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Houses of the Oireachtas

Joint Committee of Inquiry into the Banking Crisis

Witness Statement of

Michael OFlynn

Session 50

22 July 2015 (a.m.)

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[1] *See s.37 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013*

**STATEMENT OF MICHAEL O'FLYNN,
MANAGING DIRECTOR OF THE O'FLYNN GROUP
DELIVERED PURSUANT TO DIRECTION DATED 21 APRIL 2015 PURSUANT TO SECTION 67 (1) THE HOUSES OF THE OIREACHTAS (INQUIRIES, PRIVILEGES AND PROCEDURES) ACT 2013 TO THE JOINT COMMITTEE OF INQUIRY INTO THE BANKING CRISIS**

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1. INTRODUCTION

Thank you for the opportunity to provide you with my perspective on the matters under review by the Joint Committee of Inquiry into the Banking Crisis (the "**Inquiry**").

The Inquiry has asked me to make a statement by reference to a number of points, grouped together under two headings "*Overview of Relationship between your Company and Banks*" and "*Your Company – its performance and Modus Operandi*." These points appear in Document 1, attached to the Direction to Attend before the Committee and Make a Statement in Writing dated 21 May 2015 (the "**Direction**").

I understand that references to "your company" in the Direction are intended to refer to all companies within the group of companies known as the O'Flynn Group (the "**O'Flynn Group**" or the "**Group**") during the relevant periods.

I have made this statement to the best of my recollection and belief based on the records which are available to me. I confirm that any documents I have provided are true and correct.

The scope of the Direction addressed to me does not extend to matters such as the global economic and financial crisis and the well-documented, underlying problems in the Irish banking sector which, in turn, exacerbated the impact of the crisis on the Irish economy. That combination of external and internal problems caused a deep recession in the Irish economy and the banking crisis. For present purposes, it suffices to record my personal view that neither the recession nor the banking crisis could fairly be said to have been 'caused' by developers.

While I propose to answer all of the points raised in the Direction, I believe that I can best assist the Inquiry by presenting that information as part of an overall history of our Group, the events leading up to the establishment of NAMA, through our dealings with NAMA and up to our exit from NAMA. Some more detailed information is provided in appendices and some sensitive, confidential commercial information has been provided to the Inquiry on a confidential basis and are not for publication.

2. BACKGROUND TO THE O'FLYNN GROUP & THE BUSINESS MODEL

O'Flynn Construction was founded in 1978 by myself and my brother John O'Flynn. Over the following years it steadily established itself as one of Ireland's leading property development and construction companies. At its peak in the mid-2000s, it employed almost 1,000 people directly and indirectly.

The business developed incrementally over time and had to face many difficult challenges such as the economic crisis of the 1980s and the currency crisis in 1992/93, when the cost of borrowing escalated. Through a combination of high professional standards, strong professional management and prudent financial control, it came through those difficult times and emerged as a strong entity.

Our business model was based on a desire to build a successful property development company with the principals involved in all aspects of the process, including building, project management, development, planning, financing and all other aspects of the business. That remains the guiding ethos of the Group today.

In the early years we concentrated on development in Ireland. In 1985, we made a strategic decision to expand the business into the UK market and into investment type property on the basis that geographic diversification and strong investment income would reduce the vulnerability created by total exposure to development in one market. Subsequently, the O'Flynn Group has operated successfully in Ireland and in overseas markets such as the UK, Germany and Spain. It has achieved notable success in the retail, commercial, industrial, residential and student accommodation sectors. In summary, the company developed a diversified portfolio both in terms of geographic spread and product type.

Appendix 1 includes examples of some of the projects that the Group has delivered.

Our business model was soundly based. The business grew, as did the mix of skills within the organisation including developing, planning, project management, asset management and construction, investment and finance. Unlike some other developers, the Group was not just a contractor that decided to become a developer, without the requisite skills. Development was the origin of the Group and was always at the centre of our activities. No personal guarantees were ever given or pledged to financial institutions to secure loans and equity was held by the Group in most of the projects it developed. There was some joint venture development in which the Group was the development partner as distinct from the financial partner.

(i) Corporate overview

In terms of structure, the O'Flynn Group, a privately owned vehicle, was originally made up of four principal business units with no cross linkage.

The heritage brand of **O'Flynn Construction** was created in 1978. It was involved in a balanced portfolio of residential and commercial development (including retail, commercial and industrial) in Ireland. As well as having its own construction capability to ensure scheme delivery, it has extensive expertise in project management and delivery of large scale mixed-use developments, generating a significant net rent roll from tenanted stock in Ireland.

The **Victoria Hall** business was created in 1996 after O'Flynn Construction successfully developed a student accommodation scheme in Ireland in the early '90's which is still owned to this day. We went on to replicate the model in the largest university cities in Britain. It now is an international business with over 6,400 beds in UK, Germany and Spain. By September 2008 we were poised to further expand this business throughout Europe and the UK. Victoria Hall attracted joint venture partners and has always been capable of attracting equity partners.

Tiger Developments was founded in 1999, initially as a joint venture with external equity. O'Flynn started building its UK business in 1985 and since then has built up a very significant network of relationships and assets including office, industrial, retail, leisure and residential. With offices in the UK and Germany the company is primarily an investor/active asset manager adding value to acquired stock and yielding a very significant rent roll.

Shelbourne Senior Living was founded in 2005 to offer community senior living solutions based on international best practice models in a 5 star format with a focus on high density locations with supportive income and wealth demographics. In 2008, Shelbourne expansion plans included linking with outside equity for new ventures in its development pipeline.

(ii) Background to the creation of the O'Flynn Group ("the Group")

In 2006, the boards of the separate business units agreed to combine to form what became the O'Flynn Group. This was intended to:

- Bring together formally a number of very successful businesses.
- Provide bulk scale and purchasing ability that would not be achievable individually by any one company.
- Allow a more natural sharing of skills and ideas across these similar companies.
- Assist in securing additional management talent and development of existing talent.
- Facilitate a more structured and coherent expansion in the European market.

(iii) Areas of strategic priority and investment

As a Group, our plan was to create a strong and valuable organisation in the development, construction, investment and related businesses, which would be broadly based and diversified, in so far as is practical, in terms of locations, business and economic risk.

Our focus was on:

- Creating a strong management team across the Group, including the reduction of the reliance on a small number of key individuals.

- Managing financial risk, including securing sufficient financial backing, in terms of equity and debt financing.

- Diversifying the business away from the then-current strong emphasis on the Irish property market by expanding our development business further into UK and European markets.

- Expanding into complementary businesses so as to create additional shareholder value.

- Creating opportunities for the realisation of value in the Group.

As a result of the Group's focus, by the end of September 2008, the Group had diversified both its asset type and geographic base.

This spread is set out in **Appendix 2** and provides an outline of total outstanding debt by property type (unzoned land, zoned land, residential, commercial specifying type) and by financial institution on 30/09/2008.

Appendix 3 profiles the total outstanding debt by geographic area, including Republic of Ireland, UK, Germany, Spain, and Estonia on 30/09/2008.

(iv) Comments by Chairman of NAMA (Mr. Frank Daly) regarding diversification

When addressing this Inquiry on 22 April 2015, the Chairman of NAMA (Mr. Frank Daly) was highly critical [1]of diversified portfolios such as that of the O'Flynn Group.

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[1] *However, one of the more notable features of the acquired loan portfolio by NAMA was that many debtor connections had borrowed against a diverse range of assets. It was not unusual to find, when all the loan information was collated, that a connection had exposure to a number of jurisdictions and to a number of sectors, including office, retail, residential, in addition to ownership of one or more hotels, as well as undeveloped land. After NAMA acquired the loans, it was not always apparent to us what the debtor's strategy might have been in assembling such a range of assets which was so diverse, by reference to a sector and location. The obvious conclusion, in some cases, was that the compulsion to purchase more and more uncorrelated assets was entirely related to the almost unlimited availability of debt funding. Many of these asset sectors require specialist business skills which do not appear to have been available to some of the debtor connections involved. The fact that many of them had only small supporting teams means they could have found it difficult to devote the requisite skill sets to the range and scale of projects covered by their borrowings. A debtor who was a successful house builder will not necessarily have the expertise to manage a group of hotels, or run a shopping centre, but this does not appear to have inhibited the lenders involved*. (page 11 of the transcript).

In my view, Mr. Daly's comments illustrate NAMA's lack of understanding of the development sector and I take exception to the generalised suggestion that diversification can only be explained as an unbridled and irresponsible "*compulsion to purchase more.*"

Our business strategy, and in particular our strategy to diversify into different geographical areas, property types and businesses, was based on sound principles, professional advice and best international standards followed by publicly quoted property funds.

Unfortunately, statements such as this made by NAMA representatives are reflective of a persistent failure to distinguish between developers who operated professionally to the best international standards and those who strayed into unsuitable sectors, on an amateur basis, funded by our banks.

NAMA representatives have criticized strategies taken by borrowers, even where the same strategy is pursued by NAMA itself.

On 23 May 2012 in his address to the Chartered Certified Accountants in Galway, Mr. Daly said;

"With due diligence now complete however, and having had the opportunity to assess the property portfolio in more detail, ***our view is that it has more potential than we originally had reason to expect.*** *71% of the portfolio comprises completed property – offices, retail, residential, industrial, hotels and so on. 20% is undeveloped land and 9% comprises developments which are at various stages of completion. In terms of geography, 56% of properties are located in Ireland and 34% in Britain with the rest in Northern Ireland 4%, Europe and the US. A high proportion of the property assets in Ireland – 90% - are located in or close to counties with large urban centres of population (Dublin and neighbouring counties, Cork, Limerick and Galway) and the long-term prospects for much of this property will be better after the economic situation stabilizes*" (emphasis added).

I firmly believe that, from the outset, the Board of NAMA lacked experience in many important areas but most notably in the area of asset management and development. In the early days, NAMA did not recognize the benefit of a diversified and international portfolio. By 2012, they could see that such a portfolio had far greater potential than they had originally understood. However, by then NAMA had embarked upon a strategy of disposals which I believe ultimately cost the State dearly.

It is disappointing that NAMA failed, in its evidence to this Inquiry (quoted above), to acknowledge either the benefits of diversification or the difference between amateur and professional developers.

(v) Business Plan immediately preceding banking crisis

The Group's business plans were adapted leading up to the banking crisis. As the significantly reduced appetite for lending became apparent the Group proposed to support its existing and new business through external equity funding.

We anticipated that this would take the form of a commitment to fund a number of equity tranches on specific identified schemes or geographic regions in which the Group would be operating. This equity was to be raised mainly through joint venturing with a specially mobilised equity fund. Our goal was to fund new opportunities with a medium timeframe to completion, rather than achieving high annual returns.

The stable cash generation from our operational and investment businesses was available to supplement the traditional property businesses in the Group. The scale and structure of the Group assisted in providing the stability necessary to weather the difficulties encountered in the property market. The Group considered that its shared competencies, diversified income streams and central services would continue to be a key factor in facilitating the search for new equity partners and alternative refinancing to repay bank debt.

(vi) Group description in terms of Structure and Finance

Appendix 4 includes the following information;

Part 1. Pie Chart showing proportion of turnover for each segment.

Part 2. Detail of valuation methodology and firms used to determine the current market value of land and property in our portfolio (2001-2008); Each of our assets was valued annually for the purpose of our audited accounts and also as a requirement of some of our banking facilities. Professional firms were generally engaged to provide the valuations.

Part 3. Detail of the cost apportionment of different house types, outlining the cost of the land, the cost of servicing the land, construction costs, finance costs, and profits on sale (2001-2008).

A profile of the Group in terms of turnover and scale is set out in **Appendix C1**.**This information is confidential and provided to assist the Inquiry. It is commercially sensitive and not for publication.**

3. BANKING AND OTHER RELATIONSHIPS

The company had borrowings with Anglo Irish Bank, Bank of Ireland, AIB Bank, Irish Nationwide Building Society, Bank of Scotland (Ireland), ACC Bank, First Active, SEB, Aaereal and Lombard. The relationship with the various banks was appropriate and based on stringent professional principles. There was no semblance of a ‘cosy relationship’.

(i) Loan application processes

On any given loan application, the information provided to the bank was similar to the information our own boards would require before deciding to proceed with a proposal and generally would include;

- Cost of acquisition.
- Estimated cost of planning application.
- Estimated professional fees.
- Estimated cost of infrastructure.
- Estimated development costs.
- Estimated sale prices.
- Estimated timing of sales.
- Estimated profit.
- Proposals for servicing of debt.
- Proposals in relation to repayment.

Initially such information was provided by myself or our finance director at a high level to senior executive directors within the bank. Once the bank had confirmed an interest in principle in funding the project, supporting figures and documents were provided over a series of meetings or in correspondence before formal approval issued.

The loan documentation indicates stringent lending and business conditions.

I have reviewed loan agreements with our principal lender, Anglo Irish Bank. Each Facility Agreement included significant due diligence preconditions relating to valuation, title, insurance, costing, business plans and many other preconditions to drawdown, as well as stringent performance metrics. A schedule of typical conditions included in Facility Agreements is set out in **Appendix 5**. This should clarify any misunderstanding as to the true extent of the due diligence carried out in relation to companies of our scale.

It bears noting that both the Bank and the borrower relied upon reports of professional advisors, in relation to matters such as valuation, planning status, title, costings and market analysis.

In summary, all key documents had to be provided and all ‘boxes had to be ticked’ before money could be paid out. The relationships were at all times professional. Banks had full right to access financial information, imposed robust pre-conditions and performance metrics and reserved the right to operate a strong level of governance. **Appendix C2** includes sample Facility Agreements. **This information is confidential and provided to assist the Inquiry. It is commercially sensitive and not for publication**.

(ii) Interest roll-up

The practice of interest roll-up worked well for borrowers and banks until the collapse of the Irish property market and the global economic crisis when, unfortunately, there was no market for completed projects and the ability to repay the principal was delayed or, in some cases, diminished.

Interest roll-up was and remains today a necessary and key feature of the banking relationship and an inherent part of the development model both in Ireland and internationally. Interest is allowed accumulate and is paid out of income received from the sale of, or the rental income received from, a development. The lender is rewarded by means of a higher rate of interest and generally allows such roll-up only for a limited period required to bring the project to the market.

Details of interest roll up in relation to the loans of the O'Flynn Group are contained in **Appendix C3**. **This information is confidential and provided to assist the Inquiry. It is commercially sensitive and not for publication**

(iii) Multi-bank lending

In evidence before the Inquiry, the Chairman of NAMA, Mr. Frank Daly on 22 April 2015 stated that the banks '*didn't really have much interest in what a particular client's exposure was to another bank across the system'*. He went on to state that '*in terms particularly of those to whom most had been lent on an individual basis, there was an emphasis on a kind of relationship lending as much as lending for particular projects that actually seemed feasible'*.

This was not the experience of the O'Flynn Group. The Group's relationship with the banks was totally professional and every loan granted was based on strong project appraisals backed up by robust supporting documentation and rigid lending conditions and criteria. The consolidated Group accounts were made available to every bank, so the banks were fully aware of all Group borrowings.

(iv) Equity support

I have noted the views expressed by some other witnesses to the Inquiry to the effect that developers did not provide any equity in the period of 2001 to 2008. This is a sweeping generalisation and was certainly not the case in relation to the O'Flynn Group.

Firstly, in the case of the O'Flynn Group our cash balances were always strong and were applied in property acquisitions. Even in the years 2006-2008, the average amount of our cash balances was seventy six million euro (€76,000,000). In our property acquisitions, a mix of our own cash and bank borrowings was generally applied with the exception of joint venture arrangements where a lender sought a much higher return based on profit share. In such cases funding was provided by the lender and time, skills and expertise were provided by us and profits were shared.

Secondly, in the buoyant market which existed from 2001-2007, a developer could at any time have released the equity in his assets. That cash could either have been withdrawn from the business entirely or retained in a secure deposit account or reinvested in many other ways.

A developer who opted to reinvest his profits in his business and therefore to acquire property could do that in two ways; (i) by selling assets, repaying loans secured against those assets and providing the balance of the cash proceeds as equity for the next larger purchase or (ii) by avoiding the cost of sale, retaining the asset and the first loan and providing the same equity as security for the new investment. It makes no sense to me that the first of these options is considered by some to be 'real' equity while the second is not. While accepting that the tendency to reinvest in property meant that both the borrower and the bank were reliant on a stable or improving market, it is absolutely incorrect to say that the borrower had no real equity (or 'skin in the game'). By leaving his equity on the table, the borrower stood to lose money he could have used elsewhere. The real problem is not that no equity was provided by the borrower but that the value of the equity fell along with the value of the security because of the macroeconomic issues affecting the global economy and, more particularly, the Irish economy.

(v) Intergroup and personal guarantees

In the case of the O'Flynn Group, from time to time we were required to provide guarantees by one Group company for the liabilities of others and, where we believed it was the right thing to do, those guarantees were provided.

I would like to state as a fact that, as Managing Director of the O'Flynn Group, I was requested by banks to provide personal guarantees to support some loan applications for Group company loans. I made it very clear to each and every bank with whom I dealt that, as a matter of policy, I did not provide personal guarantees for the O'Flynn Group. In approving any loan application, the bank had to satisfy itself of the ability of the borrowing company to repay the loan and the security available (sometimes including a security backed guarantee from another Group Company). I have never provided any form of personal guarantee to a bank to secure an O'Flynn Group Loan.

Appendix 6 sets out collateral by institution, by type and value for all outstanding debt on 30/09/2008**.**

(vi) *Corporate Hospitality*

My senior management and I were from time to time invited to participate in corporate hospitality events run by our lenders as well as by our professional advisors and suppliers. These were generally run as dinners or sporting events including football, hurling and rugby games, golf and some horse racing meetings.

Sometimes these events were run as fundraisers for charitable organisations and while invited as a guest, one might be expected to support auctions or raffles run as part of the event for the benefit of a charity

We, in turn, also ran events from time to time to which those parties were invited as guests.

During all my years in business both in Ireland and internationally, such events are and have been commonplace.

(vii) Political Donations

Throughout my business life, I have been requested to provide donations or to attend at fundraising events for almost every political party and by independent politicians alike. I have rarely refused to make some contribution when requested.

My recollection is that it has been politicians or their associates that have approached me seeking a donation - not the other way around. I never proactively sought to make a donation to any politician or political party.

It is also important to note that, as part of our corporate social responsibility, we as a Group contributed widely to GAA, rugby, community groups, charity organisations as well as hospital and university fundraising and other deserving causes both in terms of financial contributions and application of skills and resources. A brief outline of some organisations and bodies with which I am personally associated is set out in **Appendix 7**. Our political donations would have been a fraction of the amounts contributed to the many worthy sponsorships and causes that we supported.

(viii) Lobbying

I am a member of two business organisations which participate in lobbying on behalf of the property and construction industries: Construction Industry Federation (CIF) and Property Industry Ireland (PII).

Like almost all construction companies and developers, the Group is a member of CIF and has been since May 1981. Any lobbying undertaken by that organisation was dealt with by other witnesses.

In the lead up to the establishment of NAMA, I was part of a subcommittee established to seek to engage with relevant parties on the draft NAMA legislation. The subcommittee participated in the public consultation process in relation to the establishment of NAMA and I have provided further information on that elsewhere in this statement.

PII was established in 2011. I am one of the founding members and Chairman of the Executive Committee.

PII aims to inform and shape the future of Ireland's property sector by acting as a 'think tank' to create a sustainable Irish property industry which is creative, responsive, competitive and well integrated in meeting the socio-economic needs of all the stakeholders in the built environment. Our pillar committees, populated by experts with significant local and international experience, drive the outputs of the organisation, many of which are published on its website.

4. THE ROLE OF NAMA

In 2009 NAMA was established by Government as a vehicle to acquire property related loans from Irish banks. It was vested with extraordinary powers. In exercising those powers, NAMA was required to have full regard to the legal rights of those who were to be affected by those powers. Regrettably, in my experience, this did not always happen.

NAMA wrongly took the view that borrowers had no right to make representations in relation to the acquisition of their loans. I had no opportunity to argue that my personal loans or the loans of many of the companies in the O'Flynn Group should not have been acquired. It is a matter of public record that my personal loans have been repaid in full. This is surely a vindication of the fact that, at no point did they constitute a systemic risk to the credit institutions of this State and I believe they should never have been acquired by NAMA.

(i) Flawed valuations

Under the original NAMA plan, four separate valuation methods were considered;

- The current market value of the property or other collateral underlying the loans.
- The long-term economic value (or real economic value) of the property or other collateral underlying the loans.
- The current market value of the transferred loan asset itself.
- The long-term economic value (or real economic value) of the loan asset itself.

Based on a combination of these valuation metrics, NAMA paid the banks almost 57% less than the par value of the loans. There were serious problems with the valuation methodology. Chief among these problems was that valuations were made in highly abstract circumstances i.e. where no transactions were taking place and where the credit market was not functioning normally. The balance sheets of the banks were decimated by the combination of the acquisition of performing and viable loans and the valuation methodology applied.

(ii) "Bad" bank

NAMA was originally conceived as a 'workout' vehicle rather than a 'bad bank', in the sense that it acquired performing loans as well as non-performing loans. This was a grave mistake.

When NAMA was originally conceived, a public consultation process was set up. As already stated, I was a member of the Construction Industry Federation (CIF) at that time and was involved in setting up a committee to respond to that public consultation process in a professional manner. Reports were commissioned by the CIF in relation to the legal and economic impacts of the proposal, at that time outlined in draft legislation.

The economic review of the NAMA proposal[2] was carried out for the CIF by Lombard Street Research (LSR), a macroeconomic consultancy based in London. Their general recommendations included the following;

- Establish political consensus before embarking on any action.
- Only shift bad loans to NAMA.
- Set up individual bad banks for each participating bank and/or let the originating bank administer the work-out under NAMA supervision.
- Actively encourage private participation.
- Set a clear exit strategy.
- Stimulus.
- Consideration of temporary nationalising failing banks.
- Putting failing banks into conservatorship.

The LSR report was provided to the NTMA and to Government. I have attached a copy of the Report. Unfortunately the LSR report appears to have been ignored and the opportunity to consider and develop some alternatives to or refinements of the original concept were lost.

In November 2010, a further LSR report[3] was commissioned by CIF. A summary of the mistakes which LSR believes were made by NAMA is included in their Report. That summary is included in **Appendix 8**. The report states;

[2] "A Report into the Irish Government's proposal for a National Asset Management Agency (NAMA) to deal with the Irish financial and banking crisis", Lombard Street Research, June 2nd 2009

"In these – and other – ways, NAMA, ostensibly intended to save the Irish banking sector, actually hastened its demise, along the way adding to the burden of the Irish taxpayer. To quote Mr. Michael Somers, former Head of the National Treasury Management Agency (NAMA's parent body) in 'The Irish Times' 20th of November 2010: "What an irony, what a mess!" (page 1)

I fully concur with the views of LSR. A full copy of the Report is attached.

LSR[4] warned in 2009 and 2010, that by taking over good loans as well as bad, NAMA would actually delay the banking sector's potential recovery. It removed income-earning loans from the banks and undermined further the quality of the balance sheet. Almost 7 years after the crisis commenced, the Irish banking system is starting to recover, but it is still in a challenging place and the economy is still not getting the flow of credit that it requires. This is a particular issue for the small and medium enterprise sector (SME). Arguably, if the banks had been allowed keep 'good' loans, the recovery of the banking sector would be much more advanced at this stage.

In Ireland, the approach to the property related loans held by the Irish banks was to take good and bad loans under the umbrella of NAMA. This resulted in a sharp decline in the market and serious difficulties for the banking sector. By contrast, the "bad bank" model has worked successfully and quickly elsewhere. I have in mind the Swedish Securum and the American Resolution Trust Corp, in particular. An analogous "bad loan" approach was taken in the UK through the UK Asset Protection Scheme (APS), a Government bad asset insurance scheme, again with success.

The differing performances of the commercial property markets in the UK and Ireland are instructive:

- In Ireland the commercial property market declined by 59.6% between the end of 2007 and the third quarter of 2011. It has subsequently recovered by 51.5%.
- In the UK the market declined by 34.5% between September 2007 and June 2009. It has subsequently recovered by 94.5%.

Much of the debate around NAMA has come to be dominated by its profitability as a gauge of its success. This should not be the case. By paying low prices for assets, and by taking good loans as well as bad, it was always likely that the entity would generate a profit. However, this profit has been achieved at the cost of an earlier recovery in the banking system, and serious damage to all developers who had loans acquired. It also ignores the huge hidden cost of fees which are not included on NAMA's balance sheets but, instead, added to the account of the borrower.

NAMA failed to distinguish between professional developers who had a solid business model and who were professional in their approach, and amateur developers who did not

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[3] "NAMA one year later- A Lombard Street Research Report for the CIF", Lombard Street Research, November 2010

[4] "NAMA one year later- A Lombard Street Research Report for the CIF", Lombard Street Research, November 2010

have the ability or expertise to deliver sustainable development. Treating all developers in the same way was unfair, was not good for the industry and is now generating serious problems. Ireland simply does not have enough professional developers to satisfy the construction-related requirements of an economy that is now in a cyclical recovery.

(iii) NAMA and the Housing Crisis

The residential property market is the most obvious problem area at the moment. There is considerable pent-up demand after some years of stagnation, and there is not enough supply to meet that demand.

The current housing crisis has arisen in a period when NAMA has controlled significant portions of the property market in Ireland. This crisis is due, in part, to the fact that NAMA lacks the knowledge and experience to make decisions, which would impact upon that market.

By way of illustration, I was bemused to read an explanation given by Mr. Brendan McDonagh, CEO of NAMA to a conference of CIF on 1 October 2014 in relation to NAMA's refusal to fund planning applications in the early years of the recession. Mr. McDonagh sought to justify NAMA's failure to anticipate the market on the basis of "*market conditions which prevailed at the time decisions were made"*.

I would respectfully suggest that NAMA failed to understand the lead in time required for planning, development and to anticipate the market. It is somewhat ironic that an agency so critical of the developers who responded to the buoyant market in the period from 2001- 2007, without anticipating a collapse in future demand, should itself defend the making of decisions based on prevailing conditions and fail to plan for what I would respectfully submit was a very foreseeable shortfall in supply.

Experienced developers such as the O'Flynn Group warned NAMA about lead in times for planning and construction and urged NAMA to permit use of funds for planning applications. I can say with confidence that had NAMA agreed to implement even part of the business plans of some of its borrowers, Ireland would not have the current housing crisis.

As well as the housing crisis, there is also an imminent and very real issue with suitable commercial and office space in general, and a particular problem in ensuring that there is suitable accommodation for multi-national companies investing in Ireland.

The present crisis in supply is testament to NAMA's high handed failure to engage with borrowers in relation to the original business plans submitted and a lack of willingness to have any regard to the views of borrowers, many of whom had far greater experience of the market, the planning process and the development business than the some of the most experienced property personnel in NAMA.

The national policy imperative should be aimed at measures to re-establish a functioning property market where there is an adequate supply of suitable affordable residential properties for both rental and owner-occupier demand.

If the Irish economy is to achieve and expand its growth potential over time, a supply of residential and commercial property will be required. It does not exist at the moment, not least because the professional developer class has been dealt a serious blow by the manner in which it was treated by NAMA since its inception (see part 5 below).

To solve the construction requirements now and in the future, it will be necessary to re-build a sector that has been decimated and stripped of a vital skills base. In this context, I believe that the objectives contained in *Construction 2020 (copy attached)* must be followed through.

(iv) Oversight

In addition to permitting the Oireachtas Public Accounts Committee to require the Chairman and CEO of NAMA to appear before it and answer questions, the NAMA Act also envisaged the establishment of a special Committee or sub-committee of the Oireachtas to examine matters in relation to NAMA. No such committee was ever established. Such a committee could and should have provided a forum where concerns in relation to mistakes being made by NAMA could be raised and investigated. Having created an agency with extraordinary powers to achieve an outcome so important to the State, I find it remarkable that the Oireachtas then failed to properly oversee the agency it created.

5. EXPERIENCE OF OPERATION OF NAMA

(i) Acquisition of Group and personal loans by NAMA, without fair procedures

In early 2010 NAMA began to acquire loans from Participating Institutions. All of the O'Flynn Group loans with Participating Institutions were transferred. They were acquired as part of "Tranche 1," which included the 10 largest borrowers.

Notably, at the same time, the personal loans of myself and my brother John were acquired. As we had never provided any form of personal guarantee for the loans of the O'Flynn Group, there was no link between our personal loans and those of the O'Flynn Group.

Our personal loans were of an amount and type which presented no risk to the banks with which we dealt. They certainly did not merit inclusion in Tranche 1 as they were valued at a tiny fraction of the value of every other portfolio acquired as Tranche 1. No explanation has ever been provided as to why our loans were acquired, let alone why they were acquired in Tranche 1.

On 18 November 2010, Mr. Brendan McDonagh appeared before the Public Accounts Committee (PAC). In response to a question as to the percentage of the Tranche 1 loans which were covered by personal guarantee, Mr. McDonagh responded;

"*The personal guarantees were offered at borrower level and <u>every single one of the borrowers in tranche one had offered some form of personal guarantee</u>. They are underpinned by personal guarantees because they would have given personal guarantees to the banks and we would have acquired the loans with the personal guarantees."(emphasis added)*

I wish to point out that this statement is factually incorrect in so far as it relates to the O'Flynn Group. In so far as it was used to justify the acquisition of our personal loans and their inclusion in Tranche 1, it was wrong and unfair and, I believe, was not what was intended by the establishment of NAMA. At no time was there any personal guarantee of any nature underlying the loans of the O'Flynn Group and Mr. McDonagh must have been aware of this. The public perception created that John and I had personal guarantees for the O'Flynn Group loans was extremely damaging for us reputationally and personally. Following this statement to the PAC, I wrote to Mr. McDonagh and to the Chair of the PAC to seek to have the record corrected but no attempt was ever made to do this.

Unfortunately, NAMA was not subject to any oversight whatsoever in relation to the exercise of the extraordinary powers vested in it. When the right of a borrower to make representations in relation to the acquisition of loans was ultimately raised in the case of *Dellway Investments and Others v NAMA and Others, [2011] IESC 4*, the Supreme Court strongly disagreed with NAMA's view that borrowers had no right to be consulted or make representations in relation to the acquisition of their loans. The Supreme Court was highly critical of NAMA's modus operandi and acknowledged the reputational damage associated by having loans acquired by NAMA. See **Appendix 9**.

(ii) Rejection of business plans without reason

Upon acquisition of loans, each borrower was required to submit a business plan to NAMA. Most applied enormous amounts of scarce resources to the preparation of that plan, engaging accounting, consultancy and legal firms to advise and assist. Substantial sums of money which could have been used for debt reduction were applied to prepare these plans

In April 2010, the O'Flynn Group submitted a very detailed and professional business plan to NAMA. This plan outlined the diversified nature of the business and the presence of significant income generating assets in the portfolio as well as the potential to attract equity partners. At the time these assets were generating an annual rental income of €72.5 million, with debt of €815 million attaching.

The directors of the O'Flynn Group believed that the business plan offered a realistic timeframe to allow the Group to operate a successful recovery strategy. It set out key actions which would result in full debt repayment over time. As required by NAMA, we engaged fully with an external international firm of accountants appointed by NAMA to conduct a review of our plan and the feedback we received from them was very positive. We had anticipated engagement between ourselves and that firm and NAMA to discuss our Business plan and had anticipated some requests from NAMA to adapt it to meet some specific requirements they may have required.

Instead, NAMA rejected our business plan which extended to over 2,000 pages without explanation or discussion. To this day, we have not been privy to the report provided to NAMA by the External Reviewer appointed to the O'Flynn Group.

I have spoken to very many borrowers and I am not aware of any borrower whose business plan was accepted by NAMA. NAMA adopted a "one size fits all approach" towards all borrowers despite vast differences between the businesses and experience of each borrower. The only certain outcome from a full implementation of NAMA's work out plan was that, at the end of the implementation, the borrower would be left with no assets and no business irrespective of whether a different plan would have yielded a better financial return for the State.

NAMA itself has acknowledged the significantly lower cost of having a property portfolio managed by the developer than the comparative cost of having the same portfolio managed by a receiver. However, in many instances, business plan reviews were carried out by firms which were potentially conflicted as they also provided receivership services to NAMA.

In theory a borrower could decline the NAMA plan. In practice, to do so would have led to catastrophic consequences and borrowers had no real option but to implement the NAMA plan notwithstanding their own views as to the commercial sense or reason behind it.

(iii) Refusal to allow partial refinancing, joint ventures or any other means of attracting outside equity.

Even at the deepest point in our economic crisis, the O'Flynn Group and other borrowers of scale were capable of attracting equity partners and joint venture partners. These parties had the ability to invest significant cash and we had the assets and the resources to utilise that investment to achieve profits. Those profits would have been available to service and repay debt to NAMA. NAMA, however, closed its mind to any such proposal and insisted on all assets and all ventures being controlled by NAMA.

It would appear that little regard was had to the impact that NAMA's "work-out" policy would have on the ability of the borrower to generate a profit and consequently the impact on the loans of other lenders.

(iv) The myth that NAMA constituted a bailout for developers

It is a myth that NAMA constituted a bail out for developers. Any party whose loans were acquired by NAMA continued to owe par debt. The fact that NAMA paid the bank less than the par debt for the acquisition of the loan did not alter this.

I know I speak for many developers who for one reason or another cannot speak for themselves when I say that, in my experience, there was an unpublished objective of NAMA to demonise and destroy developers of scale and this, at times, was allowed to overshadow their statutory obligation to achieve the best financial return for the State.

For example, on 13 January 2011, in speaking to the Public Accounts Committee, Mr. Frank Daly said;

"*Everybody would like to go in, close these people down and deal with them….*"

On 9 September 2011 in Mr. Daly told[5] the Joint Committee on Finance, Public Expenditure and Reform;

"I do not like working with the people concerned any more than the deputy or anyone else….. I would love to be able to tell him that we could walk away from all 850 developers, throw them out and get someone else to run these businesses,"

I believe that it is inexcusable that comments evidencing such gross and general prejudice against developers should be made by the Chairman of a public authority vested with powers which effectively permitted them to adjudicate upon those same developers. It is also deeply concerning that politicians and others tolerated and sometimes cheered on such prejudice. Senior politicians referred to "NAMA- type developers".

Disparaging comments made by senior NAMA personnel, politicians and others placed NAMA borrowers at a significant competitive disadvantage. Other developers who had opted to deal with non-Irish banks or whose loans were not acquired openly and deliberately advertised themselves as "Non-NAMA developers".

The only arm of the State which demonstrated a willingness to uphold the rule of law in relation to the rights of individual NAMA borrowers was the Judiciary.

In a time of severe recession, despite having had Constitutionally protected property rights compromised by the extraordinary powers given to NAMA[6]and being subjected to bias, prejudice and competitive disadvantage, developers such as the O'Flynn Group were still required to pay our loans in full.

A significant portion of the Group's portfolio was located overseas where markets have fully or almost fully recovered. Our business plan would, in fact, have seen our entire debt repaid over time but NAMA made no attempt whatsoever to engage with us on the plan they requested us to prepare. Instead we were required to implement a business plan designed by NAMA which offered no prospect of making full repayment.

My personal loans have been repaid in full. The loans of the O'Flynn Group were sold for a sum undisclosed to me but reported to be in the region of €1.1Bn. In addition to this, the O'Flynn Group had rental income of approximately €300m whilst in NAMA.

[5] Page 18 of the transcript of the meeting of the Joint Committee on Finance, Public Expenditure and Reform 9 September 2011.
[6] Dellway & Others v NAMA & Others [2011] IESC, 4.

I firmly believe that the gap between the par debt and the amount received by NAMA need not have arisen had a less prejudicial and more commercial approach been taken in relation to us.

Overall I believe the establishment of NAMA and the way in which it operates has actually delayed and hampered the return to economic growth in Ireland.

(v) Personal experience of NAMA

Most NAMA borrowers are prevented from speaking frankly of their personal experiences within NAMA either because their loans are still controlled by NAMA or because they are subject to confidentiality arrangements.

NAMA encouraged borrowers to cooperate and insisted that they would treat borrowers with respect. NAMA did not always do this, as evidenced by the Supreme Court's references to NAMA's conduct as "deliberate concealment", "opaque", "furtive" and "parted… from reality".

I wish to put on the public record that I have at no stage sought to put any assets beyond the reach of NAMA or any other creditor. Despite cooperating fully, overall I believe that the O'Flynn Group was treated very badly by NAMA.

I have encountered some very decent, professional and fair minded people who worked in NAMA. However, I have also had some very poor experiences. The only oversight a borrower can seek in NAMA is to seek Judicial Review of decisions made by NAMA. Not only does the expense of such application put it beyond the reach of most borrowers but any such application is certain to be regarded by NAMA as "uncooperative" and therefore in real terms, would be the end of that borrower in NAMA.

Some of my personal experiences are related in **Appendix 10**.

(vi) So-called "S172 policy"

A public authority is required by law not to make decisions based upon political considerations. NAMA, however, operated a policy wrongly entitled "section 172 policy" which decimated many borrowers and which I believe has cost the State significant sums of money.

Section 172 of the NAMA Act prevents the sale by NAMA of assets owned by NAMA (loans) only to borrowers who are in default. My personal loans and the loans of the O'Flynn Group were restructured in Feb 2013. In 2013 and 2014 they were fully performing. Despite this, when NAMA ultimately decided to sell the O'Flynn Group loans, they refused to allow the Group to have any proper commercial discussions with potential bidders. If any bidder had an association with us, even if the result would have been a higher bid and a better return for the State, they were to be excluded automatically. There is no sound commercial basis for such a policy and it is one which may well have led to financial losses for the State. Instead of a borrower being involved, even to a limited degree in the development of an asset and subsequent uplift in value resulting in profit available for debt repayment, it was preferred to allow all of that uplift go to off shore funds. NAMA's so-called "s172 policy" which, in fact, is not found in s172 at all is, in my view, based upon a political agenda to prevent the developer community from participating in the resurgence of this economy and is one which, if legally challenged, I believe would be deemed to be unconstitutional.

In written responses to the Joint Oireachtas Finance Committee[7], NAMA mentioned restrictions on disposals as being partially responsible for the lower rate of return achieved by NAMA relative to equity funds. In my experience, most of the restrictions were imposed by NAMA itself, often by an insistence on applying the so-called s172 policy to circumstances where s172 did not apply at all.

The difficulties we experienced last year following the sale of our loans were, I believe, as a direct result of the operation of this policy. It makes no sense that a business of the scale of ours whose loans are to be acquired by a third party is not permitted to have comprehensive discussions and clear understandings as to what each expects of the other. That said, I am pleased to say that the difficulties between Blackstone and the O'Flynn Group have been resolved and we are now working well with them.

8. CONCLUSIONS AND THE FUTURE

The O'Flynn Group, like many other property development companies in Ireland, was impacted very negatively by the banking crisis and by the wholesale acquisition of Group and personal loans by NAMA. The Group believes that it was a mistake to take all of its loans into NAMA, regardless of their quality. Given time, we would have worked through our loan portfolio, which would have resulted in a much better outcome for the O'Flynn Group itself, for the Irish taxpayer, for the Irish banks and the economy in general. NAMA failed to distinguish between good loans and bad loans, and between professional developers and amateur developers. I have argued this consistently since NAMA was set up and I passionately believe that the outcome could have been much better for all if a different approach had been adopted.

The O'Flynn Group co-operated fully in all of its dealings with NAMA, but there was no consultation with the developer when the loans were acquired; a strong business plan was rejected without explanation; and there was a leakage of very sensitive information into the public domain.

In a presentation to the Department of Finance in April 2009 (see **Appendix 11**), I argued that the NAMA initiative could take too long; that working capital funding for the property market could dry up; that property prices could collapse across all sectors; that property production could cease across all categories as prices would be well below replacement cost; and that the system would lack an inherent incentive for any of the

[7] NAMA responses to Joint Oireachtas Finance Committee Questionnaire dated 17 October 2014.

players in the property market, particularly banks and developers. The consequences of these risks were identified as an industry going bankrupt; larger losses for the taxpayer; severe fiscal consequences; massive job losses, particularly at contracting and professional firms; and the process would lose skill and capital. In summary, we correctly predicted that the overall loss would be larger than it should be; that taxpayers' exposure would be heightened; borrowers would go bankrupt; and the banks would be less healthy than they could be.

Development always requires skill and judgment to be done well at a significant scale; it is always capital intensive; and it is always a risky undertaking. It is essential that a professional developer class is re-established to ensure that Ireland's future construction needs are satisfied to meet the requirements of a modern growing economy. Part of the re-establishment of a professional development model will have to entail less reliance on bank finance and a greater dependence on a different funding model where the capital comes from professional investors rather than banks.

The property market is cyclical. The Group and its various companies have been through a number of peaks and troughs but adapted to meet circumstances and to continue in business.

It is easy in the current climate to forget the positive contribution made by the construction sector to the economy. The construction industry contributed €50bn to the Irish exchequer between 2000 and 2007. A functioning construction sector with properly managed, experienced companies is essential in every economy. Ireland is no exception.

Michael O' Flynn
30th June 2015.

APPENDICES TO THE STATEMENT OF MICHAEL O' FLYNN TO THE BANKING INQUIRY.

SECTION 1

This information is provided to assist the Inquiry.

Contents

APPENDIX 1

Examples of O'Flynn Group Developments:

1) MOUNT OVAL

Mount Oval Village is a prime residential development in the heart of Rochestown on the outskirts of Cork City and is in close proximity to Douglas Village, Mahon Point Shopping Centre and Retail Park, the City's main ring road system and is less than a 10 minutes' drive from the city centre. Acquired in 1998, Mount Oval is a 110 acre mixed use development with 875 residential units around a Village Square. The Village Square includes a Convenience store, Video Library, Beauticians, Doctors Surgery, Pharmacy, Crèche, Dry Cleaners, Pub & Restaurant.

MOUNT OVAL, ROCHESTOWN, CO. CORK.

2) ELYSIAN

The Elysian is a 3 acre development with a 17 storey landmark tower adjacent to City Hall, Lapps Quay, and South Mall the main business Quarter for Cork City.

The development signifies the beginning of Cork City Council's Docklands Development which is a key plank for the city's development over the coming years.

Its location adjacent to Cork City Hall and the terminus of the South Link Road which is the main entrance to the city from the South off the Ring Road System further enhances this unique development. The scheme includes a 17 storey tower at the southwest corner of the site with 5/6 storey residential blocks on the perimeter surrounding a central elevated courtyard with one acre of landscaped gardens. There are a total of 211 apartments in this scheme, consisting of a mix of one, two and three bedroom units as well as penthouses. The residential units are served by 11 individual lift/stair cores providing access from private car parking at basement level to each residential floor level. There is also private car-parking at basement level. At street level the development has a mix of office and retail space extending to 60,000 sq.ft. Car parking for both the office and retail segments is independently accessed off Eglinton Street.

THE ELYSIAN, CORK CITY.

3) BALLINCOLLIG

Ballincollig Town Centre is a 90 acre urban development in a prime location on the site of the former Murphy Army Barracks, which was acquired from the State in 2003. The town is regarded as a major employment area and is one of the fastest growing satellite towns in the country. While the current residential population exceeds 17,000 people, dramatic future growth in both the residential, commercial and working population is anticipated.

Featuring a 175,000 square foot Shopping Centre, 35 external Retail Units, over 1,000 Car Spaces –surface, deck and multi-storey, Town Centre Retailing with showrooms, restaurants and pubs, Town Centre Apartments nestling in private courtyards, Own Door Offices and Modern Business Units, Tourism Retail Centre, separate Office Campus, Mixed Residential Development of detached, semi-detached and village style homes as well as apartments and duplex units providing in excess of 1.5 million square feet of development.

In view of the success of the existing Office Campus, planning has been granted for 250,000 square feet of modern offices (Phase 2 offices). The Master Plan for the Phase 2 Retail area includes an extension of 45,000 square feet to the Shopping Centre which has full planning permission. We have completed a 70,000 sq.ft. Store for TESCO which opened in October 2014 and which delivers critical mass from a retail perspective.

4) EASTGATE

Eastgate is located at Little Island, adjacent to the N25 Cork/Waterford and N8 Cork/Dublin primary routes, 1.5km east of the Jack Lynch Tunnel and the City's main ring road system and is less than 10 minutes from the city centre. Eastgate is very accessible to Cork International Airport and Little Island train station which forms part of the extended rail connection from Midleton through Cork to Mallow and Dublin.

The overall development extends to 120 acres and consists of a mixed Retail and Business Park which is now substantially completed. When completed, the development will extend to in excess of 1.1 million sq.ft.

EASTGATE, LITTLE ISLAND CO. CORK.

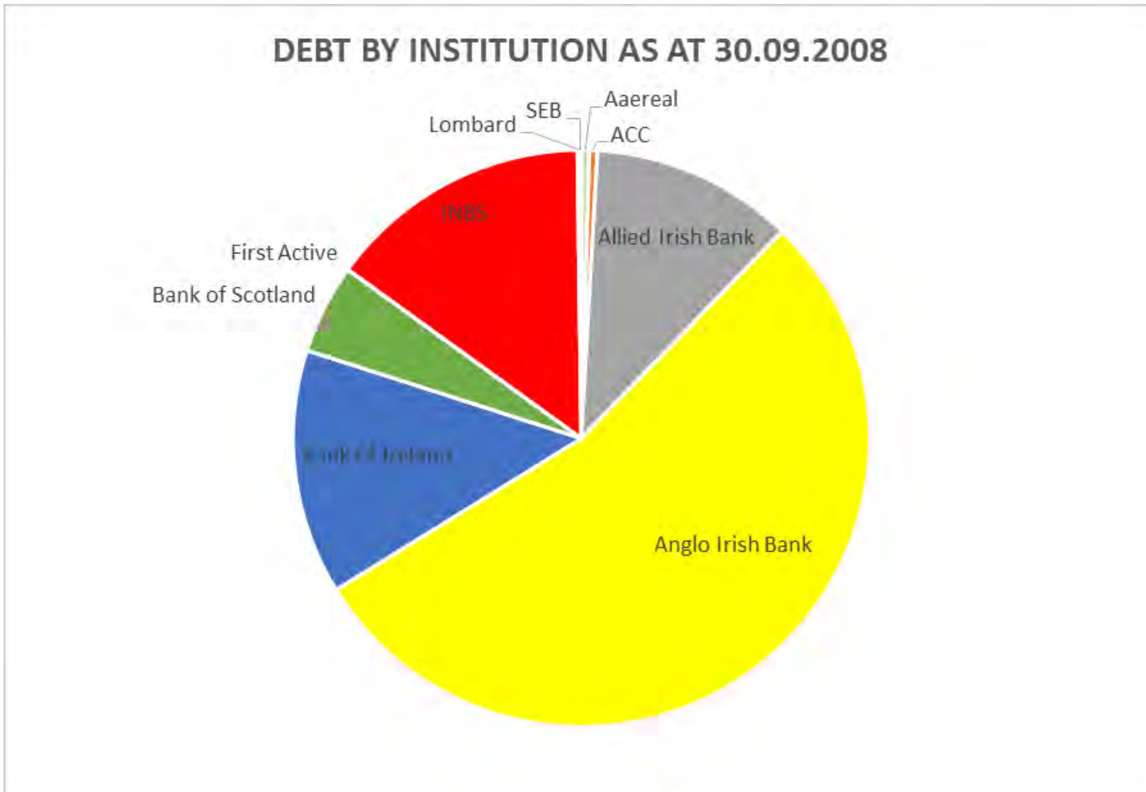
5) STUDENT ACCOMMODATION

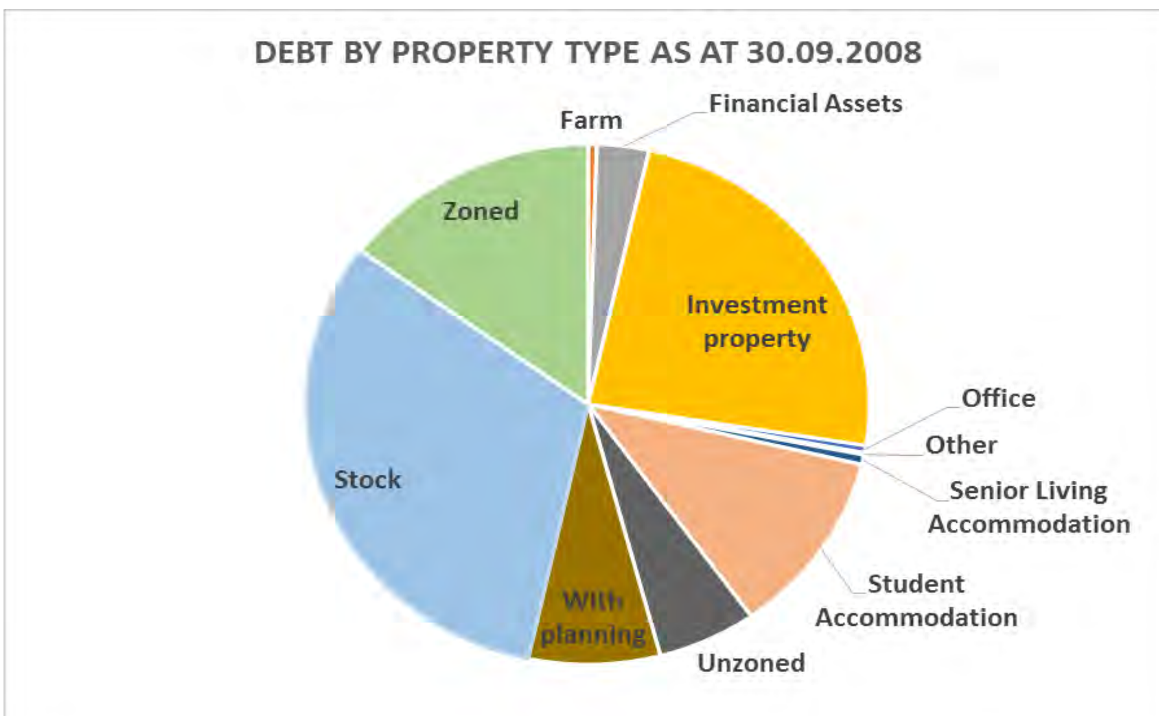
Victoria Hall is one of the UK's leading providers of quality student accommodation. It has also established itself in Germany and Spain. The company is unique in that it develops, owns and operates large student schemes which function both independently and in partnership with universities. Victoria Hall works with local planners, architects and professional design teams to provide the optimum design solution for the locality. It ultimately becomes a respected part of the community and gains acceptance as a valued service provider with a long term investment in that community.

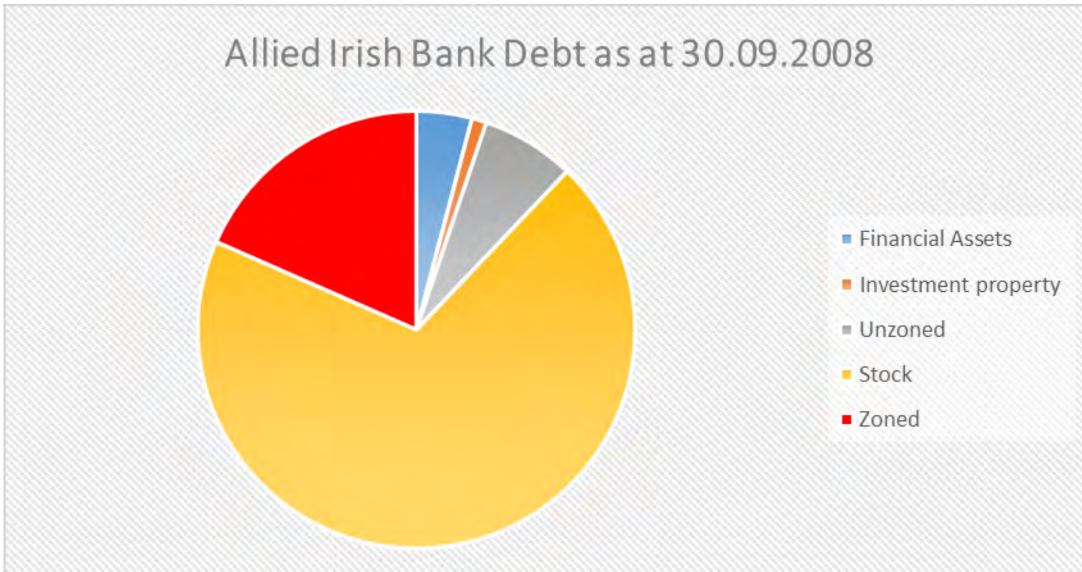
VICTORIA HALL STUDENT ACCOMMODATION,

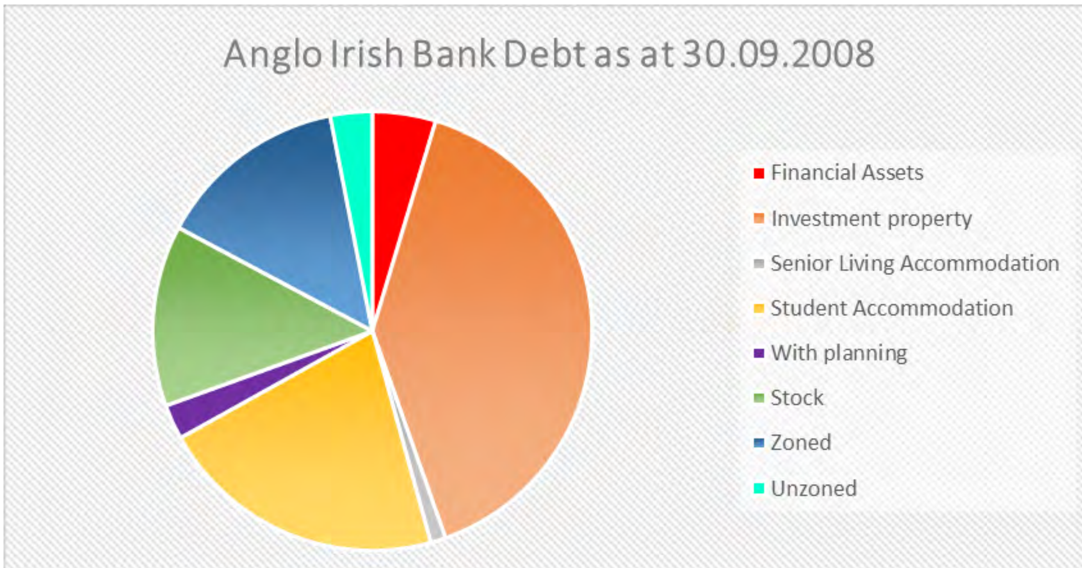
APPENDIX 2

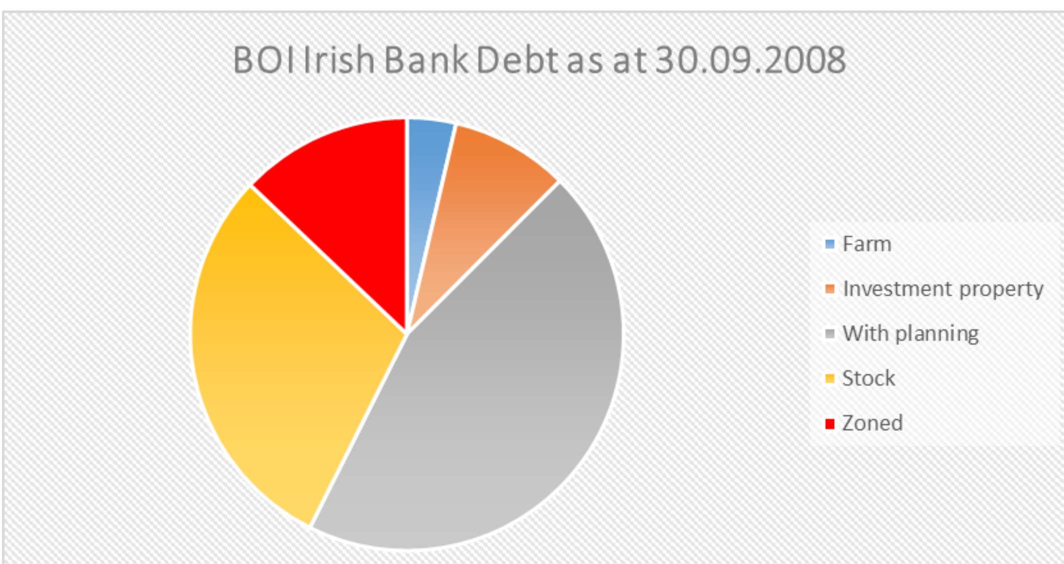
Appendix 2 provides an outline of total outstanding debt by property type (unzoned land, zoned land, residential, commercial specifying type) and by financial institution on 30/09/2008:

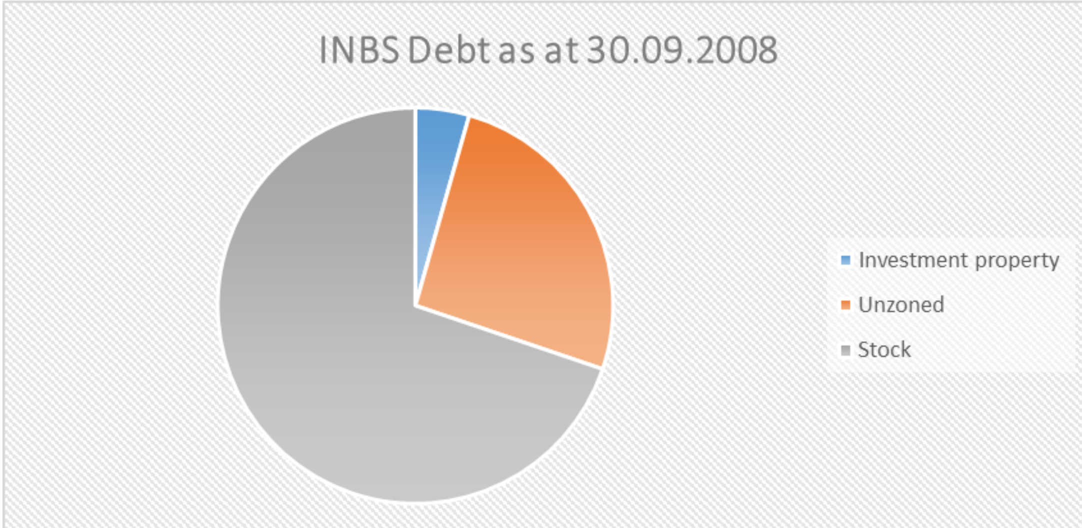


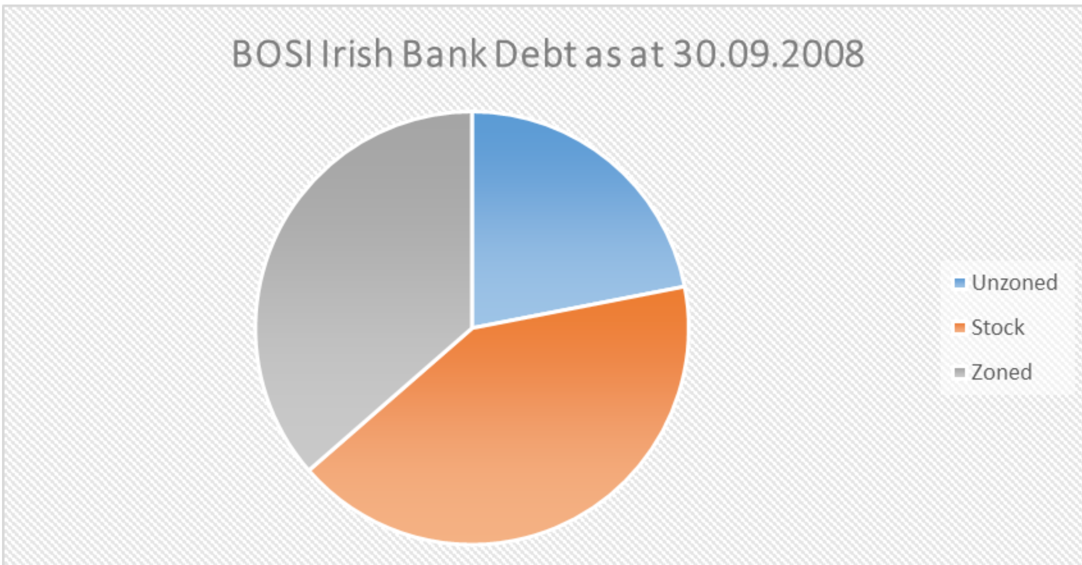


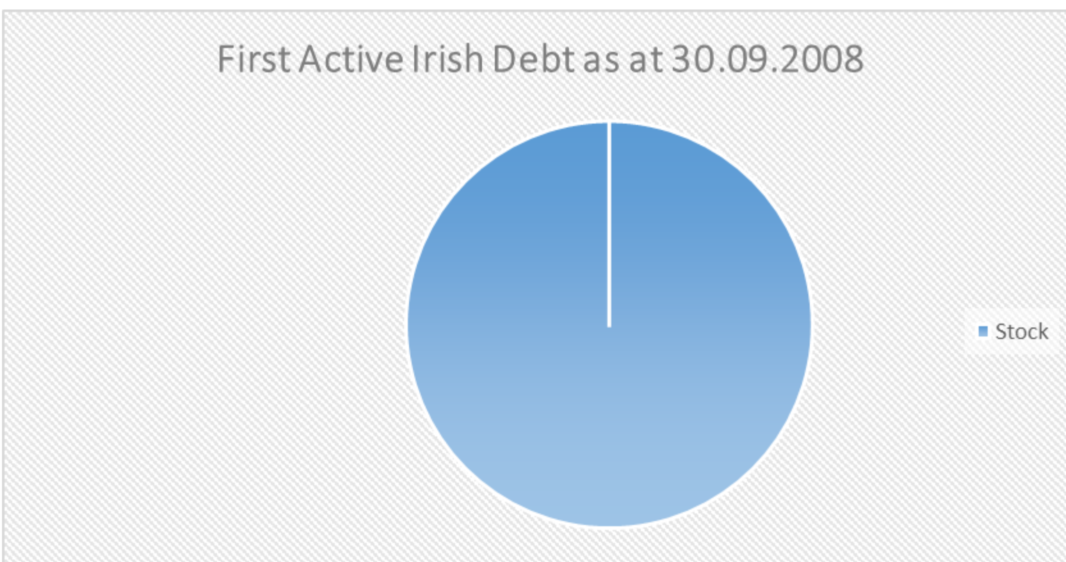

Allied Irish Bank Debt as at 30.09.2008
Financial Assets
Investment property
Unzoned
Stock
Zoned

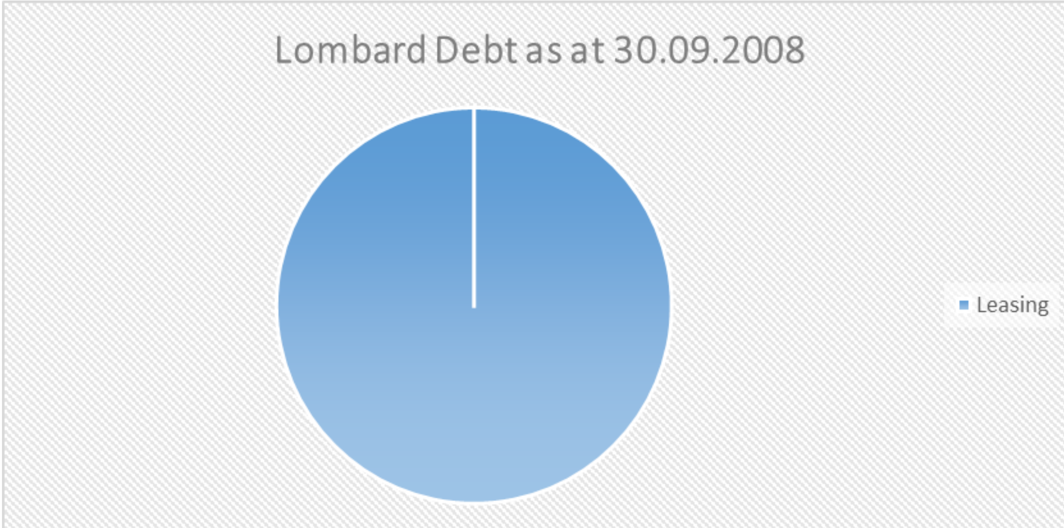

Anglo Irish Bank Debt as at 30.09.2008
Financial Assets
Investment property
Senior Living Accommodation
Student Accommodation
With planning
Stock
Zoned
Unzoned

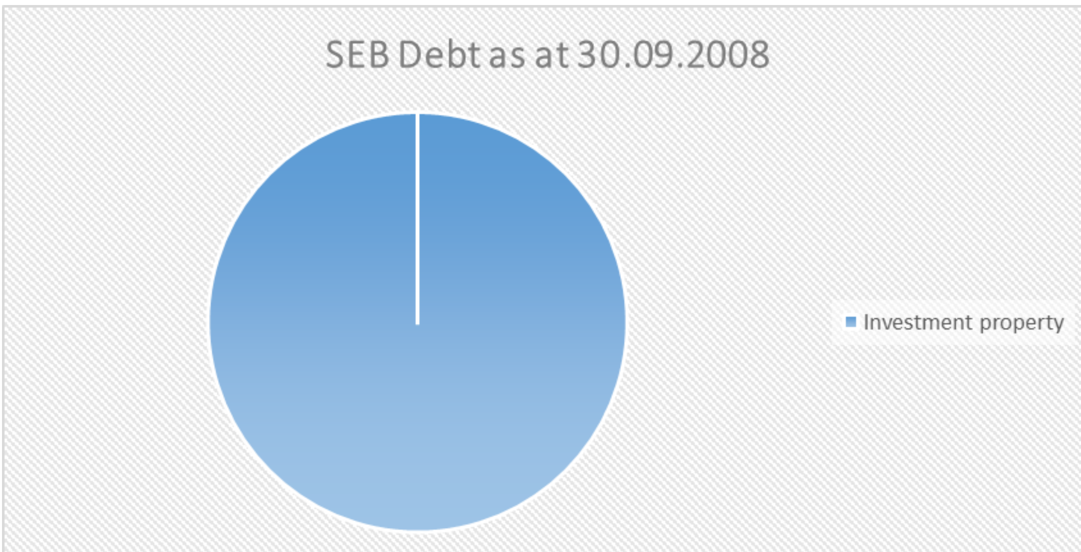

BOI Irish Bank Debt as at 30.09.2008
Farm
Investment property
With planning
Stock
Zoned

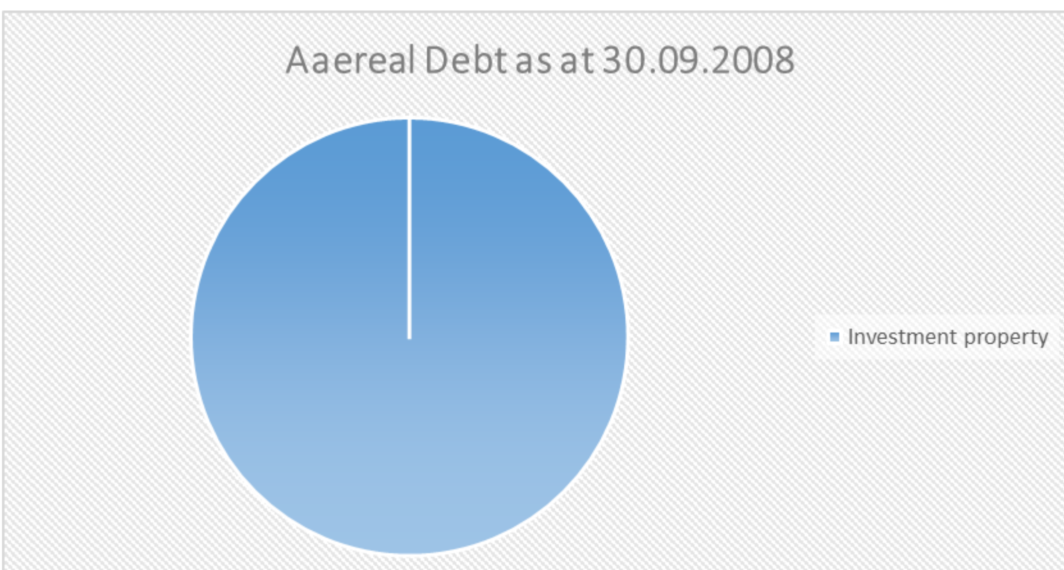

INBS Debt as at 30.09.2008
Investment property
Unzoned
Stock

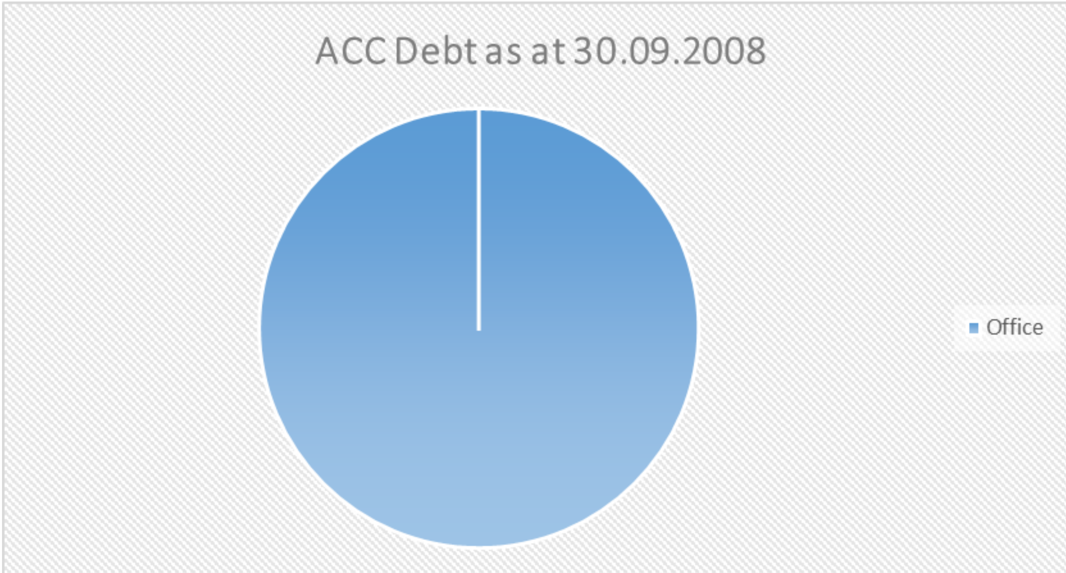

BOSI Irish Bank Debt as at 30.09.2008
Unzoned
Stock
Zoned


First Active Irish Debt as at 30.09.2008
Stock


Lombard Debt as at 30.09.2008
Leasing

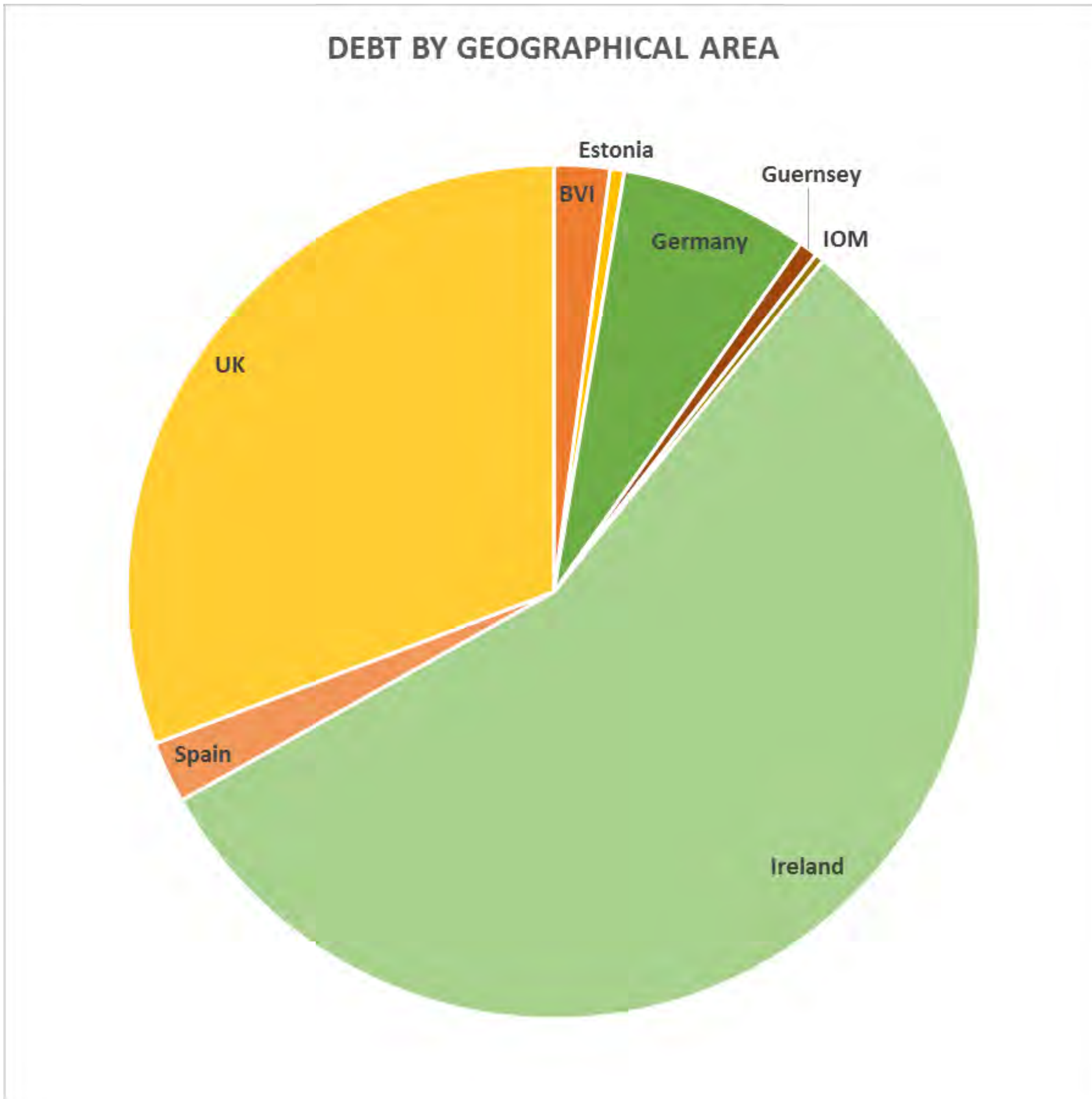

SEB Debt as at 30.09.2008
Investment property


Aaereal Debt as at 30.09.2008
Investment property


ACC Debt as at 30.09.2008
Office

APPENDIX 3

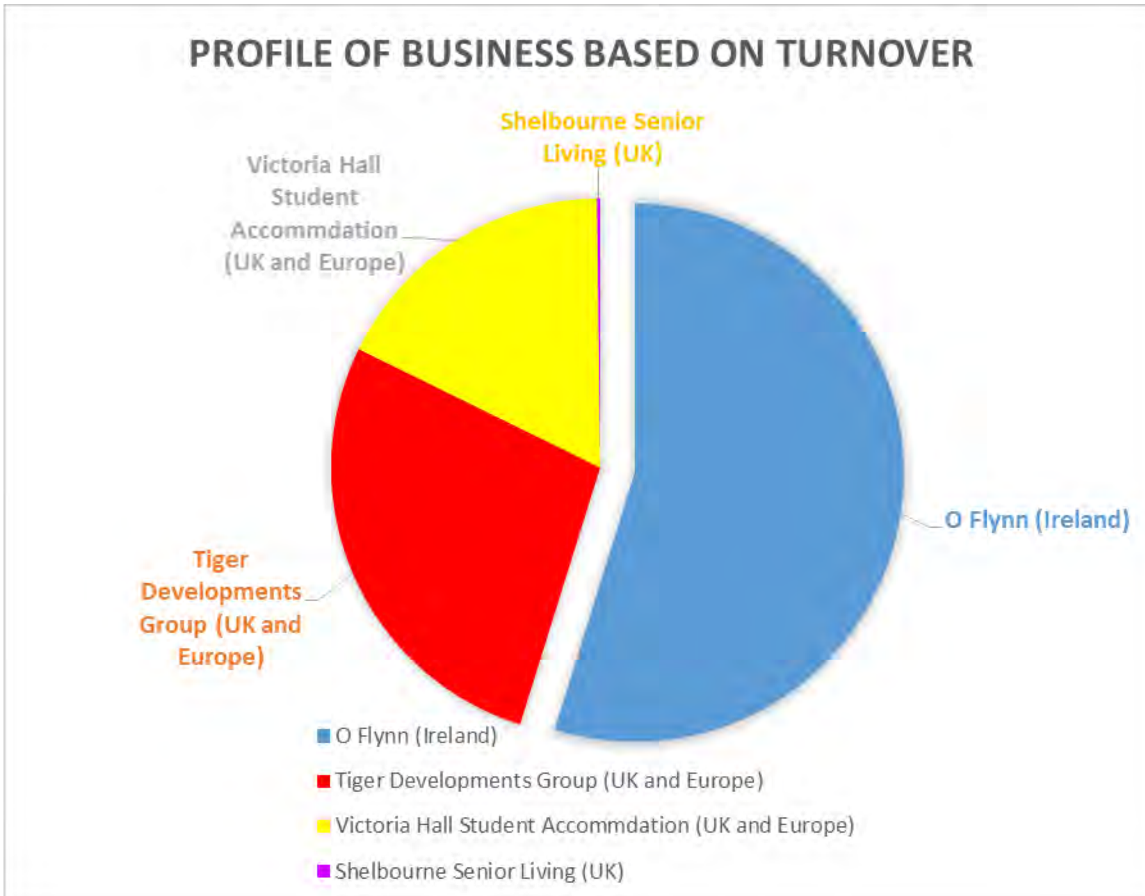
Appendix 3 profiles the total outstanding debt by geographic area, including Republic of Ireland, U.K., Germany, Spain, BVI, IOM, Guernsey and Estonia on 30/09/2008:



APPENDIX 4

Part 1

Pie Chart showing proportion of turnover for each business unit:



Part 2

Detail of the valuation methods and firms used to determine the current market value of land and property in your portfolio (2001-2008)

Valuations were carried out annually on all of our assets and were subject to audit.

Investment property valuations were carried out as follows:

- All student accommodation valuations were carried out by an independent third party valuer (DTZ) based upon a yield which the market was providing at the relevant date. Annual valuations were submitted to the Bank as required under the relevant Facility Agreements.
- All Tiger UK valuations were carried out by an independent third party valuer (Colliers).
- All German valuations were carried out by an independent third party valuer (DTZ)
- O'Flynn Construction Irish assets were valued by an independent third party valuer (generally DTZ Sherry FitzGerald).

Part of the overall portfolio was valued by means of Directors valuations and this arose typically if;

- The relevant property was on the market.
- The relevant asset comprised an operating business.

Part 3

If a residential developer, detail of the cost apportionment of different house types, outlining the cost of the land, the cost of servicing the land, construction costs, finance costs, and profits on sale (2001-2008). How did this cost apportionment develop for subsequent phases of development on the same site?

Appraisals were prepared for each site based on the purchase price of the site. For the residential schemes the land cost was apportioned over the number of units in the scheme. The cost allocated to each unit depended on the size of the unit. In our accounts the land cost was accounted for once the sale closed. The appraisals also took account of the cost of servicing the land per individual house in the scheme. The interest cost for holding land/stock was accounted for on an annual basis.

In respect of the construction costs our external Quantity Surveyors prepared detailed cost reports for each unit type and the overall site development works. These cost reports were used for the appraisals and were also used as the basis for calculating our work in progress figures in the accounts. These also allowed us to compare our actual costs v our budget costs. The external reports were updated on a regular basis.

In the accounts the Finance Costs were charged to each development. The appraisals included these costs at an individual unit level. Profit was taken for the sale of units in the accounts once the sale closed. Overhead costs were then deducted from these profits. Our appraisals had a fixed overhead charge for each unit. This varied depending on the number of units in a scheme.

The same principal as above applied to subsequent phases of the same site although the following variations would be done:

- A site replacement cost would have been included in the appraisals.
- Updated construction cost reports would be done.
- A higher finance cost would be included in the appraisals as obviously there was a longer carrying cost of the loan.

Whilst sales prices increased during this period so did the cost of replacement land for development and profits were recycled in this way to ensure a pipeline.

A typical development appraisal is set out in Section 2 Appendix C4.

APPENDIX 5

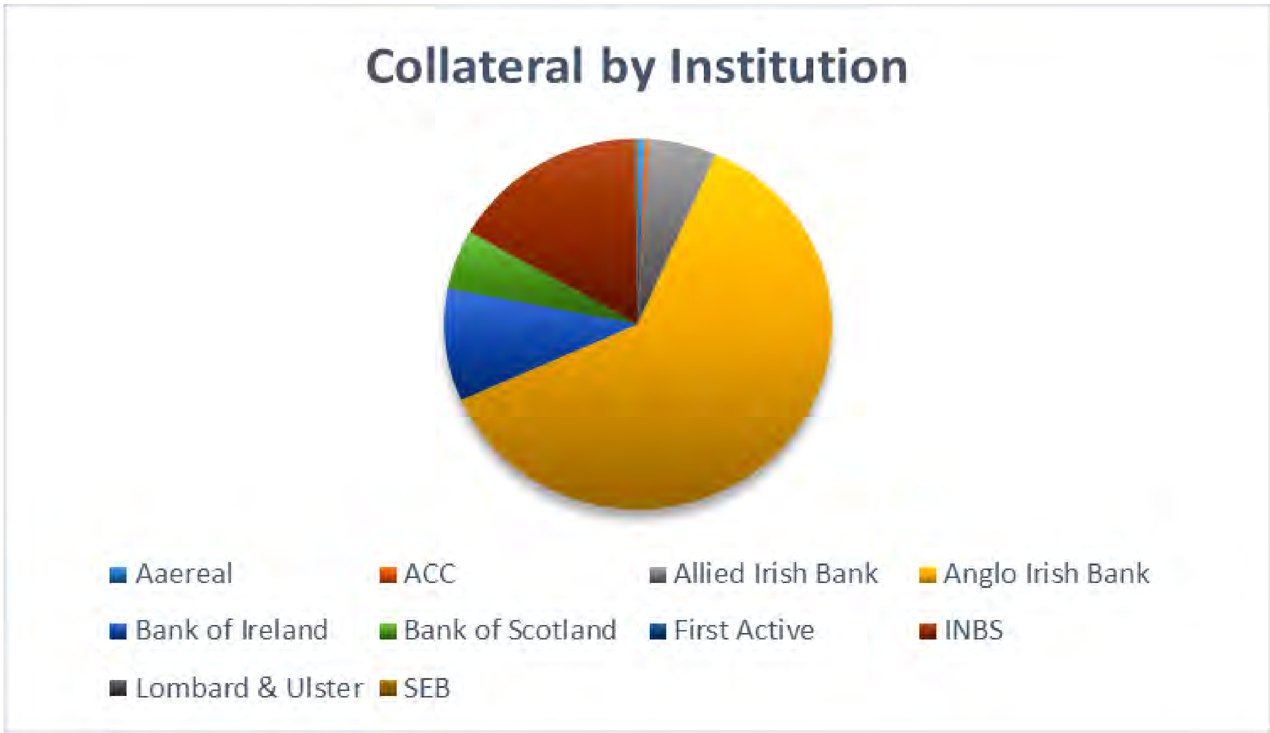
Typical Loan Conditions:

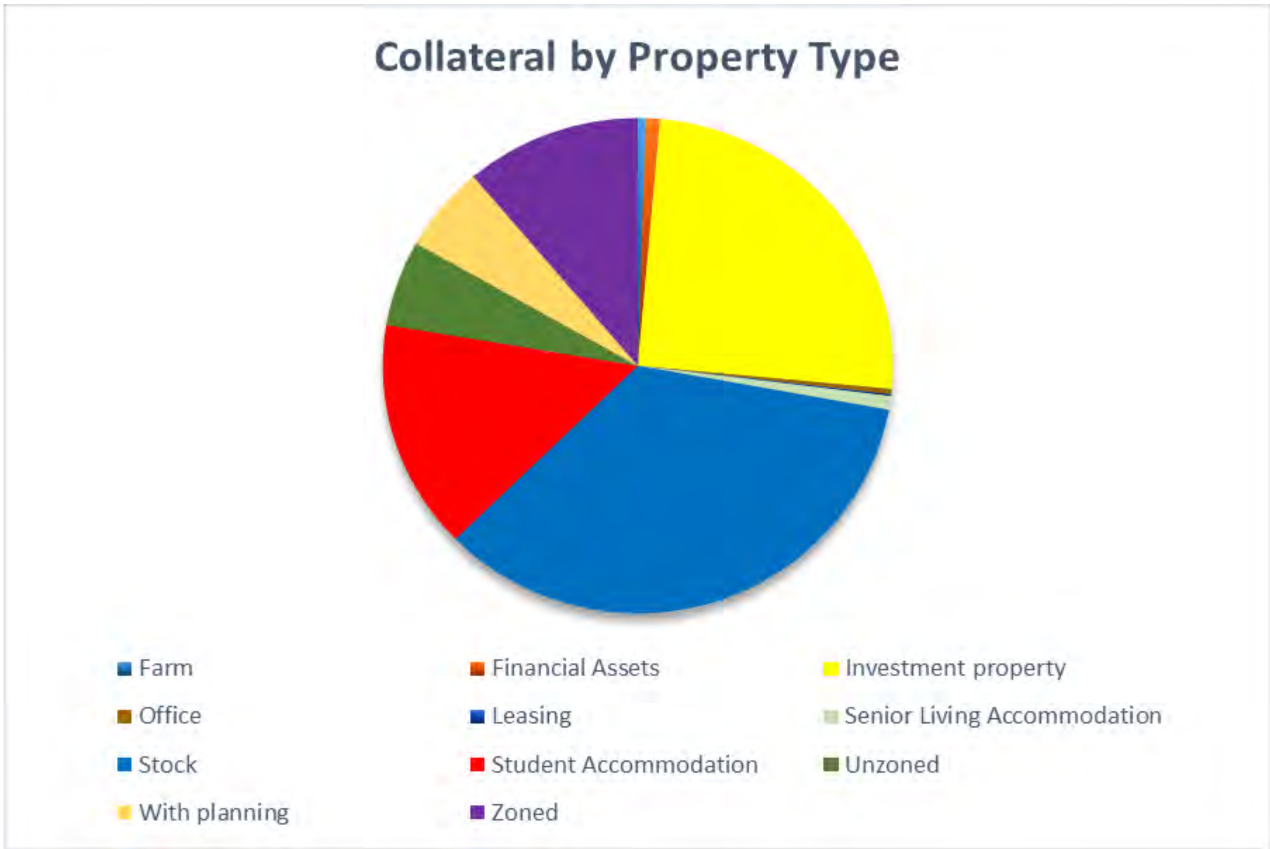
1. Independent verification of purchase price including specific reference to the investment market and the saleability of the proposed development
2. Valuation report addressed directly to the bank as Valuers of the property. Such valuation required to be at least equivalent to the purchase price.
3. The terms of reference for the independent valuation to be set out in the Bank's letter of instruction to the Valuers.
4. Drawdown available pro rata only on perfection of first legal mortgage over the site.
5. The Bank's nominated quantity surveyor was required to report to the Bank in connection with the architect/ engineer/ quantity surveyor certificates and invoices supporting each drawdown request.
6. All costs in relation to the taking examination and approval of the security by the banks solicitors' were to be for the Borrowers account.
7. Resolutions of the Board of Directors of the Borrower Company and any Guarantor company were required approving the terms of the facility letter and the General Conditions authorising their acceptance and authorising one or more named persons to sign such an acceptance and any other documents which the bank may require in connection herewith.
8. Prior to funding the Bank was to receive a satisfactory outline business plan in relation to the management of the property
9. A hedging strategy satisfactory to the Bank was sometimes required before drawdown.
10. Loan to value ratio maintenance for the duration of the loan was specified.
11. Conditions were included which required debt service coverage to be maintained at a specified level.
12. Facility was subject to satisfactory site inspection by or on behalf of the Bank.
13. Requirement for a specified percentage [typically approx. 3%] of rents to be retained in sinking fund for ongoing repairs and maintenance.
14. Borrowing proposals for investment properties were typically subject to Bank due diligence, including legal and financial audit to verify underlying net income of current occupancy of the property.
15. For certain developments the bank required a feasibility study by a Quantity Surveyor instructed by and acting on behalf of the Bank to confirm that the development could be completed within the timescales and costs advised by the borrower. All drawdowns under such development facility had to be signed off by the appointed QS firm.
16. Environmental reports were sometimes required by the Bank before they would agree to fund developments.
17. Satisfactory cash flow forecast showing development costs over the course of the facility were almost always required.
18. Confirmation that planning permission has been granted for the Development had to be provided to the Bank.
19. A satisfactory report from solicitors confirming the planning consent attached to the site was generally required.
20. Bank and other credit references and compliance with money laundering regulations.
21. Each new property had to be approved at a Credit Committee.
22. Evidence of VAT registration for relevant company.
23. Satisfactory report on the title from a Bank panel of solicitors which will include confirmation of the current planning consents attached to the sites.
24. Requirement for Quarterly management meetings to be held to review the business plan
25. Adherence to the agreed sales programme as set out in the business plan.
26. No diminution of shareholders' funds and distribution to shareholders without the Bank's consent.

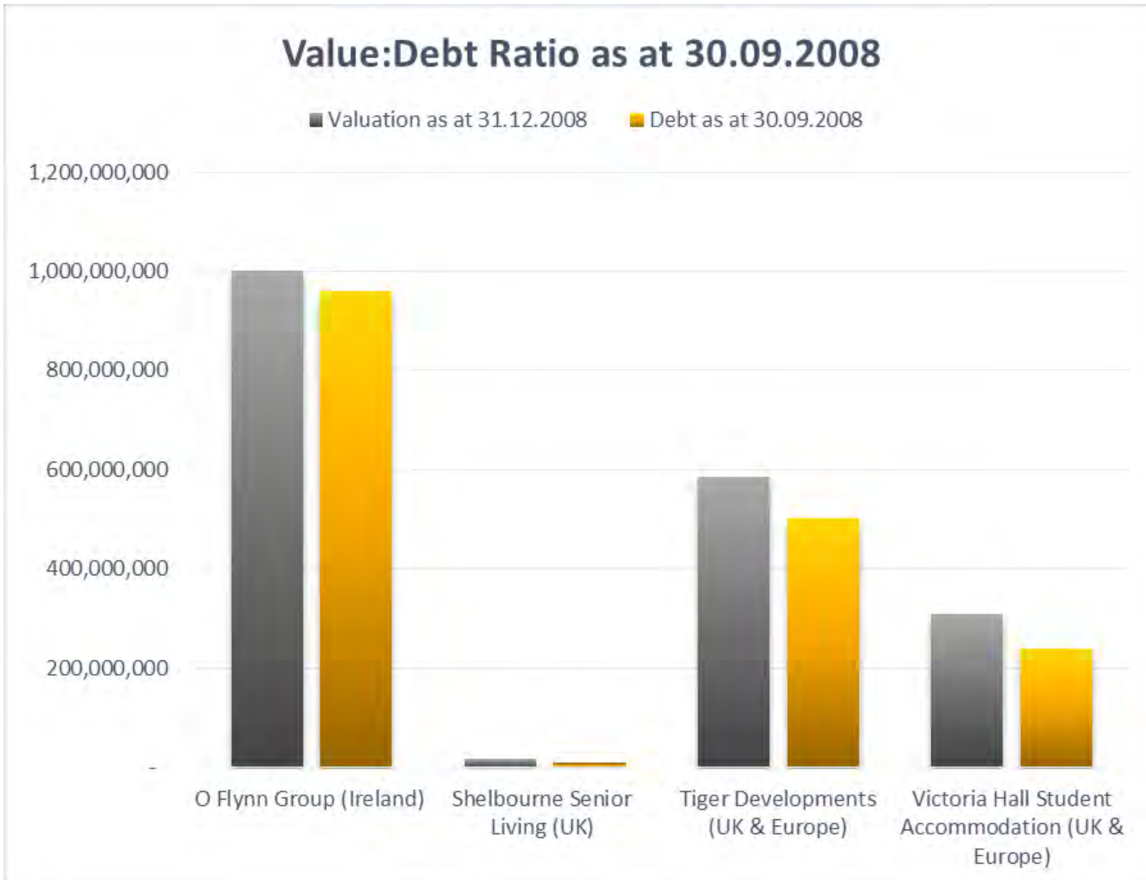
27. Financial covenants.
28. Independent searches in various registers including property registries, judgment offices, companies' offices and other independent registries were required together with confirmation from the Bank's solicitors that those searches disclosed nothing onerous effecting the report on title.
29. Where existing security was held by the bank, there was sometimes a condition requiring confirmation of efficacy of all existing security from the banks solicitor.
30. Confirmation was always required that the property was adequately insured in the joint names of the borrower and the bank to include but not exclusively (i) agreed level of loss rent/income and (ii)litigation claims from employees and/or residents.
31. Confirmation had to be provided that company filing was up to date and that that any other statutory requirements were in order.
32. Typically conditions of approval included a commitment to satisfy any other requirement / conditions as the bank or the bank's solicitors may deem necessary at the time of completion.
33. A certified copy of the memorandum and articles of association or other constitutional documents of each borrower was always provided.
34. Specimen signatures authenticated to the satisfaction of the Bank of each person authorised to sign by the company were required.
35. Where any group company was incorporated in a territory outside of Ireland or the UK, we were required to provide a written legal opinion of the legal advisors qualified and insured in that jurisdiction to the Bank relating to Borrower company, its power to enter into the Facility Agreement and any related document
36. Any documents provided to shareholders had to be provided to the Bank.
37. We were required to disclose details of any material litigation affecting the borrower company and any guarantor company.
38. Information regarding the business of the borrower and the properties held as security for the Facility had to be provided to the bank upon request.
39. The bank was provided with monthly statements for certain bank accounts.
40. Negative pledges relating to:
    - Change of auditors without notice to the Bank.
    - Provision of financial assistance to third parties.
    - Entering into any transaction with third parties save at arm's length.
    - Opening of any account with any other bank (this generally applied only to companies with limited projects).
    - Incurring of indebtedness other than in the ordinary course of business.
    - Amendment of the constitutional documents of the company.
    - Changing of business activities.
    - Granting of leases without bank consent.
    - Sale or agreement to sell any secured property without bank consent.

APPENDIX 6

Detail collateral by institution, by type and value for all outstanding debt on 30/09/2008:







Refer to Section 2 Appendix C5 for details of valuation versus debt as at 30.09.2008.

APPENDIX 7

Voluntary contribution to the Business, Community and Charitable Sectors:

- Former Chairman of the Cork branch of the IHBA 1987-1989.
- Former Chairman of the Cork Branch of the Construction Industry Federation 1993-1994.
- Director of the Children's Medical & Research Foundation at Crumlin since February 2001.
- Member of the Cork County Council Strategic Policy Committee since 2001.
- Member of the Cork Development Forum since 2002.
- Chairman of the Cork Region of the Friends of Crumlin since 2003.
- Director of the UCC Foundation, which is the fundraising arm of UCC since 2003.
- Chairman of the UCC President's Consultative Board 2005-2014. This Board advised the President on strategic matters relating to the University.
- Chairman of the Advisory Group for the HSE Reconfiguration Board for Cork and Kerry since its establishment in 2009. The Board recently delivered its final report to Ministers Leo Varadkar and Kathleen Lynch.
- Member of the Cork Science Park Advisory Board 2010-2014.
- Member of the Farranferris Foundation Board since 2010. The Board was set up to re-develop Farranferris College following a report which I produced for the Bishop of Cork and Ross.
- Founding Member and Director of Property Industry Ireland, established April 2011.

APPENDIX 8

Extract from: "NAMA one year later- A Lombard Street Research Report for the CIF", Lombard Street Research, November 2010

"One of the stark lessons to be drawn from the events of October/November 2010 leading up to the EU/IMF bailout of Ireland is this: The National Asset Management Agency (NAMA) was a flawed idea and it developed into a failure.

We can in good conscience say this because we warned of the dangers in a report commissioned by the CIF in May 2009 and passed on to the Irish Authorities.

This is not to say that the Irish Government was wrong to try to save the country's banking system but the method used was from the start contaminated by secondary objectives, which meant that it could never work.

The key flaws in the NAMA structure were

- *NAMA was not a bad bank; it was not intended to remove only toxic loans from banks' balance sheets. Instead NAMA was to be used as a vehicle to restructure radically the Irish construction industry. This meant removing performing – unimpaired – loans as well but, in turn, this further eroded the health of the banking system.*
- *NAMA insistence on no debt restructuring. This ties in with the above. If there were any chance of banks getting repaid in full for their loans, there would be no need for NAMA. By reiterating this point, NAMA further drove down the values of bank loans and their collateral, deepening the crisis.*
- *NAMA has de facto discouragement of outside capital. Foreign investors were always going to be one key source of funds for NAMA. By rejecting any debt restructuring, NAMA also ensured that the interest of such investors was kept to a minimum*

In these – and other – ways, NAMA, ostensibly intended to save the Irish banking sector, actually hastened its demise, along the way adding to the burden of the Irish taxpayer. To quote Mr. Michael Somers, former Head of the National Treasury Management Agency (NAMA's parent body) in the 'Irish Times' 20th of November 2010: "What an irony, what a mess!"

APPENDIX 9

Excerpts from judgment of the Supreme Court in the case of Dellway Investments & Others v NAMA & Others [2011] IESC 4.

Mr. Justice Hardiman

"It is difficult to accept that being acquired by a statutory company whose purpose is to remove "impaired assets", also described as "troublesome loans", "bad debts", "problem loans", "toxic lending", whose removal from the banking system is, according to the Chairman of NAMA and former Chairman of the Revenue Commissioners "equivalent to removing a tumor from the system" would not cause reputational damage. ***<u>If one is, in fact, a performing borrower, this is most unfair, and gravely damaging."(Emphasis added).</u>***

"Another aspect of the usages just discussed relates to the appellants' claim that they will suffer reputational damage by having their loans compulsorily acquired by NAMA. I have no doubt that this is so and in any event there was on the hearing of the appeal direct evidence that it was so….

The attempts of NAMA to argue the contrary was, in my view, one of the points at which their argument most strikingly parted company with reality. The State's argument was prone to seek to draw support from the terms of the NAMA Act itself. It is certainly true that this Act creates a highly artificial world in which, for example, certain bank assets are required to be treated as things which they manifestly are not. The State's argument on the reputational effect of being acquired by NAMA, as on other topics, suffers from the fact that it is a narrow and entirely legal one, deliberately closing its eyes to the commercial and human realities."

"Mr. McKillen also makes detailed complaints about NAMA's dealings with him which suggest that they were tardy, showed no sense of urgency, and were evasive and misleading over a six month period about whether they had decided to acquire his loans or not. The Divisional Court has already criticised NAMA in relation to its dealings with Mr. McKillen and this aspect will be discussed elsewhere. Its principal immediate relevance appears to be that any suggestion that extreme urgency justified a denial of Mr. McKillen's right to be heard seems obviously inconsistent with the dilatory actual behaviour of NAMA itself after the acquisition decision had been taken. ***During the period of inaction, the fact that the acquisition decision had in fact been purportedly taken was calculatedly concealed from him by NAMA (Emphasis added).***

More to the point, I have to say that in my view the actions of NAMA itself, although ***opaque*** *in certain ways about to be discussed, show quite clearly that NAMA was so little impressed with the need for expedition that, having taken a "decision" to acquire the McKillen loans in December 2008 it had still not taken the step necessary to act on that decision, the service of an Acquisition Schedule under s.87 of the Act, when Mr. McKillen commenced his proceedings more than six months later. Moreover, during most of that period* ***Mr. McKillen, placed on inquiry by media reports, had raised direct questions as to whether or not his loans were part of a tranche which NAMA had decided to acquire. He never received a straightforward answer to this simple query and instead received letters full of platitudes, irrelevant statements and obvious assertions. I can only characterise this correspondence of NAMA's as exhibiting evasiveness. It is discredible to a public body. Its authors devoted themselves for half a year or more to avoiding confirming to Mr. McKillen the fact that NAMA considered that it had taken a decision to acquire his assets. No explanation of why it did this was offered on the hearing of this appeal and indeed the correspondence was little referred to by counsel for NAMA (Emphasis added).***

The main significance for present purposes of NAMA's long and wholly unexplained delay in acting on their purported decision, and of ***the furtivity of their correspondence****, is that it is quite inconsistent with any perception of its part on a need for urgency in the acquisition of the loans. Moreover, the fact that a method was found, apparently without too much difficulty, to give a* *hearing to the banks, but not to their customers, is destructive of any suggestion that the need to give a hearing in some form would necessarily and in itself cause unacceptable delay, as the State contended" (Emphasis added).*

"..the [NAMA] Act enables the agency to derogate from well established legal norms and expressly exempts it from statutory and legal standards for the purposes identified in the long title and in sections 2 and 10. It also restricts a customer's right of access to the Courts in certain ways discussed above. **Taken as a whole, it is a measure purporting to enable acts decidedly outside the norms and conventions of established law**." ***(Emphasis added)***

Mr. Justice Finnegan;

"I am satisfied that the provisions of the NAMA Act affect the appellants' property rights and their equity of redemption. I am satisfied that the differences which I have identified between NAMA, having regard to NAMA's exemptions and powers conferred by Statute, and any other mortgagee is such as to directly affect the property rights and interests of the appellants where I have so indicated. I am satisfied that the effect of a transfer of mortgages to NAMA on the appellants' relationship with their bank is such as to affect the appellants' interests. In consequence the appellants have a right to be heard before a decision is made by NAMA under section 84 of the NAMA Act. "

APPENDIX 10

Some personal experiences in NAMA:

From the outset, I fully cooperated with NAMA and provided volumes of detailed financial information in relation to the O'Flynn Group. I also provided a sworn Statement of Affairs in relation to my own assets.

- One of my first encounters with NAMA, however, was a meeting to discuss my business plan with a senior officer, who I believe was not qualified to review a business plan for a company as complex as the O'Flynn Group. It was the unveiled prejudice, and absence of professionalism or objectivity which was most alarming. The officer accused me of criminal-like activity in my past and suggested that NAMA's role was to bring an end to that. I made a formal complaint to NAMA and while I did not have any further direct dealings with this official, I never received an apology from him or from NAMA. He was subsequently promoted to a very senior role within NAMA.

- [redacted] Oireachtas

- On a further occasion a NAMA employee, in a semi-public forum, accused my colleagues and me of wrongly withdrawing money from a bank account. Within 5 minutes we were able to provide that employee with a copy email where he had authorised the withdrawal. I have never received an apology for that incident and my request that it be fully investigated was declined.

- We were subjected to very significant pressure to sell a property in London to one particular bidder for a price lower than what was offered by another bidder.

- Within the past 12 months I have made a request to NAMA under the Data Protection Act for all personal data. The vast majority of the data I sought has been declined and that decision is currently the subject matter of a complaint to the Data Protection Commissioner. I am constrained in the information I can provide to this Inquiry because of NAMA's refusal to provide me with the data to which I believe I am entitled.

- I am aware of many other developers who had similar experiences but hearsay rules prevent me from relating same. Unfortunately, they are unlikely to be given an opportunity in this or any other inquiry to relate their experiences of the poor conduct of a public authority.

APPENDIX 11

Attached copy of the Presentation to Department of Finance, April 2009