

Chapter 31

National Sports Campus

National Sports Campus

31.1 In 2000, following a feasibility study, the Government approved the development of a National Stadium, as the centerpiece of a National Sports Campus, at Abbotstown, County Dublin. Initially, a company – Campus and Stadium Ireland Development Company Limited (CSID) – was established to manage the development and, following legislation the National Sports Campus Development Authority (NSCDA) was set up in January 2007.

31.2 The total outlay on the project to date is estimated at €19.4 million. The composition of that outlay is set out in Figure 147.

Figure 147 Outlay on Sports Campus

Cost Element	Outlay to 31 December 2010 €m
National Aquatic Centre ^a	74.0
Campus Development	
– Infrastructure and master planning	6.6
– Ancillary development costs ^b	10.2
Professional fees and legal costs ^c	13.2
Grants to National Aquatic Centre ^d	7.8
Administration	7.6
Total Outlay to 31 December 2010	119.4

- Notes:
- a Includes cost of construction of €73.4 million and subsequent works.
 - b Ancillary developments costs are in respect of administration accommodation for the Authority, the Irish Institute of Sport, the Football Association of Ireland and National Governing Bodies of Sports at the Abbotstown site.
 - c Professional Fees and Legal Costs include expenditure of €4.6 million in legal fees and settlement costs, executive services of €3.6 million and project management of €1.7 million.
 - d In 2006, CSID established a subsidiary company to operate the National Aquatic Centre upon the surrender of the lease of the Centre by the private operator, Dublin Waterworld Limited, who had operated it up to that date. This company became NSCDA (Operations) Limited following the establishment of the Authority under statute in 2007. As sanctioned by the Minister the subsidiary company receives an annual contribution from the Authority for its running costs. It also received €0.9 million in capital grants in 2007 to fund a refurbishment and maintenance programme at the Centre following repossession.

31.3 These outlays have been funded by Exchequer grants of €18 million and own resource income of €2 million derived mainly from rent of administration accommodation to the FAI. The specific source of the Exchequer funds is by way of grants charged initially to the Vote for the Department of the Taoiseach and since 2001 to the Vote for the Department of Tourism, Culture and Sport (the Department).

31.4 In July 2000, the Government agreed to the development of an Aquatic and Leisure Centre at the Abbotstown site and CSID was given responsibility for procuring the provision of the Centre. The National Aquatic Centre (NAC) opened in 2003 at a cost of €73.4 million including VAT.

31.5 Initially a competition to design, build, finance, operate and maintain the proposed stadium and other sports facilities was undertaken in 2001. The competition was not concluded following a Government decision to commission an independent review to assist in determining its final cost to the Exchequer. Consultants were appointed by the Department and reported in late 2001 estimating the cost of the project at €479 million (mid-2001 prices). In response to the report CSID stated that the project could be completed for a net Exchequer investment of €444 million.

31.6 In January 2004, the Government decided to provide funding of €190 million over a five-year period towards the redevelopment of Lansdowne Road stadium which was the existing site of international rugby and soccer fixtures. It also decided to proceed with the phased development of a sports campus at Abbotstown and requested that CSID draw up a phased development programme, an associated business case and annual budgets sufficient to deliver the component elements of the campus project.

31.7 After consultation with various sporting bodies and other stakeholders, CSID drew up a Development control plan in October 2004. That plan set out proposals for the phased development of the sports campus and estimated the cost at €19 million including VAT.

31.8 Following consideration of the plan, the Government decided in November 2005 to proceed with the development of the initial phase of the sports campus over a five-year period. The proposed elements of this phase were

- a national field sports training centre catering for rugby, soccer, Gaelic games and hockey
- a national indoor training centre to provide world class training facilities for more than 30 governing bodies of sport
- accommodation for sports men and women
- sports science and medical facilities and
- all weather synthetic pitches for community use.

Chapter Focus

This chapter outlines the extent to which the development of the National Sports Campus has been implemented and certain matters arising out of the development of the National Aquatic Centre.

Progress to Date

31.9 The initial phase included a number of development elements. Figure 148 outlines the extent to which these elements have been progressed.

Figure 148 Completion of First Phase Elements

Project element	Completion date	
	Target	Actual
Appointment of Design and Project Management Teams ^a	—	April 2008
Preliminary Design	September 2008	September 2008
Detailed Design (incl. planning permission) ^b	August 2009	November 2009
Tender Submission, Evaluation and Award ^c	—	—
Construction	—	—
Completion and Handover	—	—

- Notes:
- a During 2006 CSID/NSCDA commenced preparation of tender documentation for the procurement of the Design and Project Management teams. However, due to changes in procurement procedures and in particular the introduction of the new form of Government contract for the engagement of consultants it was necessary to prepare new tender documentation.
 - b Planning permission lodged in May 2009 and granted in August 2009 after which a review of the stage and a report to NSCDA was completed. This report was finalised and agreed by NSCDA in November 2009.
 - c NSCDA is required to seek Ministerial approval after the completion of each stage before progressing to the next stage of the project. Due to the current economic climate, approval to proceed to the next stage has not yet been sought by NSCDA.

31.10 During 2009 the Authority, together with its contracted project management and design teams, developed a revised Campus Master Plan for the facilities to be included in the initial phase of the sports campus. The indicative cost was estimated to be in the region of €148 million including VAT. The revised costs take account of additional facilities (a National Gymnastics Training Centre and a National Indoor Athletics Training Centre) approved by the Minister and revised specifications of the stakeholders with regard to facility requirements.

31.11 The Authority has stated that, in view of current financial constraints, it has examined other possible options for the development of the facilities on a phased basis as future funding might permit and has put proposals to the Department. The strategy adopted by the Authority and submitted to the Department for approval in late 2010 involves an incremental development commencing with core indoor facilities at a cost of €10.6 million combined with a partnership approach to developing field sport facilities through the leasing of sites reserved on the campus for individual sports bodies. On 21 June 2011, the Government approved proposals of the Minister for Transport, Tourism and Sport to develop the Campus on an incremental basis.

Ancillary Developments at Abbotstown

31.12 In parallel with the core Sports Campus project, the Authority redeveloped and refurbished existing buildings on the Abbotstown site for use by the wider sporting community, in particular the National Governing Bodies of Sport.

31.13 The first building to be redeveloped was the former State Laboratory, as a new headquarters for the Football Association of Ireland.²⁷³ This was followed by the refurbishment in 2009 of the former Central Meat Control Laboratory as a new headquarters for both the Irish Institute of Sport and the Authority.

31.14 Planning permission was obtained in October 2010 for the next element, the renovation of the former Marine Institute building as a new headquarters to provide on-Campus office accommodation for some 19 National Governing Bodies of Sport in Ireland. Enabling works were completed in December 2010 and the project was at tender evaluation stage in mid-2011. The Authority was allocated €3 million as part of its capital allocation for 2011 to fund the project.

Procurement of the National Aquatic Centre

31.15 The Government decided that an Aquatic and Leisure Centre should be commissioned in time for the 2003 Special Olympics World Games. CSID commenced a procurement process by advertising for a contract to design, build, finance, operate and maintain the Centre. It obtained eight expressions of interest and an assessment panel shortlisted five of these for the outline bid stage. Three bids were received and following further evaluation, a proposal from a consortium was selected as the preferred bidder. CSID signed Heads of Agreement with the consortium in February 2001 and the CSID board sanctioned entering into a contract in April 2001.²⁷⁴

Legal Action arising from the Award of the Contract for National Aquatic Centre

31.16 In May 2002, Dublin International Arena Limited (DIAL), one of the unsuccessful bidders for the provision of the Aquatic Centre, initiated legal proceedings against CSID and the then Minister for Tourism, Sport and Recreation in relation to the award of the contract. CSID made application to the High Court for security of costs²⁷⁵ which were awarded in full in May 2004. This judgment was appealed to the Supreme Court by DIAL and following the hearing in June 2007 the Supreme Court ruled in favour of DIAL.

31.17 The main proceedings commenced in the High Court in November 2009. However, during the course of the proceedings, agreement on a settlement of the action was reached between the parties on the basis of which DIAL withdrew their claim. The action was struck out in March 2010 and DIAL were paid a settlement amount from monies provided to the National Sports Campus Development Authority²⁷⁶ from the 2010 Vote of the Department.

²⁷³ Completed in November 2007.

²⁷⁴ The Attorney General reported to the Government in March 2002 on matters relating to the award of the contract for aquatic centre by CSID. The Government published the report which was made available to the Committee of Public Accounts.

²⁷⁵ Security of costs refers to a situation where a defendant to a legal action has a reasonable apprehension that his or her legal costs will not be paid for by the plaintiff if the defence is successful and seeks an order that the plaintiff provide security for the costs of the action.

²⁷⁶ As CSID had been dissolved on 1 January 2007 under the terms of the National Sports Campus Development Authority Act 2006 all legal actions involving CSID became the responsibility of the successor body, the National Sports Campus Development Authority.

31.18 The Authority, as successor body to CSID, charged the settlement cost of the DIAL litigation in its 2009 financial statements and included it under Legal and Professional Fees expenditure of €2.8 million. The Authority did not disclose the actual amount of the settlement in the financial statements since the related agreement included a confidentiality clause. Arising from the Supreme Court decision on the security of costs issue, legal costs of €287,000 were awarded against the State which were charged to the Vote of the Department in 2009. Over the course of the litigation the Authority and its predecessor body, CSID, incurred fees of €220,935 on its own legal team.

VAT Costs on National Aquatic Centre

31.19 CSID registered for VAT in 2000 on the basis that it intended to develop the National Aquatic Centre and grant a taxable lease of the property to a company that would operate it. This would allow it to recover the VAT on its construction costs. During the course of construction, VAT of €9.65 million was incurred by CSID. Because VAT was to be charged to the operating company on entering into a lease the VAT costs were not added to the asset cost as recorded on the Balance Sheet.

31.20 In April 2003, CSID entered into a lease with Dublin Waterworld Limited for the operation of the Centre. CSID charged VAT to the operator on the capitalised value of the lease. In accordance with the VAT regulations, CSID calculated the capitalised value as €75.96 million and the VAT due from the lessee as €10.25 million. CSID's calculation of the capitalised value of the lease was based on a valuation by the Valuation Office that the Centre would generate an unencumbered rent of €3.38 million per annum.

31.21 Having charged VAT to the lessee on the creation of the lease, CSID became liable to remit the amount so charged to the Revenue Commissioners. It accounted for this amount²⁷⁷ as part of its normal returns and treated it as an amount receivable in its accounts on the basis that it was recoverable from the operating company.

31.22 The amount recoverable remained outstanding from 2003 onwards as the lessee disputed that VAT was payable by it. It claimed that the value of the unencumbered rent was less than that calculated by the Valuation Office. Since the lessee failed to pay the VAT due, CSID took High Court proceedings against it claiming the sum of €10.25 million. This action was one element of a Statement of Claim lodged in the High Court by CSID for a series of alleged breaches of the lease on the National Aquatic Centre. The VAT issue was referred to arbitration by the Court, as provided in the terms of the lease, and in July 2005 the arbitrator found *'that the amount of VAT of €10.25 million charged by CSID on the capitalised value of the lease to Dublin Waterworld Ltd. was correctly charged'*.

31.23 The lessee challenged the arbitrator's decision in the High Court and in September 2005 the Court upheld the decision. The lessee appealed the decision to the Supreme Court and the matter was heard before the Supreme Court in January 2010.

31.24 The Supreme Court found that the arbitrator had erred in law and overturned the arbitrator's decision and further ordered that the dispute be referred back to arbitration. Following consideration of the implications of the Supreme Court judgement, and having taken further advice on the matter, the Authority decided in July 2010 to withdraw from the arbitration process. This had the effect of extinguishing the outstanding liability of the lessee. Costs, which are subject to finalisation and taxing, were awarded against the Authority and have not yet been quantified.

²⁷⁷ In total the amount of €10.25 million paid to the Revenue Commissioners consisted of a balancing amount paid in 2003 based on the capitalised value of the lease together with input tax paid by CSID in the course of construction of the Centre of €9.65 million.

Views of the Accounting Officer

31.25 In response to my enquiries on the progress of the Campus development the Accounting Officer stated that proposals in relation to its future development were submitted by the Minister for Transport, Tourism and Sport to and approved by Government at its meeting on 21 June 2011. The proposals involve developing the Campus on an incremental basis which includes a proposal from the NSCDA to develop a National Indoor Training Centre. In light of Government funding constraints the Minister has asked the NSCDA to explore other avenues of funding such as philanthropy or sale of some of the land at Abbotstown.

31.26 He stated that the strategy also envisages the development of certain elements of the plan in partnership with the main field sports bodies, the GAA, FAI, IRFU and IHA. These elements would include the development of natural and synthetic pitches together with the associated changing facilities. The NSCDA approach envisages providing the land and common infrastructure for access and services and all four bodies have indicated their willingness to participate individually in this approach.

31.27 He also stated that the Government approved the transfer of the Abbotstown lands from the Minister for Agriculture, Fisheries and Food to the NSCDA and the Minister has also asked the NSCDA to submit plans to him for Abbotstown House which is a listed building.

31.28 In relation to the non-payment of the VAT invoice the Accounting Officer stated that this was among a number of breaches of the lease which resulted in a Statement of Claim being lodged by CSID with the High Court (Commercial Court) in 2005. The effect of this, had it been implemented as endorsed by independent Arbitration and the High Court, is that CSID would have been paid such an amount by Dublin Waterworld Limited – who, in turn, may have had recourse to reclaim such VAT on its trading activities. However, the tenant failed to comply with its obligations under the lease and this necessitated CSID initiating legal proceedings against Dublin Waterworld Limited in March 2005.

31.29 It emerged that Dublin Waterworld Limited had transferred the beneficial ownership of the lease on the same day that it had entered the lease with CSID to another party without the permission or knowledge of CSID. The case commenced in July 2005 and concluded in November 2005. The outcome of the substantive proceedings in this matter was the vacating of the Centre by Dublin Waterworld Limited and its return to the direct control of CSID.

Summary of Actions taken by CSID in the Vacating of the National Aquatic Centre by Dublin Waterworld Limited

CSID wrote to Dublin Waterworld Limited in October 2004 pointing out that it had not complied with obligations under the lease of the National Aquatic Centre and demanding compliance and payment of outstanding amounts within 28 days. No reply was received by the expiry date. Because of the potential for incurring substantial costs, CSID sought Department approval before taking further action. The Department replied in February 2005 stating that it considered that it was unacceptable to allow the tenant renege on the terms of the lease any longer and that it was necessary to enforce the rights of CSID as landlord to recover possession of the property and that the Minister had instructed that immediate notice to quit should be served on Dublin Waterworld Limited. In this regard, CSID were instructed by the Department to exercise its rights in law under the lease and request its legal advisors to prepare the necessary documents and take all necessary steps to recover the premises.

A Forfeiture Notice was served on Dublin Waterworld Limited under Section 14 of the Conveyancing and Law of Property Act 1881 in March 2005. A Statement of Claim was delivered by CSID to Dublin Waterworld Limited in April 2005 pursuant to High Court proceedings which sought remedies to a number of breaches of the lease including

- failure to pay rent
- failure to deliver audited accounts for the purpose of assessing additional rent representing 10% of the Dublin Waterworld Limited's profits
- failure to pay insurance costs
- failure to agree the terms of a capital maintenance programme
- failure to pay Value Added Tax upon the grant of the lease
- permitting another company to operate the Centre and assigning possession of the Centre without consent
- failure to ensure that the approved manager continued in the employ of Dublin Waterworld Limited and managed the Centre.

31.30 The Accounting Officer stated that the amount of the legal costs remain to be determined but any such costs will fall to be met by NSCDA which in turn receives its funding from the Department.

Conclusion

The cost to the Authority and, by extension, to the Department, of the National Aquatic Centre has been impacted upon by two elements.

- A settlement of an undisclosed amount relating to the procurement of the National Aquatic Centre has been absorbed as part of overall legal and professional costs of €2.8 million in 2009.
- In 2010, the extinguishing of the Authority's claim for VAT on a lease with an operating company has increased the cost of the facility to the Authority by €9.65 million as all construction VAT fell to be met by the Authority. The 2009 financial statements were adjusted to reflect this.

The cost of construction of the National Aquatic Centre amounted to €73.4 million which was funded by grants from the Department with the expectation that VAT on the cost of construction would be recovered. However, following consideration of a Supreme Court finding, the Authority decided not to pursue VAT payment under the lease and the lessee vacated the premises.

Ultimately, the recovery of VAT from the lessee would not have conferred any additional benefit to the Exchequer once the lessee was a taxable person entitled to full VAT recovery on its inputs.

Overall, the campus development has slowed and although there has been an outlay of €6.6 million on design costs and planning permission has been received it is unlikely due to the constrained financial resources of the State that further substantial development will be funded by it in the medium term.