Comptroller and Auditor General
Report on Value for Money Examination

Department of Health and Children

Car Parking at Beaumont Hospital

November 2002

This report was prepared on the basis of information, documentation and explanations obtained from the public bodies referred to in the report. The draft report was sent to the Department of Health and Children and to Beaumont Hospital and comments were requested. Where appropriate, the comments received were incorporated in the final version of the report.

Report of the Comptroller and Auditor General

Car Parking at Beaumont Hospital

I have, in accordance with the provisions of Section 9 of the Comptroller and Auditor General (Amendment) Act, 1993, carried out a value for money examination of arrangements for the provision of car parking at Beaumont Hospital.

I hereby submit my report on the above examination for presentation to Dáil Éireann pursuant to Section 11 of the said Act.

John Purcell
Comptroller and Auditor General

25 November 2002

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Summary of Findings

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During the course of my audit of the financial statements of Beaumont Hospital Board for 1999, I encountered difficulties in establishing the circumstances surrounding the development of a multi-story car park by a subsidiary of the Hospital. In order to avoid further protracted delay in certifying the financial statements of the Hospital, I issued my audit report thereon on 31 July 2002. In the audit report, I indicated that I was undertaking an examination of the provision of the multi-story car park with a view to preparing a special report on the matter. This is the resulting report.

In 1998, Beaumont Hospital arranged for the construction of a multi-story car park on the hospital campus. The arrangement involved

- procuring construction of the car park at a fixed price through a tendering process
- separately awarding a concession to a developer to finance and operate the facility.

The multi-storey car park provided 600 spaces. However, it was built on the site of the existing main ground car park and therefore eliminated 370 ground parking spaces. Thus, the number of additional parking spaces provided was 230. The total cost of construction of the facility was €8.6 million (including VAT). Annual income from existing car parking charges was around €500,000.

The Developer took over the construction contract and bore the costs of providing the facility. In return, the Developer was granted a lease over the site and the right to charge parking fees to customers. The arrangements provide for the reversion of the facility to the Hospital after 13 years. The financing of the facility included the availing of substantial tax breaks provided by the State to encourage the construction of multi-storey car parks.

After the completion of the facility, staff parking continued in existing designated ground level parking areas while the multi-storey car park was to be used by the public. To provide for an orderly parking regime, parking regulations were agreed between the Hospital and the Developer and a parking protocol put in place.

Results of Evaluation

My evaluation raises three main concerns.

- The tax-based funding method was more costly than direct provision of the car park by the Hospital.
- The concession was awarded to a company which offered less income at higher turnover levels.
- The Hospital has not received the expected rental income.

Funding Method

The method of financing the project involved the State in considerable tax expenditure. The analysis indicates that public finances were worse off by between €9 million and €13 million, in net present value terms, as a result of choosing the tax-financed option rather than direct provision of the parking facility.

The pre-project appraisal did not include any analysis of the relative merits of the proposed tax-based deal and direct provision. While it is acknowledged that health agencies may not be required to carry out such analysis and funding may not have been available for direct provision in 1998, the failure to carry out such an appraisal, and to choose the most economic funding option, clearly cost the State money in the longer term.

Return from Concession

Three proposals to develop and operate the facility were short listed for consideration. Each proposal included a 'guaranteed' income level and a profit share. All three proposals provided a reasonably similar level of income at the lower levels of turnover. The two proposals which were unsuccessful were assessed as inferior in terms of deliverability. However, the rejected proposals appear to have offered better rental income in the event of higher levels of turnover being achieved, but this was not recognised in the financial ranking of the proposals.

Income Shortfall

The parking facility opened in June 1999. Subsequent operation of the facility did not yield the expected level of income to the Hospital. Based on the accepted proposal, the Hospital expected to receive income of at least €1.8 million in respect of the period between June 1999 and 31 March 2002 but only €120,000 was received because an almost equivalent amount of fines were levied on the Hospital in respect of 'illegal parking'. A combination of a failure to properly manage parking in the Hospital grounds, a lack of management awareness and the inappropriate application of agreed terms contributed to the unanticipated shortfall. While the Hospital initially accepted fines levied for all periods up to 31 March 2001, it is now in the process of taking advice on retrieving historical losses and minimizing future ones.

Views of the Department of Health and Children

It remains the Department's policy that, where appropriate, new parking facilities at major hospitals should be funded by income derived from the facilities. However, the Department shares my concern in regard to the overall management of the project. As a result, it has established a group to examine the lessons to be learned and prepare guidelines for the proper management of such initiatives in future. The group will also examine the potential for direct provision using loan finance.

Car Parking at Beaumont Hospital

1 Introduction

1.1 In 1998, Beaumont Hospital entered into arrangements with private sector partners to procure a multi-storey car park on the Hospital campus. The objective was to provide parking facilities for visitors to the Hospital. Up to that point, both staff and visitors had used existing parking facilities on the Hospital grounds.

1.2 The scheme was closely modelled on a similar scheme put in place at the Adelaide and Meath Hospital, Dublin, incorporating the National Children's Hospital (Tallaght Regional Hospital).

1.3 In general outline, the aim was to procure the development of a 600 space car park at no cost to the Hospital and without requiring the Hospital to seek State funding or bank borrowing. The scheme was also intended to maintain the current annual income of the Hospital from its existing car park charges. The existing car park income was of the order of €500,000 per annum.

Tax-based Incentives

1.4 Tax incentives were available in the form of capital allowances to encourage the construction or refurbishment of multi-storey car parks.[1] These capital allowances related to expenditure incurred during a qualifying period, where the relevant local authority certified that the car park had been developed in accordance with criteria set down by the Minister for the Environment and Local Government. Additional tax incentives were also provided for operators of such car parks.[2] These incentives allowed car park operators to claim an allowance equivalent to twice their rental payments when calculating their tax liability.

1.5 The initial qualifying period for incentives under the legislation was due to expire on 30 June 1998. The qualifying period was subsequently extended to 30 June 1999 in cases where the local authority certified (before 30 September 1998) that not less than 15% of the total cost of a multi-storey car park, including site costs, had been incurred by 30 June 1998.

Background to the Examination

1.6 The Hospital is responsible for the preparation of financial statements which are complete and accurate and their presentation to me for audit. Considerable delays arose in the disposal of queries on the financial treatment of certain transactions during the audit of the accounts of Beaumont Hospital Board for the year ended 31 December 1999. The draft financial statements presented for audit did not reflect any transactions for the multi-storey car park. In particular, they did not disclose

- the existence of a subsidiary company

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1 Section 344, Taxes Consolidation Act, 1997

2 Section 345, Taxes Consolidation Act, 1997

- the disposal of land valued at €1.65 million to this subsidiary
- the creation of a loan note to the same value by the subsidiary in favour of the Hospital.

1.7 By 31 December 1999, the Hospital's subsidiary had agreed to the creation of a sinking fund account, into which certain rent payments were being made. The subsidiary had granted a charge over the contents of this account in favour of a commercial bank. Because no consolidated accounts were prepared, there was no disclosure of the sinking fund, the charges over the fund or the balance in the fund account.

1.8 Arising out of my audit queries, internal investigations of the Hospital revealed that a significant loss of income had occurred as a result of the imposition of fines for illegal parking on the hospital campus. Once the fact of the loss was established, the Chief Executive briefed me on the situation.

1.9 As part of his investigation of the queries raised by me, the Chief Executive commissioned an internal audit report on these matters. This report, which was completed in March 2002, was made available to me.

1.10 The 1999 financial statements were subsequently adopted by the Beaumont Hospital Board on 11 July 2002. Consolidated accounts were not produced, however, because audited financial statements for the subsidiary were not available. However, the final version of the financial statements of the Board disclosed the existence of the subsidiary and the main inter-group transactions.

1.11 My audit opinion on these financial statements was issued on 31 July 2002. Notwithstanding the fact that my opinion was not qualified and in view of the information which came to light arising out of my audit inquiries and from the Board's internal investigations, I decided that an in-depth examination should be conducted into the management of the project.

Examination Objectives

1.12 The examination set out to evaluate whether

- the procurement of the multi-storey car park had been conducted in a manner which was designed to ensure value for money over the project's life
- the management of the facility and car parking generally was operated so as to ensure that the financial objectives of the project were achieved
- proper systems and procedures had been put in place to evaluate the effectiveness of the project.

Examination Methodology

1.13 The examination was conducted by staff of my Office. The examination involved reviewing the papers provided by the Department of Health and Children (the Department), the Board and the advisors of the Board, and the interview of persons who had knowledge of the transactions. Advice on applicable public procurement rules was provided by a firm of solicitors retained by me.

1.14 This report deals only with the accountability of the public bodies involved in the management of the project. My recourse to information and explanations from advisors of the Hospital was limited to filling in any gaps in the records of those public bodies. Accordingly, nothing in this report should be read as attributing responsibility for matters outlined therein to any third party.

Structure of the Report

1.15 Chapter 2 outlines the scope of the project and its structure. Chapter 3 reviews the arrangement to monitor and evaluate the project and the procurement of the multi-storey car park. Chapter 4 considers the management of car parking generally at the Hospital campus and the income received by the Hospital since the parking facility opened.

2 The Car Park Project

2.1 This chapter outlines the scope of the car park project and the general arrangements put in place to facilitate its delivery.

Proposed Project

2.2 Proposals for a tax-financed project were outlined in a letter to Beaumont Hospital from the project coordinator of the scheme at Tallaght Hospital in December 1997. Subsequently, a firm of accountants (the financial advisors) was engaged to prepare a formal proposal for consideration by the Board. The proposal was completed on 30 April 1998.

2.3 The following were the key features of the project proposal at Beaumont Hospital.

- 15% of the project costs had to be incurred by 30 June 1998 in order to take advantage of the tax concessions.
- To facilitate the development, the Hospital would set up a wholly owned subsidiary and the site on which it was proposed to develop the car park would be sold to the subsidiary.
- The consideration for this disposal was to be around €760,000, being the then estimated market value of the site.[3]
- The subsidiary would pay for the site from the proceeds of a loan made available by the Hospital.
- The subsidiary would appoint the design team, arrange for construction of the car park and seek proposals for the operation of the car park concession.
- The subsidiary would grant a lease of the site to the developer whose proposal for the operation of the concession was accepted.
- It was anticipated that this lease would generate a rent in the region of €500,000 per annum for the Hospital and benefit from its charitable status
- The subsidiary would apply to Dublin Corporation for a certificate confirming that 15% of the project cost had been incurred by 30 June 1998.
- Prior to, or shortly after the commencement of construction, the subsidiary would dispose of title to the site back to the Hospital along with the benefit of an occupational lease to the developer. The consideration for this disposal would be in the region of €760,000.
- The consideration received by the subsidiary would allow it to repay its loan from the Hospital.

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[3] The site was valued at €1.65 million by a firm of chartered surveyors in May 1998.

Professional Advice

2.4 Three sets of advisors were involved in the project

- a project team which advised the Hospital in managing the project
- a design team which was responsible to the Hospital prior to the construction contract being signed and thereafter to the developer
- a construction monitor put in place to protect the Hospital's interests after the design team became responsible to the developer.

2.5 Key external components of the project team were

- the project coordinator for the design, construction and financing of the multi-storey car park at Tallaght Regional Hospital (the project advisor)
- a firm of accountants which provided financial and taxation advice to the Hospital and sought and evaluated proposals for the operation of the parking concession (the financial advisors)
- a law firm which gave legal advice and drafted the legal documentation to give effect to the project.

Approval by the Board

2.6 On 12 March 1998, the Board was given an outline of the proposed project. The information conveyed to the Board was on the lines of that set out above.

2.7 The Board received a report from the Chief Executive on 14 May 1998. Following elaboration on the report from the Hospital's Financial Controller and its Manager of Special Projects and from the project advisor, the Board approved

- the granting of a lease and the disposal of the site
- the establishment of the subsidiary
- proceeding with the design work and planning applications
- seeking of tenders for construction of the car park from a limited panel of competent contractors and proposals from interested parties for the operation of the parking concession
- the proposed tariff rate for the operation of the car park.

2.8 On 11 June 1998, the Board approved the granting of a loan to the subsidiary. The purpose was to finance the temporary transfer of the site to the subsidiary in order to meet the qualifying criterion for the tax-based scheme that 15% of the expenditure be incurred before 30 June 1998.

2.9 On 17 September 1998, the Board approved the awarding of a contract to finance and operate the car park. The information made available to the Board was based on a joint report by the Project advisor and the Financial advisors. The report to the Board is reproduced in Appendix A.

Approval by the Minister

2.10 On 20 May 1998, the Hospital wrote to the Minister for Health and Children (the Minister) outlining the need to upgrade its car park facilities by providing a car park for 600 cars at a cost in the region of €7 million and indicating that the Hospital was not in a position to fund this. The letter then outlined the proposal to avail of tax incentives available to promote development of multi-storey car parks.

2.11 The Hospital explained that it intended, on a tender basis, to appoint a developer to build the car park at his own cost and that

- the developer would hold the car park under lease from the Hospital for 13 years
- a car park operator would run the car park under sublease
- during the 13 year period, the developer would pay rent to the Hospital which was expected to be sufficient to replace the income from the existing car park facilities
- after the 13 year period had expired, the car park lands and building would be handed back to the Hospital.

2.12 The Hospital noted that the successful implementation of the scheme depended on availing of tax incentives and to do so, the Hospital would have to incorporate a subsidiary to acquire the site and lease it to the developer. The subsidiary would subsequently sell the freehold back to the Hospital at market value. After seeking and obtaining additional assurances, the Minister approved the project on 26 June 1998.

Legal Arrangements

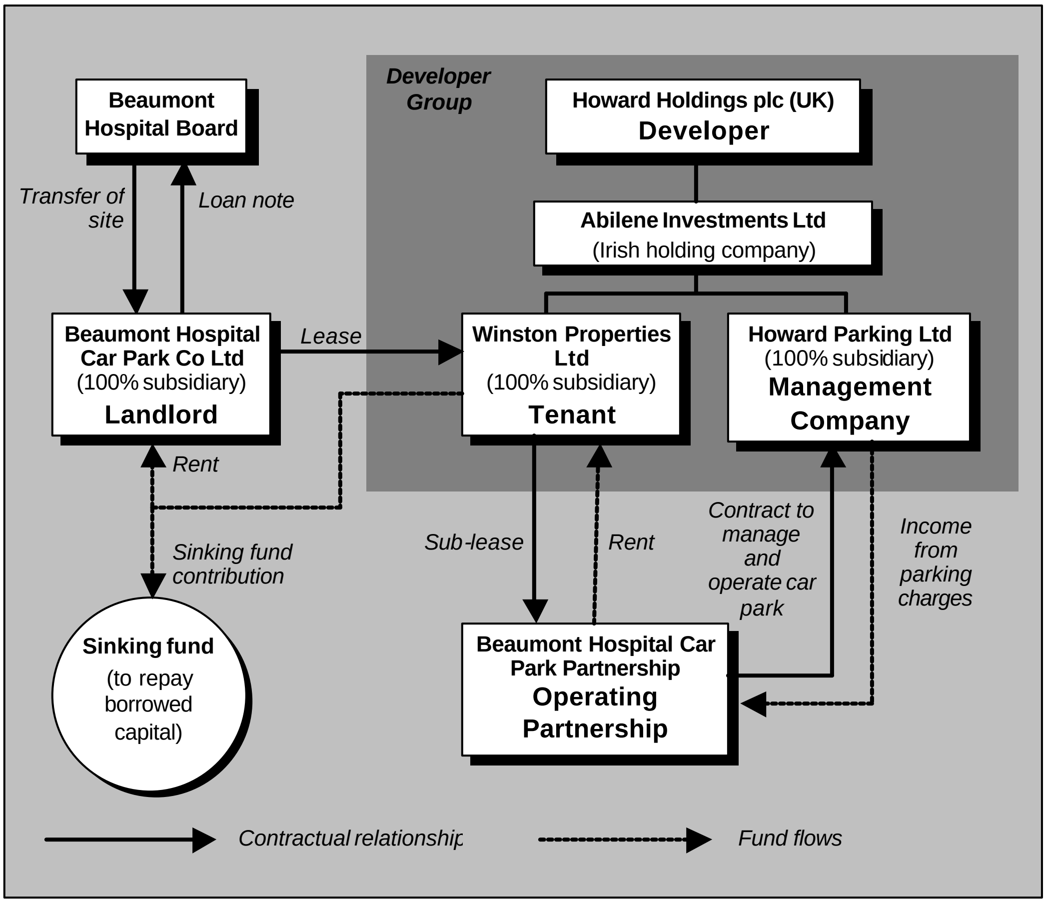
2.13 The following legal documentation was put in place to give effect to the decision of the Board

- deeds transferring title to the site to the Beaumont Hospital Car Park Company Limited (the subsidiary)
- an agreement for a lease between the subsidiary and the developer[4]
- a lease from the subsidiary to the developer.
- a side letter to the developer which clarified and modified some of the lease terms.

2.14 What emerged was a complex project structure, the main elements of which are outlined in Figure 2.1. The Figure includes the relevant components of the group of companies controlled by the developer who submitted the successful proposal for the operation of the car park concession.

4 The developer nominated a related company as tenant of the premises. All references to the developer refer to the successful tenderer and the nominated tenant. See Figure 2.1

Figure 2.1 Relationships between parties involved in car park deal



Notes a: The Hospital's subsidiary engaged in a construction tender to procure a fixed price contract. The developer took over this contract upon his engagement on foot of a financial tender round.

b: Amounts paid in to the sinking fund are nominally controlled by the Hospital's subsidiary. Ultimately, the fund will be used to redeem the capital borrowing and acquire ownership of the car park.

Transfer of the Site

2.15 Beaumont Hospital Board was the registered owner of the property on which the site was situated. The site, which consisted of an area of around 0.9 acres, was valued by a firm of chartered surveyors on 26 May 1998 on the following basis.

> "Taking into account the buoyant state of the property market and the very strong demand currently for land and sites with development potential, the subject property will have wide appeal and would command a strong price should it be offered to the market. Taking all factors into account, in our opinion the present open market value of this property on the basis of freehold title is the sum of €1,651,000."

2.16 By deed of transfer dated 30 June 1998, the Hospital agreed with the subsidiary for the sale of this property in consideration of a loan note in favour of the Hospital of €1,651,000.

2.17 The transfer deed records that the Minister, pursuant to Statutory Instrument 255 of 1977[5], authorised the transfer in consideration of the issue of the loan and agreed to join in the deed in order to confirm the transfer.

Agreement for Lease

2.18 The purpose of the agreement, which was completed on 23 October 1998, was to make provision for the granting of a licence and authority to the car park tenant to procure the construction of the car park as provided for in a building contract and set out other practical arrangements. The building contract, while negotiated by the Hospital, was between the car park tenant and the firm who were successful in the construction tender round. The agreement also covered the obligation of the developer to complete the car park in accordance with the plans and specifications, the planning permission and building regulations.

Lease

2.19 The lease, also dated 23 October 1998, transferred a leasehold interest to the car park tenant in consideration of rents and covenants. The document contained the standard covenants contained in most lease agreements.

2.20 The rent receivable was divided in four parts.

- A **first rent** was to be payable quarterly in arrears without any deduction, set-off or counterclaim for the first 13 years. This was quantified in the lease as follows
  - Years 1-6 €659,165
  - Years 7-10 €722,652
  - Years 11-13 €786,139
- A **second rent** was payable annually calculated at 65% of the excess of turnover over specified annual thresholds for the first thirteen years.
- A **third rent**, set initially at €620,900, was to be payable from years four to thirteen.
- A **fourth rent** was to be paid annually in advance. This was set at € 1.27 a year.

2.21 A sinking fund was to be created by the payment of the third rent into a blocked bank account which would be used to fund the reaquisition of the facility by the Hospital. It was agreed in the side letter to the lease that payments could be brought forward and this was done. The account into which the third rent was paid was subsequently charged by the subsidiary of the Hospital in favour of the bank which was providing loan facilities to the tenant as security for its liabilities to the bank.

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5 Beaumont Hospital Board (Establishment) Order, 1977

Side Letter

2.22 A side letter to the lease was drawn up[6]. This letter clarified, amplified and modified certain terms of the lease agreement. The agreement in the side letter was signed on behalf of the subsidiary, Beaumont Hospital Board, Howard Holdings plc and Winston Properties Limited. The Chief Executive signed on behalf of Beaumont Hospital Board. The arrangements were to remain in place for 13 years.

2.23 The following principal agreements were recorded in the side letter.

- Increases in car parking tariffs would be permitted by reference to increases in the Consumer Price Index. No tariff increase would be permitted in the first two years.
- The multi-storey car park was intended as the sole provider of public parking in the Hospital. No other public facility was envisaged. However, in the event of it nearing full occupancy, a back up facility could be used.
- If, over any three-month period, it was demonstrated by the tenant or the car park operator that 25% of the spaces in the multi-storey car park were being used on a long term basis, then both parties would work together to find a structure to prevent this from continuing. In default of agreement, the matter would be referred to an independent expert.
- The tenant would be compensated in the event of prolonged closure.
- Issues relating to parking on the Hospital campus would be dealt with in accordance with an agreed parking protocol. Costs incurred by the tenant in connection with the operation of the parking protocol would be treated as operating costs.
- The subsidiary would deposit all sums paid by way of third rent in an account with a bank to be nominated by the tenant, and would retain the proceeds together with deposit interest accruing (less any tax payable on such interest) in that account.
- The agreement acknowledged that the tenant could at his sole discretion amend the provisions for the review of the third rent in the lease, and accordingly, that the tenant could vary the amounts which were paid into the account.
- On the exercise of a Put Option or a Call Option, the monies in the account (or an appropriate part of such monies) would be used by the subsidiary to discharge the option price.
- The subsidiary would not withdraw any sums from this account (other than to discharge the option price). It would not create any lien over the monies in such account and it would comply at all times with all reasonable requirements which the tenant might make with regard to such monies.

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[6] Two signed versions of the side letter are in existence. The first is dated 23 October 1998 and the second is dated 14 December 1998.

- The subsidiary agreed to assume the obligation to pay rates in respect of the multi-storey car park. The tenant, in turn, would reimburse it for any rates so paid. The subsidiary would use reasonable endeavours to obtain relief from rates with any saving made as a result of the operation of such arrangement being divided on a fifty-fifty basis.
- The subsidiary undertook not to seek to construct a helipad on the multi-storey car park where the construction of the helipad would result in the loss of capital allowances in relation to expenditure incurred on the construction.
- The Hospital would enter into negotiations, in good faith, with a view to arriving at arrangements for the provision of services to the car park.
- The terms of the side letter would be binding on the successors in title to the signatories of the letter, and on parties deriving title from such signatories.

2.24 The text of the side letter, including the parking protocol and the initial parking regulations, is reproduced in Appendix B.

Conclusion

2.25 In summary, the implementation of the project involved the Hospital, in conjunction with its subsidiary, Beaumont Hospital Car Park Limited, in

- arranging for the design of the car park and getting related permissions
- seeking, through the Quantity Surveyor attached to the design team, construction tenders and the agreement of a fixed price cost with the successful tenderer
- the seeking, through its financial advisors, of tenders from interested parties for the operation of the concession
- the regulation of car parking after the opening of the multi-storey car park, so as to ensure that public car parking was routed to the multi-storey car park.

3 Managing the Procurement

3.1 This chapter reviews whether

- the procurement of the multi-storey car park was effected in a manner designed to ensure that value for money was achieved over the life of the project
- the procurement was carried out in accordance with public procurement rules.

3.2 Key considerations in minimising the risk to value for money in projects carried out by public bodies are

- the preparation of a proper business case and specification for the project
- the choice of the optimum funding option, taking account of the wider State interest
- approval of the project and funding option by the body's board and formulation of a good tender list
- evaluation of proposals and the choice of the proposal which yields the best value
- adequate procedures for control and management.

Business Case and Specification

3.3 The window of opportunity associated with the proposed tax-based funding seems to have militated against detailed examination of needs. While an examination was undertaken, its focus was primarily on the financial impact of the proposal on the Hospital rather than on a quantification of the need for the additional spaces.

3.4 Notwithstanding this, it is apparent that there was a need for additional parking at the Hospital. At the point at which the contracts were being negotiated, the Hospital had a ten-year physical development plan designed to improve and expand its facilities, taking account of the needs of the local catchment area and the role of the Hospital as a regional and national centre. There were plans to increase bed capacity and develop significantly the range of facilities provided within the Hospital complex. Planned facilities included

- a clinical sciences building, operated by the Royal College of Surgeons in Ireland
- an extension to the existing private clinic
- a Kidney Association hostel
- a haemodialysis unit
- a psychiatric unit
- day care facilities for the elderly.

By July 2002, the first three developments had taken place and the haemodialysis and psychiatric units were at the design stage.

3.5 The project and its components were fully outlined to the Board in a series of meetings between March and September 1998. The details of this information are set out in Chapter 2 and Appendix A.

3.6 Subject to my reservations on the failure to properly evaluate the funding method proposed (discussed below), the objectives were clearly set out on each occasion.

Achieving Best Value for the Hospital

3.7 Two tendering processes were involved in the course of the project. A construction tendering process was undertaken to establish the cost of procuring the car park. A separate tendering process was undertaken for the operation of the parking concession

3.8 Within the context of a tax-financed scheme, the Hospital should seek to maximise its revenue by choosing the best available proposal emerging from the tender process. Compliance with public procurement rules is examined later in this chapter.

Provision of Facilities

3.9 The administration of construction tendering was carried out by the Quantity Surveyor attached to the design team. Tenders were sought from eight major firms nominated by the Hospital. Separate mechanical and electrical tenders were sought by a consultant in that specialty and the result communicated to the Quantity Surveyor.

3.10 The construction tenders were evaluated by the Quantity Surveyors attached to the design team. Their recommendation was to accept the lowest tender and the contract was ultimately awarded on that basis.

3.11 On 25 November 1999, the construction monitor confirmed to the Hospital's Financial Controller that the final agreed cost for the project was €8.4 million, inclusive of design team fees and VAT. In addition, a completion bonus of €200,000 was paid bringing the final cost of construction to €8.6 million.

3.12 When account is taken of the fees payable to the Hospital's advisors and the construction monitor, as well as the planning and related costs, the final all-in cost of the facility was just under €9 million. These costs do not include the value of the site (€1.65 million).

3.13 The multi-storey car parking capacity is 600. However, the facility and ancillary works were constructed on a site already being used for car parking purposes. The Hospital estimates that 370 existing spaces were eliminated. On that basis, the project provided a net 230 additional parking spaces.

Award of the Concession

3.14 In the case of the tenders for the car park concession, the tender list was formulated and tender administration was carried out by the financial advisors. Papers provided by the advisors indicate that firms were approached from a panel of 54 firms and that seven proposals were received and evaluated.

3.15 Evaluation of the tenders was carried out by the financial advisors. The proposals received were initially examined taking account of the following six criteria, which were based on the Hospital's key concerns

- the level and timing of the annual income
- the timing of the return of the car park to the Hospital
- the share of any growth in income and the threshold above which the share began to accrue to the Hospital
- the risks to the Hospital
- the deliverability of the project
- the operator's track record.

3.16 Following this examination, the proposals were short listed down to three. Revised proposals were negotiated with these three. The revised proposals were evaluated against the following criteria

- annual income guaranteed
- potential profit share assuming a gross income of €1.27 million, net of VAT
- deliverability.

The proposals were ranked as set out in Figure 3.1.

3.17 The recommendation to the Board was to accept Proposal 1. This was mainly influenced by the following considerations.

- Proposal 2 was deemed inferior on deliverability grounds.
- Proposal 3, while offering a more attractive profit share, guaranteed less income.

3.18 No basis for the results in regard to the deliverability ranking was outlined in the report to the Board. The Financial advisors informed me that the rankings were arrived at on the basis of their discussions with the proposers.

Figure 3.1 Ranking by the financial advisors of proposals for the car park concession

	Proposal 1[a]	**Proposal 2**	**Proposal 3**
	€ million		
Guaranteed rental income	9.30	9.61	8.75
Profit share income[b]	—	—	0.58
Total rental income	9.30	9.61	9.33
Net present value of income stream[c]	6.48	6.70	6.47
Financial ranking	**2**	**1**	**3**
Deliverability ranking	**1**	**2**	**3**

Source: Financial advisors' report on the evaluation of proposals

Note: [a] Proposal 1 was ultimately the successful proposal.

[b] Assumes turnover of €1.27 million from parking charges.

[c] Rental income stream discounted at 6%.

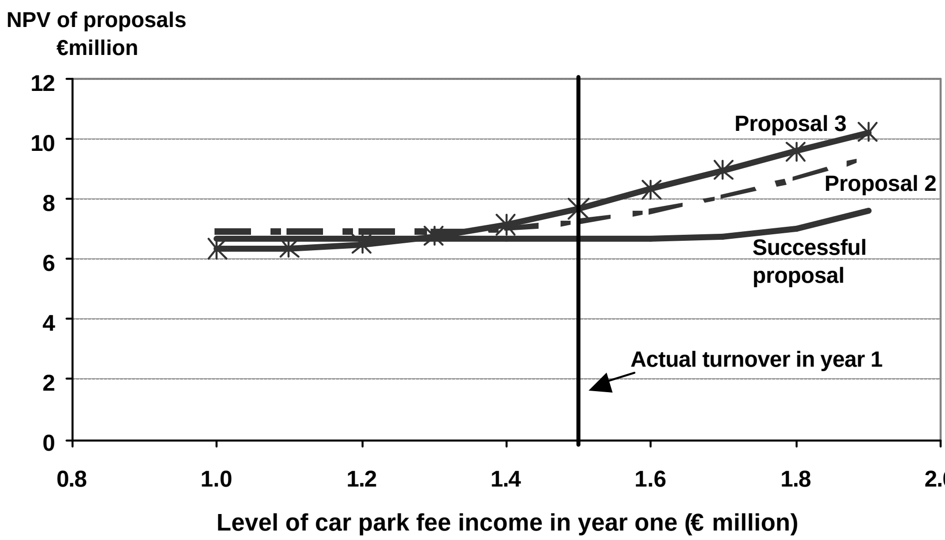
3.19 The evaluation which informed the Board decision calculated the net present values of each option using an assumed turnover from parking charges of €1.27 million in year 1. However, since each proposal had different profit sharing ratios and different thresholds from which a share of income began to accrue to the Hospital, it would have been appropriate to consider the outcome for a range of possible turnover values. Information on the impact of different assumptions about turnover was not, however, included in the report to the Board.

3.20 The net present values of the income streams were re-estimated over a range of turnovers (€1 million to €1.9 million in year 1 of operation) in the course of my examination. This range includes the projected turnover values indicated in a brief for proposals which was sent to firms who were requested to submit proposals. (The annual turnover, net of VAT, achieved during the first year of operation was approximately €1.5 million.[7]) It was further assumed that turnover would grow by 3% a year.

3.21 Figure 3.2 shows the results of the analysis, for different assumed levels of turnover.

3.22 The analysis indicates that Proposal 1, which was recommended and accepted, was the least advantageous to the Hospital in financial terms, over a range of turnover levels. Given the structure of the offer, it was the least sensitive to increases in the level of turnover. Since all the offers were worth roughly similar amounts at the lowest expected turnover level, there would seem to have been a good case for preferring one of the other offers when judged on financial grounds alone.

Figure 3.2 Net present values of proposals at different fee income levels



Source : Analysis by Office of the Comptroller and Auditor General

[7] This is the amount certified by the operator. It is unclear whether or to what extent it includes the benefit of fines offset by the tenant against the rent due.

Achieving Best Value for the State

3.23 Two main options exist when public bodies procure capital projects. The traditional direct provision option involves the State making funds available from the public purse for the construction of the facilities[8]. The alternative tax-based financing also involves a State outlay, but in the form of tax forgone. Tax incentives in this case came in two forms

- a 50% capital allowance claimable by the developer on the construction cost of the car park
- a double rent allowance claimable by members of a partnership granted the right to operate the car park.

3.24 Ultimately, from the Hospital viewpoint, only one option was considered. This option was attractive to the Hospital because it guaranteed the provision of the car park, its reversion to the Hospital after 13 years and the maintenance of the current level of income.

3.25 In the interest of identifying which of the approaches offers the best value to the State, an appraisal should be done to determine the best financing option. As part of this examination, a comparison was undertaken of the net present value of the relevant outflows and inflows to the State (including those of the Hospital) under both options. The detailed calculation and the key assumptions made are set out at Appendix C.

3.26 While it is acknowledged that the operational risks associated with running of the facility transferred to the developer and operating partnership under the tax-based deal, the cash flow comparison shows that the direct provision option would have represented far better value, taking the overall State interest into account.

3.27 Figure 3.3 summarises the estimated cash flows (in net present value terms) associated with the two provision options, based on turnover from car parking charges of €1.5 million in year 1 of operation of the parking facility.

Figure 3.3 Summary of relevant public sector cash flows over 13 years for tax-based and direct provision of car park

Cash flow element	Tax-based deal	Direct provision
	€ 000 (NPV)	
Rental payment to Hospital	6,400	—
Income from parking charges (after VAT)	—	18,000
Operating expenses	—	(4,800)
Repayment of borrowing	—	(7,600)
VAT receipts	3,800	3,800
Corporation tax receipts (net)	(200)	—
Income tax refunds	(11,000)	—
Total public sector cashflow	**(1,000)**	**9,400**

Source: Analysis by Office of the Comptroller and Auditor General

8 A variation on direct provision would be for the Department to allow the Hospital to borrow to procure the project.

3.28 The difference in the net cash flows between the two options is estimated at €10.4 million in net present value terms. The tax incentive associated with the double rent allowance is the reason for most of the costs under the tax-based deal and is the main generator of benefit to the investors (developer and partnership). Refunds of income tax are estimated to cost €11 million (in net present value terms).

3.29 The conclusion that the State would have been worse off as a result of choosing the tax-financed option holds over a range of assumptions about level of turnover. The difference in net present values of the alternatives is estimated to be between €8.9 million and €13 million, over a range of levels of annual income from parking charges starting at €1.3 million to €1.9 million in year 1.

3.30 The Chief Executive informed me that, being State-funded, the Hospital recognised its obligations to achieve value for money in respect of services it provides. However, in relation to a development on the Hospital site funded by investors using tax legislation, it would take a view that it was not possible for the Hospital to take on the responsibility of ensuring best value for the State under such statutory-based tax arrangements. As such, the Hospital would be sensitive to any implied criticism of failure to protect the interests of the State.

Control and Management of the Project

Appointment of Advisors

3.31 Most of the steps in putting the project in place were performed by agents. In order to protect the interests of the Hospital, it is desirable that all advisors be appointed through a competitive process.

3.32 None of the project team was engaged after a competitive process. Specific Board approval was received for the appointment of the project advisor and the financial advisors. This approval was given on 12 March 1998. The engagement of legal advisors was covered by a general decision by the Board giving authority to engage appropriate legal advisors.

3.33 In the case of the design team, the project advisor arranged for the engagement of the same team as was used on the Tallaght Hospital project. No competitive tendering was involved and there was no specific Board approval for these engagements. In the case of the construction monitor, there was no competitive tender, no signed engagement document and no Board approval.

Internal Management Arrangements

3.34 The internal responsibility for the project rested with the Hospital's Financial Controller, who chaired meetings of the project team. A Special Projects Manager, who was an existing employee of the Hospital, was also involved in project management. The Special Projects Manager moved to the employment of the developer in mid-1999.

3.35 Where responsibility for project management is assigned to staff members, it would be preferable if that responsibility were clearly assigned by the Board and reporting lines formally established. In addition, the principle of maintaining a division of responsibilities between the persons initiating transactions, authorising payments and accounting for the results should be maintained.

Management of Financial Risk

3.36 Because the developer took over the construction tender negotiated by the Hospital and its subsidiary, much of the risk transferred at that point. In addition, the signing of the construction contract guaranteed that the expenditure by the Hospital in setting up the project would now become part of the overall capital cost and be funded in the same manner as the direct construction cost. Had the project not proceeded, this preliminary outlay would have been nugatory and borne, as current expenditure, by the Hospital.

Documentation and Reporting

3.37 Control and management of public sector procurement requires that the accountable authority be capable of demonstrating that all decisions were regular and proper. The examination found that much of the key information about the project rested with agents of the Hospital. This included the papers relating to the evaluation of both construction and financial tendering. While acknowledging the obvious efficiency of the process, the Hospital should have had the documentation in its possession to enable it to ensure that public business was properly conducted.

3.38 In addition, although there was an apparent need to update the Board where the structure approved was not put in place, no detailed reporting was made to the Board on the outturn of the project. The following material changes occurred in the project structure which impacted unfavourably on the projected benefit to the Hospital.

- The subsidiary company was not wound up — this may affect the tax exposure of the Hospital.
- Rental income for the Hospital did not materialise at the level projected from the start of operation of the parking facilities. The Board was only informed of this in 2002.

Public Procurement Rules

3.39 Public procurement rules established by European Directives apply to contracting by public bodies. These have been implemented in Ireland under regulations by the Minister for Finance. In view of the fact that two separate tender rounds – one for the construction contract and another to appoint the concessionaire – were engaged in by the Hospital without advertisement in the Official Journal of the European Communities (OJEC), I sought a legal evaluation by a firm of solicitors on compliance by the Hospital with public procurement rules.

3.40 The legal expert confirmed that Beaumont Hospital was a body to which Council Directive 93/37/EEC (the Works Directive), as implemented in Ireland, applies[9]. It was concluded that, while the structure adopted did not fit neatly within the rules set out in the Works Directive, the two contracts taken together constituted a 'works concession contract' as defined in the Directive.

[9] The Hospital, by incorporating a wholly owned subsidiary, could not have avoided the application of the rules and, accordingly, all references to the Hospital include the subsidiary company.

3.41 Depending on the value of services contracts awarded by the Hospital, these also may have been subject to the procurement rules set out in Directive 92/50/EEC (the Services Directive). If the design element had, however, been included in the works concession contract, it would not affect the classification of the project as a works concession.

3.42 The opinion of the legal expert was that

- the Hospital breached the provisions of the Works Directive which requires that works concessions be advertised in the OJEC.
- the imposition by the Hospital of its choice of building contractor effectively prevented the concessionaire from complying with the requirement to advertise works contracts as set out in the Works Directive.

The views of the legal expert are set out at Appendix D.

Views of the Department of Health and Children

3.43 The Accounting Officer of the Department noted that in matters of this kind, the Department cannot have detailed involvement in the management of the project as this is very much the responsibility of the particular agency. However, the Department must ensure that a proposal for any new facility is planned in accordance with the overall needs of the Hospital from an operational view point. Such an examination was carried out by the Hospital Planning Office of the Department who were satisfied with the design plans for the project. The Department was also concerned that the asset of the car park would revert back to the Hospital and that, in general, the legal issues surrounding the project were satisfactory. Again, there was detailed examination by the Department of these matters.

3.44 In regard to the finding that direct provision would have been better value for the State than a tax-financed project, the Accounting Officer noted that a real difficulty was that the overall level of capital funds available to the health services in 1998 of €190m was not adequate to meet the many competing demands. The budget was put under considerable strain by the demands on it from programmes such as acute hospitals, older people, disability etc. The then Government recognised the need to increase investment in infrastructure, and the health sector was included in the National Development Plan for the first time for the period 2000–2006.

3.45 He noted that while the recent increases in capital funding by the Exchequer were very welcome, there were still many more service demands on that funding than could be met and it seems sensible to continue to look to other methods of funding car park facilities where appropriate. He informed me that it remains the Department's policy that, where appropriate, new car parking facilities in major hospital developments should be funded by income derived from car parking in those hospitals. This should include a borrowing arrangement, with income applied to loan repayments and he had asked a Departmental group to include that approach as part of their consideration of guidelines on the future financing and management of car parking facilities.

4 Management of Parking

4.1 Under the terms of the lease, the tenant was given the right to operate the car park subject to the payment of rent and the observation of certain covenants. The Hospital acknowledged in the side letter to the lease that the multi-storey car park was intended as the sole provider of public parking on the campus and that no other public parking facility was envisaged. This chapter examines

- how car parking was managed after the opening of the new facility
- why the expected revenue was not achieved.

Parking Protocol

4.2 The initial parking regulations were quite short and provided that

- The vehicle of a patient or of a visitor to a patient should not be left unattended on the Hospital campus outside the multi-storey car park, save when it was engaged in setting down within the set down area in accordance with the parking regulations.
- Staff car parks could be used only for the parking of vehicles belonging to members of Hospital staff, and commercial vehicles of service providers.

4.3 Under a parking protocol agreed with the developer, the Board undertook to use its reasonable endeavours to ensure compliance with the parking regulations and in doing so it undertook to implement the following measures

- maintain a roving patrol
- erect reasonable signage advising visitors to the Hospital campus of the parking regulations
- place stickers on illegally parked vehicles
- take measures to ensure that the set down area was used only by persons setting down visitors to the Hospital.

4.4 The Board also undertook to take measures within the law to limit the number of illegally parked vehicles on the campus and to use its reasonable endeavours to ensure that relevant personnel complied with the parking regulations.

4.5 The Board undertook to take an active role in the implementation of the regulations and to nominate a member of its senior management to liase on a continuing basis with the tenant in respect of the enforcement of the regulations in order to supervise their implementation.

4.6 Where the tenant could demonstrate that there was an excess of 30 illegally parked vehicles on the campus at any one time, the subsidiary would compensate the tenant. The amount of compensation would be the current daily parking rate in existence at that time, for each vehicle so parked and the compensation would be paid within 7 days of the tenant demonstrating that it was payable.

4.7 The protocol provided that the Board could delegate the enforcement of the parking regulations to the tenant and recorded its intention to delegate the enforcement of the regulations to the tenant as and from the date upon which the multi-storey car park went into operation. This was not proceeded with.

4.8 It was provided that any dispute in relation to the content of the parking regulations would be referred to an arbitrator.

Parking Charges

4.9 Prior to the provision of the new facility, a flat-rate parking charge of €1.27 per visit was charged by the Hospital. The tariffs agreed for parking in the new facility are shown in Figure 4.1.

Figure 4.1 Tariffs for parking in the multi-storey car park

Time spent in car park	June 1999 to December 2000	December 2000 to date
First 20 minutes	Free	—[a]
21 minutes to 1 hour	€ 1.27	€ 1.40
1 to 5 hours	€ 1.27 per hour	€ 1.40 per hour
Over 5 hours but less than 1 day	€ 6.35	€ 7.00
More than one day	€ 6.35 per day or part thereof	€ 7.00 per day or part thereof

Source: Beaumont Hospital Board

Note: a: At some time after December 2000, a tariff was introduced for the first 20 minutes of parking. The Hospital cannot verify when this change occurred.

Car Park Revenue

4.10 The lease required the tenant to pay the first rent to the Hospital quarterly. The amount of this rent was broadly equivalent to the Hospital's previous income from parking on the campus. Under the terms of the lease, the total rental income receivable as first rent from 9 June 1999 to 31 March 2002 would have been of the order of €1.8 million. Despite the lease condition that the rent was to be paid without set-off or deduction, only €120,000 was paid to the Hospital in respect of periods up to March 2002.

4.11 While rent should have been paid to the subsidiary by the tenant, in practice, the matter of rental and penalties was handled between the Hospital and the management company representing the operating partnership

4.12 The principal reason for the underpayment in the period up to March 2002 was the levying of parking penalties and their deduction from the rent payable. A total of €1.8 million was levied in respect of parking penalties — €1.7 million levied in respect of 'illegal parking' and €103,000 in respect of 'relevant closures'.[10] The penalties were treated by the tenant as

[10] 'Relevant closures' relate to an action by the Hospital or its staff (such as strike action) resulting in the closure of more than 50% of the activites of the Hospital, or the closure of the Multi Storey Car Park

cumulative and to the extent that they exceeded the rent payable they were carried forward on the statements furnished.

4.13 On 26 June 2002, rental was, for the first time, paid without deduction of penalties. The payment was for the June quarter 2002 and was made without prejudice to the issue of set-off of sums for illegal parking.

Parking Penalties

4.14 Under the terms of the parking protocol, the rate of compensation was to be the current daily parking rate for each illegally parked vehicle found. This penalty rate is in excess of the yield from a normal parking transaction. Furthermore, the penalties actually levied exceeded the agreed rate.

4.15 During the first quarter of 2002, an average parking transaction was estimated to yield €2.61. The penalty actually levied was €13.02 for each car deemed by the tenant to be illegally parked. The net result is that the penalties levied yield over five times the income which a normal parking transaction does.

4.16 In calculating penalties in the period up to March 2002, the maximum daily rate was multiplied by a factor which varied between 1.66 and 2.09. As a result of the application of these factors, the penalties levied in the period from the opening of the car park up to 31 March 2002 exceeded the amount payable as set out in the protocol[11] by €800,000.

4.17 The number of parking penalties applied is calculated by reference to samples. The tenant estimates the total number of illegally parked cars by extrapolation of the sample results. Penalties are also levied in respect of cars of private patients parked in a car park dedicated to the private clinic. As a result of this, the cost of parking by private patients is being transferred to the public purse. Up to March 2002, a deduction of €175,664 had been levied on the Hospital in respect of this parking.

Acceptance of Figures by Hospital

4.18 On 11 September 2001, the Hospital agreed the figures claimed for illegal parking on the Hospital's grounds for all periods up to 31 March 2001. The letter of agreement is set out in Appendix E.

Non-Recovery of Expenses

4.19 Certain service costs including the cost of insurance, electricity and enforcement of parking regulations which should have been recovered by the Hospital have not yet been invoiced to the tenant.

[11] Adjusted for variation in weekend traffic.

Views of Hospital Management

Views of the General Manager

4.20 As there appeared to be a lack of awareness at Board and management level of the scale of the set-offs against rental income, I asked the General Manager of the Hospital, who has ultimate responsibility for security and measures relating to the administration of parking, for his views.

4.21 The General Manager informed me that he only became aware of the scale of the problem of penalties at the end of 2001 or the beginning of 2002. Prior to that time, he was not aware of the scale of the penalties being levied nor had his staff any information on the level of penalties.

4.22 In regard to the parking regulations and parking protocol, the General Manager informed me that there was no evidence to confirm that these documents had been made available to his staff in Security, General Services and Technical Services.

4.23 The General Manager, General Services Officer, Head of Security and Technical Services Manager were involved in implementing new parking arrangements and hospital staff were made aware of the revised arrangements by way of a memorandum to all staff with a map attached. The General Manager also supplied training lecture notes to security staff outlining the changes.

4.24 The Hospital monitors staff identification cards and permits on a regular basis at the entrance to car parks. Staff are also requested through bulletins and flyers to comply with the new parking arrangements.

4.25 The General Manager informed me that he was not sure of the exact reason for issuing both a car sticker/permit and a staff identification card. He informed me that it became apparent at an early stage that the staff identification system had deficiencies and that once a staff identification card was issued, it could not be cancelled when the staff member left the organisation.

4.26 In regard to the agreement in the protocol to nominate a senior member of management to liaise on a continuous basis with the tenant in respect of the enforcement of parking regulations and to supervise their implementation, the General Manager informed me that he had no knowledge that there was to be a nomination by the Board and had no evidence that this did happen.

4.27 Issues in relation to staff car parks were summarised in a report of the General Services Manager completed in January 2001. The report, which noted that at that point there were 941 car parking spaces for staff, identified the issues set out in Figure 4.2.

Figure 4.2 Main issues identified in report of General Services Manager on parking, January 2001

- Inadequate or no fencing around the surface car parks allowed for cars to be driven over paths into the car parks and therefore completely avoid the barrier system.
- The identification system did not allow for a card to be deleted for use at the barrier when the staff member ceased employment in the Hospital.
- There were no designated parking spaces for disabled staff.
- The Hospital was being charged for all cars illegally parked on the property. These included cars parked in car parks without permits. This issue was being addressed by the Security Department by placing reminders in the Hospital newsletter in relation to permits and reminders on the cars themselves.
- Cars were being parked outside of car parks on footpaths, grass verges and other inappropriate areas etc. Stickers and notices were being placed on these cars on a daily basis with little effect.
- There was an ad hoc parking arrangement at the rear of the Hospital with the use of open spaces as car parking facilities. There were situations where cars parked in the Technical Services Department were blocking exits. There was a need to develop a car park facility in this area for use by staff.
- There was a need to dedicate spaces for use by the mortuary for removals.

Source : Beaumont Hospital Board

4.28 In regard to fencing around staff car parks, the General Manager informed me that

- In February 2001, it was agreed to go to tender for fencing. Tenders were received in May 2001. The fencing tender process was, however, the subject of a separate investigation by internal audit and the contract was not awarded.
- In November/December 2001, the Technical Services Department placed temporary fencing in areas most prone to illegal car parking.

4.29 In regard to the private clinic, where patients are not currently charged for parking in a dedicated car park, the General Manager informed me that

- Patients attending the private clinic paid a fee of €1.27 at the barrier prior to the opening of the multi-storey car park.
- The Hospital requested that patients attending the private clinic should be accommodated in the multi-storey car park. However, the clinic wished to retain the custom and practice of patients attending the clinic parking adjacent to it.

Views of the Chief Executive

4.30 The Chief Executive has informed me that there is an amount of evidence that, had his predecessor, the senior executives in the Hospital or the Board been aware of the serious losses being suffered by the Hospital for 1999 to 2002, action to stop these losses would have been taken at an early stage. The fact that this action did not take place and that the Hospital agreed to the imposition of fines has led to a situation where the Hospital is experiencing difficulty in redressing the situation. In this regard, he informed me that the Hospital had

- engaged legal and financial advisors to guide it on the major outstanding issues and in particular to advise on the manner in which action can be taken to retrieve historical losses and minimise future potential losses
- written to the operator of the multi-storey car park seeking their proposals for the management of car parking at the campus in accordance with the lease agreement and side letter and seeking that the matter of the current claims for parking penalties be referred to arbitration
- written to the operator seeking payment of arrears of rent and the repayment of penalties on the basis that the previous penalties levied against the Hospital had not been properly established.

Further Risks to the Hospital

4.31 The failure of the Hospital to complete the steps set out in the original structures puts it at risk of further loss in the form of taxation of its revenues. The original intention was that the site would be transferred back to the Hospital and the subsidiary wound up. Neither step has been taken. The subsidiary, which does not enjoy charitable status, may be exposed to tax unless the original scheme is deemed to constitute a contract in writing for the transfer of the land back to the Hospital.

Post Project Evaluation

4.32 No evaluation of the outcome of the project was done. The carrying out of such an evaluation and its reporting to the Board might, at a minimum have allowed it to consider

- the outturn compared to projections
- the remedial action it might take in the case of the income shortfall.

Views of the Department of Health and Children

4.33 The Accounting Officer stated that it was the responsibility of the Hospital to manage the project so that it would yield the expected income from the new facility. However, he also shared my concern in regard to the overall management of this project by the Hospital. The lessons to be learned from the process are important and should be made available to health agencies. To that end, a group was being established in the Department to examine the lessons of the Beaumont project and prepare guidelines for agencies on the proper management of such initiatives in the future. He added that the group, which would begin its work immediately and consult with relevant persons in the health sector, would discuss the draft guidelines with my Office before they issue.

Appendices

Appendix A

Text of report of 17 September 1998 to the Board of Beaumont Hospital

This appendix reproduces the text of a report sent to the Board of Beaumont Hospital on 17 September 1998.

Other than the developer who submitted the successful proposal and related companies, the names of private parties are not reproduced here.

All amounts of money are shown here in Euro equivalents. The original report presented monetary amounts in IR£.

Multi-storey car park for public use at Beaumont Hospital

The purpose of this report is to brief the Board of the current progress in arranging for the provision of a tax based financed multi storey car park in the Hospital and to seek Board approval for the following.

The awarding by the Hospital of the contract to finance and operate the car park to the recommended investor Howard Holdings Plc. In line with previous approvals by the Board the Hospital's legal advisors have completed the lease and other associated agreements required for this contract.

The original financial objectives of the project were to:

1. Secure the development at a nil capital cost.

2. Secure an annual income from the proposed development at least equal to its current revenue of approx €0.5m from existing car parking on the site.

3. On the completion of a lease period, ownership of the car park to revert to the Hospital.

4. The risks for the Hospital associated with the development and management of a MSCP *[multi-storey car park]* to be minimised.

The progress to date can be summarised as follows

Design & Planning Permission

[Name of architects] have designed the proposed 600 space car park to be constructed on a site within the Hospital grounds. Planning permission has at this point been received and is subject to appeal to An Bord Pleanala until 18 September, 1998.

Construction Tenders

Construction tenders have been received from six construction companies and negotiations have taken place with the lowest tenderer *[name of the successful tenderer]* for a construction price of circa €6.35 million plus fees and VAT. Construction is due for completion at the end of May 1999.

Temporary Car Park

To enable the site of the car park to be vacated and handed over to the builders, a temporary car park has been provided on the land acquired by the Hospital from *[name of owner]*. This has been provided at a cost of €222,000 plus VAT and fees. The cost of this is included in the overall project cost of approx €7.80 million.

Ancillary Works

Apart from the temporary car park there are ancillary works which will be carried out and financed as part of the car park, they relate to:

a) The new project roads required for the car park

b) The possible provision of a relief road to the east of the car park and

c) The provision of covered walkways.

The cost of these works has been included in the building cost. However, if the relief road and walkways are not built (as a result of planning permission not issuing on same) then the builder/financier will pay a higher annual rent to the Hospital equivalent to 8.5% of the cost of the omitted works.

Possible Extension of Car Park

It should be noted that provision has been made in the design of the car park for possible future amendments or extension upwards or sideways should the Hospital decide that this is desirable. No planning permission exists or has been applied for such amendments and certain assurances have been given to neighbours concerning the construction of additional floors for the purpose of car parking.

Minister and Department of Health

The required approvals from the Department of Health & Children have been obtained for this project.

Financial Structure

As previously outlined, the mechanism for financing this project is for the Hospital to engage third party investors to develop and manage the car park in return for gaining the tax incentives available for such a development in the form of both capital allowances and rent relief. In order to achieve this, it is proposed to put the following legal structure in place with the successful financial tenderer ('the Owner')

1. The Owner would take a lease of up to 30 years, with a break option at the end of year 13, of the car park site from the Hospital at a ground rent. This ground rent will in effect replace the income which the Hospital currently receives on an annual basis from car park operations.
2. The Owner will finance the construction of the car park and will enter into a turnkey Construction Contract with the nominated contractor. The Owner will, subject to certain conditions being met, receive capital allowances of 50% during its thirteen year ownership period, as outlined above.
3. The Owner would on practical completion grant the lease of the car park to a group of individuals ("the Operator") who will obtain a double allowance for the rent paid to the Owner. This group will operate the car park utilising the services of a professional car park operating company.
4. The Owner will pay a rent into a blocked bank account held by the Hospital to form a sinking fund, which will accumulate to an amount to be used by the Hospital to purchase the car park at the end of the 13 year period.
5. At the end of the break period of thirteen years the car park will be reacquired by the Hospital.

Assessment Framework

Tender proposals were invited from a range of financial institutions, companies and professional firms in respect of the financing and thereafter the operation of the car park. It was determined that the following were the key criteria on which the tender proposals be assessed by the Hospital

1. The level of annual income to the Hospital, together with its timing.
2. The timing of the return of the car park to the Hospital.
3. The share in any growth in income from the car park and the threshold above with such income is shared.
4. The risk to the Hospital.
5. Deliverability of the project.

6. The Operator's track record.

A total of eight submissions were received and following our preliminary interviews with all of these tenderers, revised submissions with appropriate clarifications were received from the following short-list:

1. Howard Holdings Plc
2. *[Name of firm - Proposal 2]*
3. *[Name of firm - Proposal 3]*

Once the short-list of three parties, as set out above, had been established, the following criteria were used to select the most favourable tender.

1. On the basis of annual income guaranteed.
2. On the basis of potential profit sharing assuming gross annual car park income in €1.27m net of VAT.
3. Deliverability.

Financial Analysis of Shortlist Tenders

On the above basis the analysis of the three shortlisted tender applications is as follows:

Howard Holdings Plc

Howard Holdings Plc is controlled by its managing director, *[name of managing director]*. *[Name of managing director]* is confident about the ability of Howard Holdings Plc to deliver the project and has provided evidence that bank finance is available to complete the project, subject to satisfactory contracts being exchanged.

Proposal 2

The proposed owner of the car park in the *[proposal 2]* proposal is *[name of financial institution],* a well regarded financial institution. However, a final decision to proceed with the project must come from a specialist unit within *[the financial institution's head office]*, and a decision from that office would not be forthcoming prior to 18 September, 1998. For this reason, this tender has not been given a sufficiently high rating on deliverability within the required time frame.

Proposal 3

The proposed owner in this proposal is *[name of firm]*, a client of the proposer. *[Name of bank]* have agreed to finance the project for the *[name of firm]*. This proposal provided the lease *[sic]* amount of guaranteed income to the Hospital and we consider that while its proposed profit share is attractive, the risk to the Hospital of not achieving the turnover levels gives this the poorest financial rating.

FINANCIAL TENDER RECOMMENDATION

The original financial objectives of the project have been met by each of the three offers under consideration. The level of guaranteed income p.a. to replace the current income of €508,000 ranges from €666,000 for year 1 to €800,000 for year 13.

The financial analysis of each tender is set out on Appendix 1 and Appendix 2 but can be summarised as follows:

Tender party	Guaranteed income €	Profit share €	NPV@ 6% €	Financial rank	Deliverability rank
Howard Holdings Plc	9,300,831	0	6,476,632	2	1
[Proposal 2]	9,605,569	0	6,702,483	1	2
[Proposal 3]	8,748,495	575,441	6,474,740	3	3

It is the view of the Hospital and its advisors that the Howard Holdings Plc proposal best meets our requirements in terms of financial return and deliverability. While the *[proposal 2]* proposal gives approximately 3.5% more in financial terms, as expressed by Net Present Value, it is not ranked first in deliverability within the critical time frame.

The net return to the Hospital as expressed by guaranteed annual income from the proposed development is in excess of its original targets.

Documentation

Detailed legal documentation is currently in hand with Howard Holdings Plc, the builders *[name of firm]* and with the professional team. There are some issues still outstanding, however, subject to the Board approving the overall arrangement and to *[incomplete sentence]*

Special Issues within legal contracts

We draw your attention to the fact that there are various issues that will be incorporated into the contract. These are as follows:

The Hospital to give undertakings in relation to the traffic management and security in the Hospital grounds.

Taxation Certification being available.

Beaumont Hospital

Appendix 1

Analysis of annual Income Payments to Hospital

Based on assumed annual Car Park receipts of €1,270,000 net of VAT

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Total	NPV @ 6%
	€	€	€	€	€	€	€	€	€	€	€	€	€	€	€
Howard Holdings plc															
Guaranteed Income	666,612	666,612	666,612	666,612	666,612	666,612	730,099	730,099	730,099	730,099	793,586	793,586	793,586	9,300,831	6,476,632
Additional Income (based on turnover)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	666,612	666,612	666,612	666,612	666,612	666,612	730,099	730,099	730,099	730,099	793,586	793,586	793,586	9,300,831	6,476,632
[Proposal 2]															
Guaranteed Income	672,961	704,705	704,705	704,705	704,705	704,705	736,448	736,448	736,448	799,935	799,935	799,935	799,935	9,605,569	6,702,483
Additional Income (based on turnover)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	672,961	704,705	704,705	704,705	704,705	704,705	736,448	736,448	736,448	799,935	799,935	799,935	799,935	9,605,569	6,702,483
[Proposal 3]															
Guaranteed Income	672,961	672,961	672,961	672,961	672,961	672,961	672,961	672,961	672,961	672,961	672,961	672,961	672,961	8,748,495	6,177,631
Additional Income (based on turnover)	0	0	0	0	0	0	0	22,579	50,868	79,821	109,642	140,537	171,995	575,441	297,109
	672,961	672,961	672,961	672,961	672,961	672,961	672,961	695,720	723,829	752,782	782,603	813,318	844,956	9,323,937	6,474,740

Beaumont Hospital
Appendix 2
Analysis of Potential Profit Share Payments to Hospital (on yearly basis)

		Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 6**	**Year 7**	**Year 8**	**Year 9**	**Year 10**	**Year 11**	**Year 12**	**Year 13**	**Total**
		9/30/00	9/30/01	9/30/02	9/30/03	9/30/04	9/30/05	9/30/6	9/30/07	9/30/08	9/30/09	9/30/10	9/30/11	9/30/12	
		€	**€**	**€**	**€**	**€**	**€**	**€**	**€**	**€**	**€**	**€**	**€**	**€**	**€**
Howard Holdings plc	65%	1,650,660	1,714,146	1,777,633	1,904,607	1,968,094	2,031,581	2,158,555	2,222,042	2,285,529	2,412,502	2,475,989	2,539,476	2,666,450	
[Proposal 2]	70%	1,841,120	1,841,120	1,841,120	1,841,120	1,841,120	1,841,120	1,841,120	1,841,120	1,841,120	1,841,120	1,841,120	1,841,120	1,841,120	
[Proposal 3]	60%	1,523,686	1,523,686	1,523,686	1,523,686	1,523,686	1,523,686	1,523,686	1,523,686	1,523,686	1,523,686	1,523,686	1,523,686	1,523,686	
Assumed Car Park Turnover		1,269,738	1,307,830	1,347,065	1,387,477	1,429,102	1,471,974	1,516,133	1,561,618	1,608,466	1,656,720	1,706,421	1,757,615	1,810,343	
Hospital Share of Turnover															
Howard Holdings plc		0	0	0	0	0	0	0	0	0	0	0	0	0	
[Proposal 2]		0	0	0	0	0	0	0	0	0	0	0	0	0	
[Proposal 3]		0	0	0	0	0	0	0	22,759	50,868	79,821	109,642	140,357	171,994	575,441

NPV of Hospital Share Turnover	**NPV**
	6%
	€
Howard Holdings plc	0
[Proposal 2]	0
[Proposal3]	297,109

Assumptions : **1** Annual Turnover (Net of VAT) initially €1,270,000
2 Turnover increases at 3% per annum cumulative

Appendix B

Side letter to lease (23 October 1998) with Parking Protocol and Parking Regulations

BEAUMONT HOSPITAL CAR PARK COMPANY LIMITED

Date: 23rd October 1998

Winston Properties Limited
97 Merchampton Road
Donnybrook
Dublin 4

Re: Multi Storey Car Park
at Beaumont Hospital ("the Hospital")

Dear Sirs,

This letter is to be read in conjunction with the Agreement for Lease relating to the car park at the Hospital.

Where an expression is used in this letter which is defined in the Agreement for Lease, or in a document appearing in a Schedule to the Agreement for Lease, or in a document appearing in an Appendix to this letter, such term shall bear the same meaning in this letter as it bears in such document.

This letter is to record that we have reached agreement on the following points in relation to the Multi-Storey Car Park.

1. The Lease provides that you are not permitted to increase the car parking tariffs without the prior written consent of the Lessor. We will permit increases in the tariffs by reference to increases in the Consumer Price Index ("the Index"), which for the purposes of this letter is assumed to stand at 100 at the Term Commencement Date. In principle the hourly tariff may rise as the Index rises. However an increase must be in the amount of 5p or a multiple of 5p. As a concession you will be permitted to increase the hourly tariff so as to anticipate an increase in the Index in the manner set out in paragraph 2.

2. Were it not for the concession referred to in paragraph 1 you would only be permitted to increase the hourly tariff by 5p when the Index had reached 105. We will, however, permit the first 5p increase when the Index reaches 103.5 (that is to say when 70% of the increase which would have been necessary, were it not for this concession, had taken place). Continuing the application of this concession, further 5p increases will be permitted on the Index reaching 108.5, 113.5 and so on. The concession referred to in paragraphs 1 and 2 will not be removed throughout the period referred to in paragraph 24

3. The Consumer Price Index means the consumer price index published by the Central Statistics Office or any successor office or department.

4. The hourly tariff is inclusive of VAT. Should the appropriate VAT rate increase we will permit a matching increase in the hourly tariff. Similarly a decrease in the

appropriate VAT rate must be reflected in a decrease in the hourly tariff. Any increase or decrease in the hourly tariff must be in the amount of 5p or a multiple of 5p. Accordingly, no increase or decrease in the hourly tariff may take place pursuant to this paragraph until the movement in the VAT rate justifies an adjustment in the amount of 5p or a multiple of 5p.

5. Notwithstanding the above no tariff increase will be permitted within the first two years from the Term Commencement Date.

6. The adaptation of the above provisions to deal with the conversion to the Euro will be governed by the Euro Adaptation Rules set out in Appendix A.

7. The Multi-Storey Car Park is intended as the sole provider of public parking in the Hospital. No other public facility is currently envisaged.

8. In the event that the Multi-Storey Car Park is approaching 100% occupancy an additional back-up facility may be used. The Landlord shall consult with the Tenant in connection with issues associated with the use of such a back-up facility. The Multi-Storey Car Park will be deemed to be approaching 100% occupancy when it might reasonably be supposed that it will shortly be 100% occupied.

9. As soon as space becomes available in the Multi-Storey Car Park entry to the back-up facility will be discontinued. An agreed mechanism will be put in place to ensure that the back-up facility will not continue to be used once spaces come free in the Multi-Storey Car Park.

10. Rates in the back-up facility will be the same as the Multi-Storey Car Park.

11. If there are certain occasions during the year when the Multi-Storey Car Park capacity is fully utilised (e.g. Christmas), a back-up facility may be opened for the general public at the Hospital's discretion. The Tenant will be notified in advance of this.

12. If over any 3 month period during the Term it is demonstrated by you or your car park operator that 25% of the spaces in the multi-storey car park are being used on a long term basis, then we and you will work together to find a structure to prevent this from continuing. In default of agreement we will refer the matter to an independent expert.

13. In the event that a Relevant Closure takes place and lasts for seven consecutive days or more, we will compensate for the financial loss sustained by you as a result of such closure. The amount of such compensation shall be agreed by us, or in default of agreement shall be determined by an independent expert. Such person (who shall act as an expert not as an arbitrator), shall be appointed by agreement between us, or in default of agreement, by the President for the time being of the Institute of Chartered Accountants in Ireland. Any compensatory sum to be paid to you shall be paid within 21 days of its amount being determined.

14. A Relevant Closure shall be deemed to exist where an action by the Hospital or its staff such as strike action results in the closure of more than 50% of the activities of the Hospital, or the closure of the Multi-Storey Car Park.

15. Issues relating to parking on the Hospital campus shall be dealt with in accordance with the Parking Protocol set out in Appendix B Costs incurred by you in connection

with the operation of the Parking Protocol shall be treated as operating costs for the purposes of paragraph 2.5 of the Third Schedule to the Lease.

16. The parties agree that, as set out in a letter to be sent by John Paul Construction Limited to Winston Properties Limited, a draft of which is set out in Appendix C, certain components in the Contract Sum are subject to further instruction from the Construction Monitor on behalf of The Beaumont Hospital Car Park Company Limited. In the event that any or all of these components are not instructed to proceed either in whole or in part the appropriate credit will be allowed. If a credit is allowed the First Rent shall be increased by 8.5% of such credit.

17. We acknowledge that you may at your sole discretion amend the provisions for the review of the Third Rent in the Lease, and accordingly that you may vary the amounts which are paid into the account referred to in paragraph 18.

18. We will deposit all sums paid to us by way of Third Rent in an account with a Bank to be nominated by you, and will retain in such account such sums, and the deposit interest accruing on such sums (less any tax payable on such interest). On the exercise of the Put Option or the Call Option the monies in such account (or an appropriate part of such monies) will be used by us to discharge the Option Price. We will not withdraw any sums from this account (other than to discharge the Option Price). We shall not create any lien over the monies in such account and we shall comply at all times with all reasonable requirements which you may make with regard to such monies.

19. We have agreed to assume the obligation to pay rates in respect of the Multi-Storey Car Park. You in turn will reimburse us for any rates so paid. We will use reasonable endeavours to obtain relief from rates.

The following provisions in this paragraph 19 provide a mechanism whereby any saving made as a result of the operation of such arrangement will be divided between us on a fifty fifty basis.

In the event that in respect of any year within the Term ("Relevant Year") a saving of rates is achieved in respect of the Multi-Storey Car Park, you shall pay us an amount equal to 50% of such saving. The amount of rates saved in a Relevant Year shall be determined by the application of the following formula:

S = N - R

Where:

S = the rates saved;

N = the amount of rates which would have been payable had the Lease not imposed on the Landlord the obligation to discharge rates;

R = the rates (if any) payable in respect of the Multi-Storey Car Park, in respect of the Relevant Year.

20. We shall enter into discussions with a view to agreeing the amount of any saving of rates in respect of any period. Should we be unable to reach agreement the matter shall be referred to an independent rating consultant to be appointed by agreement between us, or in default of such agreement to be appointed by the President for the

time being of the Society of Chartered Surveyors. Such person shall act as an expert and not as an arbitrator and his decision will be final.

21. Should you make a payment in respect of rates for a given period on foot of the Indemnity referred to at paragraph 22 below, such payment shall be treated as an operating cost in respect of such period, for the purposes of paragraph 2.5 of the Third Schedule in the Lease.

22. On the execution of the Lease the following documents shall be executed:

1. The Put and Call Option, a draft of which appears in Appendix D
2. The Indemnity (Rates) which appear in Appendix E
3. The Helipad Agreement which appears in Appendix F
4. The Indemnity (Roads & Services) which appears in Appendix G.

23. On the exercise of the Put Option or the Call Option we shall use reasonable endeavours to reduce or eliminate any Stamp Duty arising.

24. The arrangements set out at paragraphs 1 to 17 above shall continue in effect for a period of 13 years from the Term Commencement Date.

25. Howard Holdings plc will guarantee compliance by Winston Properties Limited with its obligations under this letter. Every guarantee which Howard Holdings plc gives in respect of an obligation of Winston Properties Limited (other than a guarantee arising from this side letter) shall be subject to any modification or alteration of such obligation which is contained in this side letter.

26. Beaumont Hospital Board will be bound by the agreement recorded in this letter.

27. The Beaumont Hospital Car Park Company Limited shall not seek to construct a Helipad on the Multi-Storey Car Park where the construction of the Helipad on the Multi-Storey Car Park would result in the loss by Winston Properties Limited of capital allowances in relation to expenditure incurred on the construction of the Multi-Storey Car Park.

28. Within twelve working days after the date of this letter you will discharge payments totalling IR£216,900 the details of which are set out in Appendix H.

29. The Hospital will enter into negotiations with you with a view to arriving at arrangements for the provision of services to the Multi-Storey Car Park. Both you and the Hospital will negotiate in good faith in order to arrive at an agreement which facilitates the provision of services, and the orderly disposal of sewerage and waste water.

30. The Agreement set out herein shall be binding on the successors in title to the signatories of this letter, and on parties deriving title from such signatories.

31. Should we consent to the creation by you of a sub-lease of the Multi-Storey Car Park we will extend to the sub-lessee the benefit of the agreements in paragraphs 1-12 and paragraph 15 of this letter, subject to the sub-lessee assuming the burden of such agreements.

Yours faithfully,

THE BEAUMONT HOSPITAL CAR
PARK COMPANY LIMITED

We acknowledge that the above records accurately the Agreement which has been reached.

BEAUMONT HOSPITAL BOARD

HOWARD HOLDINGS plc

WINSTON PROPERTIES LIMITED

PARKING PROTOCOL

1. The Board and Tenant shall agree a set of Parking Regulations ("the Parking Regulations"). Such regulations shall reduced to writing and initialled on behalf of the Board and the Tenant and may be amended from time to time by written agreement between the Board and Tenant. The initial Parking Regulations, which have been agreed by the Board of the Tenant, are appended hereto
2. The Board will use its reasonable endeavours to ensure compliance with the Parking Regulations.
3. In so doing it shall implement the following measures:-
   i. Maintain a roving patrol requesting those in control of Illegally Parked Vehicles to move on such vehicles.
   ii. Erect reasonable signage advising visitors to the Hospital campus of the Parking Regulations.
   iii. Place stickers on Illegally Parked Vehicles as a penalty measure.
   iv. Take measures to ensure that the Set Down Area is used only by persons setting down visitors to the Hospital.
   v. Take other such measures within the law which it feels will limit the number of Illegally Parked Vehicles on the Hospital campus.
4. The Board will use its reasonable endeavours to ensure that its relevant personnel comply with the Parking Regulations and take an active role in the implementation of such regulations.
5. The Board will nominate a member of its senior management to liaise on a continuing basis with the Tenant in respect of the enforcement of the Parking Regulations, and (subject to paragraph 7) to supervise the implementation of such regulations.

6. In the event that the Tenant can demonstrate that there are in excess of 30 Illegally Parked Vehicles on the Hospital campus at any one time, the Landlord shall compensate the Tenant, the amount of such compensation being the current daily Parking Rate in existence at that time, for each vehicle so parked. Such compensation shall be paid within 7 days of the Tenant demonstrating that it is payable the Tenant will be entitled to compensation at the current daily parking rate in existence at that time, for each vehicle so parked.

7. The Board may delegate the enforcement of the Parking Regulations to the Tenant. If it does so paragraph 6 shall not apply.

8. During any period when the enforcement of the Parking Regulations is being carried out by the Tenant the person nominated under paragraph 5 shall notify the Tenant of any matters arising from the manner in which Regulations are being enforced by the Tenant, which has given rise to dissatisfaction on the part of the Board.

9. The Board may at its absolute discretion terminate any delegation under paragraph 7 by way of 24 hours notice in writing.

10. The Tenant shall indemnify the Board in respect of any claim against the Board arising from any action taken by the Tenant, its servants or agents in exercise of any powers so delegated.

11. The Board's present intention is to delegate the enforcement of the Parking Regulations to the Tenant as and from the date upon which the Multi-Storey Car Park goes into operation.

12. The Tenant shall be responsible for the costs of enforcing the Parking Regulations (including costs reasonably incurred by the Hospital).

13.. Any dispute in relation to the content of the Parking Regulations shall be referred to an Arbitrator Such Arbitrator shall be a person having expertise in the area of the management of multi-storey car parks. He shall be appointed by agreement between the parties, or in default of agreement, at the request of either party, by the President for the time being of the Society of Chartered Surveyors (which term shall include any other body established from time to time in succession or substitution or carrying on the function currently carried on by the same). In default of any such appointment for any reason within one month of such request he shall be appointed by a Chartered Surveyor to be nominated by the Board.

14. In this Memorandum:-

i. The Board means Beaumont Hospital Board.

ii. An Illegally Parked Vehicle means a vehicle which is parked other than in accordance with the Parking Regulations;

iii. A Patient means a person who is receiving medical treatment or undergoing tests in the Hospital (whether such person is an in-patient or an out-patient);

iv. Parking Regulations shall mean such regulations as may be prescribed by the Landlord after consultation with the Tenant, to deal with Illegally Parked Vehicles;

v. Set Down Area shall mean the area edged red on the map to be agreed between the Board and the Tenant;

vi. Service Provider is a person providing services to the Hospital.

vii. Hospital campus is presently the area edged yellow on the attached map. On a continuing basis the Hospital campus shall be the lands at Beaumont used by the Hospital for the discharge of its statutory functions.

PARKING REGULATIONS

1. The vehicle of a Patient or of a visitor to a patient should not be left unattended on the Hospital campus outside the Multi-Storey Car Park, save when it is engaged in setting down within the Set Down Area in accordance with the Parking Regulations.

2. Staff Car Parks may be used only for the parking of vehicles belonging to members of the Hospital staff, and commercial vehicles of Service Providers.

3. In these Regulations the following terms shall have the following meanings:-

   i. A Patient means a person who is receiving medical treatment or undergoing tests in the Hospital (whether such person is an in-patient or an out-patient);

   ii. Set Down Area shall mean the area coloured purple on the attached map;

   iii. Service Provider is a person providing services to the Hospital.

Appendix C

Comparison of Costs of Tax-Based Deal and Direct Provision of the Car Park

This appendix presents an estimate of the potential impact on the public finances of the deal put in place to provide a car park at Beaumont Hospital (referred to below as the 'tax-based deal') when compared to direct construction and operation of the car park by the Hospital itself ('direct provision of the car park').

The structure of the car park deal was intended to allow the developer and the operating partnership to avail of tax incentives, in the form of capital allowances in respect of expenditure incurred on car park construction and double rent deduction in computing the profit or loss incurred in operating the car park. An alternative to the tax-based scheme was for the State to provide the necessary funding to the Hospital to pay for the construction of the car park.

The approach adopted is to estimate the public sector cash flows involved in both scenarios, netting out cash flow elements common to both. The figures presented are, consequently, not the absolute cash flow totals for each option but rather the values of those elements of both options relevant to the comparison. The relevant cash flows are

Scenario 1 — Tax-Based Deal

- Rental payments to Beaumont Hospital
- VAT payments to the Revenue Commissioners
- Corporation tax received by the Revenue Commissioners or saved by the developer
- Income tax refunded to the members of the operating partnership

Scenario 2 — Direct Provision of the Car Park

- Cost of construction of car park
- Borrowing to pay cost of construction
- Loan repayments
- Income from car parking charges
- Expenses of operating the car park
- VAT payments to the Revenue Commissioners.

Relevant information about the tax-based deal has been incorporated into the analysis, where available. Where information about relevant factors was not available, assumptions have been made. These are described below. Since alternative assumptions could change the conclusions to be drawn from the analysis, the sensitivity of the results to alternative values for key variables is also explored below.

In carrying out the analysis, it was necessary to estimate the expected tax positions of the developer and the Operating Partnership under the deal. The actual tax positions may have been different: this has not been examined. Only the net expected tax payments/refunds are shown in the following analysis.

Furthermore, the analysis does not take account of the extent to which the developer and/or the individuals involved in the operating partnership might have availed of other options to reduce their tax liabilities, were this project not available.

Results of Analysis

The relevant public sector cash flows are shown in Figures C.1 and C.2, presented at the end of this appendix.

The comparative net present values of the relevant public sector cash flows under the two scenarios, based on assumed initial annual car park income of €1.5 million, are summarised below. This implies that direct provision of the car park would have left public sector finances over €10 million better off than provision of the car park through the tax-based deal, at this level of income.

Scenario	Net Present Value (NPV) of relevant cash flows € 000
Tax-based deal	(1,000)
Direct provision of car park	9,400
Difference between alternatives	10,400

The tax incentive associated with the double rent allowance is the main generator of benefit to the investors (developer and partnership) under the tax-based deal. It is also the reason for most of the Exchequer's costs. Refunds of income tax are estimated at €11 million in NPV terms. There is a net corporation tax refund of €0.2 million. This tax cost is offset by rent payments to the Hospital estimated at €6.4 million and VAT receipts of €3.8 million.

Assumptions

Cost of Construction

The cost of construction of the car park (including design fees) was €7.6 million, excluding VAT.

Fees to legal and financial advisors in relation to setting up of the tax-based deal amounted to around €228,000 (excluding VAT) and are assumed to apply only to the tax-based deal. In implementing the deal, these fees were capitalized by the developer and were taken into account in fixing the level of guaranteed annual payments to the Hospital.

Project Life

The cash flows under both scenarios are estimated over a project life of 13 years. The income tax advantages being availed of under the tax-based deal expire after 10 years. The corporation tax advantages expire after 13.5 years but, for simplicity, the final half-year of tax allowances is disregarded.

Residual Value of Car Park

The car park will have a residual value at the end of year 13. This should reflect the further earning potential of the asset from then until the end of its economic life. However, as the Hospital will control the asset from year 13 under both scenarios, the residual value should be the same in both cases and so is not included in the comparative cash flows.

Discount Rate and Cost of Borrowing

It is assumed that the Exchequer would have been able to borrow over the long term at a rate of 5.5% a year to fund the construction of the car park. On that basis, the public sector cash flows are discounted at a rate of 5.5%.

It is assumed that the developer can borrow funds at a rate of 7% a year.

Income from the Developer to the Hospital

There are three significant elements in the income from the developer to the Hospital

- a guaranteed rental payment,
- a rental based on a share of the income from car park charges,
- payments by the developer into a sinking fund.

Guaranteed Rental Payments

The guaranteed rent payment by the developer to the Hospital is

Years 1-6	€ 659,000
Years 7-10	€ 723,000
Years 11 - 13	€ 786,000

These guaranteed payments are slightly lower than those used when the various developers' proposals were evaluated in September 1998. The reduction in guaranteed rent was agreed by the Hospital when the developer agreed to pay the legal and financial advisors' fees associated with putting the tax-based deal in place.

Profit Share

The tax-based deal also provided for payment by the developer to the Hospital of amounts based on a share of annual car park income over a defined threshold level. The threshold necessary to trigger such extra payments is €1.65 million (excluding VAT) in year 1, rising to €2.67 million (excluding VAT) in year 13. The amount payable is 65% of the excess of car park income over the threshold level.

It is assumed that there are no corporation tax liabilities for the Hospital from the rental income.

Sinking Fund

Under the tax-based deal, the developer creates a sinking fund which is nominally to the benefit of the Hospital. However, because moneys paid into the sinking fund, together with any interest earned, cannot be withdrawn and will flow out intact as consideration for the acquisition of the car park by the Hospital in year 13, they are not included in the comparative cash flows.

Capital Allowances

Allowances up to 50% of the capital investment in the project are available as an offset against corporation tax payable by the developer. Up to half of the allowance may be claimed in year one, with the balance being claimed over the succeeding twelve and a half years. It is assumed that the developer was able to maximize the benefit of this allowance.

The developer would be liable to pay corporation tax on profits earned on the deal. (This includes profit from operation of the car park after the partnership lease expires — years 11 to 13). The available capital allowances can be offset against this, and any unused allowance can be offset against the developer's income from other sources.

At the time the deal was put in place, it was foreseeable that corporation tax rates would decline from the rates then prevailing (i.e. in the 1998/99 tax year). It is assumed that the following corporation tax rates applied.

Year 1	28%
Year 2	24%
Year 3	20%
Year 4	16%
Year 5 – 14	12.5%

Income from Car Parking Charges

In this analysis, it has been assumed that car parking tariffs would be the same under both scenarios. No attempt has been made to estimate the possible scope for distributing the benefits differently between the State (including the hospital) and car park users.

In the process of inviting tenders from potential developers, the Hospital estimated the average income from operation of the car park (taking account of variations in daily use patterns and non-charged users) would initially be in the region of €4,200 to €5,200 a day (excluding VAT). This is equivalent to a projected annual income from parking charges of around €1.5 million to €1.9 million in year 1 of operation of the car park. It also projected that the number of visitors to the Hospital — and by implication, the number of people requiring car parking services — would grow by 2% a year. No projection was made about increases in parking charges over time.

The actual turnover of the car park up to the end of December 2001 has been certified as set out in the following table.

Period of operation	Certified turnover (excluding VAT)
9 June 1999 to 31 March 2000	1.166
1 April 2000 to 31 March 2001	1.707
1 April 2001 to 31 December 2001	1.360

Source: Beaumont Hospital Car Park Partnership

Note: It is not clear how penalties levied by the tenant impacted on these figures.

The equivalent annual fee income based on this certified turnover would have been of the order of €1.5 million in the first year of operation and €1.7 million in the second (an increase of 13%).

The public sector cash flows were estimated based on the year 1 income level ranging from €1.3 million to €1.9 million. It was assumed that car parking charges would increase, on average, at 3% a year — about in line with the 1998 level of expected general price increases — and that the volume of business would grow by 2% annually. The results are summarized below.

Level of income from car parking charges in year 1	Estimated difference in Net Present Values of scenarios € 000
€1.3 million	8,900
€1.5 million	10,400
€1.7 million	11,700
€1.9 million	13,000

The conclusion that direct provision of the car park represented significantly better value to the public sector than the tax-based deal is not affected across the range of reasonably expected values for income from car parking charges.

Car Parking Charges and VAT

It was assumed that an equal amount of VAT would be payable in relation to the income from car parking charges under both scenarios.

This treatment of VAT implies that the Revenue Commissioners would regard the operation of the car park as a commercial activity and that the Hospital would be obliged to register for VAT in relation to the operation of the car park under direct provision. In this case, the Hospital would be obliged to remit the VAT on income from car parking charges to the Revenue Commissioners and would be entitled to reclaim the VAT on construction costs.[12]

Operating Costs of Car Park

It is assumed that the actual operation and routine maintenance of the car park is contracted out to a management company under either scenario. Consequently, the level of costs incurred should be similar under both.

It is assumed that the payment to the management company commences at €450,000 in year 1 and increases at a rate of 3% a year. This includes the cost of staff, rates, electricity, cleaning, routine maintenance and repairs, insurance, etc.

The level of corporation tax payable by the operating company should be similar under both scenarios, and so need not appear in the cash flows.

[12] If the Revenue Commissioners treated the operation of the car park by the Hospital as VAT exempt, it would allow the Hospital scope to reduce tariffs correspondingly. Passing on the full value of the exemption through lower charges to users would transfer benefits of around €3.8 million (in NPV terms) to the users.

In direct provision of the car park, the Hospital would carry a risk that operating expenses would be greater than assumed above. The analysis was therefore re-done, with operating costs under the direct provision option starting at €600,000 in year 1 i.e. one third higher than under the tax-based deal. This would reduce the estimated difference in the NPVs of the options from €10.4 million to €8.7 million.

Rent Payment to Developer

Under the sub-lease, the primary rent payment made by the Operating Partnership to the developer begins at €2 million (£1.58 million) in year 1, and increases annually to €2.6 million in year 10. A second rent is payable when the income from charges exceeds agreed thresholds for each year. This second rent is 86% of the excess amount collected in car parking charges.

Income Tax Rates

At the time the tax-based deal was put in place, it was foreseeable that income tax rates would decline from the rates then prevailing (i.e. in the 1998/99 tax year). It is assumed that the following income tax rates applied.

Year 1	46%
Year 2	44%
Year 3 — 13	42%

Figure C.1 Estimated Public Sector Cash Flows under Tax Based Deal

Public sector body/cash flow	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Total
	€ thousands														
Beaumont Hospital															
Rental payments received		659	659	659	659	659	659	723	723	723	723	786	813	816	9,261
Revenue Commissioners															
VAT receipts		315	331	348	365	384	403	424	445	468	491	516	542	570	5,601
Corporation tax receipts		(433)	60	48	25	25	14	(6)	(3)	0	3	2	10	62	(192)
Income tax paid/(refunded)		(1,434)	(1,410)	(1,381)	(1,411)	(1,441)	(1,468)	(1,494)	(1,519)	(1,542)	(1,562)				(14,662)
Net public sector cash flow		**(894)**	**(359)**	**(326)**	**(362)**	**(373)**	**(392)**	**(354)**	**(354)**	**(351)**	**(345)**	**1,304**	**1,365**	**1,447**	**8**
Discount factor	*1.000*	*0.948*	*0.898*	*0.852*	*0.807*	*0.765*	*0.725*	*0.687*	*0.652*	*0.618*	*0.585*	*0.555*	*0.526*	*0.499*	
Discounted net cash flow		**(847)**	**(323)**	**(278)**	**(292)**	**(285)**	**(285)**	**(243)**	**(230)**	**(217)**	**(202)**	**724**	**718**	**722**	**(1,038)**

Note: Based on Car Park receipts of €1.5m (excluding VAT) in first year of operation.

Net Present Value

Figure C.2 Estimated Public Sector Cash Flows of Direct Provision of Car Park

Public sector body/cash flow	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Total
	€ thousands														
Exchequer															
Capital borrowing	7,643														7,643
Loan repayments		(838)	(838)	(838)	(838)	(838)	(838)	(838)	(838)	(838)	(838)	(838)	(838)	(838)	(10,898)
Beaumont Hospital															
Construction costs (excluding VAT)	(7,643)														(7,643)
Income from car parking charges (net of VAT)		1,500	1,576	1,656	1,739	1,827	1,920	2,017	2,119	2,226	2,339	2,457	2,582	2,712	26,671
Car park operating expenses		(450)	(464)	(477)	(492)	(506)	(522)	(537)	(553)	(570)	(587)	(605)	(623)	(642)	(7,028)
Revenue Commissioners															
VAT receipts	0	315	331	348	365	384	403	424	445	468	491	516	542	570	5,601
Net public sector cash flow	**0**	**527**	**605**	**688**	**775**	**866**	**963**	**1,065**	**1,172**	**1,286**	**1,405**	**1,530**	**1,663**	**1,802**	**14,346**
Discount factor	*1.000*	*0.948*	*0.898*	*0.852*	*0.807*	*0.765*	*0.725*	*0.687*	*0.652*	*0.618*	*0.585*	*0.555*	*0.526*	*0.499*	
Discounted net cash flow	**0**	**499**	**544**	**586**	**625**	**663**	**698**	**732**	**762**	**794**	**822**	**849**	**875**	**898**	**9,350**

Note: Based on Car Park receipts of €1.5m (excluding VAT) in first year of operation

Net Present Value

Appendix D

Opinion of Legal Expert on Application of Public Procurement Rules

Public Procurement Laws

Council Directive 93/37/EEC as implemented in Ireland (the 'Works Directive') imposes on contracting authorities the obligation to award public works contracts and public works concessions contracts with a value which exceeds €5 million in accordance with the rules set out in that Directive.

The Works Directive defines a '*public works contract*' as a contract for pecuniary interest concluded in writing between a contractor and a contracting authority which has as its object either the execution, or both the execution and design, of works as defined.

The Works Directive sets out three types of procedure for awarding public works contracts: the open procedure, the restricted procedure and the negotiated procedure (which may be used only in exceptional circumstances listed exhaustively in the Works Directive).

- An open procedure is one where all interested parties may submit tenders in response to a published contract notice.
- A restricted procedure is one where, of the suppliers who have expressed an interest following publication of the contract notice, only those so invited by the contracting authority may submit tenders.
- A negotiated procedure is one where the contracting authority consults the suppliers of its choice and negotiates with them the terms of the contract.

Except in exceptional circumstances listed exhaustively in the works directive all contracts to which it applies must be commenced with a call for competition notice in the *Official Journal of the European Communities* ('OJEC') and comply with the specified time limits set down.

The Works Directive defines a '*public works concession*' as a contract of the same type as a public works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with payment. The Commission's Interpretative Communication on Concessions under Community Law (OJEC 121, 29th April 2000) expands on the definition in the Works Directive. It provides that the distinctive feature of a works concession is that a right to exploit a construction is granted as consideration for having erected it. The right of exploitation allows the concessionaire to demand payment from those who use the structure (e.g. by charging fees) for a certain period of time. The concessionaire does not receive its remuneration directly from the awarding authority, but acquires from it the right to obtain income from end users on completion of the structure. Thus, it follows that the risks inherent in exploitation are transferred to the concessionaire.

The Works Directive sets out a comparatively lenient regime for works concession contracts which only requires advertisement of contracts and respect for certain time limits. Since the Hospital is a body governed by public law it should also ensure respect for the EC Treaty principles. Fundamental principles underlying the public procurement rules derived from the EC Treaty are generally applicable to the award of contracts (and concessions) by public authorities.

These principles include

- the prohibition of discrimination on the grounds of nationality
- free movement of goods
- freedom of establishment
- freedom to provide services
- principles of equality of treatment, transparency, proportionality and mutual recognition.

Is Beaumont Hospital a body to which the works directive applies?

The Works Directive annexes a list of bodies and categories of bodies governed by public law to which the Works Directive applies. For Ireland, one of the categories of bodies is hospital boards which have a public character. The Board of the Hospital was established by the Beaumont Hospital Board (Establishment) Order, 1977 (SI 255/1977). It is a hospital board of a public character, and is thus a body to which the Works Directive applies.

Were the contracts subject to the procurement rules?

The Hospital first engaged in a form of tendering round to select the company that would carry out the construction of the car park and fix a price. The Hospital then engaged in a round of 'financial' tendering whereby it selected a developer to be responsible for the overall development of the car park, including contracting with the selected building contractor for the construction of the car park, ensuring the works were implemented in the required timeframe and operating the car park thereafter.

The structure adopted by the Hospital does not fit neatly within the rules set out in the Works Directive. An arrangement only constitutes a works contract (as opposed to a works concession) if the cost of the construction is essentially borne by the awarding. In this case, the Hospital did not bear any of the costs of construction, nor indeed did it even enter into a written contract with the building contractor. Thus, neither the contract with the developer nor the arrangement with the construction company can be said to be a works contract within the meaning of the Works Directive.

However, it seems that the composite arrangements with the developer and construction company would have constituted a 'works concession contract' as the hospital wanted a car park built at the developer's risk and expense and for the developer to be remunerated not by it but by end users using the car park. The developer was to be responsible for paying the costs of construction. As such, the Hospital breached the provisions of the Works Directive which require that works concessions be advertised in the OJEC. Furthermore, by mandating that the concessionaire contract with a particular building contractor for the construction of the car park, the Hospital's actions were contrary to the spirit of the rules in the Works Directive.

Award of works concessions contracts

Works concessions for an amount of €5 million or more are subject to the regime set out in the Works Directive. The specific provisions of the Works Directive are divided into the upstream phase, i.e. the choice of the concessionaire, and the downstream phase, i.e. the contracts awarded by the concessionaire to third parties.

Works concession contracts awarded under the Works Directive are subject to a more lenient regime than those applying to ordinary works contracts under the Works Directive. As for the upstream phase (the choice of concessionaire), awarding authorities must publish a concession notice in the OJEC to put the contract out for competition at European level and allow 52 days for receipt of candidatures for the concession; the time period running from date of dispatch of the notice. The Hospital did not place any notice in the OJEC and thus must be deemed to have breached this requirement.

As far as works concessions are concerned, the awarding authority is free to choose the most appropriate procedure, and in particular, to use the negotiated procedures. Title II of the Works Directive (dealing with the use of technical standards) and Title IV (addressing, inter alia, the criteria for selection and the criteria for the awards of contracts) do not apply to concession contracts under the Works Directive.

Award of sub-contracts by concessionaires

The Works Directive sets out specific rules on sub-contracting by concessionaires. A concessionaire is obliged to make known his intention to award a works contract to a third party by means of complying with the advertising rules for works contracts in the Works Directive. Article 16 of the Directive provides that time limits for receipt of requests to participate must be not less than 37 days and time limits for the receipt of tenders not less than 40 days. An exception is made for sub-contracts with affiliated undertakings where these were listed in the initial application for the concession.

The imposition by the Hospital of its choice of building contractor on the developer was contrary to the spirit of the Works Directive which provides that works contracts be awarded in accordance with its provisions and resulted in the developer in turn not being in a position to comply with the rules, since in principle, the developer would have been obliged to advertise the award of this contract separately.

In summary, taken in its entirety, the contract entered into by the Hospital with the developer was a works concession which specified the use of a particular contractor for an agreed sum, the value of which exceeded €5 million. It should have been advertised in the OJEC and 52 days allowed for candidatures to be received.

Do time constraints arising from abolition of double rent allowance create a situation in which the rules can be ignored?

In this case, it would seem unlikely that the impending abolition of the double rent allowance would have justified ignoring the applicability of the Works Directive. The fact of the expiration of the qualifying period for tax incentives was a matter of common knowledge. In any event, the Hospital used another mechanism to avail of the incentives, i.e. the transfer of the land to a subsidiary who incurred the cost of acquisition of the land within the qualifying period (June 1998) and the award of the contract to the developer without prior publication did not in fact result in the developer incurring the necessary level of 15% of the costs prior to the expiration of the period.

In respect of ensuring completion of the works by September 1999, again the mechanism deployed would not seem to have been necessary on urgency grounds so that the rules could be ignored. The Board of the Hospital formally approved the proposal on 14 May 1998. If a notice had been sent immediately to the OJEC, the 52 day period would have expired on 6 July 1998. In fact, the contract between the developer and the building contractor was not entered into until 21 October 1998 which would appear to give adequate time for selection and negotiation. Thus, it seems that the non-compliance with the rules in the Works Directive could not have been justified on the basis of the pending expiration of the tax incentives.

Appendix E

Letter of agreement to the figures claimed for illegal parking

Website: www.beaumont.ie

Ospidéal Beaumont

BEAUMONT HOSPITAL
P. O. Box 1297 Beaumont Road Dublin 9
Telephone 809 3000 / 837 7755 Facsimile 837 6982

Miseris Succurrere

11th September 2001

Mr. [redacted]
Howard Parking Limited,
97 Morehampton Road,
Donnybrook,
Dublin 4.

Dear [redacted]

I refer to your letter dated 16 May 2001.

Further to our previous discussions, I confirm the hospital's agreement to the figures claimed for illegal parking on the hospital's grounds for all periods up to 31 March 2001. The balance for adjustment for the next quarters rent to June 2001 is agreed at £86477.50. in accordance with the details previously supplied.

I trust the above is in order

Yours sincerely

Beaumont Hospital is the principal teaching hospital for the Royal College of Surgeons in Ireland