: 0800 197 0612 Fax: 028 9147 1644 Email: bangor.valuation@lpsni.gov.u www.lpsni.gov.uk

Mr J Smith Finance Director Department of Agriculture and Rural Development Dundonald House Upper Newtownards Road Belfast BT4 3SB

Date: 6<sup>th</sup> March 2008.

Our ref: 6013682-3.

Dear John,

# Re: Crossnacreevy Plant Testing Station, 50 Houston Road, Crossnacreevy, Belfast.

I refer previous correspondence regarding the above.

Please find enclosed the final valuation report for the above property which I trust you find to your satisfaction. The report should be read in conjunction with the the original Land and Property Services report dates 1<sup>st</sup> August 2007 which fully describes the property together with assumptions and parameters. I would especially draw to your attention the opinions of value are operative for a period of 6 months following which revision maybe required.

As discussed, should you require any further assistance in this or related matters please do not hesitate to contact me directly.,

Yours sincerely

R Ian Wort Senior Valuer



An Agency within the Department of Finance and Personnel www.dfpni.gov.uk Property: Crossnacreevy Plant Testing Station, 50 Houston Road, Crossnacreevy, Co. Down.

The stated objective of this report is to consider a range of options which would realize the maximum level of receipts should all or part of the property known as Crossnacreevy Plant Testing Station be declared surplus and be disposed of on the open market.

### **History:**

The above facility is owned by the Department of Agriculture and Rural Development and occupied by Agri Food and Bio-Science Institute (AFBI).

Land and Property Services were requested to provide a detailed valuation report of the holding, same being reported on 1 August 2007 (Appendix 1.) The report detailed a full description together with an estimate of value which at the time of report was in the region of  $\pounds 10,000,000$ , this being based upon stated assumptions and parameters.

### **Planning Position:**

The potential to develop the holding beyond its existing use has been investigated in depth with a view to establishing what alternative uses could be developed within the current planning framework.

Initially with Al Adair, Planning Service who is responsible for the formulation of the Belfast Metropolitan Area Plan 2015 (BMAP) was approached with a view to establishing the potential uses or development potential of the holding which would been seen as acceptable within BMAP. The feedback is as per Appendix 2.

John Cummins, Divisional Planning Manager, Planning Service, was subsequently approached and he provided a detailed response as to the potential alternative uses of the holding. Appendix 3.

DTZ, Planning Consultants provided independent verification of the planning position of the holding within BMAP and the potential alternative uses for the holding. Appendix 4.

# **Planning Position Summary:**

The summary of alternative uses identified for all or part of the holding from the above sources is:-

- 1. Agricultural and forestry development.
- 2. Farm diversification.
- 3. Tourist development.
- 4. Industry and business comprising the change of use of the existing complex to e.g. a call centre.
- 5. Mineral development.
- 6. Outdoor sport and recreational uses.
- 7. Renewable energy projects.
- 8. A community facility to serve the local population.
- 9. Cemetery.
- 10. Residential use restricted to 4 units.

### Alternatively:-

Engage in the rolling BMAP review process and promote the site as a growth area associated with the expansion of Crossnacreevy, to commence at the earliest 2009.

## Value:

The Planning Position Summary above provides clear guidance upon which to consider the basis of valuations. It is worthwhile remembering and not to lose sight of the 2 basic economic drivers that create land value namely that planning permission must be obtainable but secondly and more importantly there must be the demand from the market for the use which planning permission is obtainable.

# **Current Property Market Condition (February 2008):**

Since approximately June 2007 the residential property market for both properties and building land have seen a considerable downturn in both activity and levels of consideration being achieved.

At the present time any sales of residential building land which have been agreed, indicated a reduction of anything from 30 -50%, this translating to a reduction from  $\pounds 2,000,000$  to  $\pounds 1,000,000$  per acre. The residential home sales market has also shown a decline, however it is noted from feedback from estate agents that the number of new instructions has dramatically reduced and sales are taking longer to achieve.

In relation to land sales due to the tightening of the Lending Institutions criteria lands without the benefit of planning permission are no longer seen as desirable security and little to no lending is being made available. The basic rule is that only where planning permission has been granted will they consider lending. For homes which were previously purchased as Buy to Let properties as capital appreciation is no longer occurring, lending Buy to Let purchasers are no longer in the market and this has been a large contributory factor in the cooling of the market up to approximately the £250,000 level. Above this level market activity has declined as house owners are unable to move from the £250,000 or less market.

The non residential property market including, commercial, agricultural and community uses did not see the dramatic levels of increase encountered by the residential market over the preceding 2 to 3 years and ending in circa June 2007. Growth was steady and there has been no downturn in prices since mid 2007, however even the current prevailing land values are well below residential land values.

## **Options:**

As stated in Appendix 1, Crossnacreevy Plant Testing Station comprises the 2 distinct parts, namely the portion located at Maryland Cross Roads extending to 14.71 acres and the major part of the Station located immediately south of the Crossnacreevy settlement and serviced by the spine road of Houston Road. Consideration has been given to the dependence of the Maryland Cross Roads lands to the remainder of the holding and visa versa and no grounds can be established that require this portion to remain with the remainder. Maryland Cross Roads holding is therefore considered separately in this report.

### **Maryland Cross Road Portion.**

The lands are currently in agricultural use with no development having taken place. Given the distance of this portion from the existing settlement at Crossnacreevy it is considered extremely unlikely that rezoning could be achieved for residential development when the BMAP review commences.

Alternative uses have been considered and the only possible alternative which could attract interest is considered to be use 9 (cemetery), however use 9 is considered to be unlikely given Policy PU1 as detailed in the DTZ report and the area includes a number of open watercourses.

The conclusion therefore is that the use will remain agricultural for the foreseeable future and the value is therefore in the region of £220,000. The sale of this portion could be undertaken at anytime.

**Crossnacreevy Plant Testing Station** (Excluding Maryland Cross Roads portion). The potential alternative uses of all or part of the holding are stated in Planning Position Summary 1 to 10 together with the option for potential rezoning. Consideration has been given to the value attached to each of the uses and these are summarized as follows.

#### Agricultural and forestry development.

Agriculture as an alternative use is close to the existing use and compatible with the surrounding land uses. A demand exists and the existing buildings would compliment the land holding. Excluding the 4 houses and / or sites at Houston Road the value is in the region of £1,260,000. The fees and costs would be approximately £20,000 and it is envisaged planning permission would take circa 12 months to obtain.

#### Farm diversification.

This is closely associated with Agricultural and forestry development as above, however as a stand alone use it is not considered to have a value as no demand is envisaged.

#### **Tourist development.**

No demand can be identified for this use and therefore there is no value attached to this alternative use.

**Industry and business** comprising the change of use of the existing complex to e.g. a call centre.

This use would be restricted solely to the development of the existing buildings, i.e the stores, offices and laboratories which would have to compete with superior properties better located. There is considered however to be a limited demand and the value is considered to be in the region of £1,800,000, subject to satisfactory planning permission. The fees and costs would be in the region of £25,000 and it is envisaged planning permission would take circa 18 months to obtain.

#### Mineral development.

This alternative use is not considered to be a feasible alternative given the location close to the existing Crossnacreevy settlement and other residential properties. Extraction would be subject to establishing if there is a viable mineral deposits plus planning permission would be extremely restrictive. A value will be dependent upon specialist ground investigations however there is no evidence of existing extraction in the immediate locality.

#### Outdoor sport and recreational uses.

No demand can be identified for this use and therefore there is no value attached to this alternative use.

### Renewable energy projects.

No demand can be identified for this use and therefore there is no value attached to this alternative use.

### A community facility to serve the local population.

No demand can be identified for this use and therefore there is no value attached to this alternative use.

### Cemetery.

This use is a possibility and it is understood there is demand. If planning permission was granted the value excluding the areas of the existing dwellings and or the area for replacements. The obtaining of planning permission would normally take in the region of 18 months with fees and costs circa  $\pm 30,000$ , however if objections are received this could take longer. The value is estimated to be in the region of  $\pm 3,250,000$ , achievable in about 2 years.

### Residential use restricted to 4 units.

The existing dwellings at Houston Road have a value each in the region of £175,000. Should planning permission be pursued for replacement units each site would have a value in the region of £200,000. The fees and costs will total circa £10,000. Regarding the 5<sup>th</sup> dwelling located within the main complex, indications from Planning Service are that this would be treated as part of the Plant Testing and not as a separate replaceable unit.

The options available to the Department are:-

## **Do Nothing:**

Offer the property for sale as is, on the open market. The market would determine the value and take into account the potential uses.

The advantage of this approach is that this is the quickest method of affecting a sale, outlays would be normal agents and legal fees and no planning applications would be required.

The disadvantages are that bids will be speculative and given the risks and time scale involved in obtaining alternative use permissions bids would be depressed accordingly.

The value following this approach is considered to be in the region of £3,000,000.

# Disposal of Part or Parts Only with the benefit of Alternative Planning Approvals.

Disposal of the Plant Testing Station is possible by prudent lotting of all or part of the complex. Below are the options available which achieve either partial or full disposal, subject to the time scales as previously outlined.

Maryland Cross Roads lends itself to disposal as a single sale and the value is estimated to be in the region of £220,000.

Disposal of the 4 dwellings as is or with planning permission for replacement sites could be affected without any effect upon the remainder and would have a total value in the region of £800,000.

Were the remainder of the lands to be offered for sale either as a cemetery  $\pounds 3,250,000$  or for agricultural development  $\pounds 1,260,000$ , any value attributable to an alternative use of the complex buildings will be lost as it would be reflected in theses values.

Should an alternative use for the existing complex be granted planning permission, the value of the surrounding lands for agricultural purposes be reduced to circa  $\pounds 1,000,000$  as a purchaser will have to develop alternative facilities. If however the surrounding lands were to be granted planning permission for a cemetery the value of the complex for an alternative use will be reduced by up to 20%, producing a figure of  $\pounds 1,600,000$ .

### **Disposal of the Entirety Post Review of BMAP 2009:**

Engaging in the rolling BMAP review process and promoting the site as a growth area associated with the expansion of Crossnacreevy is due to commence at the earliest in 2009 has been offered as an alternative disposal approach. 2009 is given as the earliest time of review and it is envisaged that the outcome of a review will not be known until circa 2015.

As state above there is no guarantee that the outcome of following the above strategy will have the desired result, namely all or any of the Department's land holding will be designated for expansion of Crossnacreevy. Other locations will be completing for lands to be released including Moneyreagh and Ballygowan plus brown field sites within Belfast City such as Titanic Quarter. The total area available is circa 72 acres and the entirety of this would not be realised for residential development. A potential developer will be required to fund and provide all services and accesses together with quality initiatives in the form of open space and community faculties. This would effectively reduce the net developable area to about 45 acres and betaken into account in the overall value. Should the Department be successful and basing a value upon current prevailing land values the total receipts could be in the region of £45,000,000. However it must be stressed there is no certainty of a positive or part positive outcome plus there must be the demand for housing at this location. Fees to pursue this course of action are estimated to be in then region of £50,000.

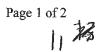
#### Summary:

The above sets out a mix of pathways available to the Department to realize the maximum consideration for the subject property.

R Ian Wort Senior Valuer Land and Property Service (Valuation) Crown Buildings, Hamilton Road, Bangor BT20 4LQ

Date: 6th March 2008.

Plant Testing Station at Crossnacreevy



## White, Janet

From:Adair, Al [Al.Adair@doeni.gov.uk]Sent:13 December 2007 14:56To:Smith, JohnCc:White, JanetSubject:RE: Plant Testing Station at Crossnacreevy

You have captured the thrust of the current position well. I would offer a few comments:-

- Perhaps you could stress more that there are no objections lodged relating to the site and accordingly
  it cannot be considered as part of the Inquiry. On this point I confirm that the process is closed to new
  participants, ie, anyone who had not raised the objection during the period that ended in February
  2005.
- The review of BMAP might be quicker than 3-4 years but only if Planning Service can secure a more
  efficient process by then, which is being progressed now as part of the Review of Public
  Administration. The next opportunity is however some way down the line in any event.
- Finally as I suggested at our meeting, you may wish to explore the ways in which development of some sort could take place now, within the current policy context. For this I would advise contact with John Cummins who is Divisional Plan Manager, also located here in Bedford House.

#### Regards

Al Adair

From: White, Janet [mailto:Janet.White@dardni.gov.uk] Sent: 07 December 2007 14:49 To: Adair, Al Cc: Wort, Ian Subject: Plant Testing Station at Crossnacreevy

AI

Please see attached from John Smith

Thanks

Janet

Janet White PS/John Smith 202890 525591

- 02890 524148
- janet.white@dardni.gov.uk

<<AlAdair.doc>>

27/02/2008

	Scan to	Ian Work	12	VA		
our Ref:	and return to m	e Planu	ņing			
Our Ref:	Thempes					
	John	Divisiona	I Planning Office			
Mr John Smith Finance Director Department of Agriculture and Rural Development Dundonald House		Bedford House 16-22 Bedford Street Belfast BT2 7FD				
Upper Newtown BELFAST BT4 3SB	ards Road	Direct Line: 028 st Date: 、る、De	90 252801 cember 2007			

Dear Sir

### **CROSSNACREEVY PLANT TESTING STATION**

I refer to your correspondence of 2 November 2007. You have identified 2 areas of land. The smaller of the areas located adjacent to the Maryland Industrial Estate would be regarded by Planning Service as a separate planning unit. The land would appear to be in agricultural use. The larger area south of Crossnacreevy is more evidently associated with a business operation. Both areas are located in the countryside and rural policies under draft Planning Policy Statement (PPS) 14 will apply.

Overall there is a presumption against development in the open countryside with a number of exceptions as defined in draft Planning Policy Statement 14. In general terms development will only be permitted if there are overriding reasons why the development is essential and could not be located in a settlement.

Planning Service has considered the questions you have posed in the context of the main planning unit adjacent to Crossnacreevy.

What use or uses does the Planning Service consider the complex is currently being used for?

The description you give is a "Plant testing station with associated offices, laboratories, stores and workshops together with 4 dwellings". Planning Service would consider that the substantive use of this area falls within Class B1(c) of the Planning (Use Classes) Order (Northern Ireland) 2004. That is a Business Use for research and development which can be carried out without detriment to amenity by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Planning Service would also consider that the 4 dwellings, whilst clearly associated with the business operation, are not tied to it by way of a planning condition and are therefore Residential Uses falling within Class C1 (a) and (b) of the Planning (Use Classes) Order (Northern Ireland) 2004. This residential use would extend to the defined curtilages of those dwellings.



Tel. (028) 9025 2800 Fax. (028) 9025 2828 Email. divisional.planning.office.belfast@nics.gov.uk Web. www.planningni.gov.uk

119/PI INVESTOR IN PEOPLE

Which alternative potential uses or development could the complex be put to, in part or in full which would be acceptable to Planning Service?

Where a building or other land is used for a purpose of any Class specified in the legislation, the use of that building or that other land for any purpose of the same Class is not taken to involve development and would not require planning permission to change that use. In these circumstances, the Use Class B1 category would permit the change of use to a call centre, or an office use <u>other</u> than a use within Class A2 (Financial, Professional and Other Services).

It would also be appropriate to consult other regional planning policies in assessing what potential there might be. I would direct you in the first instance to Policy CTY1 of draft PPS14. You will note that this policy also incorporates references to a range of other regional policies. You should note that Planning Policy Statement 4 Industrial Development is under review and that a Draft Planning Policy Statement 4 entitled Industry, Business and Distribution was published in January 2003. All these policies can be viewed on the Planning Service website www.planningni.gov.uk.

Are there any constraints which the Planning Service is aware of which would impinge or prohibit development of all or part of the land for alternative uses?

The Department, in dealing with a planning application, shall have regard to the Development Plan, so far as material to the application and to any other material considerations.

These buildings and lands lie outside the proposed settlement boundary for Crossnacreevy as set out in the draft Belfast Metropolitan Plan. dBMAP is subject to an ongoing Public Inquiry, following which it will be adopted in light of the Planning Appeals Commission recommendations. It is likely that the present countryside designation and presumption against development will remain in force.

The relevant regional policy in draft PPS 14 (as amended on 25<sup>th</sup> October 2007) is being reviewed by a Committee of Ministers of the Executive under the Chairmanship of the DOE Minister. It is anticipated that a revised consultation draft will be published within the next 6 months.

It is difficult to be prescriptive in terms of possible constraints which might impact on these lands. Planning Service would consult a range of agencies in assessing any planning application, for example DRD Roads Service, Northern Ireland Water and the Environment and Heritage Service including Natural and Bullt Heritage. In this respect Planning Service would consider the merits of any planning application in terms of the relevant policy and Development Plan context, comments received in consultation with other agencies as well as representations from third parties submitted as part of the statutory advertising process prior to making a determination. You may of course wish to consult the infrastructure and environmental agencies separately to identify any specific development constraints.

I hope you find this response helpful.

Yours faithfully

J CUMMINS Divisional Planning Manager

119/PLG

### From the Finance Director



John Smith Dundonald House Upper Newtownards Road Ballymiscaw Belfast BT4 3SB

Tel: 028 90 524272 Fax: 028 90 524148 Email: john.smith@dardni.gov.uk

### John Cummins

Planning Service

2 November 2007

### **Crossnacreevy Plant Testing Station**

DARD is currently considering its future occupation and use of the above property and I would be most grateful for the input from Planning Service at this early stage.

For your information please find attached maps indicating the boundaries of the complex which extends to circa 86 acres. Currently we use the property as a plant testing station with associated offices, laboratories, stores and workshops at 50 Houston Road together with 4 dwellings at 34-40 Houston Road.

To enable us to evaluate and establish the properties potential I would be most grateful if you could arrange to provide the following information and guidance.

- 1. What use or uses does the Planning Service consider the complex is currently being used for?
- 2. What alternative potential uses or development could the complex be put to, in part or in full which would be acceptable to Planning Service?
- 3. Are there any constraints which the Planning Service is aware of which would impinge or prohibit development of all or part of the lands for alternative uses?

I trust you are able to provide the above and await your response in this matter.

John Smith Finance Director

14/2/08

1



**Planning Position Statement** 

# Planning Position Statement Crossnacreevy Plant Testing Station, Castlereagh



DTZ One Edinburgh Quay 133 Fountainbridge Edinburgh Quay EH3 9QG



#### 4. Recommendation

The options open to DARD with regards to the future of the Crossnacreevy landholding are:

- Engage with the rolling Area Plan review process (this is unlikely to commence until after 2009) and promote the site as a growth area associated with the expansion of Crossnacreevy; or
- Submit a planning application or release the land for tourism, outdoor sport, recreational uses or a cemetery.



#### **EXECUTIVE SUMMARY**

DTZ has been instructed to provide an overview of the key planning considerations affecting land at Crossnacreevy Plant Testing Station in the ownership of the Department of Agricultural and Rural Development (DARD) and to advise on options for optimising land value from the disposal of this site.

A limited opportunity for development at Crossnacreevy Plant Testing Station exists due to its location within the greenbelt. As a result strict planning controls for new development will be applied. Notwithstanding this a number of potential types of development are considered acceptable in principle as defined by the planning policy context for the site. These include:

- Agricultural and forestry development;
- Farm diversification proposals;
- Tourism development;
- Industry and business;
- Minerals development;
- Outdoor sport and recreation uses;
- Renewable energy projects; or
- A necessary community facility to serve the local rural population.

DTZ are of the opinion that rural diversification, tourism development, outdoor sport or a cemetery are the most appropriate land uses in the context of the site characteristics and planning policy context.

Indeed the existing research building at Crossnacreevy Plant Testing Station presents an opportunity for the change of use to a non-residential use (i.e. industrial, tourism, recreational uses or community facilities).

The options open to DARD therefore with regards to the future of the Crossnacreevy landholding are:

- To engage with the rolling Area Plan review process (this is unlikely to commence until after 2009) and promote the site as a growth area associated with the expansion of Crossnacreevy; or
- Submit a planning application or release the land for tourism, outdoor sport, recreational uses or a cemetery.



#### 1. Introduction

Under the terms of the CPD Framework Contract (Ref: No CPD 11603/06) DTZ in conjunction with The Paul Hogarth Company have been instructed to provide planning advice with regard to the land use potential of Crossnacreevy Plant Testing Station by the Department of Agriculture and Rural Development (DARD).

-DARD made a decision in Summer 2007 to dispose of the site, as it was no longer required for research purposes.

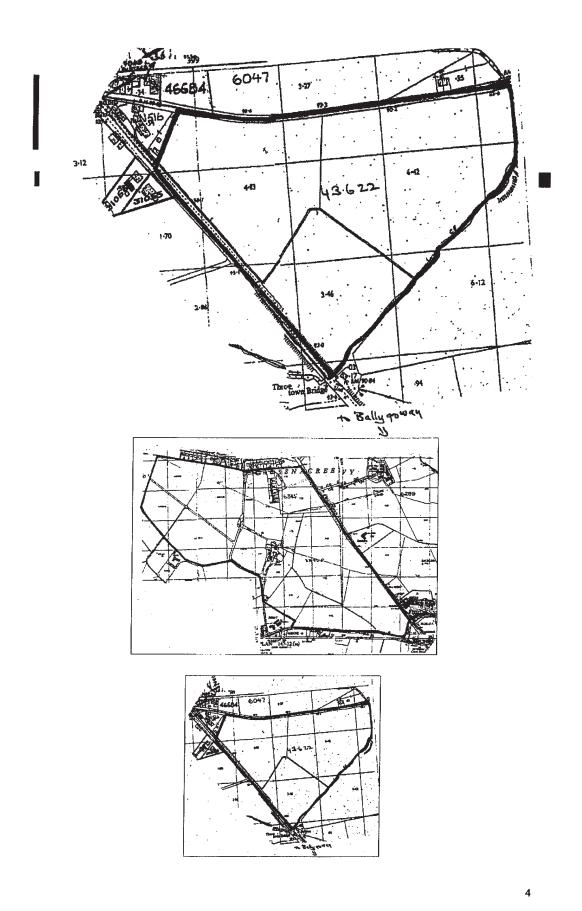
This report provides an overview of the key planning considerations affecting the site in the ownership of DARD. Specifically we have been asked to comment on:

- The planning policy context of the site; and
- Future development options for the site in the context of planning legislation.

Key planning considerations assessed in this report to assess the potential for alternative uses on the site are:

- The site and its surroundings
- Existing land use
- Development Plan context

Our planning advice is based on a desk top assessment, reviewing development and land use potential on the basis of adopted and emerging development policy and other material considerations and information of relevance, including initial discussions with planning officers at the Planning Service (Belfast Area).





#### Existing Land Use

The site incorporates both the Northern Ireland Plant Testing Station, a centre of expertise on seed and cultivar science and technology, and the Northern Ireland Official Seed Testing Station. Research, technical and statutory work is carried out on seeds and cultivars and specialist advice is provided to Government and industry.

Activities include:

- Seed Testing and Certification;
- UK Plant Breeders' Rights;
- UK National List and DARD Recommended List Testing;
- Innovative research and development.

#### 3. Planning Policy Context

We have reviewed the relevant planning policy context for the site, which includes the Regional Development Strategy, the Rural Development Strategy, Planning Policy Statement 14, and the emerging Belfast Metropolitan Plan. The relevant status of each is outlined below:

-	Regional Development Strategy	September 2001
-	Rural Development Strategy	October 2006
-	Planning Policy Statement 14	October 2007
-	Belfast Metropolitan Plan 2015 Draft Plan	November 2004
-	Belfast Metropolitan Plan 2015 Draft Plan Amendment No.1	February 2006

#### 3.1 Regional Development Strategy for Northern Ireland (RDS)

The Regional Development Strategy (RDS) 'Shaping Our Future' is a strategy for the development of Northern Ireland up to 2025. It contains a Spatial Development Strategy and related Strategic Planning Guidelines, which provide the strategic planning context for development plans and making decisions on individual planning applications. The RDS states the sustainable development must be at the heart of future rural development.



This can be achieved by the following strategic objectives:

- Supporting the development of a strong, diversified and competitive rural economy served by the Regional Strategic Transport Network;
- Developing a living and working countryside which recognises the unique rural character of the Region and contributes to a sense of belonging in local rural areas;
- Promoting the continuing renewal and revitalisation of towns and villages in rural Northern Ireland;
- Improving the accessibility of the rural community to employment, services and regional amenities; and
- Managing and enhancing the natural and built heritage in rural areas.

#### 3.2 Rural Development Strategy (PSRNI)

The Rural Development Strategy (PSRNI) was published in October 2006. The Strategy contains a number of strategic planning policies applicable to rural Northern Ireland and are relevant in the context of Crossnacreevy. Policies within the RDS are being gradually replaced by Planning Policy Statements (PPSs) however the Rural Strategy remains a material planning considerations until superseded by PPSs.

#### 3.3 Planning Policy Statement 14: Sustainable Development in the Countryside

Draft Planning Policy Statement 14 (PPS14) was published initially in March 2006 and subsequently re-issued in October 2007. This was due to widespread concern regarding the provisions outlined in PPS14 to address development pressure affecting rural Northern Ireland. As a result a judicial review challenging Draft PPS14 was lodged.

The aim of PPS14 is to "manage development in the countryside in a manner consistent with achieving the strategic objectives of the RDS for Northern Ireland."

The countryside is defined as land lying outside of settlement limits as defined in development plans.

The policy provisions in draft PPS14 take precedence over some of the existing policies in the Planning Strategy for Rural Northern Ireland<sup>1</sup> and are applicable to the Crossnacreevy Plant Testing Station.

A limited number of types of development are considered acceptable in principle as defined by **Policy CTY1** – **development in the Countryside**.

PPS14. CTYI is a policy 01

<sup>&</sup>lt;sup>1</sup> A Statement by Arlene Foster Minister of the Environment, 25 October 2007



Potential appropriate alternative uses on the site, include:

- Agricultural and forestry development (Policy CTY8);
- Farm diversification proposals (Policy CTY9);
- Tourism development (in accordance with the TOU Policies of PSRNI);
- Industry and business (in accordance with PPS4);
- Minerals development (in accordance with the MIN Policies of PSRNI);
- Outdoor sport and recreation uses (in accordance with PPS8);
- Renewable energy projects (in accordance with Policy PSU12 of PSRNI); or
- A necessary community facility to serve the local rural population.

These alternative land uses require to be assessed against the various related policies in PPS14 and policies highlighted in brackets above. DTZ are of the opinion that rural diversification, tourism development, outdoor sport and a cemetery are the most appropriate land uses in the context of the site characteristics and planning policy context.

Indeed the change of use of the existing research building at Crossnacreevy Plant Testing Station is considered acceptable in principle. **Policy CTY1** allows for the reuse and adaptation of existing buildings in the countryside to a non-residential use (i.e. industrial, tourism, recreational uses or community facilities) where the proposal:

- Would not result in the need for a new building as a replacement;
- The building is of sound and permanent construction and is proposed for re-use without major alterations;
- The building is large enough to accommodate the proposed use and the site is of adequate size;
- The services and access are available or can be upgraded without adverse environmental impact; and
- The nature and scale of the proposed use is appropriate to a countryside location and is not detrimental to
  agriculture, residential amenity or landscape quality.

With respect to farm diversification, planning permission will only be granted where it is demonstrated that diversification is complementary to the agricultural operations and be operated as part of the farm enterprise. Diversification enterprises include: tourist accommodation, livery for horses and ponies, farm shops, sport, recreation and educational facilities.

Policy CTY13 is also relevant in the context of development at the Crossnacreevy Plant Testing Station. It prevents development that mars the distinction between a settlement and the surrounding countryside.



#### 3.4 Belfast Metropolitan Area Plan (BMAP) 2015 - Draft Plan

The current Area Plan covering Crossnacreevy plant Testing Station is the draft Belfast Metropolitan Plan 2015 (draft BMAP) which was published in November 2004. It covers the City Council areas of Belfast and Lisburn and the Borough Council areas of Carrickfergus, Castlereagh, Newtownabbey and North Down. The Plan is currently the subject of a Public Local Inquiry by the Planning Appeals Commission considering objections to the Draft Plan including Plan Amendment No.1 to the Draft Plan.

A timeline of the BMAP process is provided below.

	Nov 04	Jan 05	Feb 06	April 06	April 07	Oct 07	2009
Publication of BMAP Draft Plan							
Public Consultation of BMAP Draft Plan				i			
Publication of BMAP Draft Plan Amendment No.1					-		
Public Consultation of BMAP Draft Plan Amendment No.1							
Public Local Inquiry - Strategic Issues							
Public Local Inquiry - Site Specific Issues1			1 1				
Expected Adoption of BMAP	1						
<sup>1</sup> The Public Local Inquiry is still on-going	·			·	L		

During the production of BMAP and subsequent consultation process, DARD did not make any representations with respect the land allocation of the subject site. Moreover, no other third party objections in relation to the subject site were registered. Accordingly, whilst the BMAP inquiry process is on-going, there is no means of reviewing policies or proposals in relation to the subject lands.

The proceeding section provides an overview of the current planning context of the Crossnacreevy Crop Plant Testing Station in relation draft BMAP.

BMAP contains a number of policies, which aim "to provide a planning framework to facilitate sustainable growth and a high quality of development within the Belfast Metropolitan Area, whilst protecting and enhancing the natural an man-made environment".

The Plan seeks to focus development in the cities and towns, with priority given to the re-use of land within existing urban areas and the need to contain outward expansion. In the context of rural areas, vibrant rural communities are promoted as well as the consolidation of small clusters of development in the open countryside to form a number of new rural settlements and prevent further encroachment of development in the open countryside. As a result large-scale expansion is resisted in the rural area to ensure that development takes place in towns where infrastructure already exists.

BMAP has designated a hierarchy of settlements to guide development to the most appropriate areas. Crossnacreevy is designated as a small settlement. BMAP aims to consolidate development within these settlements and prevent any further encroachment in the countryside, with no further land being provided for expansion.



The site is zoned as greenbelt (Designation COU 1) in the draft BMAP, whereby strict planning control for new development will be applied.

Proposals for alternative uses on the site, such as tourism, outdoor sport and cemetery provision etc, would have to be assessed against the various related policies of the BMAP. *Policy T2* accepts the principle of tourism development outside the Metropolitan Development Limit and Settlement Limit. It states "planning permission will only be granted for tourism development where all the following criteria can be met:

- A site specific need for the development is demonstrated;
- Proposals are small in scale and satisfactorily integrate into their surroundings;
- There is no detrimental impact on the residential or visual amenity, views, landscape quality or the character of the area;
- There is no detrimental impact on an area of designated built heritage or proven archaeological importance;
- There is no detrimental impact on nature conservation interest or the coast; and
- The proposed site is well serviced by infrastructure and public transport and there is no detrimental impact on road traffic volumes or increased congestion on the road network."

A cemetery may be acceptable in the context of a greenbelt location. The Roselawn Cemetery is located to the north of the site and we understand there is a requirement for land for new cemeteries in the Belfast Metropolitan Area. **Policy PU1 Cemetery Provision** states *"planning permission will be granted for cemetery provision provided there is adequate infrastructure in place and no detrimental impact on visual or residential amenity, the landscape character of the area and nature conservation, built heritage or archaeological interest of the area."* 

The Castlereagh Slopes Area of High Scenic Value lies to the west and north of the site, where **Policy COU 7** is applicable. This states, "planning permission will not be granted to development proposals that would adversely affect the quality, character and features of interest in Areas of High Scenic Value. Proposals for mineral working and waste disposal will not be acceptable. A Landscape Analysis must accompany development proposals in these areas to indicate the likely effects of the proposal on the landscape".

Land to the east of the Ballygowan Road is zoned as a Landscape Policy Area. This is currently the subject of an objection, on the basis of a third party attempt to secure opportunities to develop extensive residential development. This is currently being considered through the appeal process.

#### 3.5 Belfast Metropolitan Area Plan (BMAP) 2015 - Draft Plan Amendment No.1

BMAP Draft Plan Alteration No.1 was published in February 2006 to address a number of omissions and inaccuracies identified in the draft BMAP. The plan largely updates strategic, transportation, urban environment and countryside policy in the Area Plan. No changes in the Draft Plan Amendment No.1 are directly relevant to the subject site.

# Chairperson's Letter of 15 September 2011 to Mr Stephen Peover

Room 371 Parliament Buildings Ballymiscaw Belfast BT4 3XX

Tel: (028) 9052 1208 Fax: (028) 9052 0366 E: pac.committee@niassembly.gov.uk aoibhinn.treanor@niassembly.gov.uk

Stephen Peover Accounting Officer Department of Finance and Personnel Rathgael House, Balloo Road Bangor BT197NA

15 September 2011

CC Treasury Officer of Accounts DL

Dear Stephen,

### PAC inquiry into Farm Nutrient Management Scheme

At its meeting yesterday the Committee decided to take further evidence in this inquiry.

I am writing to inform you that to support the Accounting Officer of the Department of Agriculture and Rural Development (DARD), Michael Brennan is required to attend the Committee at 2 pm on 28 September 2011 (at a room to be confirmed) in Parliament Buildings. Treasury Officer of Accounts for this inquiry, Richard Pengelly, is also invited to attend.

Please confirm attendance by close of play tomorrow.

The Committee also agreed to ask further questions of DFP in writing in advance of the session.

Accordingly, please provide the following information:

- Was DPF/DFP Supply made aware that DARD received a detailed valuation report from LPS of £10 million for the Crossnacreevy site on 1 August 2007?
- If so, who was made aware of it, and when?
- At the PAC Evidence Session on 15 June 2011, Mr Michael Brennan told the Committee that the £200 million figure for Crossnacreevy was accepted by the Executive for incorporation into the budget in January 2008. On what date was this accepted by the Executive?
- On the basis of what data was it understood that there was demand for use of parts of the Crossnacreevy site as a cemetery?

Please liaise with DARD if necessary to provide this information.

I would be grateful to receive your reply by no later than close of play on 20 September.

Yours sincerely,

ć Taul Maskey

**Paul Maskey** Chairperson Public Accounts Committee

# Correspondence of 21 September 2011 from Mr Stephen Peover



### From The Permanent Secretary

Stephen Peover Rathgael House Balloo Road BANGOR, BT19 7NA

Tel No: 028 9127 7601 Fax No: 028 9185 8184 E-mail: stephen.peover@dfpni.gov.uk

Paul Maskey Chairperson Public Accounts Committee Parliament Buildings Room 371 Stormont Estate BELFAST BT4 3XX

21 September 2011

Dear Paul

## Public Accounts Committee Inquiry Into Farm Nutrient Scheme

Your letter of 15 September 2011 regarding a further evidence session on the above inquiry also asked further questions of DFP in advance of that session. The information you have requested is provided below.

# Was DFP/DFP Supply made aware that DARD received a detailed valuation report from LPS of £10 million for the Crossnacreevy site on 1 August 2007?

Central Finance Group (CFG) can find no record of any notification by DARD to DFP of a valuation of the Crossnacreevy site by Land and Property Services (LPS) at £10m prior to the Executive agreeing the Budget on 21 January 2008.

In correspondence dated 2 January 2008 to DFP Supply, the DARD Senior Finance Director provided a short update on progress with disposal of the site in light of DARD's work with Planning Service, LPS and external planning consultants. While this correspondence signalled difficulties in rezoning the site under the draft BMAP in the short term, it did not include a revised valuation.

After agreement of the Budget, the first formal notification from DARD regarding the updated valuation of Crossnacreevy was on 3 June 2008 in correspondence from the DARD Finance Director which stated the site value was likely to be in the range of  $\pounds 3m - \pounds 6m$ , taking into account planning policy and market conditions.

# At the PAC Evidence Session on 15 June 2011, Mr Michael Brennan told the Committee that the $\pounds$ 200 million figure for Crossnacreevy was accepted by the Executive for incorporation into the budget in January 2008. On what date was this accepted by the Executive?

Proposed spending plans for NI departments for the period 2008-09 to 2010-11, incorporating the planned disposal process for Crossnacreevy were agreed by the Executive on 21 January 2008 and approved by the Assembly on 29 January 2008.

# On the basis of what data was it understood that there was demand for use of parts of the Crossnacreevy site as a cemetery?

CFG was not involved in the detailed consideration of the disposal of the Crossnacreevy site.

The following information has been supplied by DARD.

In February 2008, DTZ were instructed (on the basis of advice from LPS) to provide a Planning Position Statement for Crossnacreevy. One of the final recommendations of this report was for DARD to release the land for 'tourism, outdoor sport, recreational uses, or a cemetery'. Earlier in the report they note that 'we understand there is a requirement for land for new cemeteries in the Belfast Metropolitan Area'. No data was provided to confirm this requirement.

LPS provided a final valuation report for the land at Crossnacreevy on 6th March 2008 in which they identified a number of alternative uses for all or part of the holding. LPS noted in the 'Options' section of the report that use as a cemetery 'is a possibility and it is understood there is a demand'. The report did not provide data confirming this demand.

Subsequent to events in 2008, a representative of Belfast City Council approached DARD in February 2010 to discuss, without obligation to either party, their respective future land requirements in the vicinity of Crossnacreevy. This was prompted by an exploratory approach that had been received by Belfast City Council from a private landowner at Crossnacreevy regarding the possible sale of land to the Council for cemetery purposes. However, because of the location of the land in question, any sale for this purpose would also have required the sale or exchange of DARD owned land. The private landowner speculatively suggested to the Council that DARD might perhaps be willing to become involved in such a transaction. DARD and Council officials met in early March to discuss the issue. However, it became clear that there was no advantage to either party in pursuing this particular option and no further action was taken.

I trust you will find this helpful.

Yours sincerely

prepulention

**Stephen Peover** 

# Chairperson's Letter of 21 September 2011 to Mr Stephen Peover

Room 371 Parliament Buildings Ballymiscaw Belfast BT4 3XX

Tel: (028) 9052 1208 Fax: (028) 9052 0366 E: pac.committee@niassembly.gov.uk aoibhinn.treanor@niassembly.gov.uk

Stephen Peover Accounting Officer Department of Finance and Personnel Rathgael House, Balloo Road Bangor BT197NA

21 September 2011

Cc TOA DL

Dear Stephen,

### PAC inquiry into the Farm Nutrient Management Scheme

Thank you for your letter earlier today. At its meeting the Committee considered this and agreed that I write to ask for sight of the 2 January 2008 letter you referred to.

The Committee also agreed to ask for an LPS official, preferably Stephen Fay who facilitated last time, to attend on Thursday for the evidence session on this inquiry.

I would be grateful to receive your reply by close of play on Friday 23 September.

Yours sincerely,

Taul Maskey

Paul Maskey Chairperson Public Accounts Committee

# Correspondence of 23 September 2011 from Mr Stephen Peover



### **From The Permanent Secretary**

Stephen Peover Rathgael House Balloo Road BANGOR, BT19 7NA

Tel No: 028 9127 7601 Fax No: 028 9185 8184 E-mail: stephen.peover@dfpni.gov.uk

Paul Maskey Chairperson Public Accounts Committee Parliament Buildings Room 371 Stormont Estate BELFAST BT4 3XX

23 September 2011

Dear Paul

## Public Accounts Committee Inquiry into The Farm Nutrient Management Scheme

Your correspondence to me dated 21 September requested sight of a letter dated 2 January 2008. As requested, please find attached a copy of this correspondence.

Yours sincerely

prepulation

**Stephen Peover** 

**From The Senior Finance Director** 



Dundonald House Upper Newtownards Road Ballymiscaw Belfast BT4 3SB

Tel: 028 905 24638 Fax: 028 905 24813 Email: gerry.lavery@dardni.gov.uk and liz.patterson@dardni.gov.uk

2 January 2008

From: Gerry Lavery

JACK LAYBERRY

## **Disposal of Land at Crossnacreevy**

In June 2007 the DARD Minister took the decision to seek to sell land at Crossnacreevy. The purpose of this note is to keep you informed about progress to date.

We have been working with Planning Service on two fronts. First to determine the property's Belfast Metropolitan Area Plan (BMAP) status and the prospects of rezoning land within the draft BMAP. Secondly to evaluate and establish the property's potential in the context of current planning policy and the process by which DARD could submit any planning applications, as necessary.

With respect to the draft BMAP, Planning Service has advised that, inter alia, the property lies in the green belt and is currently outside the settlement/development limit for both Crossnacreevy village and Belfast. The draft BMAP is currently at Inquiry stage and the process is closed to the registration of new objections. Therefore there appears to be no OPPORTUNITY TO SEEK TO HAVE the property rezoned under the draft BMAP in the short term. The next opportunity to do so will be when the draft BMAP is adopted in 2009/2010 and enters a review phase which is expected to last between 1-4 years. DARD has sought an independent second opinion on this advice.

With respect to the second strand of work, we await Planning Service advice, in response to our letter dated 2 November. In parallel we have begun a process of appointing specialist planning advisers to help the Department devise a strategic approach to the disposal and to assist on planning issues. The aim is to have advisers appointed in early 2008.

I will of course keep you updated as this project develops. I am copying to Richard Pengelly who may wish to consider implications for the final Budget.

CRRy Lauth

Gerry Lavery Senior Finance Director

# Chairperson's letter of 30 September 2011 to Mr Gerry Lavery

Room 371 Parliament Buildings Ballymiscaw Belfast BT4 3XX

Tel: (028) 9052 1208 Fax: (028) 9052 0366 E: pac.committee@niassembly.gov.uk aoibhinn.treanor@niassembly.gov.uk

Mr Gerry Lavery Accounting Officer Department of Agriculture and Rural Development Dundonald House Upper Newtownards Road Belfast BT4 3SB

CC Treasury Officer of Accounts DL

30 September 2011

Dear Gerry,

# **Evidence Session on Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Management Scheme**

Thank you for your participation in the Committee's evidence session.

As agreed the Committee would be grateful if you could provide the following information:

- Confirmation of the date on which the Committee for Agriculture and Rural Development requested all of the correspondence relating to the Crossnacreevy site;
- Whether DARD or LPS shared the £10 million valuation cited in the 1 August 2007 letter from LPS with any person or body outside DARD before notifying the Agriculture and Rural Development Committee of it on 23 January 2008;
- 3) In liaison with Planning Service, what representations were made to the BMAP process before it closed in 2005 regarding Crossnacreevy; and since then what individuals and/or bodies have sought to establish a change of designation of the Crossnacreevy site;
- 4) The bids/projects bid for made in the 2008-09 monitoring round and their values, showing those that were successful and those that were not;
- 5) The effective merging date of the Valuation and Lands Agency and the Rates Collection Agency;
- 6) A summary of the expertise within the Capital Assets Realisation Taskforce in place at the time and an overview of its portfolio specifying any information the taskforce had on Crossnacreevy;
- 7) A copy of guidance for officials on the disposal of assets predating CART and at the time of the decision to dispose of the Crossnacreevy site and an assessment of how current guidance differs from it.

You also offered to provide evidence demonstrating the likelihood of infraction fines relating to phosphate and nitrate loadings, and I would be grateful for this if it is supplementary to information already received in the Committee's inquiry.

I should appreciate your response by 10 October 2011. Please liaise with the Committee Clerk if you wish to clarify any of the above points.

Yours sincerely,

Taul Masker

Paul Maskey Chairperson Public Accounts Committee

# Correspondence of 10 October 2011 from Mr Gerry Lavery



#### From The Permanent Secretary

Gerry Lavery Dundonald House Upper Newtownards Road Ballymiscaw Belfast BT4 3SB

Tel: 028 905 24638 Fax: 028 905 24813 Email: gerry.lavery@dardni.gov.uk and liz.patterson@dardni.gov.uk

Paul Maskey Chairperson Public Accounts Committee Room 371 Parliament Buildings BELFAST BT4 3XX

cc: Treasury Officer of Accounts Paddy Hoey

10 October 2011

Dear Paul,

# **Evidence Session on Reducing Water Pollution from Agricultural Sources – The Farm Nutrient Management Scheme**

Thank you for your letter of 30 September detailing the additional information that the Committee requires following the evidence session held on Wednesday 28th. I was glad to have the opportunity to participate in that session and I hope that the answers provided below are sufficient to answer the Committee's remaining queries.

# 1) Confirmation of the date on which the Committee for Agriculture and Rural Development requested all of the correspondence relating to the Crossnacreevy site;

The Minister for Agriculture and Rural Development advised the Committee at its meeting of 12 June 2007 that the Department had conducted a review of the AFBI estate, including Crossnacreevy. On 13 June 2007 the Committee asked for sight of the results of this review including all the options that had been considered and any economic appraisal of those options. Relevant papers were provided on 25 June 2007.

The Committee Clerk subsequently wrote to the Department on 14 November 2007 seeking "...all other papers relating to the sale of Crossnacreevy" and the Department submitted a batch of papers to the Committee on 15 November 2007.

On 19 December 2007 the Assistant Clerk queried if any further papers were available, in particular a response from the VLA to Carol Hetherington's letter of 11 June. A further trawl of relevant papers was conducted, and following the receipt of consent from LPS to release the VLA letter of 1 August it, together with an invitation to the Committee Clerk to view the considerable number of other papers available, was subsequently forwarded to the Committee Clerk on 23 January 2008.

# 2) Whether DARD or LPS shared the £10 million valuation cited in the 1 August 2007 letter from LPS with any person or body outside DARD before notifying the Agriculture and Rural Development Committee of it on 23 January 2008;

Neither DARD nor LPS shared the £10 million valuation provided on the 1 August 2007 with any person or body outside DARD before notifying the Agriculture and Rural Development Committee of it on 23 January 2008. The letter stipulated, "The valuation ...... should not be released to a 3rd party without prior consent to this office". LPS note that its valuers are all bound by the RICS Valuation Standards and Rules of Conduct and are prevented from disclosing valuations without the prior authorisation of its clients. The duty of confidentiality is continuous and ongoing.

# 3) In liaison with Planning Service, what representations were made to the BMAP process before it closed in 2005 regarding Crossnacreevy; and since then what individuals and/or bodies have sought to establish a change of designation of the Crossnacreevy site;

The following information was supplied by the BMAP team: The table attached at Annex A shows that the BMAP Team received 15 representations that relate to Crossnacreevy before the consultation period closed on 25 January 2005. The extent of these representations is identified on the accompanying map. Where appropriate, objections were heard at the Public Inquiry, convened by the Planning Appeals Commission between April 2007 and May 2008, and the Commission has made recommendations that the DOE will take into account when adopting BMAP.

It was confirmed in 2007 that DARD had not lodged any objections that are relevant to the AFBI buildings or adjacent lands. It was also confirmed that no other individuals and/or bodies made representations to the BMAP process that affect the AFBI site to the south west of Crossnacreevy.

DARD has been in contact with the BMAP team on several occasions from 2007 onwards to enquire about whether BMAP had been reopened. On each occasion DARD has been informed that the status remains unchanged.

# 4) The bids/projects bid for made in the 2008-09 monitoring round and their values, showing those that were successful and those that were not;

The Department of Finance and Personnel have provided tables showing all bids and allocations made in respect of the 2008-2009 monitoring rounds. These tables are attached as Annex B.

# 5) The effective merging date of the Valuation and Lands Agency and the Rates Collection Agency;

The Valuation and Lands Agency and the Rate Collection Agency merged to form Land & Property Services, an executive Agency within the Department of Finance and Personnel for Northern Ireland, on 1st April 2007.

# 6) A summary of the expertise within the Capital Assets Realisation Taskforce in place at the time and an overview of its portfolio specifying any information the taskforce had on Crossnacreevy;

The following information was provided by OFMDFM: SIB would have had some expertise in development and regeneration in autumn 2007 that could potentially have been available to departments, subject to SIB's other commitments at the time. This was augmented during 2008 to enable the interim Capital Assets Realisation Team to undertake its work. It is for departments and appropriate public bodies to commission advice and support from SIB.

A Capital Realisations Taskforce, consisting of a group of senior officials, led by an external advisor, was established by Ministers in the autumn of 2007 charged with reviewing "the potential for further asset disposals over and above those already identified in the Investment

Strategy, or their reuse, across all Departments over the next few years." Crossnacreevy was not part of this portfolio of additional assets as disposal of this site was already covered in the earlier draft Budget. Assets already baselined in this draft Budget were excluded from the Taskforce's remit – this included Crossnacreevy which therefore did not form part of the Taskforces's considerations.

An interim CART was established in early 2008 to focus on implementing the Taskforce's findings. It continued to do so during 2008, working on the delivery of the further disposals identified in the CRT report until it became clear that this would no longer be feasible due to the collapse of the land and property market that followed the credit crunch.

# 7) A copy of guidance for officials on the disposal of assets predating CART and at the time of the decision to dispose of the Crossnacreevy site and an assessment of how current guidance differs from it.

The following information was provided by Land & Property Services: Responsibility for guidance on the disposal of surplus land and property rests with the Central Advisory Unit (CAU) within LPS. The process to recruit key personnel to form a Central Assets Realisation Team (CART) started in April 2008. The version of CAU guidance applying at that time was published in June 2005. A PDF copy has been provided separately. Revised guidance was published by CAU in March 2010 and this remains the current guidance. I attach links to both sets of guidelines –

Guidance from 2005 –

http://www.dfpni.gov.uk/lps/disposal-of-surplus-public-sector-property-ni-jun\_05\_-\_feb\_10.pdf

Current guidance from 2010 -

http://www.dfpni.gov.uk/lps/cau\_disposal\_guidelines\_v8.1-3.pdf.

The current guidance differs from the June 2005 version as follows -

- Section 3.0. This new section was added following the outcome of the NI Assembly PAC report of 2007 in to the DE pathfinders PFI project. The PAC report findings included recommendations as to the treatment of surplus lands identified as a result of PFI schemes.
- All references to Government Accounting NI (GANI) were changed to Managing Public Money NI (MPMNI).
- Sections 5.0 and 6.0. These relate to the procedures relating to the clearing house procedure and transfers within the public sector. These sections were tightened up and clarified to address unacceptable delays.
- Section 7.0. The former owner rules were clarified.
- Section 15.0. This was a substantially new "Exceptional Circumstances" section replacing the former "Specialised Properties" section in the previous issue.
- Throughout the document, various references and passages were rationalised and updated to reflect current practices and developments in the property market.
- The Disposal of Surplus Land Request for Preliminary Advice form (D1 Form) was revised with the introduction of a new facility to submit it via email.

LPS note that if PAC is interested in a particular aspect of the Disposal guidance it would be happy to provide a more focused commentary if the scope of interest was narrowed down.

You also offered to provide evidence demonstrating the likelihood of infraction fines relating to phosphate and nitrate loadings, and I would be grateful for this if it is supplementary to information already received in the Committee's inquiry.

The EU Nitrates Directive requires Member States to identify surface waters which are eutrophic or may become eutrophic. MS are then required to designate their catchments as Nitrates Vulnerable Zones (NVZs) and to apply action programmes to control agricultural pollution to those zones. Alternatively, MS may declare total territory and apply action programmes across the whole territory.

In 2002, a joint scientific report by DARD and DOE had confirmed that agriculture was the most significant source of nitrate in both Lough Neagh and Lough Erne. As agriculture was contributing 75% and 92% respectively in the two Loughs, the report concluded that the Nitrates Directive would mandate control of nitrates in both these catchments.

Also in 2002, the ECJ ruling against France clarified that eutrophic waters must be addressed under the Nitrates Directive, even where eutrophication was caused mainly by phosphorus.

By 2003, seven Member States including Ireland had adopted total territory approach to implementing the Nitrates Directive. Of the MS not applying total territory, seven had designated below 50% of their land as NVZ's. At that time, the European Commission was taking infraction proceedings against all seven, including the UK, for insufficient designation.

The European Commission uses infraction proceedings to discourage non compliance and to incentivise Member States to comply with Directives.

In 1999 the Commission referred the UK to the ECJ for failure to identify and designate waters with elevated nitrates levels as required by the Nitrates Directive. On 7 December 2000 judgement was given in favour of the Commission and the UK was forced to review the designation of Nitrate Vulnerable Zones (NVZs). As a result the percentage of land designated as NVZs increased from 6% to 55% in England and 13.5% was designated in Scotland.

The Commission had indicated informally that it intended to pursue NI for its failure to apply the Directive to eutrophic waters.

In 2003, NI had designated only 0.1% of its land area. Given this very low level of designation and the confirmed widespread eutrophication problem, NI was very vulnerable to further legal proceedings.

Therefore action was taken to address the problem. In 2003 DARD and DOE set up a stakeholder group and an Economic appraisal of the policy options was conducted. Following detailed engagement with stakeholders the recommendations of the EA were put to public consultation in April 2004 and a total territory approach to implement the Nitrates Directive was adopted in October 2004.

On 18 October 2004 the Commission issued a further notice of infraction against the UK. This was because of failure to identify and designate eutrophic waters and failure to establish compliant action programmes including inadequate closed periods for spreading manure and insufficient manure storage capacity requirements.

Northern Ireland was excluded from this infraction case because of the positive action that had recently been taken in 2004 to address the problem of eutrophic waters. Regulations implementing the total territory approach came into operation in October 2004. Discussions with the Commission on Action Programme measures had already commenced. DARD and DOE officials met the Commission in Brussels in October 2004 for further discussions on the detail and timing of implementation of the Action Programme.

Infractions and recorded Commission judgements against Member States in relation to the Nitrates Directive are as follows:

- Spain 1998
- Italy 1999
- Spain 2000
- UK 2000
- Italy 2001
- Germany 2002
- France 2002
- Ireland 2004
- UK 2004
- Spain 2005
- Belgium 2005
- Luxembourg 2010

In 2010 infraction proceedings were taken against Spain, Greece, France and Poland.

I trust that these answers cover everything that the Committee desires clarification on. If you require any further clarification please do not hesitate to contact me.

Yours sincerely,

# **Gerry Lavery**

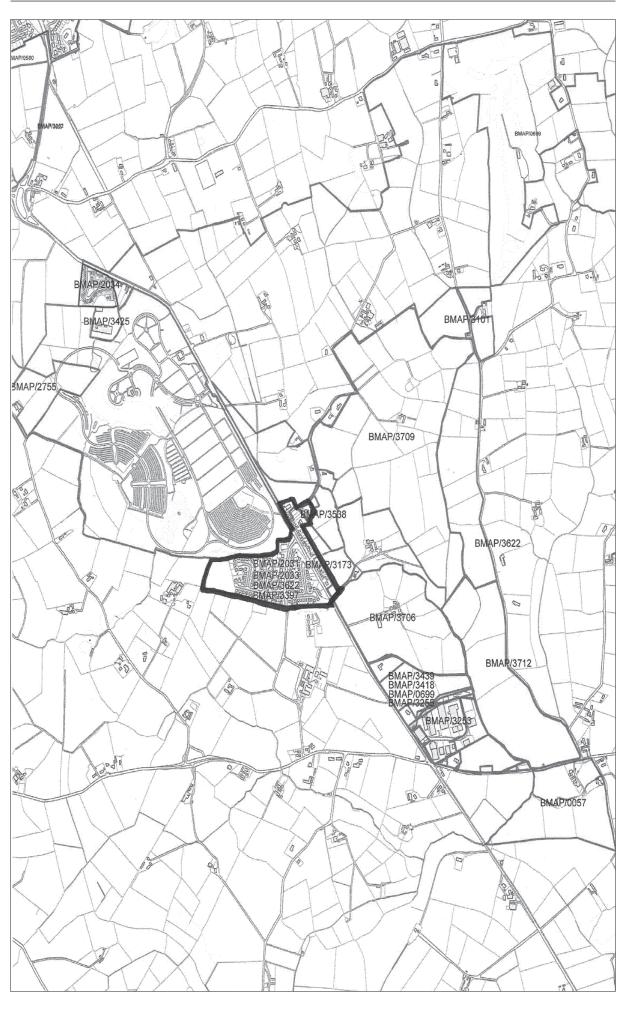
Permanent Secretary

# Annex A

Objection Number	Objector	Nature of Objection
0057	Thomas Johnston	Objection to strict countryside policies but is a landowner to the south of Gransha Road and has provided a map of his land.
0699	Castlereagh BC	Objection to the Settlement Development Limit (SDL) for Crossnacreevy. Requests that identified lands are included in the SDL.
2031	Elevate	Objection to the SDL.
2033	Elevate	Requests that identified lands are included in the SDL.
3101	Malcolm Hill	Requests that identified lands are included in the SDL.
3173	Burroughs	Objection to SDL – Requests that identified lands are included in the SDL.
3253	Burroughs	Objection to SDL – Requests that identified lands are included in the SDL.
3255	Burroughs	Objection to SDL – Requests that identified lands are included in the SDL.
3397	Farningham McCreadie	Objection to SDL.
3418	Farningham McCreadie	Objection to site being within the Greenbelt.
3538	Alan Patterson Design/ Antrim Construction Company	Objection to SDL – Requests that identified lands are included in the SDL.
3622	Fraser Homes	Objection to SDL – Requests that identified lands are included in the SDL.
3706	Burroughs	Objection to SDL – Requests that identified lands are included in the SDL.
3709	Burroughs	Objection to SDL – Requests that identified lands are included in the SDL.
3712	Burroughs	Objection to SDL – Requests that identified lands are included in the SDL.

## **Objections in relation to the Crossnacreevy Area**

The areas which these objections relate to are highlighted with their objection number on the map below (Fig 1).



### Annex B

#### JUNE 2008 MONITORING 1)

Bid	s su	bmitted	(£	mil	lion
-----	------	---------	----	-----	------

Department	Description	Admin	Resource	Total Current	Capital
DARD	AFBI – Hillsborough Infrastructure				0.4
	AFBI – Renewable Energy Centre				1.3
	Animal Disease Testing & Compensation		8.2	8.2	
	Delay In Fisheries Aqua – BSP Project				0.0
	Delay In Rural Dev Interreg III Projects				0.1
	Delay In Rural Development – BSP Project				0.7
	Delay In Vision Schemes	0.4	0.1	0.5	
	Fisheries Interreg III				0.0
	Increase In Depreciation & COC Costs		2.3	2.3	
	LMC Resource & Capital Consumption		0.3	0.3	0.1
	Modulation Match Funding		3.7	3.7	
	North/South Body – FCILC				0.3
	Rivers – Plant, Vehicles & Machinery				0.8
	Slippage In IDF – Faughan Valley				0.1
	Slippage In Fisheries IDF Projects		0.2	0.2	3.5
	Slippage In IDF Rural Dev Schemes		0.1	0.1	
	Slippage In Vision – E Plans				0.0
Total Departm	ent DARD	0.4	14.9	15.3	7.4
DCAL	Language Body Exchange Rate Pressure		0.7	0.7	
	Libraries Service Redundancies/ Bookstock		3.7	3.7	
	Resource Consequentials of Cap Projects		2.1	2.1	
Total Departm	ent DCAL		6.5	6.5	
DE	Asbestos Management		1.9	1.9	
	Energy Certificates		0.6	0.6	
	Energy Increased Fuel Costs		7.5	7.5	
	Extended Schools		5.0	5.0	

Department	Description	Admin	Resource	Total Current	Capital
	Foyle and Londonderry College				21.0
	School Maintenance		10.0	10.0	
	School Meals Increased Food Costs		1.9	1.9	
	Teacher Redundancy Costs		2.7	2.7	
Total Departm	nent DE		29.6	29.6	21.0
DEL	Slippage- Project Previously Funded by EREF				0.8
DFP	Building Control Systems				0.3
	ICT Security – Laptops	1.2	0.1	1.3	1.1
	Legal Costs		0.8	0.8	
	Rating Reform Valuation/Rate Collection		2.0	2.0	
	Reform – ACNI Project Costs	2.8	2.6	5.4	
	Reform – IT Assist – Network NI	6.7	1.7	8.4	0.3
	Reform – NI Direct	4.3	0.9	5.2	0.3
	Reform – eHR Project Costs	0.1	0.4	0.5	1.2
	Support for Energy Projects				1.0
Total Departn	nent DFP	15.2	8.4	23.6	4.2
DHSSPS	07/08 Slippage: Computers				0.5
	07/08 Slippage: Departmental Capital				0.8
	07/08 Slippage: NDPB & Agency Capital				0.2
	07/08 Slippage: NIFRS Capital				0.1
	07/08 Slippage: QUB Medical School				0.2
	07/08 Slippage: Trust Capital				1.1
	07/08 Slippage: Trust PSS Capital				0.4
	07/08 Slippage: Energy Efficiency Projects				0.1
	BCH Health & Safety Issues				10.0
	Health & Well Being Centres				6.0
	Lisburn Assessment and Resource Centre				1.4
	RVH Maternity Interim Refurbishment				5.0
Total Departn	nent DHSSPS				25.8

Department	Description	Admin	Resource	Total Current	Capital
DOE	Driver Licensing Project				0.3
	Illegal Waste Mgt Equip				0.8
	Industry Fund Grant				0.1
	Larne Weighbridge Project				0.0
	Production & Translation of Highway Code		0.7	0.7	
	Roe Valley Hydroelectric Restoration				0.3
	Slippage in Planning ePIC Computer Project				1.9
	Waste Management Grant Scheme				0.5
Total Departme	ent DOE		0.7	0.7	3.9
DRD	Land for Belfast City Centre Ring Road				3.0
	Maintain Street Lighting Stock		3.6	3.6	
	NILGOSC Bus Employer Pension Contrib.		3.5	3.5	
	NILGOSC Rail Employer Pension Contrib.		1.5	1.5	
	P&T Staff to carry out Roads ISNI work	0.7		0.7	
	PSO Rail Safety Increased costs		1.8	1.8	
	Roads Structural Maintenance		47.2	47.2	
	Slippage Bus Garage & Workshop Facilities				1.9
	Slippage Warrenpoint Harbour – RORO				3.5
	Slippage Warrenpoint Harbour – DWQ				3.2
Total Departme	ent DRD	0.7	57.6	58.3	11.6
DSD	CMED Office Machinery and Equip				0.1
	Co-ownership Housing				15.0
	Community Support Programme		1.0	1.0	
	Comprehensive Develop Land Acquisition				0.1
	Core Dept Office Machinery and Equip				0.0
	Housing Executive Maintenance Costs		4.6	4.6	
	Housing Executive Stock Condition Survey		0.8	0.8	

Department	Description	Admin	Resource	Total Current	Capital
	Housing Executive Urban Renewal				4.0
	IDF – Arterial Routes Env Imp Scheme				0.8
	IDF – Expansion of Neighbourhood Renewal				0.1
	IDF – Strabane Env Imp Scheme				0.0
	Mortgage Rescue Scheme				5.0
	Omagh Riverside Project				0.2
	Public Realm Schemes				1.2
	SPED Acquisitions		1.6		
	Shortfall in Co-Ownership Receipts		0.5	0.5	2.6
	Urban Development Grants				0.5
	Warm Homes Scheme				5.0
Total Departm	ent DSD		8.4	8.4	34.6
NIAO	Commitment Approved In Corporate Plan		0.1	0.1	
	Spend On Increase Data Security Software				0.0
Total Departm	ent NIAO		0.1	0.1	0.0
OFMDFM	Childrens Fund		2.0	2.0	
	Shortfall of Advertising SSC	0.1		0.1	
Total Departm	ent OFMDFM	0.1	2.0	2.1	
TOTAL BID		16.3	128.2	144.6	109.3

## June 2008 Monitoring Allocations (£ million)

Department	Description	Admin	Resource	Total Current	Capital
DHSSPS	Learning Disability Services		5.0	5.0	
Total Allocations	S		5.0	5.0	

#### September 2008 Monitoring Bids Submitted (£ million)

Department	Description	Admin	Resource	Total Current	Capital
DARD	Animal Disease Testing & Compensation		9.5	9.5	
	Flood Emergency Assistance		2.0	2.0	
	Forestry Increase in Depreciation & CoC Charge		1.0	1.0	
	Livestock Meat Commission		0.5	0.5	
	Rural Development – BSP Project				0.7
Total Departme	ent DARD		13.0	13.0	0.7
DCAL	2012 Unit, RPA & Account NI	0.5		0.5	
	Launch of World Rally in N Ireland		0.6	0.6	
	Libraries Book Stock Cost Increase		0.7	0.7	
	N/S Body Exchange Rate Pressure		0.8	0.8	
	Redundancy Costs for Public Library Service		3.0	3.0	
	Re-imaging Communities Programme		0.5	0.5	
Total Departme	ent DCAL	0.5	5.5	6.0	
DE	DE Reform	1.1		1.1	
	ELB Asbestos Management		2.1	2.1	
	ELB Increased Food Costs		1.9	1.9	
	ELB Part-time Youth Workers		1.6	1.6	
	ELB Redundancy Costs		0.9	0.9	
	ELB Schools Maintenance		10.0	10.0	
	Energy Certificates		0.6	0.6	
	Extended Schools		5.0	5.0	
	Frameworks Legal Challenge	0.9		0.9	
	Increased Cost of Cleaners		4.2	4.2	
	Increased Energy & Utility Costs		15.1	15.1	
	VGS/GMI Job Evaluation Classroom Assistants		1.4	1.4	
Total Departme	ent DE	2.0	42.9	44.9	
DFP	IT Security – Laptop Encryption	0.3		0.3	1.2
	Procurement Legal Costs	0.8		0.8	
	Rating Services		1.5	1.5	
	Reform – Account NI Project	1.3	2.5	3.8	
	Reform – HR Connect Project Costs				1.2

Department	Description	Admin	Resource	Total Current	Capital
	Reform – IT Assist/Network NI				0.2
	Reform – NI Direct	3.7	1.1	4.8	0.5
TOTAL DEPARTM	IENT DFP	6.1	5.1	11.1	3.1

# September 2008 Monitoring Bids Submitted ( $\pounds$ million)

Department	Description	Admin	Resource	Total Current	Capital
DOE	Elderly Pedestrian Campaign		0.5	0.5	
	Flood Relief to District Councils		1.5	1.5	
	Illegal Waste Management & IT Equipment				0.8
	Programme Delivery Support Unit		0.5	0.5	
	Roe Valley Country Park				0.3
	Waste Management Grant Scheme				0.5
	ePIC – Planning Computer System				1.9
Total Departm	ent DOE		2.5	2.5	3.4
DRD	Bus Pension Contributions to NILGOSC		3.5	3.5	
	Bus Workshop and Garages				1.9
	Increased Safety Costs – Rail		1.1	1.1	
	Land for Belfast City Centre Ring Road				3.0
	Maintenance of Street Lighting Stock		3.6	3.6	
	Rail Pension Contributions to NILGOSC		0.9	0.9	
	Street Lighting – Increased Energy Costs		2.3	2.3	
	Structural Maintenance Increase in Price of Oil Products		3.0	3.0	
	Structural Maintenance Tranche 1		10.0	10.0	
	Structural Maintenance Tranche 2		20.0	20.0	
	Warrenpoint Harbour Deep Water Quay				3.2
	Warrenpoint Harbour RoRo				1.0
	Warrenpoint Harbour RoRo Trust Port Loan				2.0
Total Departm	ent DRD		44.4	44.4	11.1

Department	Description	Admin	Resource	Total Current	Capital
DSD	Co-Ownership				5.0
	Community Support Programme		1.0	1.0	
	Housing Association Repayments		0.5	0.5	3.2
	Hostels and Homeless Payments		1.0	1.0	
	Mortgage Rescue Scheme		0.1	0.1	5.0
	NIHE Capital Receipts Shortfall				51.9
	NIHE Stock Condition Survey		0.8	0.8	
	NIHE Urban Renewal Programmes		0.6	0.6	5.9
	Special Purchase of Evacuated Dwellings		9.4	9.4	
Total Departme	ent DSD		13.3	13.3	70.9
NIAUR	Refurbishment of Office Accommodation				0.1
OFMDFM	Children's Fund – DHSSPS Shortfall		2.0	2.0	
Total Bid		8.6	128.7	137.3	89.3

## September 2008 Monitoring Allocations (£ million)

Department	Description	Admin	Resource	Total Current	Capital
DARD	Animal Disease Testing & Compensation		3.5	3.5	
DCAL	Public Library Service – Redundancies		1.5	1.5	
	Re-imaging Communities Programme		0.5	0.5	
Total Departme	nt DCAL		2.0	2.0	
DE	Extended Schools		5.0	5.0	
DFP	Rating Services		1.5	1.5	
	Reform – NI Direct				0.5
	Reform – HR Connect Project Costs				1.2
	Reform – IT Assist/Network NI				0.2
Total Departme	nt DFP		1.5	1.5	1.9
DHSSPS	First Call on Available Resources		5.0	5.0	
DOE	Flood Relief to District Councils		1.5	1.5	
	e-PIC – Planning Computer System				1.9
Total Departme	Total Department DOE		1.5	1.5	1.9

Department	Description	Admin	Resource	Total Current	Capital
DRD	Warrenpoint Harbour Deep Water Quay				3.2
	Warrenpoint Harbour RoRo				1.0
	Warrenpoint Harbour RoRo Trust Port Loan				2.0
Total Departme	nt DRD				6.2
DSD	Special Purchase Evacuated Dwellings		2.5	2.5	
	NIHE Capital Receipts Shortfall				15.0
Total Department Dsd			2.5	2.5	15.0
Total Allocation	S		21.0	21.0	25.0

#### December 2008 Monitoring Bids Submitted (£ million)

Department	Description	Admin	Resource	Total Current	Capital
DARD	Animal Disease Compensation		3.0	3.0	
	Farm Nutrient Management Scheme				32.0
Total DARD			3.0	3.0	32.0
DCAL	North/South Body Exchange Rate Pressure		0.7	0.7	
	Redundancy Costs for Public Library Service		0.6	0.6	
Total DCAL			1.3	1.3	
DE	DE Reform	1.5		1.5	
	Display Energy Certificates		0.6	0.6	
	ELB Asbestos Management		2.1	2.1	
	ELB Capital				10.0
	ELB Job Evaluation – EWO & Crafts People		3.5	3.5	
	ELB Redundancy Costs		1.8	1.8	
	ELB School Meals – Increased Food Costs		1.1	1.1	
	ELB Schools Maintenance		5.8	5.8	
	Increased Cost of Cleaners		4.0	4.0	
	Increased Energy & Utility Costs		8.3	8.3	
	Part-time Youth Workers – Arrears/ Pay		2.6	2.6	

Department	Description	Admin	Resource	Total Current	Capital
	VGS/GMI/Class Assist/Cleaner/ Grounds People		2.3	2.3	
Total DE		1.5	32.1	33.6	10.0
DFP	EU Match Funding		0.5	0.5	
	IT Assist – Shortfall in Salaries	0.9		0.9	
	LPS – Interest Refunds & Legal Fees		2.2	2.2	
Total DFP		0.9	2.7	3.6	
DOE	Shortfall in Planning Application Income		2.6	2.6	
DRD	A1 Newry-Dundalk Compensation Land Costs				4.0
	Belfast City Ring Road (Bankmore Link)				3.7
	Blight Costs A2 Maydown to CODA Scheme				1.2
	Blight Costs on A2 Greenisland Scheme				2.0
	Emergency Repairs to 16 Bridges (Floods)				1.0
	Fuel Duty Rebate Increase		1.0	1.0	
	Impact of Oil Price Increase Maintenance Budget		2.5	2.5	
	Increase in Rail & Bus Pension Contributions		4.1	4.1	
	Increase in Street Lighting Energy Costs		3.4	3.4	
	Increased Depreciation Charge on Roads Network		4.4	4.4	
	Increased Safety Costs – Railway PSO		0.6	0.6	
	Maintain Existing Concessionary Fares		0.6	0.6	
	Maintaining Street Lighting Stock		3.6	3.6	
	Maintenance – Public Roads and Footpaths		10.0	10.0	
	Purchase Notice Holywood Arches Bypass				3.0
	Replace Out-Dated Parking Machines				1.0
Total DRD			30.1	30.1	15.9

#### December 2008 Monitoring Bids Submitted (£ million)

Department	Description	Admin	Resource	Total Current	Capital
DSD	Disabled Adaptations				2.0
	Fuel Poverty Payments		9.8	9.8	
	Hostels & Homeless Payments		0.8	0.8	
	Housing Association Receipts Shortfall		0.6	0.6	0.5
	Housing Disabled Facilities Grants				2.0
	Housing Executive Receipts Shortfall				36.2
	Housing Executive Modernisation Programme				1.2
	Housing Executive Stock Condition Survey		0.6	0.6	
	Housing Executive Urban Renewal Programme				5.9
	Mortgage Rescue Scheme		0.1	0.1	0.9
	Social Housing New Build Programme				10.0
	Special Purchase Evacuated Dwellings Sales		1.3	1.3	
	Special Purchase Evacuated Dwellings		9.0	9.0	
	Supporting People Initiative		2.0	2.0	
	Warm Homes Scheme				3.0
Total DSD			24.2	24.2	61.7
NIAUR	Refurbishment of Office Accommodation				0.1
OFMDFM	Children's Fund Grants		1.6	1.6	
Total BID		2.4	97.6	100.0	119.7

#### December 2008 Monitoring Allocations (£ million)

Department	Description	Admin	Resource	Total Current	Capital
DARD	Animal Disease Testing & Compensation		1.5	1.5	
	Farm Nutrient Management Scheme				20.0
	Flooding Hardship for Agriculture		0.5	0.5	
	Assistance to Fishing Industry		0.7	0.7	

Department	Description	Admin	Resource	Total Current	Capital
DE	Part-time Youth Workers – Arrears/ Pay		2.6	2.6	
	Schools Maintenance		4.0	4.0	
DHSSPS	First Call on Available Resources		5.0	5.0	
DOE	Shortfall in Planning Application Income		2.0	2.0	
DRD	DRD General Costs		3.0	3.0	
	Roads Structural Maintenance		2.5	2.5	
	Transportation Capital Works				1.8
DSD	Special Purchase Evacuated Dwellings		4.0	4.0	
	Housing Executive Receipts Shortfall				5.0
OFMDFM	Children's Fund Grants		1.6	1.6	
	Fuel Credit		15.0	15.0	
Total Allocatio	ns		42.4	42.4	26.8

#### February 2009 Monitoring Bids Submitted (£ million)

Department	Description	Admin	Resource	Total Current	Capital
DARD	Farm Nutrient Management Scheme				9.3
DE	ELB Capital				2.0
	Frameworks Legal Challenge	2.0		2.0	
Total DE		2.0		2.0	2.0
DFP	Land and Property Services Statutory Interest Payments		0.8	0.8	
DHSSPS	First Call on Available Resources		5.0	5.0	
DOE	Shortfall in Planning Application Income		0.9	0.9	
DRD	NI Water Assets Reclassification				32.7
	Roads Structural Maintenance		2.5	2.5	
Total DRD			2.5	2.5	32.7

Department	Description	Admin	Resource	Total Current	Capital
DSD	Disabled Adaptations				3.0
	Fuel Poverty Financial Assistance		7.5	7.5	
	Housing Association Receipts Shortfall		0.6	0.6	
	Housing Programme Capital Pressures				21.0
	Housing Urban Renewal Programme				6.0
Total DSD			8.1	8.1	30.0
NIAUR	Refurbishment of Office Accommodation				0.1
TOTAL BID		2.0	17.4	19.4	74.1

## February 2009 Monitoring Allocations ( $\pounds$ million)

Department	Description	Admin	Resource	Total Current	Capital
DARD	Dioxin Cont. Feed Incr Hardship Payments		1.5	1.5	
DHSSPS	First Call on Available Resources		5.0	5.0	
Total Allocations			6.5	6.5	

# Disposal of Surplus Public Sector Property in Northern Ireland



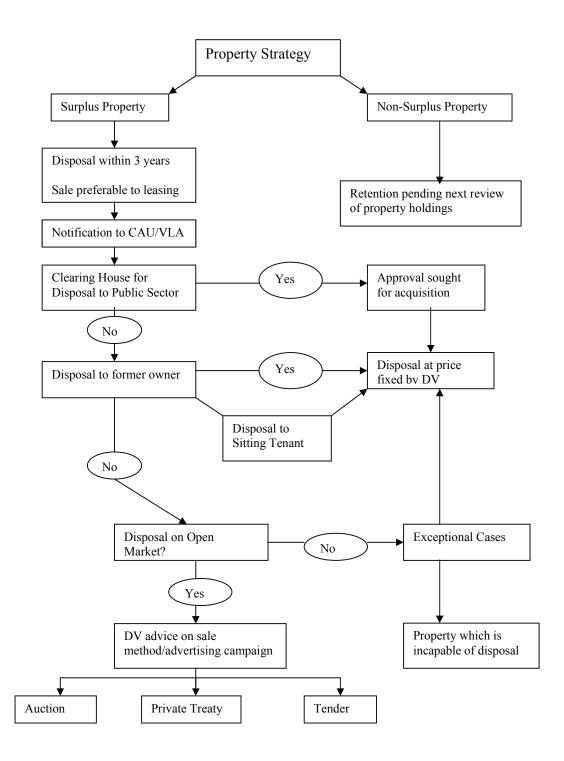
An Agency within the Department of Finance and Personnel CENTRAL ADVISORY UNIT



#### TABLE OF CONTENTS

	SURPLUS LAND FLOWCHART	3
1.0	INTRODUCTION	4
2.0	IDENTIFICATION AND DISPOSAL OF SURPLUS PROPERTY	5
3.0	SALE OR LEASE	6
4.0	NOTIFICATION OF DISPOSAL TO VLA & CAU	7
5.0	CLEARING HOUSE ARRANGEMENTS	7
6.0	TRANSFERS WITHIN THE PUBLIC SECTOR	8
7.0	FORMER OWNERS	10
8.0	OTHER EXCEPTIONS TO OFFER BACK	11
9.0	FORMER OWNER WHOSE ADDRESS IS KNOWN	13
10.0	FORMER OWNER WHOSE WHEREABOUTS ARE NOT KNOWN	13
11.0	LAND CLAUSES CONSOLIDATION ACT 1845	14
12.0	NEGOTIATIONS ON SALE PRICE TO FORMER OWNER	15
13.0	TIME LIMIT ON NEGOTIATIONS ON SALE PRICE	15
14.0	EXTENSION OF TIME LIMITS	15
15.0	INTERESTS QUALIFYING FOR OFFER BACK	16
16.0	SUCCESSOR	16
17.0	RECORDING OF DISPOSALS SPECIALISED PROPERTIES	16
18.0 19.0	SALE PRICE AND MARKET VALUE	17 18
20.0	DISPOSAL OF SURPLUS HISTORIC BUILDINGS	20
20.0	SITES WITH DEVELOPMENT POTENTIAL	20
22.0	CLAWBACK	24
23.0	SMALL OR INCONSEQUENTIAL SITES	26
24.0	UNMARKETABLE PROPERTY	27
25.0	OPEN MARKET SALES – APPOINTMENT OF AGENTS	28
26.0	OPEN MARKET SALES – NO AGENT ACTING	30
27.0	SALE METHODS	31
28.0	PRIVATE TREATY	32
29.0	SALE BY AUCTION	33
30.0	SALE BY TENDER	34
31.0	DISPOSAL OF SURPLUS TENANTED PROPERTY	35
32.0	FINANCIAL CREDENTIALS	36
33.0	ADVERTISING	37
34.0	CORRUPT PRACTICES	38
ANNE		39
ANNE		41
ANNE	XEC	43

## DISPOSAL OF SURPLUS LAND FLOWCHART



#### 1.0 INTRODUCTION

- 1.1 The guidance in this circular follows earlier Central Advisory Unit (CAU) Northern Ireland guidelines of January 1997, January 1999 and September 2001. Relevant public bodies are asked to ensure that this new guidance is incorporated into their property disposal procedures.
- 1.2 It is for Property Centres and Accounting Officers to ensure that good value for money is achieved and that high standards of propriety are maintained. They should not normally depart from the guidance unless there is a very good reason to do so.

Compliance with these guidelines can be important in the context of a Judicial Review or an investigation by the Parliamentary Ombudsman or other similar body.

- 1.3 The requirements of Government Accounting continue to apply, as do any delegation limits set bilaterally between DFP and individual departments.
- 1.4 The guidelines apply to all disposals in Northern Ireland of surplus land and buildings by public sector bodies where the property was acquired by or under threat of vesting. A threat of compulsion will be assumed in the case of a sale by agreement if power to acquire the land compulsorily existed at the time. The only exception is if the property was offered for sale either publicly or privately immediately before negotiations begin.
- 1.5 Properties that are identified as part of a contract with a developer for a PPP/PFI project are not considered to be surplus and, therefore the guidance as specified in this document does not apply to those properties. Government Accounting guidelines state "Departments then need to consider the relative costs and benefits of selling the asset on the open market against those of transferring the asset as part of a project"
- 1.6 Property transferred to another body, whether in the public sector or not, to carry out the same functions of the disposing body is not subject to this guidance.
- 1.7 These guidelines are also recommended to the bodies in the private sector such as a Government Owned Company, to which public land holdings have been transferred, for example on privatisation.

4

#### 2.0 IDENTIFICATION AND DISPOSAL OF SURPLUS PROPERTY

- 2.1 Identification of surplus land is the responsibility of individual public bodies that should keep their land holdings under continual review. The objective should be to release surplus property with the least possible delay, subject to the need to realise full value for the Exchequer.
- 2.2 Public bodies are reminded of the importance of limiting their holdings of land and buildings to the minimum required for the performance of their present and clearly foreseen responsibilities. In accordance with the report by the Northern Ireland Efficiency Scrutiny on the Management and Disposal of Government Owned Land, public bodies are required to have a property strategy in which they **justify the retention** of all current land holdings by a system of continuing review.

There may be opportunities for periodic pruning of operational holdings, pruning being defined as the economic disposal of land and buildings, or part thereof, achievable without prejudice to the operational business and objectives. A formal surplus property audit should be carried out every 3 to 5 years.

- 2.3 It is in the public interest to dispose of surplus land with the least possible delay and it should be possible in almost all circumstances to do so. Delays can be avoided if time is taken at the start to ensure difficulties with title or boundaries are dealt with expediently. All disposing bodies should be aware of any rights of way, encumbrances, restrictive covenants or boundary difficulties **prior** to formally declaring property surplus. Nevertheless, there may be exceptional cases where a longer period may be appropriate or inevitable to produce a better return for the public purse. These could, for example, be disposal of very large areas of land which might flood the local market, heavily contaminated sites, sites where the planning position is unusually complex or where a higher price may be obtained by marketing several properties at the same time.
- 2.4 Even in these cases disposal should only be delayed after careful appraisal Of the financial implications based on professional advice from the District Valuer covering both the current value and the amount likely to be achieved by a later disposal. The possibility that prices may rise at some time in the future does not justify delay. Public bodies must be able to show that delaying disposal is cost effective and that a disposal strategy exists for the property.
- 2.5 The introduction of resource accounting requires bodies to compile opening and closing balance sheets in each financial year. Property Centres should therefore advise their finance departments of any surplus land so that the correct valuations can be recorded on the balance sheet, the asset register noted and the appropriate accounting entries made when the sale is undertaken.

#### 3.0 SALE OR LEASE

- 3.1 Sale is normally preferable to lease and public bodies should endeavour to dispose of their entire interest (usually freehold) in the surplus property. However, there may be exceptional cases where a long term lease may be appropriate. Professional advice should be taken in cases where a sale of the entire interest is considered inappropriate. Under the Property (NI) Order 1997 a fee farm grant can no longer be created.
- 3.2 If any body has any historical, internal statutory or any other special arrangements regarding the leasing of property the matter should be referred to CAU for comment and analysis of its effect on good management practices.

#### 4.0 NOTIFICATION OF DISPOSAL TO VLA & CAU

4.1 Once a property becomes surplus and all details about title are available a property centre should fill in a form called a D1. This form must be accompanied with good quality maps and should issue to CAU for trawling purposes and to the local VLA who will provide an estimate of value and marketing advice, if applicable. Any difficulties with title, or the encroachment of boundaries etc should have been resolved prior to issue of D1 to CAU/VLA. This will help reduce the time involved to complete a sale of the property. CAU are responsible for the clearing house function described in section 5 below. Copies of the D1 form are available directly from CAU.

A list of VLA offices is available on VLA website contacts page http://vla.nics.gov.uk/office.htm

4.2 It is essential that D1 forms are completed as fully and as accurately as possible to prevent any undue delay in marketing which may result in a lesser amount being realised from the sale.

#### 5.0 CLEARING HOUSE ARRANGEMENTS

5.1 The circulation of surplus land to relevant public bodies is the first stage of the disposal process and precedes any offer to the former owner or an open market sale.

On receipt of the completed D1 form CAU will circulate details of surplus land to those Property Centres it considers relevant. Relevant bodies in the clearing house arrangements will be given three weeks to notify CAU of their potential interest in the property. Any delay in response after this time period may prejudice their opportunity to acquire the property.

The limited circulation of these selected properties is on the clear understanding that action to sell to the former owner or on the open market will not be unduly delayed and, where sale on the open market is deemed appropriate, disposing bodies should continue with this procedure (up to the point of the District Valuer instructing agents) concurrently with the circulation of Property Centres.

#### 6.0 TRANSFERS WITHIN THE PUBLIC SECTOR

- 6.1 Surplus land will be transferred within the public sector only if:
  - I. The prospective transferee has proved strong and exceptional reasons of public interest **and** immediate need **and** has compulsory acquisition powers for the purpose for which the land is required; and
  - II. a. The transfer is authorised by the Minister or Ministers for both the transferee and transferor; or

b. The value of the land is not more that £100,000 and the transfer is authorised by a senior officer or officers within the Northern Ireland Government Department (or delegated officers of equivalent rank in NDPBs, Area Boards or the NIHE); or

c. The value of the land is not more than £20,000 and the transfer is authorised by an officer or officers of not less than Principal rank within the Northern Ireland Government Department (or delegated officers of equivalent rank in NDPBs, Area Boards or the NIHE).

- 6.2 A public sector transfer may be made to an organisation which does not have compulsory purchase powers itself, but which has a sponsor body or Department that does hold such powers of acquisition. The sponsor body or Department must be willing to endorse such a transfer on their behalf. A classic example is where land can be transferred to a Housing Association because NIHE have compulsory purchase powers in relation to social housing needs although the funding comes from the Department of Social Development.
- 6.3 For a public sector transfer to take place a prospective acquiring body should have all the necessary approvals and the business case in place within a 6 month period of declaring the a firm interest in the property. Other than in particularly complex cases transfers should be completed within 12 months of a firm expression of interest by the acquiring body.
- 6.4 The most recent government accounting guidance issued in December 2004 is known as Government Accounting in Northern Ireland (GANI). In particular, Chapter 24 deals with the best practice required with regard the disposal of assets including property. The most recent version can be accessed on the website www.aasdni.gov.uk

The estimated value should have a time limit of 3-6 months, depending on the nature and circumstances of the subject property. After the expiration of the time limit the District Valuer should be requested to carry out a review.

6.5 In the event of a relevant body declaring an interest in acquiring a surplus property they must keep the disposing body appraised of all major steps and timescales in the process e.g the preparation of an economic appraisal under the HM Treasury Guide – "Appraisal and Evaluation in Central Government" (plus the NI Practical Guide produced by DFP in 2003). Any

delays or unforeseen problems in the transfer process should be notified to the disposing body together with a brief summary of the corrective action proposed and the timescale involved.

6.6 Submission to Ministers and delegated officers should contain the following information:

- I. Description of the land and its size, approximate value, date, mode of and reason for acquisition and whether compulsory purchase powers were available to the acquiring authority for the purchase.
- II. A statement of the reasons for the proposed transfer and whether compulsory purchase powers are available for the purpose for which the land is required.
- 6.5 The aim of the submission is to seek, in principle, approval for the transfer of the surplus property, subject to the subsequent carrying out of an Economic Appraisal under the Green Book. See Annexe C

#### 7.0 FORMER OWNERS

7.1 The Crichel Down rules \* are specific to GB. Northern Ireland has incorporated them into this guidance with some amendments to reflect local statute and practice.

Where a department wishes to dispose of land to which the guidelines apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have "materially changed" where, for example, dwellings or offices have been erected on open land, mainly open land has been afforested, or where substantial works to an existing building have effectively altered its character. The erection of temporary buildings on land, however, is not necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing department should consider the likely cost of restoring the land to its original use.

There are several other exceptions that can apply and these are detailed at Para  $8.0\,$ 

Any land offered back would be at its current market value i.e. on the same basis under which it was originally acquired.

Any queries can be addressed to Central Advisory Unit.

\*

rules established following a Public Inquiry ordered by the Minister of Agriculture into the disposal of land at Crichel Down, June 1954. The rules were reviewed in GB, the most recent version (October 2004 Circular 06/2004) is available on the Office of the Deputy Prime Minister website www.odpm.gov.uk

#### 8.0 OTHER EXCEPTIONS TO OFFER BACK TO THE FORMER OWNER

- 8.1 There is no requirement to offer surplus land to the former owner if any of the following circumstances apply:
  - I. Where the land has been declared surplus more than 25 years after the date of acquisition (date of the instrument of conveyance or transfer or vesting declaration) from the private sector.
  - II. Where there is authorisation as described in para 6.1 to transfer the surplus land and within the public sector i.e. that it is not, in a wider sense, surplus to public sector requirements.
  - III. Where, in the opinion of the disposing body, the surplus land consists of small and inconsequential areas of land which would be of no satisfactory or reasonable beneficial use to the former owner either alone or in conjunction with other land already in his possession, or would contribute more effectively to the development of an area if sold on the open market either separately or with adjoining land, or would be prejudicial to the disposal of other significant areas held by that body or any relevant public body.
  - IV. Where it would be to the mutual advantage of the public sector and an adjoining landowner to make minor adjustments in boundaries through an exchange of land.
  - V Where it would be inconsistent with the purpose of the original acquisition eg where property has been acquired for a regeneration purpose, land acquired specifically to encourage industrial usage or dwellings bought for onward sale to a Registered Social Landlord. In all these cases the property must be disposed of in persuance of that purpose to be considered an exception.
  - VI Where a disposal is in respect of either :
    - a. A site for development or redevelopment which comprises two or more previous land holdings, or
    - b. A site which consists partly of land which has been materially changed in character and part which is not,

and there is a risk of a fragmented sale of such a site realising substantially less than the market value of the site as a whole. However, in such cases any former owner who has remained in continuous occupation of the whole part of his former property (by virtue of tenancy or licence) will be given a right of first refusal of that property or part of the property as the case may be, and in the first type of case special consideration will be given to any case where a consortium of former owners has indicated a desire to purchase collectively;

VII Where the market value of the land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the Department's professionally qualified valuer and specifically agreed by the responsible Minister.

11

- VIII Where no powers of compulsion were available for the acquisition or where even though compulsory powers were available, the land was acquired by agreement in advance of any liability under blight provisions, or where the land was offered for sale publicly or privately immediately before negotiations for acquisition.
- IX Where the former owner or his successor has disposed of lands from which the surplus land was severed and the disposing authority considers that it would be inequitable not to offer the surplus land to the present owner of the land from which the surplus land was severed. Such circumstances are most likely to arise in relation to small areas of land which adjoin lands subsequently sold by the former owner or his successor.

#### 9.0 FORMER OWNER WHOSE ADDRESS IS KNOWN

9.1 In all appropriate cases the disposing body will write to the former owner by recorded delivery post offering to sell to him his former interest in the land and asking him to indicate in not **later than 8 weeks** time whether or not he is interested in purchasing. The letter will indicate that sale to him will be at a price to be determined by the District Valuer as representing current market value. If he fails to respond or indicates that he does not wish to purchase, the land will be otherwise disposed of.

#### 9.0 FORMER OWNER WHOSE WHEREABOUTS ARE NOT KNOWN

10.1 The disposing body will contact the solicitor or agent or any other known professional adviser who acted for the former owner when the land was acquired with a view to establishing the former owner's whereabouts and, failing that, may advertise locally or on a Northern Ireland basis taking into account the value of the disposal relative to advertising costs.

The advertisement should invite him to contact that body **within 4 weeks** of the last date on which the advertisement appears. The solicitor or agent or any other professional adviser contacted would be informed about the advertisement. If there is no response within the 4 weeks period or if any other party contacted is unable to confirm the former owners whereabouts by the end of that period the land should be otherwise disposed of.

10.2 Advertising to find the former owner should be such that it adequately covers the whole community.

#### 11.0 LAND CLAUSES CONSOLIDATION ACT 1845

11.1 An individual has a right under this legislation to have land offered back where some land was vested and other land was retained. There are specific criteria applicable and all must be satisfied for these paragraphs to apply. Legal advice may be required to ascertain whether this legislation will be applicable.

Paragraphs 128 – 131 of the above legislation are still applicable in Northern Ireland. They are also reiterated within the Local Government Act 1972. As with most legislation it is best to read all the paragraphs in their own context. There are specific criteria that must be fulfilled in order for somebody to have land returned to them if they still retain other lands not vested from them.

This applies only to land that is outside of a town and is specific to land in Northern Ireland only.

#### 12.0 NEGOTIATIONS ON SALE PRICE

12.1 Negotiations on the price at which a sale to the former owner will take place will be conducted by the District Valuer.

#### 13.0 TIME LIMITS ON NEGOTIATIONS ON SALE PRICE

13.1 If the former owner enters into negotiations under either Land Clauses Legislation or Northern Ireland Disposal Guidelines the former owner is given **6 weeks** from date of the formal approach by the District Valuer to agree terms. If agreement on price cannot be reached then **if** that land falls within the Land Clauses Legislation the matter should be referred to Lands Tribunal. If Northern Ireland Disposal Guidelines apply then there is no formal right of appeal to any other body with regards to the amount assessed by way of market value by the District Valuer. The former owner should be notified when it is put on the open market.

#### 14.0 EXTENSION OF TIME LIMITS

14.1 If, for sound reasons, an extension of the stipulated time limits is warranted additional periods may be allowed at the discretion of the disposing body. The overall objective should, however, be to complete transactions in as orderly and as expeditious a manner as possible (see para 2.0)

#### 15.0 INTERESTS QUALIFYING FOR OFFER BACK

15.1 Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may at their own discretion, offer the freehold to the former leaseholder, if the freeholder is not interested in buying back the land. If neither the former freeholder or leaseholder is identifiable or interested in buying back the land then the freehold freed from any lease can be disposed of.

#### 16.0 SUCCESSOR

16.1 If at the time of disposal of surplus land the former owner is deceased the land will be offered to his successor, that is the person on whom the interest in the property would clearly have devolved had it not been compulsorily acquired. The successor does not include any person who purchased from a former owner the balance of a holding, part of which was compulsorily purchased and part not. References to the former owner in these guidelines include the successor where appropriate. Also refer to para 8 (ix).

#### 17.0 RECORDING OF DISPOSALS

17.1 Disposing Departments will maintain a central record or file of all transactions covered by the guidance including all cases where the offer back to a former owner is made or the exceptions to offer back are applicable.

Departments are encouraged to discuss with the former owner all aspects of the sale from the outset of negotiations and of the decisions affecting the sale of his former property.

#### 18.0 SPECIALISED PROPERTIES

18.1 In exceptional circumstances a public body may wish to sell a specialised or singular property to a selected purchaser (eg a "heritage" body such as the National Trust ) by means of private treaty, on the basis of a market valuation only.

In such circumstances the same principles as set out in Section 6.1 (transfers within the Public Sector) will apply. As it is envisaged that this type of transfer would only be in exceptional circumstances the need to have compulsory purchase powers may be waived if considered appropriate.

#### 19.0 SALE PRICE AND MARKET VALUE

19.1 Generally the legislation under which surplus sector property is disposed of is Section 5 of the Stormont Regulation and Government Property Act (NI) 1933. This states that "a sale, exchange, lease or surrender of land under this section shall be at the best price or for the best rent or otherwise on the best terms which, in the opinion of the Ministry of Finance\*, can reasonably be obtained".

Disposal of assets is considered in Government Accounting Northern Ireland 2004 (GANI), which states that,

"A department or NDPB should take appropriate professional advice to ensure that the consideration obtained for the property is "the best that can reasonably be obtained"

- 19.2 The District Valuer will be able to act in an intelligent client role when an agent is appointed and when no agent has been appointed he can supply a direct service to the disposing body.
- 19.3 Normally all disposals whether within the public sector or not, should be made at the market value (see paragraph 19.4) of the property. However, there may occasionally be cases where it will be reasonable to consider wider issues and accept a lower amount. This should only be done in exceptional circumstances and must be justified by the public body's Accounting Officer\*\*. In these cases the benefits which are expected to result from the disposal must be clearly identified. Disposing bodies should note that current EU regulations on the sale of public sector property restrict the scope for such concessions and professional advice must be taken in this regard if a sale at below market value is being considered.

Values assessed should have a time limit of 3 –6 months. Depending on the nature and circumstances of the subject property. After expiration of the time unit the valuer should be requested to carry out a review.

- \* Now Department of Finance and Personnel (DFP) acting on recommendations made by Valuation and Lands Agency.
- \*\* Or the senior full time official of an NDPB if he has not been formally designated as Accounting Officer.

#### 19.4 Market value is defined by RICS in "The Red Book" as

"The estimated amount for which a property should exchange on the date of valuation, between a willing buyer and a willing seller in a arm's-length transaction after proper marketing wherein the parties had each acted knowledgably, prudently and without compulsion"

Market Value is measured as most probable price reasonably obtainable in the market at the date of valuation in keeping with the Market Value definition.

There is a presumption "that both the willing buyer and seller are reasonably informed about the nature and characteristics of the property, its actual and potential uses and the state of the market as of the date of valuation. Each is further presumed to act for self-interest with that knowledge and prudently seek the best price for their respective positions in the transaction. Prudence is assessed by referring to the state of the market at the date of valuation, not with the benefit of hindsight at some later date. It is not necessarily imprudent for a seller to sell property in a market with falling prices at a price, which is lower than previous market levels. In such cases, as is true for other purchase and sale situations in markets with changing prices, the prudent buyer and seller will act in accordance with the best market information available at the time"

A price which is depressed because of general economic situation or because a particular property does not prove attractive to bidders is still market price. It is the disposing body's responsibility to ensure that the property is promptly and properly marketed and that professional advice is taken on its value ( which will reflect the nature of the property, its condition, the planning position and location as well as the economic circumstances).

The only reason for delay would be if a public body had clear professional advice that holding on to the property for a limited period would enable a significantly higher price to be obtained e.g. because planning permission was likely to be granted.

19.5 The highest bid then made would normally be accepted provided that the professional advisers consider it reasonable, even if only a single bid is received. The mere possibility that prices may rise at sometime in the future does not justify delay but in large disposals care must be taken by appropriate phasing or timing of the sale, taking professional advice, not to flood the market and so depress the price. To minimise the risk of the price being reduced because the market, particularly at the local level, might become flooded, it is advisable where major disposals are contemplated to liase with the Central Advisory Unit which is informed of all public sector surplus land disposals in Northern Ireland (see para 5.1)

#### 20.0 DISPOSAL OF SURPLUS HISTORIC BUILDINGS

- 20.1 This section should be read in conjunction with the rest of the guidelines and in the disposal of Historic Buildings the basic principles as stated in Section 19 should still be the prime objectives. However, it is Government policy that the maximisation of receipts should not be the overriding objective in such disposals. The aim should be to obtain the best return for the taxpayer having regard to:
  - I. the provisions of the statutory development plan for the area.
  - II. Government policies for historic buildings and areas;
  - III. The fact that these policies are likely to restrict the opportunities for realisation of development value;
  - IV. The clear recognition that the most appropriate long term use for an historic building may not be the use which generates the optimum financial return;
  - V. The building's current state of repair, and the likely costs of future maintenance and repair.
- 20.2 All surplus historic buildings should be disposed of a quickly as possible; this may point to a particular method of disposal.

If the building is economically viable, has been kept in good order and has a positive value in a recognised use for which there would be demand in the market, normal methods of open market sale will be sufficient.

- 20.3 Historic buildings are defined as:
  - I. Listed building;
  - II. Scheduled ancient monuments;
  - III. Unlisted buildings, which make a positive contribution to the character or appearance of a designated conservation area
  - IV. Locally listed buildings where policies for their protection have been formally adopted by the planning authority and are either incorporated in, or linked to, the statutory development plan for the area.

The status of buildings should be clarified before formal disposal procedures are put in place.

20.4 If a historic building is surplus to requirements in its present use consideration should first be given to a cost effective alternative use. This will involve assessing the feasibility of alternative uses (which will require suitable professional advice), the likely cost of adapting the building to a new use compared with alternative means of accommodating that use the prospects for disposal and likely receipts.

In appraising these options maintenance and running costs need careful assessment, taking account of the advice given in the Conservation Guide (see 20.6). It should not be assumed that historic buildings are necessarily more expensive to run than modern buildings.

In assessing the financial prospects for disposal account should be taken of:

- I. the cost of maintaining the building prior to disposal; and
- II. the extent to which sale value may be depressed by restrictions on future use, or by costs of repair or adaptation which a purchaser would have to meet.

All appraisals should look at the overall costs of retention/disposal. In the case of a substantial building, or where buildings are grouped, the economic appraisal should also include an assessment of any wider costs and benefits.

- 20.5 Paragraph 2.4 of these guidelines stipulates disposal within 3 years of a property being declared surplus. This may not always be achievable in complex cases involving historic buildings but, as a general rule, it is particularly important to set disposal procedures in train as soon as possible after historic buildings are judged surplus to requirements, even if they have not yet become vacant. Risks of deterioration, vandalism and theft are a serious threat to historic buildings and wherever possible it is better to keep them in full or at least partial use up to the point of disposal. Where buildings are unavoidably vacant during disposal it is essential that they are inspected and maintenance regimes strictly adhered to. Inadequate maintenance will make the disposal more difficult.
- 20.6 Additional guidance called The Disposal of Historic Buildings 1999 has been produced by the Department of Culture, Media and Sport and is available within their website <u>www.culture.gov.uk</u>.

#### 21.0 SITES WITH DEVELOPMENT POTENTIAL

- 21.1 In seeking professional guidance on the sale of surplus property disposing bodies are advised to obtain explicit advice from the local DOE Planning Service on whether there is likely to be potential for development, the nature of such development and/or whether there are particularly sensitive planning issues. This request will be a key item in the advice offered by the District Valuer on the conduct of the sale. In order to obtain the best price when disposing sites, it is important that the proposals for the future use are in accord with the planning framework set out in the local area plan, unless material considerations indicate otherwise.
- 21.2 The disposing public body or the District Valuer on its behalf, will wish to liaise with DOE Planning Service particularly where large and/or sensitive sites are involved. Close liaison with Planning Service is essential for public bodies with large land holdings who are considering longer term disposals so that their disposal programmes can be properly co-ordinated and integrated with the local area plan. This will also help to achieve a programmed series of disposals and avoid placing too many major sites on the market at the same time which could depress the price.

To minimise the risk of the price being reduced because the market particularly at the local level, might become flooded, it is advisable where major disposals are contemplated to liaise with CAU, which is informed of all public sector surplus land disposals in Northern Ireland (see para 5.1).

21.3 Previously guidance in disposal of surplus land with development potential stressed that with the benefit of planning permission was the best way of ensuring that receipts were maximised. Recent changes in the planning regime have called this policy in question.

Applicants for outline planning permission may be called upon to provide environmental impact assessments, traffic studies and other details for consideration by the planners. This implies an investment of time and expense which may make the exercise counter-productive from a public sector viewpoint. For example, if a substantial delay is involved this would be at odds with the requirement to expedite disposal of surplus land.

Experience has also shown that after providing the information needed the conditions attached to the planning permission eventually granted may make it unattractive to the market.

Despite the above it is possible that applying for planning permission prior to disposal might still be the course of action recommended by professional advisers.

21.4 Where it is decided to proceed without applying for planning permission there are various alternative schemes which can be used to protect the public interest and these are detailed in Section 22.1

22

21.5 Professional advice is particularly important in cases where the surplus land being disposed of has development potential. This advice should be obtained as early as possible in the disposal process so that the optimum course of action can be chosen.

# 22.0 CLAWBACK

22.1 Where there are, or are likely to be, unusual delays in resolving uncertainties about the planning permission of a property which is considered to have development potential, or where there is doubt as to the use which would generate the best price, a public body may decide that it should sell the property without the benefit of planning permission before those uncertainties have been resolved.

Where this is the case the public body should carefully consider, in the interests of the taxpayer, whether they should seek to secure from the purchaser, by suitable wording of the disposal terms, part of an increase in value which is realised subsequent to the original disposal.

This can be achieved by various methods which will depend on the particular circumstances of the case. These methods may include:

(i) selling land subject to a restriction on use – the normal scenario here is that a developer would want to change the use so as to maximise the development potential of the land. In order to change the use he would have to buy out the restrictive covenant and the disposing body would therefore share in the full development value of the land.

(ii) selling land subject to a restriction on access (sometimes referred to as "ransom strips")-similar to (i) but the restriction is physical rather than legal in nature. The disposing body would in this case sell its land but retain a narrow strip, usually along the road frontage. Again the developer would have to buy out this remaining interest in order to achieve his aims.

(iii) selling an option to purchase - there may be circumstances where it is in the disposing body's interest to retain legal ownership of the surplus land but to sell an option to purchase to a developer. This might be the chosen method where the land being disposed of has complex planning issues attaching to it and where the property market is buoyant. The eventual full disposal would be triggered by some future event, for example the obtaining of planning permission, resulting in payment of the market value for the permitted use (less the amount already paid for the option) assessed at the relevant time.

(iv) disposal via a developer's brief and /or a building agreement – this is a method used in urban situations where the public sector is keen to influence the type of development which takes place on the surplus land. This should be a relatively rare occurrence and would be influenced by the strategic importance of the site in question. Typically a developer will make a down payment for the land of a relatively small percentage of its open market value. The balance will then be paid in stages as the development proceeds.

The District Valuer will be able to give an assessment of the likely effect of the above schemes on the sale price.

- 22.2 In cases where land has been sold with planning permission disposing bodies will also wish to consider with the appropriate professional advisors whether a clawback provision should be included to cover the purchaser significantly enhancing a planning consent to his advantage, should this seem to be a possibility.
- 22.3 All schemes aimed at securing the disposing body a share in the development value of surplus land depend on the definition of a "trigger event" e.g. the obtaining of planning permission. This definition requires careful drafting and sound legal advice is essential.
- 22.4 Another aspect of disposing of some surplus public sector property can be a difficulty in gauging the commercial potential of property which has been used in the past for a purpose which is peculiar to the public sector. Increases in market demand can lead to an unforeseen increase in the value of the property after it has been sold.

For those reasons, a public body which has sold property for a price on terms which were defensible at the time of sale may be criticised if the property is later resold for a higher price or used for a purpose which suggests that a higher price could have been obtained by the disposing body. Once again this sort of scenario can usually be avoided by good advice and, possibly, use of one of the clawback schemes described above.

22.5 The failure of disposing bodies to secure a share in the development value of surplus land has in the past attracted audit criticism. These cases tend to produce difficult issues and raise questions to which there may be no single correct solution. To minimise the risk of criticism bodies should follow these guidelines and obtain good advice.

#### 23.0 <u>SMALL OR INCONSEQUENTIAL SITES – LIMITED MARKET VALUE</u> <u>SALE RESTRICTED TO ADJACENT OWNERS</u>

23.1 There may be occasions when, in the opinion of the District Valuer, portions of land have no marketing potential where, for instance, the cost of marketing the site may be higher than the expected purchase price. The type of site envisaged is amenity or agricultural land that will be subsumed into a contiguous site to enhance the appeal of the main site without materially increasing the value of the new enlarged site.

The site should be contiguous with only one other land holding, and may or may not have direct vehicle or pedestrian access.

It is permissible in these cases to open 'confined' negotiations with the adjacent owner in order to achieve the most advantageous financial result. However, departure from open marketing should only be considered in the circumstances as outlined in this section and on professional advice.

In cases where there is more than one other contiguous land holding consideration should be given to alternative disposal strategies (e.g. sealed tenders) to obtain the best price.

23.2 Where the District Valuer has estimated the value of the land at £1,000 or less there is DFP approval for disposal to proceed at less than that estimated value provided an appraisal has been carried out which shows that the projected costs exceed the projected returns.

# 24.0 UNMARKETABLE PROPERTY

24.1 There will be occasions when property will be incapable of disposal. This type of property will be identified either by testing the market or by professional advice. The reasons may be varied and may relate to size, shape, location, access difficulties or disinterest on the part of the market.

In the case of obviously unmarketable property initial professional advice should highlight the problem and provide suitable advice on what action to take.

For property that has been exposed to the market and has attracted no interest in a 6 month period from the date it is first marketed it should be reviewed by the District Valuer and a recommendation made to the disposing body. If it is decided to continue with disposal action progress should be reviewed in conjunction with the District Valuer at regular intervals of no more than six months

It may be that the disposing body will be faced with continuing responsibility for the property. The District Valuer will, in his reporting letter offer whatever advice is considered appropriate for dealing with the situation which may be one of continuing, long term management.

# 25.0 OPEN MARKET SALES – APPOINTMENT OF AGENTS

- 25.1 If property is to proceed to the open market the disposing body will have issued a CAU/D1 form to the District Valuer and received a preliminary report containing the following:
  - I. An estimated current value, if appropriate.
  - II. Advice on disposal.
  - III. Advice on any potential difficulties in the way of disposal.
- 25.2 The functions of the District Valuer will include:
  - I. Liaising with DOE Planning Service and, where appropriate, making a formal planning application;
  - II. Selecting and appointing a selling agent, taking account of the type of property, location etc and ensuring that the appointed agent will have the required expertise; establishing the initial guide price;
  - III. Devising a marketing strategy in consultation with the selling agent;
  - IV. Advising, in consultation with the selling agent, on the final reserve price in sales by tender or auction;
  - V. Advising on the acceptability of offers and bids received within the sale deadline;
  - VI. In private treaty sales advising on any authentic late or revised bids received after the closing date, but before the sale has become legally binding, which are higher than bids received within deadline;
  - VII. When the final sale is at a price below the initial guide price, certifying, jointly with the selling agent, that it is the best offer reasonably obtainable.
- 25.3 Where private sector agents are used to carry out sales of property only those firms with membership of a professional body such as the Royal Institute of Chartered Surveyors, Irish Auctioneers and Valuers Institute or National Association of Estate Agents among their partners or directors, will normally be considered eligible for appointment,

A check should be made on the professional indemnity insurance carried by the agents and that they have the appropriate experience for the commission being offered. 25.4 Where land is sold for development, offers may be received where the receipts depend on the outcome of the purchaser's scheme, often involving some form of deferred completion.

In such cases it is essential to consider the way changes in the market may affect the receipts and the other inherent risks and to weigh these against other offers or ways of disposing of the property. The contract should provide express time limits for actions which are the purchaser's responsibility, for example applying for planning permission and provisions which prevent indefinite or lengthy delays in completion.

The use of staged payments of interest may be helpful in achieving these aims, but other approaches are possible. As any contract term may affect the price, it is important that disposing bodies obtain proper professional advice as to the most appropriate methods having regard to the particular transactions.

# 26.0 OPEN MARKET SALES – NO AGENT ACTING

- 26.1 On the advice of the District Valuer it may be considered more cost effective for the disposing body of VLA to act autonomously and sell the property without an Agent.
- 26.2 The normal method of disposal should be to place an advertisement in the appropriate section (Property Sales) of the local newspaper(s) giving brief details of the property together with a contact name and telephone number. The contact should be available to take enquires on the next working day the advertisement appears.
- 26.3 All offers must be recorded on an offer record sheet that cover:

Name, address, telephone number or offeror Date and time of offer. Amount of offer. Conditions of offer (if any).

If competitive bidding cannot be brought to a swift conclusion consideration should be given to:

- I. Bringing the bidders together for a closed auction; or
- II. Taking final written offers.
- 26.4 The highest bidder should be informed in writing that his bid has been accepted, subject to contract.

# 27.0 SALE METHODS

27.1 Professional advice should be obtained on the appropriate sale methods having regard to the particular transaction. The sale method will take account of the nature of the property and will form part of an overall marketing strategy. Normally sales are by private treaty although sale by auction or tender may occasionally be more appropriate.

Disposing bodies should bear in mind that sale by tender requires much more in terms of administrative oversight than the other two methods. It also usually involves the prospective purchasers in carrying out detailed investigation of the property being sold without them knowing whether they have any real chance of acquiring it. For these reasons sale by tender should not be considered in a weak market.

# 28.0 SALE BY PRIVATE TREATY

- 28.1 The following guidance applies to sales by private treaty:
  - I. In private treaty disposals offers are normally accepted on a "subject to contract" basis, which allows either party to withdraw. The selling agent will be asked to advise on the precise sale terms, which will depend on the particular circumstances of the case, e.g. it may be desirable to seek binding offers by a specified date, i.e. an informal tender, or offers subject to contract or other conditions, such as funding.
  - II. Disposing bodies should take care to ensure that they are neither legally nor morally committed to proceed with the sale until contracts are exchanged in case it becomes necessary or desirable to break off negotiations at an advanced stage.
  - III. If a deadline for receipt of offers has been set this should not prevent consideration of higher offers received after the deadline nor should a further offer be ruled out of consideration because a lower offer has been accepted "subject to contract". In such circumstances if a higher offer is received following the initial acceptance on a "subject to contract" basis, professional advice should be taken. In doing so the public body will need to weigh its duty to the taxpayer in regard to obtaining the best possible price for the property against the risk of the original bidders withdrawing their offers because of the delay or accusations of bad faith. Where necessary sufficient time should be allowed for enquiries into the late offeror's financial credentials (see para 30).
  - IV. Where, in the case of a private treaty sale, a number of parties have expressed interest it may be appropriate to invite "best and final offers" to resolve matters. This procedure carries certain risks, and it should only be used on the advice of the professional agents handling the sale. Where it is used, all the interested parties should be invited either to submit their best (subject to contract) offers within a stated period or to take part in a "closed auction"
  - V. When closing private treaty sales the following procedures are advised:
    - a. When bidding has reached a point where the agents considers it unlikely to go further and the agent has received the approval of the District Valuer and the vendor to sell at the price, the top bidder should be informed that his offer will be accepted if he returns a signed contract with a deposit within 2 weeks.
    - b. If the returned contract is conditional to the point of being unacceptable the bidder should be given 24 hours to sign an acceptable contract. Otherwise the under bidder should be given the opportunity to purchase. He would be under the same constraints with regards to the terms of the contract.

# 29.0 SALE BY AUCTION

29.1 Sale by auction provides strong evidence that the disposal was made in a fair way and that the best price was obtained. In a sale by auction the auctioneer is authorised to accept a deposit, sign a contract and generally act on behalf of the disposing body.

The solicitor dealing with the contract and title details should be advised of inspection.

The conditions of sale should be prominently displayed at the auction.

Sale should be to the top bidder unless there are reasons to doubt his financial credibility.

The District Valuer or his representative should be in attendance to ensure that the top bid represents best price.

The following guidance applies to sale by auction:

- I. It is normally advisable to set a reserve price. The District Valuer will consider with the auctioneer the level at which it should be set.
- II. The reserve should normally be set as near to the time of the auction as possible, and not more than seven days in advance.
- III. Property should normally be sold for the highest bid which equals any reserve price.
- IV. Where the reserve price is not reached and the highest bid is only marginally lower than the reserve, the District Valuer in consultation with the auctioneer will advise on whether it would nevertheless be worthwhile accepting that bid.

# 30.0 SALE BY TENDER

30.1 In sale by tender, bids are invited by a certain date. It should be made clear at the outset that the best bid will not necessarily be accepted eg, where the bidder is known to be a "man of straw."

The following guidance applies to sale by tender:

- Tenders may be binding where the acceptance of an offer creates a contract, or non binding where the final terms will be settled after an offer has been accepted. Both procedures have advantages and disadvantages, and disposing bodies should seek advice from their agents on which procedure to adopt.
- II. As with auctions it is normally advisable to set a reserve price with the level being fixed following consultations with the District Valuer and the selling agent. The agent should subsequently consider whether the initial valuation needs to be revised in the light of changed market circumstances prior to a final reserve being set.
- III. The final reserve should normally be set as near to the tender deadline as possible and not more than seven days in advance.
- IV. In a sale by tender it is unacceptable for a bid to be made on the basis that a certain sum over and above the highest tender will be paid or that the bidder will top the highest bid.
- V. Property should normally be sold for the highest bid which at least equals any reserve price; the under bidders should not be invited to improve their bids.
- VI. If none of the bids clear the reserve all the tenderers may be told this and be given an opportunity to revise their offers by a specified date as an alternative to a readvertisement of the sale.
- VII. Alternatively, where the reserve price is not reached and the highest bid is only marginally lower that the reserve, the District Valuer in consultation with the agent will advise on whether it would nevertheless be worthwhile accepting that bid.
- VIII. A fixed date and time must be set for receipt of tenders with no revisions to tenders normally allowed. Late bids should be returned unopened. If this is not done confidence in the tender procedures may be undermined and prospective purchasers may be reluctant to submit bids in other disposal cases.

# 31.0 DISPOSAL OF SURPLUS TENANTED PROPERTY

31.1 The disposal of surplus tenanted property whether residential or commercial is a complex matter and professional advice should be sought at the earliest possible stage.

# 31.2 Residential Tenanted Property

Where a property that was compulsorily acquired, has a sitting tenant in residence at the time of disposal, the freehold should be offered to the sitting tenant rather than the former owner.

- 31.2.1 Sitting tenant in the context of 31.2 is described as a tenant who has indefinite or long-term security of tenure. That is where a tenant has a tenancy that is or analogous to a restricted or regulated tenancy under the Rent Order (NI) 1978.
- 31.2.2 A person is not considered to be a sitting tenant if they hold a license only or a tenancy known as a protected shorthold tenancy under Housing Order (NI) 1983 or hold any uncontrolled tenancy.

It is recognised that some tenants who fall within para 31.2.2 may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the disposing Department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.

### 31.3 Commercial Tenanted Property

Normally surplus property should be offered for sale with vacant possession as this usually attracts the best price. This may not always be possible due to the introduction of the Business Tenancies (NI) Order 1996 where in certain circumstances the tenant is given some rights to continue occupation or to receive compensation in order to provide vacant possession. Professional advice of a legal and property nature should be sought to ensure best practice is being adhered to in every circumstance.

Where a sale to the former owner is unsuccessful or inappropriate, a selling agent, in consultation with the District Valuer (or the District Valuer only, where there is no selling agent) may advise an approach to the sitting tenant who, for particular reasons, may be prepared to **pay more than the open market value (as a tenanted property).** The disposing body should consider whether this should be followed up. It will be desirable for the professional adviser to state in writing that the price finally agreed exceeds the open market value of the tenanted property

# 32.0 FINANCIAL CREDENTIALS

32.1 In sales by tender and private treaty the creditworthiness of the bidder should be examined before acceptance of an offer. However, the effort devoted to this examination should always be proportionate to the value of the property. Various credit rating agencies are available to advise in this regard. Where agents are used to establish the credit worthiness and development track record bidders, it is recommended that disposing bodies ensure that they obtain the advice in writing, including the nature of the evidence on which the recommendation is based.

In an auction sale disposing bodies should note that, as bids accepted result in a binding contract and the purchaser has to pay a 10 per cent deposit immediately, it is not normal to check on bidders' creditworthiness except for very large disposals (greater than £2m value). Even in these cases it will only be feasible to carry out such checks where the identity of bidders is known in advance.

# 33.0 ADVERTISING

- 33.1 It is most important to ensure that cross community coverage is achieved, even if this means placing the advertisement or notice in more than one newspaper circulated in the area.
- 33.2 When an agent is acting he/she should advise on the papers to be used but if there is any element of doubt, both sides of the political/religious 'divide' should be covered.
- 33.3 Marketing strategy, draft advertisements and estimated costs should be submitted for approval and information. Any marketing material, should it be advertisements in newspapers or periodicals, brochures, for sale signs or notices, should be proportionate to the nature and circumstances of the subject property. The costs and effort should be commensurate with the expected return.

# 34.0 CORRUPT PRACTICES

- 34.1 Disposing bodies must be scrupulously fair in their land disposal dealings. It should be recognised that the sale of surplus land may offer opportunities for corruption and bodies should ensure that both they and their selling agents have appropriate procedures in place to minimise these risks.
- 34.2 Sale by Tender is the most open to irregularity and particular attention is required in the procedures dealing with the receipt and opening of tenders.
- 34.3 In the appointment of agents it is essential that public bodies receive written assurance that no conflict of interest exists. In the conduct of a sale agents should record in writing all bids received for subsequent examination if necessary.

Further details in this regard are contained in the Valuation and Lands Agency's "Standard Conditions for the Appointment of Agents" – see Annex A

# ANNEXE A

#### DEPARTMENT OF FINANCE AND PERSONNEL

#### VALUATION AND LANDS AGENCY

#### STANDARDS CONDITIONS APPLYING TO THE APPOINTMENT OF AGENTS TO DISPOSE OF PROPERTY ON BEHALF OF THE PUBLIC SECTOR BODIES

- 1. The Agents appointed shall have no other interest which will in any way conflict with their responsibilities to the disposing body.
- 2. The Agents appointed shall have and maintain professional indemnity insurance at least in accordance with RICS guidelines:-
  - I. £100,000 for each and every claim where the gross income of the firm in the preceding year did not exceed £50,000; or
  - II. £250,000 for each and every claim where the gross income of the firm in the preceding year exceeded £50,000 but did not exceed £100,000; or
  - III. £500,000 for each claim where the gross income of the firm in the preceding year exceeded £100,000.

The policy and the receipt for the last premium will be produced for examination if required by the Valuation and Lands Agency (VLA).

- 3. The Agents appointed shall not commit the vendor to any action without prior written consent.
- 4. Subject to reasonable notice the Agents appointed will attend any meetings with VLA representatives, legal advisers etc, at which their presence is required.
- 5. Legal advice will be provided by the disposing body's solicitor and requests for such advice by the appointed Agents are to be directed through VLA.
- 6. As it is essential for the sale to be carried out in a demonstrably impartial manner the appointed Agents will not disclose any details of the property until the commencement of the advertising campaign. Any enquirers prior to that date are to be advised that sale particulars will be sent to them as soon as the advertising campaign begins.

- 7. Particulars of Sales, press advertisements, press releases or other public announcements concerning the subject property both before and after the sale are to be subject to VLA prior written approval and in particular treaty or tender.
- 8. Any Agent's boards must be securely affixed to the property and must conform to Planning Regulations.
- 9. Agents appointed shall keep VLA advised of progress during the period leading up to the sale or until a sale has been agreed in the case of a private treaty sale.
- 10. All information concerning this commission is in confidence between VLA and the appointed agents and must not be disclosed to any third party.
- 11. The fees and expenses of the Appointed Agents will be payable on the completion of the sale of the property. In the event of a sale not being completed due to the actions of the disposing body a fee based on "quantum meruit" (not exceeding the tendered fee in total) together with approved expenses incurred up to the date of termination will be payable.
- 12. The sales publicity programme and its cost must be agreed with VLA in advance; any expenditure over the agreed limit may be disallowed.
- 13. The benefit of any discounts received by appointed agents in respect of advertising, printing etc., must be passed on to the disposing body and the appointed Agents will be required to certify that the charges to be met by the body for disbursements are net, with receipted accounts being produced in support.
- 14. VLA, acting on behalf of the disposing body, reserves the right to terminate the commission at any time by notice in writing stating the reason and upon receipt of such a notice the commission shall be terminated forthwith. If terminated by VLA on the grounds of unsatisfactory performance or breach of any of the conditions set out herein no fee or expenses shall be payable by the disposing body.
- 15. The appointment made shall be personal to the appointed Agents who shall not be permitted to delegate their authority or to instruct sub-agents.
- 16. The appointed agents must abide by the terms of the Estate Agents Act 1979 and the Property Misdescriptions Act 1991

# ANNEXE B

#### DEFINITIONS

### PUBLIC SECTOR BODIES

These include:

- I. Northern Ireland Government Departments and their Executive Agencies.
- II. Non Departmental Public Bodies (NDPBs)
- III. Education & Library Boards

Health & Personal Social Services Trusts were excluded from the report by the NI Efficiency Scrutiny on the Management and Disposal of Government owned land. Nevertheless, the requirements to apply good practice to the management and disposal of land should be implicit in Trusts' framework documents and in accordance with the HSS Executive Land Transaction Handbook.

The above is not a definitive list of those bodies that can be involved. Please refer to paragraph 6.0 for information on who can become a transferee and in what circumstances.

#### NON-DEPARTMENTAL PUBLIC BODIES (NDPB'S)

An NDPB is a body which has a role in the process of national government, but is not a government department nor part of one, and which accordingly operates to a greater or lesser extent at arm's length from Ministers.

#### SURPLUS LAND

Land or Buildings in this context means land in the ownership of the public sector bodies which is no longer required for the purpose for which it was acquired or is held.

#### **LAND**

Defined in Section 45 of the Interpretation Act (NI)1954 and includes houses, buildings other structures and land covered by water.

# PROPERTY CENTRE

A centre dedicated to the effective management of all land and buildings held by that public body. It will seek to adopt the features of best practice and ensure compliance with policy guidelines issued by the Central Advisory Unit. The formation of property centres was recommended by the NI Efficiency Scrutiny on the Management and Disposal of Government Owned Land.

#### **CENTRAL ADVISORY UNIT**

A body located within the Valuation and Lands Agency whose role is to adopt a more proactive approach to estate management with the main aim of improving estate management practice and the performance of all operational property assets in the public sector. The unit was set up on the recommendation of the NI Efficiency Scrutiny and in January 1996 it assumed the land disposal policy role formerly held by DOE Lands Service.

#### VACANT POSSESSION

An empty property which can be exclusively occupied and used by the owner or, on sale or letting, by the new owner or tenant.

#### PLANNING BRIEF

This a brief prepared by the Planning Authority and the Disposing Body. It will set out the development possibilities based on the policies in the local development plan and it should be subject to public consultation.

# ANNEXE C

"The Green Book" and The Northern Ireland Practical Guide to the Green Book

The Green Book sets out HM Treasurys' general principles regarding public sector economic appraisal and evaluation. In Northern Ireland, DFP produced a guide to the most recent version of the Green Book in 2003. The purpose of this guide is to provide technical and procedural guidance, which is more specific to the needs of the Northern Ireland sector, than the Green Book itself.

This guide, rather than the Green Book, should be the first port of call for relevant NI bodies, since it is tailored more specifically to their requirements. The Green Book itself still provides much detailed guidance that is not duplicated within the NI Guide and it remains an authoritative source of guidance, the NI Guide should be read in conjunction with it.

# NOTE

Words and modes of expression implying the masculine include the feminine and words implying the singular include the plural and the versa where the comment requires.



# Appendix 4 List of Witnesses

# List of Witnesses Who Gave Oral Evidence to the Committee

- 1 Mr Gerry Lavery, Accounting Officer, Department of Agriculture and Rural Development (DARD);
- 2 Mr John Smith, Director of Finance, DARD;
- 3 Mr Brian Ervine, Principal Officer, DARD;
- 4 Mr Michael Brennan, Central Finance Group, Department of Finance and Personnel (DFP);
- 5 Mr Stephen Fay, Land and Property Services, DFP;
- 6 Mr Kieran Donnelly, Comptroller and Auditor General; and
- 7 Mr Richard Pengelly, Acting Treasury Officer of Accounts.



Published by Authority of the Northern Ireland Assembly, Belfast: The Stationery Office

and available from:

Online www.tsoshop.co.uk

#### Mail, Telephone, Fax & E-mail TSO PO Box 29, Norwich, NR3 1GN Telephone orders/General enquiries: 0870 600 5522 Fax orders: 0870 600 5533 E-mail: customer.services@tso.co.uk Textphone 0870 240 3701

#### TSO@Blackwell and other Accredited Agents

£22.00

Printed in Northern Ireland by The Stationery Office Limited © Copyright Northern Ireland Assembly Commission 2011

