



**Comptroller and Auditor General
Special Report**

**University of Limerick property acquisitions
in Limerick city**

Report of the Comptroller and Auditor General

University of Limerick property acquisitions in Limerick city

I have, in accordance with the provisions of Section 9 of the Comptroller and Auditor General (Amendment) Act 1993, carried out an examination of two property acquisitions by the University of Limerick in Limerick city in 2019 and 2023.

This report was prepared on the basis of information, documentation and explanations obtained from the University. The draft report was sent to the University. Where appropriate, comments and responses to the draft received from the University were incorporated in the final version of the report.

The sole focus of this report is on the performance of the University, and not on that of its staff members or any third parties. For the avoidance of doubt, this report does not make any criticism or comment or present any view, whether express or implied, with respect to staff members of the University or to third parties, and should not be understood as doing so.

I hereby submit this report for presentation to Dáil Éireann in accordance with Section 11 of the Comptroller and Auditor General (Amendment) Act 1993.



Seamus McCarthy
Comptroller and Auditor General

8 August 2024

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Summary

Summary

In 2019, the University of Limerick acquired a site and building at Honan's Quay in Limerick city, some five kilometres from its main campus, for the purposes of establishing a city campus. The cost of the acquisition was €8.3 million.

In response to a number of concerns raised, the University's Governing Authority appointed external consultants to examine the Honan's Quay acquisition process. Based on their report, which is not publicly available, the consultants made a number of recommendations, which were reflected in a set of policies and procedures for capital acquisitions adopted by the University in June 2022.

The only major capital acquisition by the University since then has been the purchase of a development of 20 houses at Rhebogue in Limerick for use as student accommodation. That purchase, at a contract cost of €11.4 million, was completed in October 2023. The University was required subsequently to pay an unanticipated stamp duty charge of €1.008 million in respect of the property.

This examination was undertaken to review the purchase of the Honan's Quay property from a value for money perspective. It also examined the property acquisition procedures adopted by the University since that purchase, and the way in which those procedures have been used in the subsequent property acquisition at Rhebogue.

Establishing a Limerick city campus

The University has a long-standing general goal of extending its visible presence in Limerick city. Its 2013 – 2018 capital development plan envisaged developing an academic building on part of property acquired by Limerick City and County Council for a large-scale inner-city regeneration project referred to as the Opera quarter.

In November 2018, a sub-committee of the Governing Authority — the Finance, Human Resources and Asset Management Committee (FHRAMC) — approved a proposal for expenditure of €5 million to purchase property in the Opera quarter and to bring the project to planning permission stage. In December 2018, the Governing Authority endorsed the plan, while noting that the proposed use of the new city campus had not yet been decided.

On 2 April 2019, the University submitted an application to its main funder, the Higher Education Authority (HEA), for capital funding support for the development of a 'Future Skills Academy' in the Opera quarter. The application outlined an overall project cost of €45.2 million to develop a 7,866 m² facility, in a combination of new building and refurbished existing buildings. The proposed project cost included the purchase of the required property at the Opera quarter for €3 million.

While the proposal for the Opera site was being developed, senior staff of the University and an external property advisor of the University continued to engage with the owners of another city centre site — a 5,535 m² former retail property at Honan's Quay — with a view to purchasing it.

On 5 April 2019 — three days after the Opera Centre funding application was submitted to the HEA — a proposal to purchase immediately the Honan's Quay site for €8 million was submitted to and approved by the Governing Authority. While this was represented as a simple site substitution, it involved an immediate commitment to acquiring a city centre property, without a coherent funding plan being in place for its development. In addition, the scale of development envisaged for the new location was potentially significantly more than had been envisaged for the Opera quarter location, and could require the University potentially to become involved to a significant degree in speculative property development. The strategic implications of this change for the University, both in terms of building utilisation and securing of funding, were therefore likely to be substantial.

The HEA subsequently declined to fund the application.

The purchase of the Honan's Quay site was finalised in June 2019. The University has not yet determined how it will use the Honan's Quay property in the medium to long term.

Acquisition of the Honan's Quay property

At the time of acquisition of the Honan's Quay property, the University had no formal/written policy and procedures for such transactions. The established practice was that property acquisitions were normally the responsibility of the University's Buildings and Estates Department. In the case of the Honan's Quay acquisition, that Department had only limited involvement up to the time the Governing Authority approved the purchase. The negotiation appears to have been managed by a property advisor engaged by the University who reported on progress to the President, with the Deputy President preparing and presenting the acquisition proposal to the Governing Authority.

The University obtained some valuation advice, but no formal valuation report on the property was obtained. Over the course of the acquisition, a range of values were referenced. In September 2018, the University was considering offering €3 million. In the middle of March 2019, the University offered €6.5 million and in early April 2019 a price of €8 million had been agreed.

An inspection of the Honan's Quay building had been carried out by an architect in September 2018. However, other than informal valuation advice, no further due diligence work appears to have been undertaken prior to the Governing Authority approval on 5 April 2019.

At the time of Governing Authority approval, the VAT treatment had not been determined. Discussions with the University's tax advisors and the vendors resulted in the University agreeing to increase the purchase price by €343,000 to compensate the vendor for a tax claw back they would incur arising from the treatment of the transaction as VAT exempt.

Loss of value for money

An economic assessment was not undertaken of the relative merits of the Honan's Quay property and suitable alternative properties e.g. at the nearby Opera quarter, where a suitable site was stated to be available at an estimated €3 million. Because there is no evidence of any additional real benefits to be gained from the University's development and use of the Honan's Quay property, as compared to a similar facility at the Opera quarter, it is difficult to see how the excess cost incurred — of the order of €5 million — was warranted, or that it represents value for money.

Independent valuers commissioned by the University in 2023 to review the price paid for the Honan's Quay property concluded that the University had paid around one third more than the market value of the property in 2019. On that basis also, the acquisition did not represent value for money.

In addition to the purchase price, the University had incurred renovation and customisation costs to bring at least some of the existing Honan's Quay property into use. For the purposes of the 2022 – 2023 annual financial statements, the independent valuers valued the Honan's Quay property as at 30 September 2023 at €5.4 million. As a result, the University has proposed an impairment charge (or loss) of €3.044 million in respect of the asset value to be recognised in the financial statements for the financial year ending on that date.

Acquisition of houses at Rhebogue

In late 2021, the University was approached by a developer in relation to a site in Rhebogue, followed by a written proposal in January 2022. The proposal was that the developer would build student accommodation — totalling 80 bed spaces — on a site which had planning permission for 20 houses, and either lease the accommodation to the University, or the University would purchase the houses outright on completion. The proposal suggested that outright purchase would cost in the region of €12.2 million including VAT.

Objective appraisal of investment proposals and the avoidance of premature commitments are the central objectives of the *Public Spending Code*. In the case of the Rhebogue acquisition, this examination found no evidence of proper, objective appraisal of the options of the kind that should have been available to decision makers, including the Governing Authority members, when they were asked to approve the acquisition.

Planning due diligence

The University's acquisition policy — approved in June 2022 — requires identification and assessment of the planning status of target property in advance of an acquisition proposal being submitted for approval to the relevant decision-making body i.e. the FHRAMC and/or the Governing Authority. The policy specifically states that the planning authority should be contacted in that regard.

Planning advice on the Rhebogue proposal received from relevant professionals between March and July 2022 was not conclusive. An architects' report in July 2022 recommended that written clarification should be sought from the local authority about whether the proposed use of the property as student accommodation would represent a material change in use, but this did not happen. Notwithstanding the residual doubt, the presentation to the Governing Authority on 3 August 2022 stated that the related advice from the University's legal advisors 'supports proceeding with the purchase' and that the Rhebogue development was 'planning approved'.

The University's acquisition policy was not complied with in respect of planning due diligence. The proposal put to the Governing Authority should have disclosed the divergent views on the planning matter, and that the planning authority's confirmation had not been sought or received. The Governing Authority should also have been informed that the planning permission was due to expire in March 2023 because this might have been relevant to the approval of the purchase price.

A December 2023 warning from Limerick City and County Council about a potential unauthorised development of the Rhebogue property is the direct result of the University having proceeded without completing proper due diligence. This is an undesirable and unnecessary outcome.

Valuation of the property

There are a number of ways in which property assets can be valued. The appropriate method(s) to use depend on a range of factors, including whether or not an asset is (or is intended to be) income generating. The valuation advice that the University obtained was based on rental yield. While (net) rental yield is a potentially useful summary valuation method, its application and limitations need to be understood. On its own, it is not an adequate valuation methodology for a public body to rely on when a significant capital investment is being contemplated.

The stance the University took on planning was that the target property for acquisition was essentially a standard residential development, with some customisation. On that basis alone, it is difficult to understand why the University did not focus more on the standard sales price comparison method to estimate the market value of the property. There was some evidence in the valuation reports the University commissioned in March 2022 that comparable residential property was trading at significantly lower prices than the Rhebogue development would represent, but this was not explained in the proposal to the Governing Authority. Instead, only the significantly higher overall valuations based on net rental yield were quoted in the document presented to the Governing Authority.

The proposal to the Governing Authority used the comparative metric of 'cost per bed' for bespoke student accommodation. This was used as a benchmark of the reasonableness of the cost proposal being put forward i.e. the proposed purchase at a cost of €136,000 (including VAT) per bed space. Based on the 80 planned bed spaces, this was equivalent to an overall cost of €10.9 million.

There is no documentary evidence that the valuation reports received by the University were made available to the members of the Governing Authority for its 'special purpose' online meeting on 3 August 2022. The valuation reports should have been submitted to the Governing Authority, together with the acquisition proposal, and in advance of the special purpose meeting.

Overall, the financial analysis presented to the Governing Authority represented a justification of the maximum price that the University could reasonably pay for assets that would help to fulfil a legitimate need for student accommodation. As a negotiating stance, this was detrimental to the University's and taxpayers' financial interests. The default position for a public body should be to seek to acquire all goods and services, including real property, at the minimum achievable price, not the maximum.

Governing Authority approval

The briefing document submitted to the Governing Authority meeting on 3 August 2022 was defective in several ways. It misrepresented that the recently-adopted acquisitions policy and procedure had been followed. Key risks of the investment proposal were not clearly explained to the members of the Authority, and the valuation information was also not adequately explained. The headline acquisition cost was represented as €10.9 million (including VAT) payable over five years, but a four-year rent sharing proposal whereby the developer would receive a further €1.08 million was not clearly set out.

The minutes of the meeting are little more than a recitation of the information in the briefing document. They do not reflect the nature of whatever discussion occurred, or whether any opposition to or questioning of the proposal took place. They also do not adequately record relevant specifics of the decision taken by the Governing Authority — even what the approved purchase price was. This represents deficient record-keeping in respect of an important investment decision.

Subsequent to the Governing Authority meeting, the University contracted with the developer on the basis of a total contract value of €11,979,280, to be paid in various instalments over five years.

Handling of counterarguments

The Governing Authority had an absolute right to be fully briefed on the risks that had been identified by independent professional advisors and by relevant University senior executives in respect of the proposal, in advance of being asked to authorise the assumption of a substantial binding commitment. The proposal document submitted to the Governing Authority for the meeting of 3 August 2022 failed significantly in that regard, and legitimate issues of concern raised by relevant officials about the proposed acquisition were simply omitted.

Some of the issues of concern surfaced subsequently in a protected disclosure received in early 2023. As the University had done in respect of previous disclosures, this disclosure was handled in a tightly legally-focused way, with an independent investigation being carried out by a senior counsel. The more general implications of the disclosures for the effectiveness of operation of the University's system of control and decision-making do not appear to have been adequately considered or investigated by the University or by the Governing Authority.

By late 2023, it emerged that the stamp duty implications of the acquisition had not been properly assessed, and that there might be a planning difficulty. These difficulties, together with recognition of the existence of other significant concerns, prompted a further independent investigation of the University's processes which found there was credible evidence of dismissal and override of legitimate counterarguments. This raises a serious doubt about the objectivity of the University's evaluation of the Rhebogue acquisition. On the contrary, the evaluation undertaken and presented to the Governing Authority appears biased in favour of the acquisition on unfavourable terms, and comprehensively fails to comply with the principles of the *Public Spending Code*.

Contracting for the acquisition

An agreement dated 12 August 2022 provided for a purchase price of €11,979,280 payable in stages over five years, commencing on practical completion of the development, which was expected to be on 30 August 2023. The contract price comprised the €10.9 million capital cost that was prominently referenced in the proposal to the Governing Authority, and amounts totalling €1.08 million which may correspond to the rent share referenced in the proposal. However, the contract does not specifically refer to rent sharing.

Under the terms of the contract, a deposit of just €10 was payable by the University on the contract signing date.

On 2 August 2023, a supplemental agreement was signed with the developer. This provided for outright purchase of the property by the University on the contract closing day, with payment in full. A reduction in the purchase price of €540,000 — i.e. to €11,439,280 — was negotiated as part of the revised deal and earlier payment. The revised agreement amount represented an average purchase price of almost €572,000 per property.

Unanticipated stamp duty liability

The University's acquisition policy requires that the expected VAT liability associated with an acquisition be identified before a commitment to purchase is made. The potential liability to stamp duty should likewise be investigated in advance. In the case of the Rhebogue acquisition, the University failed to identify that, because this was a multi-unit purchase, there was an exposure to stamp duty at a rate of 10% of the purchase price. This represents a failure of the University's due diligence process in this case.

The University was obliged to pay stamp duty of €1.008 million on the Rhebogue acquisition to the Revenue Commissioners in February 2024. Late payment interest of a further €29,790 was also payable to Revenue.

Impairment of Rhebogue asset value

A March 2024 'value in use' valuation of the Rhebogue assets indicates that the University is likely to have paid significantly more than it should have for the Rhebogue property. While there is scope for debate about the required return on capital/relevant discount rate, it appears that the University failed to achieve value for money in this investment. The University has proposed an impairment charge of €5.2 million on the asset value to be recognised in the University's annual financial statements for 2022 – 2023.

On this basis, it appears that the manner in which the University acquired the Rhebogue assets resulted in a significant loss in value for money. Further significant improvements are therefore urgently required in the University's property acquisition policies, procedures and controls.

**University of Limerick property acquisitions
in Limerick city**

1 Introduction

- 1.1 The University of Limerick's main campus is located in Castletroy, five kilometres from Limerick city centre. In 2019, the University purchased a site and building bounded by Sarsfield Street, Liddy Street and Honan's Quay in Limerick city centre (Honan's Quay site) for the purposes of establishing a city campus.
- 1.2 Subsequent to the purchase of the property, significant concerns were raised about the process adopted in purchasing the property. In March 2021, the Governing Authority of the University appointed external consultants to examine the due diligence carried out prior to the purchase and the accuracy of the information provided to the Governing Authority when seeking approval for the purchase. The consultants completed their report in December 2021, and submitted it to the University. However, circulation of the report within the University was very restricted due to legal proceedings taken against the University.
- 1.3 The consultants made six recommendations about how the University's internal processes around property matters should be improved. The University's Governing Authority approved proposals intended to implement the report's recommendations on 30 June 2022.
- 1.4 The only major capital acquisition undertaken by the University since receipt of the consultants' report on the purchase of the Honan's Quay site was the purchase in October 2023 by the University of a development of 20 houses located at Rhebogue — about three kilometres from the main campus, and around two kilometres from Honan's Quay — for use as student accommodation.
- 1.5 The Department of Public Expenditure, National Development Plan Delivery and Reform (Department of Public Expenditure) has issued high level guidance for public bodies in relation to acquiring (or disposing of) property.¹ The objective of the guidance is to encourage sound management of property assets that is effective in delivering value for money while also providing for the property needs of public bodies.
- 1.6 In relation to property acquisition, the Department of Public Expenditure guidance sets out best practice requirements including the need for regular high level review of property holdings, the development of an objective business case where that review identifies a need to acquire property and the process for implementing an acquisition decision, including the importance of early engagement of professional advice (legal, valuation, planning, structural, etc.).
- 1.7 This examination was undertaken to review the purchase of the Honan's Quay property from a value for money perspective, and to identify how the University has implemented lessons learned from that purchase. In particular, it examined
 - the University's assessment of the strategic and business need for a city centre campus
 - the acquisition process adopted for the Honan's Quay property including the due diligence and approval processes
 - the revised property acquisition procedures adopted by the University since the purchase and the extent to which those revised procedures have been used in the subsequent property acquisition at Rhebogue.

¹ Department of Public Expenditure, National Development Plan Delivery and Reform circular 17 of 2017 — *Policy for Property Acquisition and the Disposal of Surplus Property*.

Methodology

- 1.8** The examination reviewed the documentation held by the University relating to the purchase of the Honan's Quay site, including emails exchanged between the key individuals involved in the acquisition. This was assessed against the requirement of the Department of Public Expenditure's guidance in force at the time.

- 1.9** The University's documentation relating to the purchase of the development at Rhebogue was assessed by reference to the Department of Public Expenditure's current guidance on capital acquisitions, and the University's policies and procedures for capital acquisitions adopted on 30 June 2022.

2 Strategy and business need for a city campus

- 2.1** One of the goals in the University's strategic plan 2011 to 2015 makes reference to 'extending the visible presence of the university in Limerick city'. However, no specific action in that plan refers to the establishment of a city centre campus.
- 2.2** The University's capital development plan 2013 to 2018 sets out the capital projects to be progressed over the period of the plan. It includes a project to develop a city centre academic building by 2018. The plan noted that the University was reviewing the feasibility of locating part of its core activity in the city centre and referred to constructing a building on a large site (the 'Opera site') acquired by Limerick City and County Council in 2011 for a major regeneration project.¹ The capital plan envisaged the University acquiring a site and constructing a building of 4,400 m². The projected capital cost of the project to establish a functioning facility was €15.9 million.
- 2.3** The University's strategic plan 2015 to 2019 noted the aim of completing the projects in the capital development plan including the city centre academic building. The strategic plan also referred to supporting Limerick City and County Council in delivering the Limerick 2030 plan, including development of the Opera Centre. The latter involves regeneration of a large site in the inner city, a couple of blocks from Honan's Quay.

Approval to purchase Opera site

- 2.4** In August 2018, the University contacted the owner of the property at Honan's Quay to indicate its interest in purchasing the property for its city centre campus. The University continued to engage with the owner of the property and its own advisors in relation to the acquisition, at the same time as progressing the Opera site project.
- 2.5** In November 2018, a proposal was brought to the University's Finance, Human Resources and Asset Management Committee (FHRAMC) to purchase part of the Opera site from Limerick City and County Council and to develop that land for a city campus.² The proposal indicated that
- the Opera site represented the best option 'given the criteria to be satisfied and the availability of sites'
 - formal analysis of need, cost/benefit, site and risks would need to be done and that the proposal paper only presented a high level view of these matters
 - the full financial commitment including site purchase, development and contingency was estimated at €45 million.
- 2.6** While the proposal document submitted to the FHRAMC makes reference to other site options, it does not name or identify those sites and does not indicate whether alternative site options were assessed or evaluated.
- 2.7** In response to the project proposal, the FHRAMC approved expenditure of €5 million to purchase property at the Opera Centre and to bring plans to planning permission stage. The FHRAMC was to receive further briefings as the project progressed.

¹ The site was acquired by the Council in 2011 for €12.5 million. It includes river frontage and represents a substantial inner city redevelopment zone. The Council has been granted planning permission for development on the 2.35 ha site.

² The Finance, Human Resources and Asset Management Committee is a sub-committee of the University's Governing Authority.

- 2.8** In December 2018, the Opera site proposal and the FHRAMC approval were presented to the Governing Authority. The Governing Authority welcomed the plan for a presence in the city. It also noted that the proposed use of the new city centre campus had not yet been decided.
- 2.9** On 2 April 2019, the University submitted an application to the Higher Education Authority (HEA) for funding from the Higher Education Strategic Investment Fund towards the development of the Opera site for use as a 'Future Skills Academy'. The application estimated that purchase of the site for the academy would cost €3 million and that a total of €45.2 million would be required to develop the site, including a new build and refurbishment of existing buildings on the site providing a 7,866 m² facility. HEA capital funding of €22.6 million was sought. The application for funding included a business case, an appraisal of three options — to locate the Future Skills Academy on the Opera site, on the main University campus or 'do nothing' — using multi-criteria analysis and an assessment of the risks associated with the project.

Approval to purchase Honan's Quay site

- 2.10** Three days after submitting the funding application for the Opera site to the HEA, on 5 April 2019, the University's Governing Authority was briefed on the funding application submitted to the HEA. However, a document was also submitted to the Governing Authority proposing to purchase a building at Honan's Quay for €8 million plus associated costs and taxes.¹ The proposal stated that the presentation to the Governing Authority in December 2018 in relation to the development of the Opera site had noted that a number of sites had been examined and that the Honan's Quay site was the preferred site but was not available at that time. There was no evidence in the papers presented to the Governing Authority in December 2018, to the FHRAMC in November 2018, or in the minutes of those meetings that the preferred site was Honan's Quay.
- 2.11** The briefing document submitted to the Governing Authority on 5 April 2019 explained that the owners of the Honan's Quay property had recently approached the University and, following discussions over the previous two weeks, agreement had been reached on a purchase price of €8 million. It pointed out that discussions on the Opera site had not reached a conclusion and there was no binding commitment to it. It also set out a range of arguments in favour of the Honan's Quay property.
- The Honan's Quay site is located at the geographical centre of the city and satisfied all the criteria for a site suitable as a city campus.
 - The significant advantages of the Honan's Quay site over the Opera site were the 'potential for future development' and the 'ability to deliver very quickly a fully functioning building'.
 - 'Early engineering assessments' suggested the structure of the existing 5,535 m² building was designed to support additional floors over the existing two.
 - The building was in dry workable condition but would require attention to issues of normal wear and resolution of issues following a detailed survey.
- 2.12** When the site was originally considered, architects had outlined possible mixed-use building options — sketches were appended to the proposal to illustrate the options. These sketches envisaged the development of a substantial mixed-use development at the site.²

¹ The document submitted to the Governing Authority on 5 April 2019 is reproduced in Appendix A.

² These were prepared in October 2018 when two options were outlined — the first based on a university/commercial site usage designed to achieve a development of between 8,000 m² to 10,000 m² gross floor area and the second showing how a residential tower might be accommodated. The second option was described by the architects at the time as being very aspirational and ambitious. The architects described these as two very preliminary graphic studies demonstrating an approach which might be taken and noted that their views on the site were based on a very preliminary desktop study.

- 2.13** In relation to the proposed purchase price, the briefing note for the Governing Authority stated that, during negotiations, valuation reports had been ‘tabled’ both by the vendor and by the University. The vendor had proposed an asking price of €10 million and the University had made an opening offer of €6.5 million. The proposal stated that the University was satisfied that the agreed price of €8 million represented ‘good value’.
- 2.14** In the meeting minutes, the Governing Authority noted that discussions would take place with the HEA about amending the application for funding to replace the Opera Centre site with the Honan’s Quay site. The Governing Authority agreed to the proposed purchase of the Honan’s Quay property for €8 million (plus costs and taxes). At the same time, the Governing Authority approved matching funding of €22.6 million which would be required if the University’s application to the HEA were successful.
- 2.15** The University informed the HEA on 6 April 2019 of the change of site location. Ultimately, the University’s funding application to the HEA was unsuccessful. The HEA informed the University in August 2019 that the application was not successful because the Future Skills Academy proposal did not satisfy the objectives to the same extent as other applications competing for the funding available under the scheme. The site location does not appear to have been a factor in that decision. A business case was not prepared for a proposed development of the Honan’s Quay site.
- 2.16** Site demolition and enabling work on the Limerick City and County Council Opera project commenced in 2020. Construction on the first new build in the project commenced in early 2024.
- 2.17** Since 2020, the University’s Department of Architecture has used the existing building on the Honan’s Quay site to operate its innovation and digital fabrication lab. The University has stated that it is collaborating with Limerick City and County Council to facilitate interim activities and enhancements to the site while the decision-making process regarding its future continues.

Conclusions

- 2.18** The University adopted a general objective of establishing a ‘visible presence’ in Limerick city centre around 2010 or 2011. The University’s capital development plan 2013 – 2018 envisaged this as a relatively modest project involving the development of a facility of around 4,400 m², at a capital cost of around €16 million, to cater for delivery of part of the ‘core activity’ of the University. At that stage, the project was framed as part of a much larger local area regeneration being led by Limerick City and County Council to develop the Opera quarter.
- 2.19** In December 2018, the Governing Authority noted a proposal for a development in the Opera quarter that would deliver a building of some 7,800 m² at a cost of €45 million. On 2 April 2019, the University submitted an application to its key funder, the HEA, for capital funding to cover half of the €45 million projected cost of the envisaged Opera quarter development. The proposed site purchase cost for this development, as outlined in the proposal to the HEA, was €3 million.

- 2.20** On 5 April 2019, a proposal was submitted to the Governing Authority to purchase immediately a different site at Honan's Quay, at a cost of €8 million. While this was represented as a simple site substitution, it involved an immediate commitment to acquiring a city centre property, without a coherent funding plan being in place for its development. In addition, the scale of development envisaged for the new location was potentially significantly more than had been envisaged for the Opera quarter location, and could require the University potentially becoming involved to a significant degree in speculative property development. The strategic implications of this change for the University, both in terms of building utilisation and securing of funding, were therefore likely to be substantial.
- 2.21** The impact of the Honan's Quay site purchase on the relationship with the HEA was also likely to be substantial, especially given the dependence on the HEA for overall project funding. The HEA did not approve funding for the proposal it had received for a Future Skills Academy, and the University has not presented an alternative funding proposal to the HEA for the Honan's Quay site.
- 2.22** The University has not yet determined how it intends to use the Honan's Quay site in the medium to long term. Development of a strategy for the site will need to take account of current and future demand for commercial property, current and future supply of commercial property (not least from the nearby Opera quarter development) and the likelihood of availability of significant State funding for the University's capital programme.

3 Acquisition of the Honan's Quay site

- 3.1 The key events in the Honan's Quay acquisition process between August 2018 and the finalisation of the purchase contract in June 2019 are set out in Figure 3.1.

Figure 3.1 Key events timeline in acquisition of Honan's Quay site by the University of Limerick, August 2018 to June 2019

Date	Event
17 August 2018	University's property advisor contacts owners of site by email stating that UL is 'back interested' in the site.
17 September 2018	Architect's draft inspection report of site and premises received.
6 October 2018	Property advisor emails the President to inform him that the owners are suggesting a lease option. The President responds stating there are 'too many moving parts — time to exit'.
15 October 2018	Updated architect's inspection report.
26 October 2018	Architects provide preliminary graphic studies of development options.
14 December 2018	Governing Authority 'noted' a proposal to develop a city centre building on an Opera Centre site.
8 March 2019	Meeting with owners attended by President and property advisor.
15 March 2019	Valuer representing University emails owner with an offer of €6.5 million payable over four years.
29 March 2019	University's property advisor emails owner attaching draft heads of agreement with a purchase price of €8.125 million payable over four years.
2 April 2019	University submits funding application to HEA for funding of €22.6 million to develop a €45.2 million project at the Opera Centre.
3 April 2019	University's property advisor sends a draft memo about the Honan's Quay purchase to the President.
4 April 2019	Final proposal document sent to the University Corporate Secretary's Office, the President and the Chancellor.
5 April 2019	University Governing Authority approves purchase of Honan's Quay property for €8 million plus associated costs/taxes.
17 April 2019	Vendors raise issue of VAT on the transaction.
13 May 2019	Engineers provide University with draft preliminary structural commentary report.
20 May 2019	FHRAMC approve increase in purchase price of €343,000 to compensate vendor for VAT clawback.
22 May 2019	Engineers submit draft geotechnical desk study to UL.
23 May 2019	University's legal advisors submit final report on draft contract.
21 June 2019	Sale closes.

Source: Emails provided by the University of Limerick. Analysis by the Office of the Comptroller and Auditor General.

University acquisitions policy and procedures

- 3.2** At the time of the acquisition of the Honan's Quay property, the University did not have a formal written policy or procedure for property acquisitions.
- 3.3** Property acquisitions were normally the responsibility of the University's Building and Estates Department. In the case of the Honan's Quay site, that Department had only limited involvement up to the time the Governing Authority approved the acquisition.
- 3.4** There was a direct line of responsibility for the Buildings and Estates Department within the University's management structure. The Director of Buildings and Estates reported to the Director of Management Planning and Reporting who in turn reported to the Deputy President who fulfilled the roles of Chief Operating Officer and Registrar. The Deputy President reported to the President.¹
- 3.5** In addition to the internal management structure, an external consultant (property advisor) had for many years provided the University with advice on property related matters. The property advisor was engaged by the University on a freelance/as-required basis.
- 3.6** The FHRAMC terms of reference set out its role in relation to the evaluation of capital acquisitions. These include
- the evaluation and approval of acquisition of assets up to €20 million and subsequently reporting on these to the Governing Authority and
 - evaluation of proposed acquisitions in excess of €20 million, and reporting thereon to the Governing Authority for its consideration and approval.
- 3.7** The proposal for development of the project at the Opera site was brought to the FHRAMC and that committee approved expenditure of €5 million to purchase the site (estimated purchase cost €3 million) and to progress the project to planning permission stage.
- 3.8** This examination found that the acquisition of the Honan's Quay site did not follow the normal process. In addition to the limited role for the Director of Buildings and Estates, the FHRAMC played no role in evaluating the acquisition. The negotiation appears to have been largely managed by the external property advisor who reported on progress directly to the President and the Deputy President, who prepared and presented the acquisition proposal directly to the Governing Authority.

Property valuation

- 3.9** Although the April 2019 proposal to the Governing Authority to purchase the Honan's Quay site stated that valuation reports obtained by the University and by the vendor were tabled during the negotiations, in fact, no valuation report was obtained by the University. While advice about the value of the property was obtained from a firm of auctioneers (the valuer) engaged by the University, no formal valuation report was obtained.²
- 3.10** Property value advice considered by the University for the site and the existing 5,535 m² building ranged from €3 million in September 2018 up to the purchase price agreed in April 2019 of €8 million. The evidence of valuation advice obtained is contained in emails from the valuer.

¹ The President in post at that time left the University in August 2020. An interim President was appointed at that time and was appointed on a permanent basis in October 2021. The Deputy President left the University in January 2022.

² The *Public Spending Code* requires at least one formal valuation prior to agreement to a property acquisition.

- 3.11** On 19 September 2018, the property advisor emailed the Deputy President stating that 'we think €3 million is a good offer knowing it could make more'. The email, which was forwarded to the President, indicates that this is based on an architect's draft inspection report and comparisons with retail rent in different parts of Limerick city. It is unclear whether the valuer had any input into this estimate.
- 3.12** On 20 September 2018, the property advisor emailed the valuer stating that the University intended to offer €3 million for the site. The valuer replied stating that he thought that was about right and that 'overall at €3m I think we are definitely in the ball park'. In a follow up email, the valuer noted that for valuation purposes 'we would need a steer on density from engineers' and that 'whatever way you kick this about I think the level we are talking is realistic'.

Figure 3.2 Email from valuer to property advisor, 28 September 2018

All reports and land comparisons are now shared with ... & in [vendor company]. It definitely makes sense to do this and will demonstrate that developing for them or indeed anyone else is not a viable option at present. Think we had to go through all of that yesterday at the meeting so that they understand local values in Limerick both in terms of end use levels and comparable site sale values. We are far removed from Dublin levels!!! This will all be teased out by their board before they make a final decision so let's put all the cards on the table and hopefully they will see what we are saying makes sense. Think we are being very open, fair and balanced in our approach. I know we started very low and they began in the clouds but again discussions and time can sometimes bridge large price gaps. This is already in train from both sides.

As per our discussions the best we could hope to achieve on apartment sales if developed would be a max of €30m. Capitalise the rental value of the office space at further say €20m. Current overall end value of say €50m. These are approx. gross sales figures and VAT would have to be deducted at source which further dampens the development argument.

Estimated build cost at €65m. The figures are not stacking at all.

Furthermore, developing apartments over lecture/educational facilities will not be as attractive as say [another site] The perception may be that these units would be utilised for student use. May affect their end value. Ye may be pushed into providing student accommodation??? We have the Apartments at 350k per unit to try and achieve the 30m number. That is even assuming a slightly higher density than we already have.

Counter argument based on retaining the existing:

If we apply a current rent of say €8/10.00 per sq.ft to the existing say 55,000 sq.ft. So let's round the rent to say 500k p/a. Apply a yield of say 9% to reflect asset type, location, potential etc we may be able to get it to make sense at 5m. We ideally need to reduce then for repairs etc.

The refurb figure to make good for educational use will be very interesting. If UL do a high end job you could potentially justify a 25.00 per sq. ft. rental value down there. This has been recently achieved at [another] site. Now you have something meaty. Negative is no parking.

So say a rental of 55,000 sq. .ft at 25.00 per sq. Ft. Annual rent of €1,375,000. Capitalise that at say 8% (when completed) at the overall could be worth say €16.5m.

Site Costs say ...5m

Refurb costs.....????? Would it be 6/8m. I know the estimates are lower for fit out but the roof needs doing, think the façade could be modernised, perhaps external insulation?? Some glazing to overlook the water???...something very attractive could be created off the existing structure.

Now you have created value perhaps some value,

Going forward if needed you could probably develop upwards off the existing structure. There are concrete pillars throughout the building so these should hopefully carry further weight. Your engineers may confirm??

Remember these are all very much loose quick fire figures but in general terms are in the ball park.

- 3.13** In an email on 28 September 2018 to the property advisor, the valuer indicated that ‘we may be able to get it to make sense at €5m’ but that a reduction on that amount could be argued for based on required repairs and refurbishment. The full text of that email is reproduced in Figure 3.2.
- 3.14** In an email on 7 March 2019, the valuer re-iterated to the property advisor the estimate of €5 million — ‘You know my thoughts on value, at €5m we were up there. They will be probably pitching at a 10% yield to arrive at a market rent if this is the route UL wish to pursue’. In a follow up email the next day, the valuer stated ‘[we] would need to do some due diligence on flooding risk but maybe keep that off the table for the moment. Can be sorted with paperwork if a deal is progressing’.
- 3.15** On 15 March 2019, the valuer emailed the vendor stating that he had been instructed to submit an offer of €6.5 million payable over a four-year period, with the University assuming full responsibility for the property from the formal inception of the deal. It is not clear who in the University instructed the valuer to submit this offer, or on what it was based.
- 3.16** The valuer emailed the property advisor on 3 April 2019 suggesting that the Governing Authority should be asked to approve the acquisition in principle ‘subject to a full due diligence including a valuation’. He noted that the valuation would take some time and that it would be difficult to find local comparable property sales. He also suggested that the property advisor request a copy of the vendor’s valuation of €7.5 million and stated ‘put a valuation on the delayed payment and you are there’.
- 3.17** On the evening of 3 April 2019, the property advisor emailed the President attaching a draft memorandum regarding the acquisition. The draft did not reference the price. In the email, the property advisor stated ‘I have asked [the valuer] to provide an updated valuation report. He is to phone me 11pm to discuss a draft. I will email on receipt’. The President forwarded this email to the Deputy President the following morning (4 April 2019).
- 3.18** On the morning of the Governing Authority meeting (5 April 2019), the valuer emailed the property advisor with thoughts on how ‘we can make this stack up as a reasonable investment’. The text of that email is reproduced in Figure 3.3. Prior to the Governing Authority meeting, the property advisor sent an email based on the highlighted text — to the Deputy President stating that it may be useful ‘if pressed on price’.

Figure 3.3 Text of email from valuer to property advisor, 5 April 2019

I have been giving this situation much thought over the past two days to see if we can make this stack up as a reasonable investment. I reviewed our earlier rationale and those figures are probably accurate enough even though works etc were very much estimated.

If we take the purchase price at €8m. Fit out spend to say €5m (reduced) which may be more in line with current costs (ie €100.00 per sq.ft.). Structural spend of say €2m, and this is an unknown until the roof etc is properly surveyed.

We now have an overall spend of say €15m. Apply “[another site]” rents which are very much up their at say round €30.00 per sq ft for say 50,000 sq.ft net space. Income of €1.5m reflecting 10% yield.

The big grey area are the spend costs. This would need to be analysed immediately.

Two other issues. Flood risk and change of use. The latter may be opposed because retail preservation is now a very sensitive issue around town and with the planners may not do UL any favours if seen to be moving away from the Opera Centre site.

Valuation by Limerick City and County Council

- 3.19** In 2017, as part of Limerick City and County Council's (the Council) bid for European Capital of Culture 2020, the Honan's Quay site, which contained a vacant substantial retail building, was identified as a possible location for use as a cultural hub. The Council obtained a desk-based valuation of the building and site. The valuer engaged by the Council estimated the value at just over €3 million but made clear that this was not a full valuation report which would require confirmation of floor areas, an inspection and a feasibility study from a qualified planner or architect.
- 3.20** In legal proceedings related to placing the site on the derelict site register, it was noted that in July 2017, property agents submitted an offer on behalf of the Council for the purchase of the site for €3 million. The offer was not accepted. In the event, the cultural hub project was not progressed and the Council did not pursue the purchase of the site.
- 3.21** There is no evidence that the University had a copy of the Council's valuation advice about Honan's Quay at the time of acquisition. However, the University sought details of the valuation advice in 2021 through a freedom of information request to the Council.

Other due diligence

- 3.22** The University obtained advice and reports from a number of professionals during the Honan's Quay acquisition process in the areas of legal, architectural and engineering.

Legal assessment

- 3.23** The University's legal advisors had limited involvement prior to the Governing Authority approval in April 2019. In early September 2018, the University's property advisor informed the legal advisors that negotiations had been opened on the possible purchase of the Honan's Quay site and asked that title be checked as well as any other work considered necessary. However, this was not possible as the owners would not release the title documents prior to an offer being submitted. The legal advisors conducted an online search with the Property Registration Authority which identified that most of the title to the site was unregistered.
- 3.24** There was ongoing engagement with the legal advisors from April 2019 until sale closure in June 2019. In early May 2019, the legal advisors recommended that a number of matters be addressed during the course of due diligence as the vendor was not providing any warranties in relation to planning, building regulations, fire safety, environmental matters, etc. It was a matter for the University to carry out its own due diligence and investigations in regard to those matters. The legal advisors submitted their final report on the draft contract on 23 May 2019. This was subject to confirmation of completion of the various due diligence matters recommended.

Architectural assessment

- 3.25** In early September 2018, the property advisor asked the Director of Buildings and Estates to arrange for a firm of architects to undertake an inspection of the Honan's Quay site. The architects inspected the site on 13 September, provided a draft report on 17 September and an updated report on 15 October 2018. The report noted that as the building had been vacant for ten years, there were signs of a deterioration in the building fabric but that the building was suitable for adaptation to a new use or for site clearance and construction of a new building. The report noted significant issues in relation to compliance with planning permissions and with fire safety requirements and recommended specialist advice in relation to these. The University has stated that the recommended specialist advice was not considered necessary because of the lapse of time since the planning permission for the original building and the fact that planning and fire safety issues would be addressed in proposals for future use of the building.
- 3.26** In October 2018, at the request of the Deputy President, another firm of architects provided by way of email an opinion on the Honan's Quay site. They noted that the site offered good potential but cautioned that they had merely explored some ideas based on a very preliminary 'desktop' study. Preliminary graphic studies demonstrating two possible options for building on the site were provided and these were subsequently appended to the proposal to the Governing Authority in April 2019. The architects recommended the preparation of a detailed feasibility exercise followed by discussions with the local authority and development bodies as to their views on possible developments. There is no evidence that any such feasibility work was carried out.

Engineering assessment

- 3.27** Engineering advice was not obtained prior to the Governing Authority approval to acquire the site.
- 3.28** In early May 2019, the University requested an engineering firm to complete an initial structural assessment of the building on the site. The engineers were asked to consider whether the building had been designed to support loadings for a multi-storey structure which had been mentioned in the original (1972) planning permission for the site but not in fact built. A brief desktop study on flooding risk was also requested.
- 3.29** On 13 May 2019, a draft preliminary structural commentary report was provided. This was based on a desktop study of available information from the planning search completed by architects as part of their inspection report of October 2018 on behalf of the University and on a brief walk-through of the building. The engineers also sought information from the original contractors for the building.

- 3.30** The engineers' report concluded, based on a walk-through and visual inspection, that the condition of the structure appeared to be reasonably sound. Noting the building was designed for retail loading, the report concluded it was most likely suitable for most academic type loadings but that areas with a lot of heavy equipment, such as laboratories, may not be appropriate for the (upper) ground floor. It further stated that the structure was unlikely to have been designed to support a future seven or eight-storey building overhead. Some evidence of dampness was noted in areas of the lower ground floor. The engineers recommended that if the building was to be used in a temporary fashion, further investigation should be undertaken to assess the full structural condition. It was considered that it might be possible to retain the lower ground floor slab and retaining wall construction in a future development proposal, depending on the design and extent of the development. Site investigation and assessment of the existing sub-structure would be required to assess the suitability of the existing structure for this scenario.
- 3.31** The flooding risk to the site was stated to be predominantly tidal, and the majority of the site appeared to be at risk of flooding from a 1-in-200 year tidal event. The site did not appear to be at risk from fluvial flooding. Further investigation was recommended.
- 3.32** On 22 May 2019, the engineers submitted a draft geotechnical desk study of the site. The report considered the site location and history as well as the likely geology and hydrogeology. The report set out a number of risks related to ground conditions and possible contamination. The risk mitigations were set out including further investigation, testing and sampling.
- 3.33** Both of the engineering reports (of 13 May and 22 May 2019) were received as draft reports. The University does not have final reports from the engineers on file.
- 3.34** The University has stated that it is currently undertaking a flood risk assessment as requested by An Bord Pleanála in relation to its change of use application.

Purchase price agreed

- 3.35** There is little documentary evidence available as to the negotiations involved in agreeing the purchase price or the basis for the various offers made by the University for the site. It is evident from emails that, in September 2018, the University was considering offering €3 million for the site. Following a meeting with the vendors in September 2018, emails indicate that an offer of €5 million was being considered and the valuer emailed the property advisor a draft letter offering €5 million but noting that the vendors may not accept this and may want €6 million. It is not clear whether this offer was put to the vendors. On 6 October 2018, when the property advisor informed the President that the vendors may only want to offer a lease option, the President indicated that it was 'time to exit'.
- 3.36** There is no evidence of any further discussions on price until March 2019 when an offer of €6.5 million (payable over four years) was made.
- 3.37** The proposal to the Governing Authority in April 2019 stated that the vendors sought €10 million and the University tabled an opening offer of €6.5 million. The proposal requested approval for a purchase price of €8 million, with no reference to VAT or the payment being made in instalments.

- 3.38** A price of €8.125 million was included in a draft 'heads of terms' sent by the University's property advisor to the vendors on 29 March 2019. Those draft heads of terms also envisaged payment over a four-year period but do not reference VAT. The draft terms were emailed to the President and Deputy President on 3 April and to the Chancellor on 4 April. The University has stated that it has no evidence that the draft heads of terms were agreed with the vendors and signed.
- 3.39** The VAT applicable to the transaction had not been determined at the time of Governing Authority approval. The issue of VAT was first raised by the vendors on 17 April 2019 when they informed the property advisor that the sale was subject to VAT at which point the University sought tax advice in relation to the transaction. Any VAT arising on the sale would represent an additional cost to the University and was likely to be in the order of €1 million.
- 3.40** If the sale was treated as VAT exempt, the vendors would incur a tax clawback of some €340,000. The vendors proposed that if that was to be the treatment, the purchase price should be increased by the amount of this clawback. Following discussion with its own tax advisors, the University agreed to this.
- 3.41** The Governing Authority approved the purchase of the site for '€8 million plus associated costs/taxes'. The FHRAMC approved an increase in the purchase price of €343,000 at its meeting in May 2019. The minutes of that meeting noted that not paying this could lead to the vendors withdrawing from the sale. The purchase price included in the sales contract was €8,343,475. The sale formally closed on 21 June 2019.

Briefing document for the Governing Authority

- 3.42** The examination reviewed the documentary evidence regarding the preparation and submission of the proposal to the Governing Authority.
- 3.43** The proposal document to the Governing Authority for the purchase of the site comprised two pages of narrative, an appendix with 11 photographs of the building and the surrounding area, and a further two-page appendix with the architects' sketches provided in October 2018 for two possible building options for the site based on a preliminary desktop study.
- 3.44** The proposal document was based on a document drafted by the property advisor which was sent to the President on 3 April 2019. The email to the President noted that reports had not been included and stated that the 'engineering report' is unduly negative in language and is not an appropriate report for briefing purposes.¹ It also noted that an updated valuation report is awaited. A revised draft of the document was sent by the property advisor the next day incorporating the purchase price.
- 3.45** On 4 April, the President asked the Deputy President to prepare a paper for the Governing Authority for the following day's meeting, based on the draft document and the heads of agreement. The proposal was finalised following review and comments by the President and was sent to the Corporate Secretary's office on the evening of 4 April 2019. The Deputy President also sent the proposal document to the President and to the Chancellor. The President asked that the document not be circulated to the Governing Authority members in advance of the meeting.

¹ This seems in fact to be a reference to the architect's inspection report of October 2018.

Agenda and circulation of proposal

- 3.46** The Honan's Quay proposal was not on the agenda for the scheduled Governing Authority meeting of 5 April 2019. The President was aware of the negotiations to purchase and was involved in the preparation of the proposal to the Governing Authority. The Chancellor was provided with a copy of the proposal and the draft heads of an agreement to purchase the day before the meeting. However, it appears that it was first raised with other Governing Authority members during the course of that meeting.
- 3.47** The only documentary information provided to the Governing Authority was the proposal document and this was presented to members at the meeting.
- 3.48** The proposal document did not explain why the matter was not on the agenda circulated in advance of the meeting, or why the document was not provided to members in advance. Neither the proposal document nor the minutes of the meeting make reference to any urgency needed in seeking approval for the acquisition. The document did not explain why the proposal was not initially considered by the FHRAMC.

Site selection

- 3.49** The proposal document states that at a presentation to the Governing Authority in December 2018, it was noted that a number of sites had been examined and that the Honan's Quay site was the preferred site but was not available. The Opera site was then presented as the best available site.
- 3.50** The reference to the Honan's Quay site as being the preferred site is not evident from the presentation to the Governing Authority meeting of 14 December 2018 or from the minutes of that meeting. Other than a reference in the minutes to 'extensive consideration' of different sites, the minutes and the presentation appear to deal exclusively with the Opera site.
- 3.51** The minutes of the December 2018 Governing Authority meeting noted that as well as the presentation, a document was also presented to that meeting. That document was titled *Opera Site Limerick City, Have your Say* and was in fact prepared by Limerick City and County Council in the context of a public consultation in preparation for a planning application for the Opera site. It does not deal with the University's plans for a city campus.
- 3.52** The April 2019 proposal document set out the key factors in selecting a site as described in the paper presented to the FHRAMC in November 2018: scale of site, vibrancy and accessibility of location, prominence of location and proximity to practitioner base and potential access students. The proposal described the scale and location of the Honan's Quay site, stated that it is in the geographical centre of the city and concluded that the site satisfied all the criteria for suitability for a city campus. The proposal stated that it had significant advantages over the Opera site because of its potential for future development and an ability to deliver very quickly a fully functioning building. No further details of these specific advantages were set out.

Description of due diligence

- 3.53** The proposal document did not clearly set out what due diligence work had been undertaken up to that point and also what further due diligence work would be necessary prior to finalisation of the purchase.
- 3.54** The only written report obtained prior to the Governing Authority meeting was the October 2018 inspection report prepared by architects for the University. There was no reference to or summary of this report in the proposal document and a copy was not appended to the proposal. As explained above, the property advisor had expressed concern that the report was unduly negative in language and was not an appropriate report for briefing purposes.
- 3.55** The proposal does not refer to any planning permission that may be required whether in relation to change of use or if a new building were to be constructed.

Engineering assessment

- 3.56** The proposal document stated that 'Early engineering assessments suggest that the structure of the building is designed to support additional floors overhead the existing 2 floors'. The University did not obtain engineering advice prior to the proposal being submitted to the Governing Authority.
- 3.57** An inspection of the site had been carried out by architects engaged by the University in September 2018. The October 2018 report of that inspection notes that it is possible for the building to be stripped back to the concrete frame and adapted to a new use and that this could possibly generate a three-storey building.
- 3.58** The preliminary structural assessment of the building commissioned by the University in May 2019 — after Governing Authority approval — concluded that it was unlikely the structure was designed to support a seven or eight-storey office building overhead.

Valuation

- 3.59** The proposal document submitted to the Governing Authority stated that 'Valuation Reports secured by both the vendor and the purchaser were tabled at negotiation'. This implies that the University had obtained a formal written valuation. It also implies that the University had sight of the vendor's valuation report during the course of the negotiations. While the University did obtain some advice from a valuer, no formal valuation report was obtained. There is no evidence that the University had sight of a valuation report commissioned by the vendor.
- 3.60** The final deal with the vendor included a restrictive clause requiring that any retail component of the development on the Honan's Quay site would be limited to not more than 139 m² (1,500 square feet). The proposal to the Governing Authority in April 2019 referred to the fact that a restriction on major retail use was included in the agreement.

Purchase price

- 3.61** The proposal document stated that the owners of the Honan's Quay site had approached the University and that, following discussions over the previous two weeks, had agreed to sell the site to the University for €8 million.
- 3.62** Other than the reference to an asking price of €10 million and an opening offer of €6.5 million, there was no reference in the proposal document to how the agreed price of €8 million was negotiated or the basis on which it was considered to represent good value. The proposal document did not consider the issue of VAT which if charged on the sale would be a non-recoverable cost to the University. The approval as noted in the minutes of the Governing Authority meeting was to purchase the site for €8 million plus associated costs/taxes.¹ In the event, the VAT treatment adopted added a further €343,000 to the cost.
- 3.63** The proposal document referred to the building having a significant advantage of being in a condition to occupy within a short period with a relatively low spend but did not provide an estimate of that spend. There is also reference to the potential for a new building of up to eight storeys with preliminary architects' sketches provided. Cost estimates for a new build were not provided other than a reference to a cost of €27.6 million to build on a cleared site.

Procurement of professional advisors

- 3.64** The University engaged a number of professional advisors in relation to the acquisition of the site (see Figure 3.4).

Figure 3.4 Professional advisors

Nature of advice	Cost ^a	Procurement process
Property advisor	€44,000	Unknown, no contract in place. Disclosed as non-compliant.
Legal	€53,400 ^b	Expired framework (2013 – 2017) for legal advice re estates and capital.
Valuation	€11,685	None.
Architectural — site inspection	€5,821	Framework for design team services 2018 – 2022.
Architectural — sketches	—	N/A ^c
Engineering — structural inspection	€5,100	Framework for design team services 2018 – 2022.

Source: Analysis by Office of the Comptroller and Auditor General

Notes: a Amounts have been rounded.

b Comprises €51,200 solicitor fees and €2,200 counsel opinion in relation to vacant site levy.

c Architects engaged for separate work requested to prepare sketches and did not bill separately for those sketches.

¹ The minutes were agreed and signed at a Governing Authority meeting on 7 June 2019.

Property advisor

- 3.65** The University relied on its property advisor to oversee the acquisition process including the negotiations. The advisor was also the liaison for some of the other experts engaged. While the University has repeatedly engaged this property advisor for many years, the University is unable to provide a copy of any contract in place at the time of the acquisition of the Honan's Quay site or to provide details of the procurement process used to secure his services. Up to the date of finalisation of the sales contract, the cost of the property advisor's services was some €44,000 (including VAT) for advice in relation to the acquisition.
- 3.66** The total cost of the property advisor's services in the 2018 – 2019 year of account for all property advice provided was €267,956. A contract was agreed with the property advisor in June 2019 following a request for tenders for the provision of strategic services on the implementation of the University's capital development plan.¹

Legal advice

- 3.67** The legal advisors used on the acquisition were from the legal firm retained for advice in relation to estate management and capital development under the legal services framework for 2013 – 2017. A new framework was not put in place until 2019. In the interim, the University continued to use this firm. A rate of 0.5% of the purchase price was agreed for the work in relation to the acquisition of Honan's Quay and this was cleared with the President. The total cost of the services provided by this firm in 2018 – 2019 are included in the disclosure in the University's annual governance statement of the amount of procurement that is part of the transition process to the Office of Government Procurement model.

Valuation advice

- 3.68** The purchase order for this service was raised in July 2019 after the provision of the advice and the completion of the site purchase, with the fee being agreed on behalf of the University by the property advisor.

Architectural advice

- 3.69** The architects who conducted the site inspection in September 2018 were appointed from the University's framework for design team services.
- 3.70** A different firm of architects had been engaged by the University to assist in the preparation of a 'campus master plan' for the University. Separately from that work, the firm was asked to prepare sketches of options for building on the Honan's Quay site. The University has stated that the architects did not bill separately for those sketches.

Structural inspection

- 3.71** The engineering firm engaged to carry out the initial structural assessment and the geotechnical desk study was appointed from the University's framework for design team services.

¹ The cost of the property advisor's services in 2018 – 2019 prior to the June 2019 contract (€131,300 excluding VAT) was disclosed as part of the non-compliant procurement in the University's annual governance statement.

Conclusions

- 3.72** Despite having an extensive estate of properties and an ambitious capital investment programme, the University of Limerick did not in 2018 – 2019 have a formal, written statement setting out the controls and procedures to be adhered to by all University personnel when engaged in capital acquisitions. Formal policies and procedures were adopted by the Governing Authority on 30 June 2022. The policies and procedures adopted do not make reference to appraisal of options when considering an acquisition.
- 3.73** The University had in place a dedicated Buildings and Estates Department with a clear reporting line to the President and Deputy President. That Department had limited involvement, in September – October 2018, in the consideration of the suitability of the Honan's Quay building/site for a city centre development. That involvement appears to have ended when the property was deemed to be unavailable and after an architects' report raised concerns about the feasibility of the building/site for development. The relative merits of alternative locations for the city centre building — if actually assessed — were not adequately documented.
- 3.74** The FHRAMC approved expenditure of €5 million to purchase the Opera site and to progress the project to planning permission stage. A funding application for the development of a facility on the Opera site was submitted to the HEA on 2 April 2019. This involved a proposed 7,866 m² building, at a projected cost of €45 million. The funding application envisaged half of the development cost coming from the HEA, with the remainder coming from the University's reserves and other funding sources. The application was brought to the attention of the Governing Authority on 5 April 2019, three days after its submission to the HEA.
- 3.75** The available evidence indicates that negotiations for the purchase of the Honan's Quay site recommenced around March 2019, via the University's external property advisor. He appears to have reported directly to the President in relation to the negotiations, and supplied *ad hoc* property valuation advice he received from a valuer. The University neither sought nor received a formal valuation of the building/site to underpin the offers submitted to the vendor or the final price agreed. Under the *Public Spending Code*, at least one formal valuation is required prior to agreement of a property acquisition.
- 3.76** Apart from the advice and information received from the property advisor, no additional work appears to have been undertaken during the March – April 2019 negotiations in relation to assessing the condition or development potential of the building or site at Honan's Quay, any planning issues, legal issues or the availability of funding for a potentially much bigger development. Further due diligence inquiries were only undertaken after the Governing Authority had approved the purchase of the site on 5 April 2019.
- 3.77** A succession of progressively increasing offer amounts were referenced in emails received by the President and Deputy President between September 2018 and April 2019, beginning with a suggested offer of €3 million based on comparative market values. Thereafter, higher potential offers were mentioned, apparently based on speculative property development options and likely target investment yields. The expectation in September 2018 was that a deal might be done at a price of €5 million to €6 million. The University's initial formal offer was €6.5 million, and the final offer accepted by the vendors was €8 million, plus €343,000 to cover the vendor's VAT liabilities.

- 3.78** It is often helpful to have champions to drive a public investment project forward, but there must always be a neutral/unbiased assessment function to challenge and to evaluate the proposal and the associated project risks before decisions are made to commit significant public funds. There is no evidence that such a role was engaged in respect of the proposal being put to the Governing Authority in respect of the Honan's Quay property.
- 3.79** The FHRAMC has a specific remit to evaluate and to report on major capital acquisitions to the Governing Authority. It carried out this function in relation to the Opera Centre proposal, but was bypassed in relation to the proposed purchase of the Honan's Quay building. Given the proposed additional spending of €5 million on the site cost, and the potential change in the nature of the development, the lack of a FHRAMC evaluation should have been a key concern for the Governing Authority meeting on 5 April 2019. The minutes of the Governing Authority meeting on 5 April do not record the reason why the Honan's Quay proposal was not brought to the FHRAMC for consideration or whether there was any urgency associated with the acquisition.

4 Events after acquisition of Honan's Quay

- 4.1 In December 2019 and March 2020, disclosures to the University raised a number of concerns in relation to the Honan's Quay acquisition. Subsequently, freedom of information requests about the detail of the acquisition were received by the University in October 2020 and February 2021.

Disclosures December 2019

- 4.2 An anonymous disclosure was sent by letter to the Chancellor and members of the Governing Authority in December 2019. In the same month, a disclosure was sent from an anonymous email account to the members of the Governing Authority. Both disclosures contained allegations in relation to a number of matters, including in relation to the acquisition of the Honan's Quay site.

- The first disclosure alleged that acquisition of the Honan's Quay property impacted the financial viability of the University and that it was effectively the purchase of a site for €8 million. The disclosure questioned how much would be spent on developing the site and alleged that the cost of removing asbestos would be substantial.
- The same disclosure questioned whether any member of the Governing Authority had declared an association with the family of the vendor.
- The second disclosure expressed concern that a 'free site' offered at the Opera Centre had been rejected in favour of a '€26 million site'.

- 4.3 The Governing Authority requested that internal audit review the allegations. The internal audit report of October 2020 found that no further action was required in relation to the Honan's Quay allegations. It noted that once the new campus masterplan was approved, a proposal for a building programme with identified sources of funding would be considered. It noted that no conflict of interest in relation to the acquisition had been declared by any member of the Governing Authority.

- 4.4 The minutes of the December 2020 Governing Authority meeting noted that the corporate secretary had sought a written declaration from members of the Governing Authority and those associated with the acquisition of the site as to whether or not a conflict arose for them, and that no conflict was declared. The minutes also noted that an estimate of the cost of removal of asbestos would be provided to the Governing Authority.

- 4.5 Costs incurred up to 30 September 2023 in relation to the Honan's Quay property totalled €9.6 million, comprising the purchase price of €8.3 million and post-acquisition expenditure on the premises of €1.3 million. The expenditure since acquisition includes some €209,000 associated with the removal of asbestos; €790,000 for works to bring part of the building into use; and €66,000 in relation to works on the façade of the building.

Disclosure March 2020

- 4.6** In March 2020, a disclosure was made to the Chancellor and to the Chief Executive of the HEA mainly concerning the position and treatment of the discloser. It also outlined the discloser's role together with that of a senior executive staff member in the proposal and request for funding for the Opera site project. It alleged that during that process, the President did not inform the University's Executive Committee that he was in advanced negotiations for the purchase of a different site. The disclosure questioned the purchase of the Honan's Quay site at a price more than the Opera site and whether any cost-benefit analysis or due diligence comparing both sites was conducted. It also questioned the accuracy of the proposed cost of developing the site as reported in the media and asserted that no financial plans were in place at the time for the development of the Honan's Quay site. The discloser requested that the financial viability and its impact on the University's finances be determined.
- 4.7** The University's protected disclosures group reviewed this disclosure and determined that two of the matters raised — not related to the Honan's Quay site — were protected disclosures and were within the scope of an ongoing investigation into another — earlier — disclosure. Those matters were referred to the person investigating that earlier disclosure.
- 4.8** The person who made the disclosure in March 2020 wrote to the University in February 2021 withdrawing the allegations, including those about the Honan's Quay purchase. On the basis that the allegations had been withdrawn, the University did not investigate the matters further.

Freedom of information requests

- 4.9** In October 2020, the University received a freedom of information request seeking a copy of the independent valuation report obtained in advance of the acquisition — as referenced in the proposal to the Governing Authority in April 2019 — and details of the cost of asbestos removal. The University responded that no valuation report could be located and that the costs of asbestos removal were not yet known.
- 4.10** A further request was received for a copy of a Limerick City and County Council valuation of the site provided to the University in advance of the acquisition and records of any other valuations provided as part of the University's due diligence. The University responded that no such records were held.
- 4.11** At its February 2021 meeting, the Governing Authority noted the contradiction between the response to the freedom of information requests that no valuation report was available and the reference in the April 2019 proposal document to valuation reports having been 'tabled'. In light of this, the Governing Authority agreed that a report should be drawn up on the due diligence carried out in the purchase of the Honan's Quay site, including the matter of securing a valuation report. At its March 2021 meeting, the Governing Authority agreed that the report should be prepared by an independent party.
- 4.12** The consultants appointed completed their report in December 2021 and presented the report to the University. Copies of the report were provided to the President, the chair of the Audit and Risk Committee, the Chief Corporate Officer and the Director of Human Resources.

- 4.13** The University has stated that due to legal proceedings initiated in relation to the report, its legal advice was that the report should not be disseminated more widely than it already had been when the proceedings were initiated.
- 4.14** The Committee of Public Accounts requested a copy of the consultants' report on a number of occasions in 2022. However, the University responded citing legal advice as to why it was unable to provide the report. The Committee received a copy of the report in 2023 when it used its compellability powers. My Office received a copy of the report in March 2023. The consultants' recommendations were provided to all University staff in September 2023.
- 4.15** The consultants' recommendations were provided in a separate *Investigation Findings and Recommendations Report* in January 2022. The consultants' observations and recommendations are set out in Figure 4.1.

Figure 4.1 Consultants' review of Honan's Quay acquisition

Observation	Recommendation
<p>University does not have a formal policy in place for the acquisition of new property.</p> <p>Consultants were informed that the Director of Buildings and Estates has a process and that process is followed all the time. Review found that was not the case for the Honan's Quay acquisition.</p>	<p>A formal policy for the acquisition of new property should be implemented which should consider best practice from</p> <ul style="list-style-type: none"> the <i>Code of Practice for Governance of State Bodies</i> <i>Circular 17/2016 Policy for Property Acquisition and for Disposal of Surplus Property</i>. <p>The procedures for acquisitions in the University's <i>Code of Governance</i> (December 2021) should be incorporated into the policy.</p>
<p>The Honan's Quay acquisition lacked transparency. Review found that only a small number of individuals knew of the University's ongoing interest and that they maintained strict confidentiality at the request of the vendor.</p> <p>Review found that the acquisition was only discussed at the Governing Authority.</p>	<p>The policy should clearly document the process through which property acquisitions should be approved within the University's governance structure. These approvals should be completed and documented prior to being proposed at Governing Authority or FHRAMC level.</p> <p>The property acquisition approval process should be documented in all proposals presented for Governing Authority or FHRAMC consideration.</p>
<p>The University relied heavily on external consultants for the acquisition of the Honan's Quay site.</p>	<p>All property acquisitions should be led by the appropriate University executive. This should be clear in the documentation presented to the Governing Authority.</p>
<p>The minutes of the Governing Authority meeting of 5 April 2019 did not fully record the different views expressed by members of the Governing Authority on the issue of the Honan's Quay site proposal.</p>	<p>Consideration should be given to recording divergent views on property acquisitions where a matter is ultimately not a unanimous decision of the Governing Authority.</p>

Source: *Investigation Findings and Recommendations Report*, January 2022, consultants appointed by the University to review Honan's Quay acquisition

Retrospective valuation commissioned by the University

4.16 In light of the concerns raised about the absence of a formal valuation prior to acquisition, including at a Committee of Public Accounts meeting in May 2023, the University commissioned independent valuers to provide a valuation of the site in accordance with the Royal Institute of Chartered Surveyor's *Red Book*. This defines market value as

the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

4.17 The valuers were asked

- to provide written market valuations, as defined in the *Red Book*, of the site and building acquired at Honan's Quay at two valuation dates — 5 April 2019 (when the Governing Authority approved the acquisition) and 30 September 2023 (the reporting date for the University's 2022 – 2023 annual financial statements)
- to estimate the amount, if any, by which the restrictive covenant about retail use included in the purchase agreement would reduce the estimated market value
- to consider whether the University meets the *Red Book* definition of a 'special purchaser' i.e. a purchaser for whom a particular asset has special value *because of advantages of ownership that would not be available to other buyers* in the market, and if so, to provide an estimate of the impact on the value
- to provide an opinion on whether the price paid represented good value at April 2019.

4.18 The valuers completed their valuation report in December 2023. The valuers concluded that the University did meet the definition of a special purchaser as the building and its location were ideally suited to meet the specific needs of the University at the time of acquisition. The valuers noted that the property was not on the open market publicly for sale at the time of purchase and, in their opinion, the University could expect to pay a premium above the market value to secure the property given their very specific requirements. In relation to the restrictive covenant, the valuation considered that it had no impact on the market value.

4.19 The market value at 5 April 2019 was estimated at €6 million. In addition, an amount estimated at €500,000 would reflect the premium that the University could have expected to pay, given its assessed specific needs. On that basis, the valuers concluded that the purchase price paid by the University in 2019 exceeded the then value of the property (see Figure 4.2).

4.20 The valuation as at 30 September 2023 was that both the market value and the premium the University would expect to pay had reduced by 10% due to market conditions at the time.

Figure 4.2 Honan's Quay site — Red Book valuation completed December 2023

	Valuation Date	
	5 April 2019	30 September 2023
Market value	€6,000,000	€5,400,000
Special purchaser premium	€500,000	€450,000
Impact of restrictive covenant	—	—
Value reflecting the University's requirements	€6,500,000	€5,850,000

Source: Report of valuers commissioned by the University, December 2023

Conclusions

Handling of protected disclosures

- 4.21** Protected disclosures received by the University in 2019 and 2020 alleged there were significant shortcomings around the acquisition of the Honan's Quay property. The initial allegations were investigated in a narrowly-focused internal audit. The second set of allegations was not investigated after the reporting person 'withdrew' the disclosure.
- 4.22** The University took a narrow approach in responding to protected disclosures received alleging the overriding of internal controls. Once the second disclosure had been received, the implications of alleged wrongdoing for the operation of controls over the property acquisition should have been considered as a whole, taking account of all of the circumstances of the acquisition, and the non-standard approval procedure followed. This might have warranted the kind of investigation that was later commissioned from external consultants following freedom of information requests.
- 4.23** A protected disclosure alleging wrongdoing received by a public sector organisation is different from a grievance lodged by an employee. The fact that a reporting person had indicated that they were withdrawing allegations or a protected disclosure was incidental to what the University should have investigated, or how that investigation was carried out.¹

Outcome of external review of acquisition

- 4.24** The external consultants who reviewed the procurement of the Honan's Quay property in 2021 concluded that the University's established property acquisition procedure had been bypassed. While the body of their report was not widely circulated for legal reasons, the policy and process recommendations they set out in January 2022 were made available by email to University staff. The University confirmed to the Committee of Public Accounts that all the recommendations had been accepted by the Governing Authority and would be implemented for all future property acquisitions.

Loss of value for money

- 4.25** The price paid for the Honan's Quay property was in excess of the prevailing market value. The independent valuers who reviewed the price in 2023 concluded that because of the nature of the property vis-a-vis the University's need, there was a case that the University might pay a modest premium (about 8.3%) over what might be paid by others generally. They actually paid around one third more than the market value. On that basis, the acquisition did not represent value for money.

¹ Guidance issued by the Department of Public Expenditure in November 2023 states that once a protected disclosure has been made in accordance with the Protected Disclosures Act 2014 (as amended), it is not possible for the reporting person to withdraw the disclosure.

- 4.26** An economic assessment was not undertaken of the relative merits of that property and suitable alternative properties e.g. at the nearby Opera quarter, where a suitable site was available at an estimated €3 million. Because there is no evidence of any additional real benefits to be gained from the University's development and use of the Honan's Quay property, as compared to a similar facility at the Opera Centre, it is difficult to see how the excess cost incurred — of the order of €5 million — was warranted, or that it represents value for money.

Impairment charge

- 4.27** Impairment arises where the recoverable value from disposal of the asset is less than the carrying value reflected in the financial statements. The recoverable value is the higher of the 'fair value' less costs to sell, or the value in use i.e. the present value of the future cash flows from the asset.
- 4.28** The independent valuation of the Honan's Quay property as at 30 September 2023 is €5.4 million. As a result, the University has proposed an impairment charge (or loss) of €3.044 million in respect of the asset value to be recognised in the consolidated and university statement of comprehensive income for the financial year ending on that date.

5 Acquisition at Rhebogue

- 5.1 In light of the recommendations in early 2022 from the external consultants' report into the acquisition of the Honan's Quay site, the University drew up a formal policy and an associated set of procedures for the acquisition of property, buildings, land or infrastructure.¹ This examination sought to ascertain whether the lessons learned by the University following the Honan's Quay acquisition were applied in subsequent property acquisitions.

Acquisition policy and procedures

- 5.2 The University's new acquisitions/capital projects policy requires the designated project promoter² of each acquisition to prepare a report which defines the need to be addressed by the acquisition, quantifies costs and specifies sources of funding, identifies risks and mitigating actions, concludes on a preferred option and makes a recommendation to the Governing Authority.
- 5.3 The policy states that the aim is to ensure that acquisitions comply with the relevant Department of Public Expenditure circulars and other relevant guidelines, with particular regard to obtaining relevant professional advice in a timely way. The procedures require that all relevant due diligence investigations and assessments are carried out prior to an acquisition.³ The matters that are expected to be addressed in each category of professional report are outlined in the procedures.
- 5.4 In the submission to the Governing Authority and/or FHRAMC for approval — depending on the expected acquisition value — the project promoter is required to set out a number of matters including
- confirmation that the acquisition procedures have been followed
 - the decision/recommendation of the University's Executive Committee
 - an outline of the project risks
 - details of the property and proposed use, and
 - whether there are any time sensitivities in the acquisition.

1 The policy was approved by the Governing Authority on 30 June 2022.

2 A member of the University's executive committee or other senior member of staff nominated by the President who is assigned the lead role in relation to an acquisition.

3 The investigations and assessments mentioned in the procedures are architects, various engineering including fire engineering, planning including environmental, valuation, legal, VAT treatment and quantity surveyor estimated cost report for any remediation, reconfiguration or post acquisition development. The procedures note that the professional reports required will depend on the particular acquisition and that additional reports may be required depending on the specific acquisition.

Overview of acquisition of student accommodation at Rhebogue

- 5.5 In August 2022, the University entered into an agreement with a developer for the purchase of a development of 20 houses at Rhebogue which it intended to use as a student housing facility. The development is situated between the main campus and the city centre, about three kilometres from the University's main campus. The acquisition at Rhebogue was the first significant investment by the University following the Honan's Quay purchase.
- 5.6 The need for additional student accommodation has been identified as an issue nationally. The student accommodation available to the University was considered to be insufficient particularly given increased student numbers.

- 5.7** The developer of a site in Rhebogoe had planning permission for construction of 20 two-, three- and four-bedroom homes. In late 2021, the developer approached the University in relation to the site, and in January 2022 submitted a written proposal to the University. Subsequently, under a purchase agreement entered into with the University, the developer undertook to construct 20 units, with a total of 80 beds, for student accommodation. The whole development was to be purchased by the University.
- 5.8** The key events in the acquisition of the Rhebogoe accommodation are summarised in Figure 5.1.
- 5.9** Over the period February to March 2022, the University commenced a due diligence process in relation to the developer's proposal including obtaining professional advice, and meeting with the developer. The project was presented to the FHRAMC on 21 March 2022. The Committee agreed that the due diligence process should continue and that a proposal should be submitted to the FHRAMC in due course.
- 5.10** The University stated that it has no written evidence of an appraisal or evaluation of the options available at the time the proposal was first presented to the FHRAMC.

Figure 5.1 Key events associated with acquisition at Rhebogoe, October 2021 to March 2024

Date	Event
Quarter 4 2021	Developer approaches University in relation to proposed development of student accommodation on site.
24 January 2022	Proposal letter received by University from the developer.
February/March 2022	Internal consideration of the project and further engagement with the developer.
22 February 2022	Proposed heads of terms received from the developer.
9 March 2022	Valuation report from valuer A estimates market value of up to €10,600,000.
14 March 2022	Valuation report from valuer B estimates market value of up to €11,225,000.
15 March 2022	Legal advice received that acquisition is not subject to public procurement rules.
21 March 2022	<i>FHRAMC approval to continue due diligence on the acquisition.</i>
23 March 2022	Planning advice received by the University indicates that use as student accommodation would be a material change.
29 March 2022	Developer's planning consultant's report considers that use as student accommodation is permissible under the terms of the existing planning permission. This was an update to earlier advice dated 21 March 2022 reflecting the developer's consultant's response to the planning advice received by the University.
12 May 2022	<i>Chancellor and President attend Committee of Public Accounts meeting.</i>

Date	Event
24 May 2022	Valuer B's additional advice on rental and capital value based on a 20-year lease with a housing agency — capital value estimate €10,950,000.
7 June 2022	University receives legal advice re planning that the proposed development as student accommodation does not appear to be a material change of use.
15 July 2022	Architect's due diligence report received, questioning planning status.
29 July 2022	University's Executive Committee endorses proposal and agrees that an exceptional Governing Authority meeting should be scheduled to seek approval.
3 August 2022	<i>Governing Authority approves acquisition for €10.9 million (including VAT).</i>
12 August 2022	Contract for sale signed. Commitment is to pay €11,979,280 in five staged payments commencing on completion with final payment on fourth anniversary of completion.
23 February 2023	Disclosure received in relation to process and procedures of acquisition. External investigator appointed in April 2023.
17 May 2023	President approves proposal to reduce price.
18 May 2023	<i>President attends Committee of Public Accounts meeting.</i>
2 August 2023	Supplemental agreement signed reducing price to €11,439,280, payable in full on completion of building.
August 2023 to October 2023	University engagement with its tax advisors in relation to VAT, RCT and stamp duty.
29 September 2023	Certificate of practical completion received.
10 October 2023	<i>Acquisition completed with property ownership transferring to a University subsidiary, Plassey Trust Company CLG.</i>
13 October 2023	Stamp duty return filed claiming exemption applicable to charities.
6 November 2023	University's tax advisors indicate that a stamp duty liability may arise under section 31E of the Stamp Duty Consolidation Act.
24 November 2023	Meeting with Revenue in relation to the liability and subsequent follow up meetings.
13 December 2023	Warning letter seeking information received from Limerick City and County Council.
22 December 2023	External investigator reports to President on findings in relation to February disclosure.
17 January 2024	Response to Limerick City and County Council warning letter issued.
19 February 2024	The University's Audit and Risk Committee commission an external review into aspects of the acquisition.
23 March 2024	Report by the external reviewer to the Audit and Risk Committee.

Source: Analysis by Office of the Comptroller and Auditor General

Planning status of the Rhebogogue development

- 5.11** An Bord Pleanála granted planning permission for 20 houses on the Rhebogogue site in March 2018 which was due to expire in March 2023. The permission was granted subject to a number of conditions including that the development would be carried out and completed in accordance with the plans and particulars lodged with the planning application. The development of the site for student accommodation would involve alterations to the original planned design for the site, including an increase in the number of bed spaces from 58 to 80.
- 5.12** The University commissioned independent planning advice in relation to the site. The planning advisor's opinion provided to the University on 23 March 2022 was that
- it is likely that the proposed development could be considered a material change of use and the 'intensification' of use would also likely involve a material change of use
 - the proposed alterations are not works that could be carried out without planning permission — i.e. they were not exempted development — because the structures were not yet in existence and the works involved would be associated with material change of use which in itself would be unauthorised.
- 5.13** The developer of the site also obtained planning advice on 29 March 2022 which was provided to the University.¹ That advice disagreed with the University's planning advisor. It considered that the occupation of a house by a student for the purpose of accommodation is housing in an ordinary manner and is permissible under the terms of the planning permission. In relation to the proposed alterations, the advisor noted that he was not familiar with the nature and extent of the proposed alterations but on the basis that all the alterations were internal, he considered that the works would be exempted development and therefore not require separate planning permission. He further advised that
- there is no condition that would suggest that internal changes would give rise to any obvious contravention of a planning condition
 - assuming that the alterations would not subdivide any of the units, no change of use would occur and where the residential use remains generally in accordance with that envisaged in the permission, it would be reasonable to assume that no intensification of use would occur
 - the exempted development provisions can only be relied on after the development has been completed and not during the course of construction.
- 5.14** In light of the conflicting opinions, the University sought legal advice. The legal advice received on 7 June 2022 considered the planning advices and stated that the position was not conclusive.² They noted the following.
- On the main issue, the legal advisors were in agreement with the developer's planning advisor that the tenure and occupation of the houses did not of itself appear to be a material change of use. It noted this was open to argument and there was a risk that a complaint could be made.
 - They were not aware of the nature and extent of the proposed alterations. A concern was that the alterations may change the position such that the character of the use of the houses would be considered a material change. If the alterations were material, such alterations could also have a bearing on the change of use status of the houses.

¹ The advice dated 29 March 2022 obtained by the developer was an update to earlier advice of 21 March 2022 to reflect a response to the planning advice obtained by the University.

² The legal advice also considered a draft of the architect's inspection report which included consideration of planning permission. See paragraph 5.15 below.

- A contract entered into would, as is normal, include an obligation on the developer to provide on completion an architect's confirmation of compliance with planning on which the University would be entitled to rely. If the alterations were not material, the developer's architect would normally confirm that the development is 'substantially compliant'.
- Issues raised in relation to social and affordable housing and demolition works should be considered further as part of the contract and title investigations.

5.15 In July 2022, the University received a due diligence report from its architects which included consideration of the issue of planning permission. The architects agreed with the opinion of the University's planning advisor that the development would be considered a material change of use. The report suggested that the planning authority could be asked for a written clarification that the proposed development was permitted and that the provisions in the planning legislation in relation to social and affordable housing did not apply. The report noted that Limerick City and County Council had issued a warning letter to the developer in June 2022 indicating that an unauthorised development may have taken place in relation to non-compliance with some of the conditions of the planning permission.

5.16 In addition to considering issues in relation to planning, the architects' report also concluded that

- the developer should confirm and demonstrate compliance with requirements in relation to accessible bedrooms as provided for in the building regulations applicable to student accommodation
- detailed specifications, site investigations, construction drawings, details, and room layouts were required from the developer to demonstrate how the proposed development will be constructed to meet the University's requirements for student accommodation.

5.17 The University's acquisition policy states that the planning authority should be contacted 'to ascertain zoning and planning history of the proposed property to be acquired'. The University did not seek clarification from Limerick City and County Council, nor request the developer to do so, in advance of signing the contract.

5.18 The University has stated that in progressing the matter, the legal advice appears to have been given more weight than the professional planning advice.

Alleged planning contravention

5.19 On 13 December 2023, Limerick City and County Council issued a warning letter to the University in respect of the property at Rhebogue. The letter states that an unauthorised development may have occurred, involving a change of use from residential dwellings to student accommodation without the required planning permission.

5.20 Planning consultants responded to Limerick City and County Council's letter on 17 January 2024 on behalf of the University, asserting that the development is authorised and complies with the planning permission.

5.21 The University has stated that on 15 April 2024, it was informed by Limerick City and County Council that it was in the process of submitting a referral to An Bord Pleanála in relation to the alleged change of use of the property.

- 5.22** The University also stated that Limerick City and County Council had refused the developer's application for permission to retain a revised site boundary line, revised boundary treatments and revised landscaping plan for the site. The decision was based on the fact that Limerick City and County Council was not satisfied that a material change of use had not occurred on the site.

Valuation advice

- 5.23** In the letter sent to the University's Chief Corporate Officer in January 2022, the representative of the developer proposed either a 30-year lease — with two options for the management of the student accommodation — or an outright sale of the Rhebogoe properties to the University.
- The lease options were not priced, but certain assumptions about potential rent, rent inflation, occupancy and management arrangements were outlined.
 - The purchase option was priced on a 'per-bed' basis, equivalent to around €12.26 million (including VAT) for the whole development, equivalent to an average of €613,000 for a four-bedroom house. The letter suggested that this was a 'good value' option that could be used for a period by the University to bridge a student accommodation shortage with the opportunity to sell on the units after five to seven years as individual homes.
- 5.24** In early March 2022, the University sought valuation reports from two professional valuers. Instructions to the valuers were given by email, but formal terms of the engagements with the valuers were not put in place by the University.
- 5.25** Valuer A was asked to provide a valuation to identify the open market value of 80 bed spaces on the site. The valuer was informed that the University intended to agree a five-year lease at €7,500 per bed space per year with a buy-out option over the five-year period.¹ The valuation report, dated 9 March 2022, took two approaches.
- Based on current market information about sales of comparable new residential properties in Limerick, likely future price increases and the cost of upgrading the residential design to student accommodation, the report estimated an average current market value of between €390,000 to €420,000 for four-bed units in the scheme. This implies an overall market value of €7.8 million to €8.4 million for the scheme, without allowance for any bulk purchase discount that might be available.
 - Based on what was referred to as 'indicative yield values' of between 3.6% and 5.25% for other property investments, the valuers selected a yield rate of 4.7% as appropriate to the University. This yield was applied to the estimated net annual rent of €498,000 to arrive at a capital valuation of €10.6 million at the valuation date of 9 March 2022.²

Only the figure of €10.6 million was referenced in the market valuation formally presented in the report. This implied an average value of €530,000 per property in the development.

- 5.26** Valuer B received the same instructions. In this case, the report, received on 14 March 2022, was based on an assumption that a 20-year lease to the University was in place with a net annual rent of €498,000. Referencing information for other sales, the valuer considered that a yield of 4.25% was 'appropriate for these new builds with a long term lease with a strong covenant'. On that basis, the report derived a value of €11.7 million. After deducting unspecified 'costs' of the order of €500,000, the formal reported valuation for the development was €11.225 million.

¹ No lease agreement was referenced in the contract entered into in August 2022.

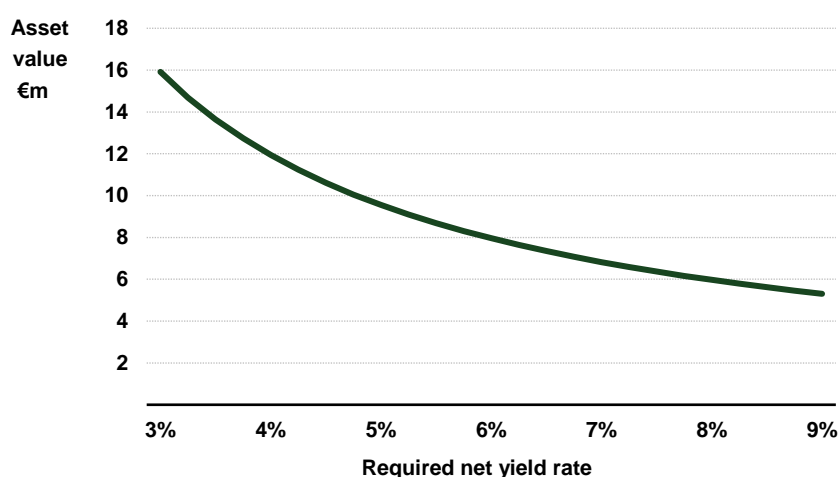
² €7,500 per bed space per year less management and letting fees of 17%.

- 5.27** Both valuers were asked to set out what the University could realise if it were subsequently to sell the 80-bed accommodation on the open market, but this specific request was not addressed in either report.
- 5.28** The University asked valuer B for further advice in relation to the value of the property in the event that the properties were rented on the open market as houses. In May 2022, valuer B provided a view on the rental and capital value based on a 20-year lease with a housing agency. The valuer considered that the rents for the 20 units would be in the order of €438,000 per annum and that it would be appropriate to apply a yield of 4%, giving a capital value of €10.95 million.

Basis of valuation

- 5.29** The valuations provided to the University in 2022 were derived using a 'net rental yield' (or income) valuation model, based on assumptions provided to the valuers about expected future rent yields from the proposed property. This valuation method can be used to estimate the present market value of a property by reference to the rental income (net of costs) from that property, based on a purchaser's (or seller's) required yield rate. As Figure 5.2 indicates, when that model is used to arrive at a capital value from a known or assumed annual rent, the value is highly sensitive to the yield rate that is applied, especially at lower yield rates.
- 5.30** The market value of property is also routinely estimated on a sales comparison basis, by reference to publically available prices for properties of similar size and features in or around the target area. Valuer A presented some information of that kind but did not present a formal market valuation on that basis.

Figure 5.2 Rental yield (income) method of property valuation^{a,b}



Source: Office of the Comptroller and Auditor General

- Notes:
- a Rental yield is the gross rent less costs of ownership divided by acquisition cost.
 - b Assumes gross asset rental of €600,000 per annum, less management costs of 17%.

Post-purchase valuation and impairment

- 5.31** As part of the preparation of annual financial statements, the University is obliged to consider whether assets may be impaired i.e. where the recoverable value from disposal of the asset is less than the carrying value reflected in the financial statements. The recoverable value is the higher of the 'fair value' less costs to sell, or the value in use, i.e. the present value of the future cash flows from the asset.
- 5.32** In the context of preparing the financial statements for 2022 – 2023, the University commissioned valuer C to undertake a further valuation of the Rhebogue property, given concerns that had been raised about the purchase. This valuer used a market sales comparison approach, focused mainly on the sales prices of comparable new properties in adjacent areas of Limerick. The valuers noted in their report (dated 11 March 2024) the year-on-year increase in residential property market prices. On this basis, and noting the nature of the property allowed for in the planning permission, the valuers arrived at a 30 September 2023 market value for the 20 properties of €6.585 million i.e. equivalent to an average of just under €330,000 per property.
- 5.33** Separately, the University commissioned an independent consultancy firm to assess the value in use of the Rhebogue property. The consultants' report sets out a discounted cash flow analysis of the projected income and expenses associated with student rental over ten years, and the property's projected residual value at the end of that period. The discount rate used, designed to reflect the University's estimated weighted average cost of capital, was 7.31%. The consultants estimated that the value in use of the assets as at end September 2023 was €7.425 million. The expenditure accrued on the acquisition at that date was €12.65 million. On this basis, the University has proposed to recognise an impairment of €5.225 million in respect of the Rhebogue property in its financial year 2022 – 2023.

Valuers' declarations

- 5.34** Public bodies contracting with the suppliers of professional services and advice have an obligation to ensure that no conflicts of interest exist that could influence or could appear to call into question the independence of the services or of the advice received. Valuers routinely declare any potential conflicts of interest to their clients, so that the relevant facts can be considered, and any required mitigating controls applied. If the required declarations are not provided, the client's representatives should actively request them. Professional services should not be contracted if the required declarations are not received.
- 5.35** In the respective reports received by the University formally presenting valuation advice in relation to the Rhebogue assets
- valuer A declared that the firm had not had any previous involvement with the property the subject of the valuation
 - valuer B declared that the firm had no previous involvement with the client i.e. the University
 - valuer C declared that it had not had any prior involvement with the subject properties or with the developer of the subject properties; it also declared that it had done some professional work for the University in the recent past, but stated that this did not represent a conflict of interest in respect of the subject property.

- 5.36** The declaration by valuer B makes no reference to the subject property and/or to the developer, which is the principal requirement. This examination has seen no evidence that that omission was noted or followed up by the University at the time the valuation report was received. Subsequent to the acquisition of the property, the University has identified that there was a close family connection between valuer B's lead valuer and the solicitor acting on behalf of the developer.

Governing Authority approval

- 5.37** The proposal to contract for the Rhebogue acquisition was presented to the University's Executive Committee on Friday 29 July 2022. The Committee endorsed the proposal and agreed that an exceptional Governing Authority meeting should be scheduled to seek approval. A specially-convened online meeting of the Governing Authority was held on the following Wednesday, 3 August 2022.

- 5.38** The presentations to both the University's Executive Committee and the Governing Authority about the Rhebogue acquisition record that the valuations obtained indicate that the proposed price is at 'market value'. The presentations do not indicate that a rental yield valuation approach was adopted, or the sensitivity of the stated value to variations in the assumptions.

- 5.39** The proposal to enter into an agreement with the developer presented to the Governing Authority on 3 August 2022 summarised the rationale for the project and stated that the University's acquisition policy had been followed.¹ The proposal did not clearly set out the risks to the project. It noted

- the project would provide 80 additional beds by September 2023 while larger accommodation projects continued
- the amounts of the valuations obtained and that these indicated the proposed price represented the market value
- that a planning opinion was obtained by the University and by the vendor and that the University's legal advisors supported proceeding
- due diligence had been completed with some specification changes to be agreed during build
- cost of €10.9 million equating to €136,250 per bed
- ownership of the property would transfer to the University on completion of the build, but payment to the developer would be spread over five years
- the University would receive 25% of the rent for year 1, increasing incrementally to 100% after four years
- funding for the acquisition was possible from an existing University subsidiary's projected operating income over the four years
- payback period for the investment estimated at 27 years
- 'cost per bed' was competitive compared with costs in other universities and estimated cost of building on campus
- local community integration arrangements.

¹ The documents considered at the Governing Authority meeting on 3 August 2022 are reproduced in Appendix B.

- 5.40** The minutes record that the Governing Authority approved the proposal at the 3 August 2022 meeting, and authorised the President to enter into binding contracts with the developer.

Purchase agreement and completion of units

- 5.41** An agreement dated 12 August 2022 provided for a purchase price of €11,979,280 payable in five staged payments commencing on practical completion, with final payment on the fourth anniversary of completion. This comprised the €10.9 million capital cost that was prominently referenced in the proposal to the Governing Authority, and amounts totalling €1.08 million which may correspond to the rent share referenced in the proposal. However, the contract does not specifically refer to rent sharing.
- 5.42** Under the terms of the contract, a deposit of €10 was payable by the University on the contract signing date.
- 5.43** The first substantial payment to the developer was due to be made on the contract closing day, which was defined as seven days after the certificate of practical completion of the works. The contract provided that if practical completion was not achieved by 30 August 2023, then the developer would pay the University €25,000 per month during the delay.
- 5.44** On 2 August 2023, a supplemental agreement was signed with the developer. This provided for outright purchase of the property on the contract closing day, with payment in full. A reduction in the purchase price of €540,000 — i.e. to €11,439,280 — was negotiated as part of the revised deal and earlier payment. The revised agreement amount represented an average purchase price of almost €572,000 per property.
- 5.45** The certificate of practical completion of the development was signed on Friday 29 September 2023. The University assigned the contract to one of its wholly-owned subsidiaries, Plassey Trust Company CLG.^{1,2}

Stamp duty

- 5.46** In October 2023, the University submitted the required stamp duty return on the acquisition to the Revenue Commissioners. The return claimed full relief from stamp duty under the exemption for charities provided in Section 82 of the Stamp Duty Consolidation Act 1999.
- 5.47** Following the submission of the return, the University's tax advisors contacted the University to advise that stamp duty may apply under an amendment to the legislation introduced in 2021. That amendment provided that the exemption for charities would not apply where more than ten residential units are acquired in a year and a higher 10% rate of stamp duty would apply.
- 5.48** The University paid stamp duty of €1.008 million to the Revenue Commissioners in February 2024. The University sought mitigation of the interest due arising from the late payment. Revenue responded on 28 May 2024 stating that there were no grounds for mitigation, and that interest of a further €29,790 was payable.

¹ Plassey Campus Centre CLG and its subsidiary Plassey Trust Company CLG manage student accommodation and related services for the University which is the ultimate parent and controlling party.

² The University's entitlement to claim €25,000 from the developer for the (one month) late completion was waived.

Investigation of a protected disclosure

- 5.49** A February 2023 protected disclosure raised concerns about the Rhebogue acquisition. A senior counsel was appointed by the President in April 2023 to investigate the alleged wrongdoing. The investigation report was completed in December 2023.
- 5.50** As set out in the terms of reference for the engagement, the investigator was required to investigate and report on five specific matters, reflecting allegations that
- the Rhebogue acquisition had proceeded without an appraisal process as required by the *Public Spending Code*
 - the acquisition had proceeded without a required procurement process or public advertising
 - a deal had been made with a developer for the acquisition in advance of any property valuation
 - valuations received were based on projected income and/or on values of apartments/buildings in Dublin which were not comparable to actual market property types and value in the area of Rhebogue, Limerick
 - professional external planning compliance advice for the property was ignored.
- 5.51** The investigation process was based on oral and documentary evidence made available with the investigator making a determination on the facts and, if the allegations were affirmed, whether these constituted a ‘relevant wrongdoing’ under the protected disclosures legislation.
- 5.52** Overall, the investigator found that the alleged matters did not represent wrongdoing within the meaning of the Protected Disclosures Act.

Report commissioned by the Audit and Risk Committee

- 5.53** At its meeting on 18 December 2023, the Governing Authority considered a briefing paper which gave an update on the Rhebogue project, including the unexpected stamp duty cost. At the meeting, several Governing Authority members expressed serious concern at the adequacy of the due diligence undertaken despite assurances to the contrary and the asserted implementation of the revised policy on acquisitions. Concern was also expressed at the apparent high price per house which appeared to exceed market value, a situation that was compounded because of the potential stamp duty liability. The minutes of the meeting also note that the difference between the purchase price approved by the Governing Authority of €10.9 million and the €11.439 million was only brought to the attention of Governing Authority members in a memo dated 7 December 2023.¹ It also noted that the amended contract (August 2023) had not been presented to the FHRAMC.
- 5.54** The minutes also noted the importance of the Governing Authority being provided with all the facts, clarity on costs, legal and planning issues, inclusion of rent in payment to developer, reasons behind the amended contract, and the operation of checks and controls. Members asked that it be established if the Governing Authority had been in a position to make a fully informed decision when approval was given in August 2022.

¹ The Governing Authority approved the purchase in August 2022 on the basis of a purchase price of €10.9 million in staged payments. The final purchase price agreed in August 2023 was €11.439 million payable in full on completion.

- 5.55** It was agreed that the University's Audit and Risk Committee (ARC) would consider the matter thoroughly and from the outset, to include the original submission to the FHRAMC and the Governing Authority, the ensuing contract entered into following Governing Authority approval, the subsequently amended contract, the advice sought from the University's tax advisors on the stamp duty issue, and clarity on all costs.
- 5.56** The ARC met twice in January 2024 to consider matters arising from the Rhebogue acquisition. An external reviewer was appointed on 19 February 2024 in accordance with terms of reference set out by the ARC. These required an end-to-end examination of the Rhebogue acquisition beginning on the date of initial contact to/from the developer up to the date of the appointment of the reviewer. In particular, the ARC was interested in matters relating to stamp duty, the purchase price and the planning permission.
- 5.57** The reviewer was specifically asked to consider, in relation to each of the above, issues relating to
- compliance e.g. adherence to circulars, codes, university policies, procedures, or any combination thereof
 - process, including decision-making and approvals, and
 - governance — executive functions, FHRAMC and Governing Authority reserved functions.
- 5.58** The reviewer's report was submitted to the ARC on 23 March 2024 (see key findings from the review in Figure 5.3). The reviewer emphasised that the review was not asked to consider whether the decision made to acquire this property was correct, or whether benefits to the University had been realised or not. Rather, the review was focused on the processes leading to the making of the decision and considered whether those making the decision had full possession of the facts in making their determination.
- 5.59** With regard to due diligence, the report commented that several of the steps and processes detailed in the governance documentation were undoubtedly taken in relation to the progression of the Rhebogue proposal. However, the report concluded that compliance was, in some instances, nominal in application and the rigour expected to provide the appropriate levels of assurance to the Governing Authority was not evident to the reviewer in the processes undertaken.

Figure 5.3 Summary of reviewer's findings

Concern	Findings
Was due diligence undertaken at all stages in the acquisition?	Not completely.
Were University policies, procedures and approvals processes adhered to, including recommendations made by the consultants that examined the Honan's Quay acquisition?	Not completely.
Was the information contained within the written presentation provided to the FHRAMC/Governing Authority, including in relation to aggregate and unit cost, correct and clear?	No.
Were the input assumptions provided to or agreed with the valuers to inform the valuation(s) and relied upon by the FHRAMC/Governing Authority correct?	No.
Was the cost structure of the acquisition as set out in the written presentation provided to the FHRAMC and/or the Governing Authority clear and consistent with the contract signed thereafter?	No.
Were subsequent amendments made to the contract by the University/its subsidiary, including in relation to payment terms, matters to be considered by the FHRAMC/Governing Authority?	Yes.
Was internal or external advice taken in relation to tax/stamp duty and if so at what point(s) in time?	Internal advice was taken at the appropriate time. External advice was only taken after the proposal had been approved by the Governing Authority.
Were actions taken on foot of planning advice and/or following the issue of a planning notice consistent with good governance?	No.

Source: Reviewer's report, 23 March 2024. Analysis by the Office of the Comptroller and Auditor General.

Treatment of contrary views

- 5.60** The reviewer noted that the opportunity and scope to express contrary views is an important part of governance in any organisation. In providing scope for the expression and consideration of such views, decisions taken within the organisation are strengthened against future challenge.
- 5.61** The reviewer stated that one of the most striking issues in the examination of the documentation provided by the University is how it appears that those who had a challenging or contrary view in relation to progressing the proposal were treated during the process. At different points, two heads of functions who expressed views challenging the information underpinning the proposal appear to have been excluded from further involvement in the consideration of the proposal. Views expressed repeatedly by another head of function were considered, but the advice provided in terms of mitigating the risk of challenge to the University was not followed.

- 5.62** The reviewer further stated that, unfortunately, it had been alleged in some of the correspondence seen that the motivation of some of those who voiced such challenges had been to discredit the project and its executive sponsors, or to delay its progress. The reviewer stated that whatever the motivation, the expression of legitimate concerns during the development of the proposal had not been treated with appropriate seriousness at the time and that this weakened the process, even if it meant that progress could be achieved more rapidly than would otherwise have been the case.
- 5.63** The reviewer concluded that, at the very least, the existence of such contrary opinions should have been indicated to the decision-making bodies at the appropriate time in order to ensure that decisions were being made in full knowledge of the project risks involved.

Conclusions and recommendations

Acquisitions policy and procedures

- 5.64** The University developed a formal policy and procedures for the acquisition of property in mid-2022, in response to a recommendation of the external reviewers of the Honan's Quay property purchase. These were intended to incorporate the evaluation and management principles required under the Department of Public Expenditure's *Public Spending Code*. The policy emphasised the role of the project promoter, and the obligation the promoter should have in ensuring relevant due diligence analysis and professional input are acquired, and that required procedures are completed in advance of binding commitments being entered into. The policy does not adequately explain the necessity for objective appraisal of the options available to the University to address perceived problems. Objective appraisal of investment proposals and the avoidance of premature commitments are the central objectives of the *Public Spending Code*.
- 5.65** In the case of the Rhebogue acquisition, this examination found no evidence of proper, objective appraisal of the options. This should have been available to decision makers, including the Governing Authority members, when they were asked to approve the acquisition.

Recommendation 5.1

The University should revise its policy and procedures for the acquisition of property assets to take on board all the relevant requirements of the *Public Spending Code*. It should seek formal independent expert assurance that the revised policy and procedures adequately reflect the key requirements of the Code.

Response of the Acting President of the University

Agreed.

The Strategic Governance Committee has made a similar recommendation which has been accepted by the Executive and the Governing Authority. Taking account of the section 64 review commissioned by the HEA, due to be completed by the end of July, which is also looking at this matter, the procurement of independent advice can commence in September 2024, with completion of work and revised policy to be completed by the end of March 2025.

Timeline for implementation

March 2025.

Recommendation 5.2

Responsibility for confirmation of process compliance in respect of a proposal for a major investment project or property asset acquisition should be assigned to an officer who is independent of the project promoter.

Response of the Acting President of the University

Agreed. This will be included in the revised policy referred to in recommendation 5.1.

Timeline for implementation

March 2025.

Planning assessments

- 5.66** The University's acquisition policy requires identification and assessment of the planning status of target property in advance of an acquisition proposal being submitted for approval to the relevant decision-making body i.e. the FHRAMC and/or the Governing Authority. The policy specifically states that the planning authority should be contacted in that regard.
- 5.67** While planning advice was taken from relevant professionals between March and July 2022, this was not conclusive. An architects' report in July 2022 recommended that written clarification should be sought from the local authority about whether the proposed use of the property would represent a material change in use, but this did not happen. Notwithstanding the residual doubt, the presentation to the Governing Authority on 3 August stated that the related advice from the University's legal advisors 'supports proceeding with the purchase' and that the Rhebogue development was 'planning approved'.
- 5.68** The University's acquisition policy was not complied with in respect of planning due diligence. The proposal put to the Governing Authority should have disclosed the divergent views on the planning matter, and that the planning authority's confirmation had not been sought or received. The Governing Authority should also have been informed that the planning permission was due to expire shortly because this might have been relevant to the approval of the purchase price.
- 5.69** The December 2023 warning from Limerick City and County Council about a potential unauthorised development of the Rhebogue property is the direct result of the University having proceeded without completing proper due diligence. This is an undesirable and unnecessary outcome.

Valuation of the property

- 5.70** There are a number of ways in which property assets can be valued. The appropriate method(s) to use depend on a range of factors, including whether or not an asset is intended to be income generating. While (net) rental yield is a potentially useful summary valuation method, its application and limitations need to be understood. On its own, it is not an adequate valuation methodology for a public body to rely on when a significant capital investment is being contemplated.

- 5.71** The stance the University took on planning was that the target property for acquisition was essentially a standard residential development, with some customisation. On that basis alone, it is difficult to understand why the University did not focus more on the standard sales price comparison method to estimate the market value of the property. There was some evidence in the valuation reports received in March 2022 that comparable residential property was trading at significantly lower prices than the Rhebogue development would represent, but this was not explained in the proposal to the Governing Authority. Instead, only the significantly higher overall valuations based on net rental yield were quoted in the document presented to the Governing Authority.
- 5.72** The proposal to the Governing Authority used the comparative metric of 'cost per bed' for bespoke student accommodation. This was relevant for an understanding of the general context for the decision, but instead was used as a benchmark of the reasonableness of the cost proposal being put forward i.e. proposed purchase at a cost of €136,000 (including VAT) per bed. This was equivalent to an overall cost of €10.9 million.
- 5.73** There is no documentary evidence that the valuation reports received by the University were made available to the members of the Governing Authority for its 'special purpose' online meeting on 3 August 2022. The minutes do not record any of the members seeking the reports. The proposal did not go in advance to the FHRAMC which would have been an appropriate forum for detailed consideration of the valuation reports. Absent assurances that a detailed FHRAMC review had taken place, the valuation reports should have been submitted to the Governing Authority, together with the acquisition proposal, and in advance of the special purpose meeting.
- 5.74** Overall, the financial analysis presented to the Governing Authority represented a justification of the maximum price that the University could reasonably pay for assets that would help to fulfil a legitimate need for student accommodation. As a negotiating stance, this was detrimental to the University's and the taxpayers' financial interests. The default position for a public body should be to seek to acquire all goods and services, including real property, at the minimum achievable price, not the maximum.
- 5.75** The March 2024 'value in use' valuation of the Rhebogue assets is based on a multi-annual discounted cash flow analysis. This is a much more comprehensive and appropriate analysis of the economic value of the Rhebogue acquisition. It is the kind of analysis that is appropriate for prior appraisal of public sector investment proposals — as envisaged in the *Public Spending Code* for an investment on this scale — and that should be available and reviewed by investment decision makers.
- 5.76** The results of the value in use analysis indicate that the University is likely to have paid significantly more than it should have for the Rhebogue property. While there is scope for debate about the required return on capital/relevant discount rate, it appears that the University failed to achieve value for money in this investment.
- 5.77** The acquisition policy requires that the expected VAT liability associated with an acquisition be identified before a commitment to purchase is made. The potential liability to stamp duty should likewise be investigated in advance. In the case of the Rhebogue acquisition, the University failed to identify that, because this was a multi-unit purchase, there was an exposure to stamp duty at a rate of 10% of the purchase price. This represents a failure of the University's due diligence process in this case.

Governing Authority approval

- 5.78** The briefing document submitted to the Governing Authority meeting on 3 August 2022 was defective in several ways. It misrepresented that the recently-adopted acquisitions policy and procedure had been followed. Key risks of the investment proposal were not clearly explained to the members of the Authority, and the valuation information was also not adequately explained. The headline acquisition cost was represented as €10.9 million (including VAT) payable over five years, but a four-year rent sharing proposal whereby the developer would receive a further €1.08 million was not clearly set out.
- 5.79** The minutes of the meeting are little more than a recitation of the information in the brief. They do not reflect the nature of whatever discussion occurred, or whether any opposition to or questioning of the proposal took place. They also do not adequately record relevant specifics of the decision taken by the Governing Authority — even what the approved purchase price was. This represents deficient record-keeping in respect of an important investment decision.

Handling of counterarguments

- 5.80** The Governing Authority had an absolute right to be fully briefed on the risks that had been identified by independent professional advisors and by relevant University senior executives in respect of the proposal, in advance of being asked to authorise the assumption of a substantial binding commitment. The proposal document submitted to the Governing Authority for the meeting of 3 August 2022 failed significantly in that regard, and legitimate issues of concern raised by relevant officials about the proposed acquisition were simply omitted.
- 5.81** Some of the issues of concern surfaced subsequently in a protected disclosure received in early 2023. As the University had done in respect of previous disclosures, this disclosure was handled in a tightly legally-focused way, with an independent investigation being carried out by a senior counsel. The more general implications of the disclosure for the effectiveness of operation of the University's system of control and decision-making do not appear to have been adequately considered or investigated by the University or by the Governing Authority.
- 5.82** By late 2023, it emerged that the stamp duty implications of the acquisition had not been properly assessed, and that there might be a planning difficulty. These difficulties, together with recognition of the existence of other significant concerns, prompted a further independent investigation of the University's processes which found there was credible evidence of dismissal and override of legitimate counterarguments. This raises a serious doubt about the objectivity of the University's evaluation of the Rhebogue acquisition. On the contrary, the evaluation undertaken and presented to the Governing Authority appears biased in favour of the acquisition on unfavourable terms, and comprehensively fails to comply with the principles of the *Public Spending Code*.

Appendices

**Appendix A Proposal to Governing Authority for the purchase of
the Honan's Quay site**

Presented at Governing Authority meeting 5 April 2019



GOVERNING AUTHORITY

PRIVATE & CONFIDENTIAL

UNIVERSITY OF LIMERICK

Proposal for the University of Limerick to purchase the [REDACTED]
[REDACTED] Site and Building at Sarsfield Street, Liddy Street, Honan's
Quay, Limerick

5th April 2019

Summary

The Governing Authority has already agreed the proposition of a Limerick City Centre Campus and approval has been given to purchase a site.

At the presentation given in December 2018 it was noted that a number of sites had been examined and that one in particular was the preferred site (the [REDACTED] site) but that site was not available. The Opera site was then presented in detail as the best available site. (The FHRAMC approved €5m to be spent on site acquisition and bringing the site to planning stage in November 2018).

Recently the owners of the preferred site [REDACTED] [REDACTED] have approached the University and following discussions over the last two weeks have agreed to sell the site to the University for €8m.

The purpose of this paper is to seek approval from the Governing Authority to proceed with this purchase.

A resulting issue is to reconsider the purchase of the Opera site – discussions on this site have not reached conclusion and there is no binding commitment to it.

The Site

The characteristic of the site for the planned City Campus is a crucial criterion in the overall plan for the long-term success of the City Campus. In the paper considered by the November 2018 FHRAMC the following was noted:

“Key factors in selecting a site was scale of site, vibrancy and accessibility of location, prominence of location to enhance both the reputation of the city and of the University and proximity to both the practitioner base and potential access students.”

The [REDACTED] site comprises some 0.81 acres. It is located at the conflux of Henry Street and Sarsfield Street and has significant frontage overlooking Sarsfield Bridge. The building on the site is viewed on the north and western facades by all traffic entering the City from the key Ennis Road access.

The site is located at the geographical centre of the City 500 metres distance from the City Hall, The International Gardens and the Opera Site.

The site location satisfies all of the criteria set by the University in determining whether a site is suitable as a City Campus.

Significant advantages of this site over the Opera site are both the potential for future development and the ability to deliver very quickly a fully functioning building.

The Building

The building on the site comprises some 5,535 sq. metres (see appendix 1 for photographs). Early engineering assessments suggest that the structure of the building is designed to support additional floors overhead the existing 2 floors.

The entire building is preserved in dry workable condition apart from natural dampening of ceiling tiles arising from some ten years of vacancy suggesting that the build quality is high and the structure is of good quality.

As would be the case with a building of 1970s construction the building will require attention to issues of normal wear and the further resolution of issues following a detailed survey.

Modernisation will be required as part of fit-out to render the building fit for purpose. The building has the significant advantage of being in a condition to occupy within a short period of time following relatively low spend. The cost to build a building of this scale on a cleared site would be in the region of €27.6m assuming a cost per square metre of €4,990 (this was the estimate used for the new build part of the Opera site).

The potential of the site to accommodate a significant building given the location of the building beside the river (ie a building of up to 8 stories is possible) is significant. When the site was originally considered the University masterplanning architects sketched possible building options for the site which are included in appendix 2.

The Purchase

Agreement to purchase has been reached with the site owners subject to normal pre-contract qualifications

The agreement provides that the site will be purchased as is for University use as well as ancillary activities (eg bookshop, food outlet etc) but with no major retail use.

Valuation Reports secured by both the vendor and the purchaser were tabled at negotiation. An asking price of €10million and an opening offer of €6.5million were tabled. Negotiations took account of equivalent build cost, site value, return and use value. Based on advice and experience of current market prices both asking price and recently achieved prices the University is satisfied that the agreed price of €8million represents good value.

Funding

As with the original proposition for the Opera site the purchase would initially be funded from the University's cash and subsequently borrowing sought in the context of the fuller masterplan ie once the masterplan concludes a proposal for a building programme with funding from state, donations and the University (through additional borrowings) will be put in place. Any funding awarded under the HESIF application will be redirected to this site with the approval of the funding authority.

Timelines

If approved the transaction will proceed immediately with possession likely to be achieved by late May 2019.

Appendix 1 Photographs























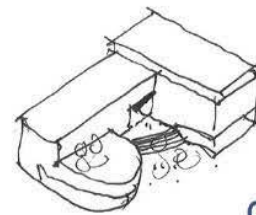
Appendix 2 Architect Sketches



Aerial View 1



Aerial View 2



OPTION 1
Preliminary sketch ideas



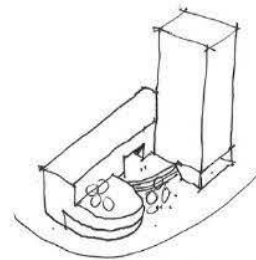
Aerial View 1



Aerial View 2



Aerial View 3



OPTION 2
Preliminary sketch ideas

**Appendix B Proposal documents to Governing Authority for the
Rhebogue acquisition**

Presented at special online Governing Authority meeting 3 August 2022




Submission to Governing Authority

Title of Submission
Acquisition of Housing for Student accommodation
Presenter of Submission/Executive Sponsor
██████████
Operational Decision of Executive Committee (date on which approved by EC)
29 July 2022 unanimous support
Submitted to Governing Authority for discussion
Matter Reserved to Governing Authority (reference Schedule of Matters)
Acquisition of Property
Submitted to Governing Authority for Decision – date of meeting
3 rd Aug 2022
Summary Overview of Submission
Seeking approval for the acquisition of 20 houses to be used as student accommodation from September 2023. Acquisition consists of complete development.
Business case and commercials included in presentation.
High Level Key Risks/Opportunities
Opportunity to add additional 80 beds to stock, no financial risk for UL until practical completion, financing risk carried by developer, Ready for academic year 2023, opportunity to acquire property between the campus and city centre. Opportunity to manage complete site with UL patrols etc. Opportunity to acquire beds quicker than we can deliver onsite solutions. Opportunity to address part of the accommodation crises we are in for students and staff.
Integration into existing residential area needs to be managed appropriately, risk of push back from local residents or objections from local community.
Recommendation (if submitted for decision of Governing Authority)

It is recommended that the Governing Authority approve the purchase to help ease the crises of accommodation facing our students.

See overleaf for additional requirements for requests for approval of the purchase of property by the University:

Property Location
Rhebogue
Property Description and Proposed Use
The property is currently an undeveloped site with approval for development of 20 houses The houses which will be used for student and potentially staff accommodation.
Executive Sponsor and Team Members (e.g. Design Team)

Confirmation of whether or not B&E Procedures for the acquisition of property have been followed
Yes procedures have been followed
Has the proposed purchase been approved by the PDR/relevant GA Committee? If not, why not?
Proposed acquisition was approved by FHRAMC on 21 March for completion of the due diligence and sending onward to GA based on the outcome of same.
Is the proposed purchase time sensitive, if yes, please explain why.
Yes as the project will take up to 12 months to construct and we require the project completion by the end of August next year.

Provision of additional student accommodation bedrooms

Date : 3 August 2022

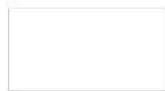
GA Presentation



Project Need/Rationale



- There is an existing severe shortage of accommodation in the Castletroy & the wider Limerick area and expanding student numbers in the University will make this worse
- Solutions are immediately required - Lack of a solution could compromise growth planned in UL@50 Strategic Plan
- Lack of growth in student intake will impact the talent pipeline necessary for regional and national economic growth
- There are no private sector developments planned for student accommodation near the University (1 beside [REDACTED] and 1 beside [REDACTED] planned but not funded)
- For the private rented market to function correctly the excess demand caused by growth in student numbers needs to be taken out of the private rented market.



Process Followed



- Executive approval received 29th July (16th March approved for DD)
- FHRAMC presentation on 21 March and approved progressing subject to due diligence and approval by GA
- Valuations of property as student accommodation obtained from 2 valuers
 - Valuation 1 - €11,225,000
 - Valuation 2 - €10,600,000
- Valuation of property as rented housing obtained
 - Housing on long term lease to agency valuation €10,950,000
- UL planning consultant opinion obtained and shared with Vendor
- Vendor planning consultant opinion received and both given to external legal advisors [REDACTED] for a view





Process Followed

- [REDACTED] Advice supports proceeding with the purchase
- B&E completed due diligence (some specification changes to be agreed during build)
- Payment terms means UL can fund from loan or operational profits if desired
- Ownership transfers on Day 1
- No risk to UL should the development not reach practical completion
- Funding risk fully borne by developer
- Valuations indicate price is at market value
- Penalty clause for late delivery by developer
- Retention of funds to completion of commitments given in contract



Business Case

Drominbeg, Rhebogue Road, Student Accommodation Development

Addressing
Critical
Need

Additional
Housing stock

Accelerated
Development
+ Affordable

1. Addressing Critical Need

- Severe shortage of accommodation
- Expanding student numbers
- Declining private provision post-C19
- Government seeking assurances + rapid solutions to a national problem
- Aligned to UL@50 + forthcoming Capital Dev Plan (>1,100 beds/5 yrs)
- Responsive to student concerns

2. Additional Student Housing Stock

- 80 beds across 20 units
- Community conscious
- Communal areas + private room, study area, en-suite
- Fully Serviced by PCC (May need to be Procured)
- Close to UL campus
- Sustainable build (Building Energy Rating A)

3. Accelerated development

- Planning approved
- No procurement impediments/delays
- Complete + occupied by Aug 2023
- Build costs – €120k per bed plus VAT (€136k inc. VAT) phased funding model
- Can be financed through PCC



Demand Analysis & Needs

- Significant excess demand for on campus bedrooms in September 2021 (Estimated in region of 1,000 beds required)
- Student numbers are growing quickly and the situation is only going to get worse. (Assume rate of 5:1 students to beds required for growth in numbers)
- Private rented market for students is contracting in Castletroy.



List of Main Volume Options



- Include all the feasible volume options which can achieve the desired outcomes
 - Build by the University (plan for 850 beds in 24/25)
 - PPP model – provide land (Procurement challenges (26/27))
 - PPP model – guarantee rents (Balance sheet challenge need government support (26/27))
 - Acquire suitable existing buildings (80 beds - Due Diligence to commence September)
 - Repurpose existing space to accommodation (100 twin beds Park Point 23)
 - Purchase units from plans (80 beds for approval by GA)





Proposal for Consideration

- Purchase of 20 Houses in block
- Complete development will be owned by UL
- Student Village will be in residential neighbourhood
- Only opportunity to acquire a ready to go site with a 12 month delivery time under agreeable commercial term
- 80 additional beds available for September 2023
- Interim additional beds while larger projects continue
- No financial risk to UL should practical completion not be achieved
- Full financial risk sits with Developer
- New Policy for Acquisition of Property followed





Commercials

- Cost €9,603,524 + 13.5% VAT of €1,296.476
- Total = €10,900,000
- 80 Beds @ €136,250 per bed inclusive of VAT
- Payment terms
 - €2,725,000 on practical completion (Aug 2023) (25%)
 - €2,180,000 in Aug 2024 (20%), €2,180,000 in Aug 2025 (20%)
 - €2,180,000 in Aug 2026 (20%), €1,635,000 in Aug 2027 (15%)
- Rent receivable by UL from Aug 2023 (25%)
- Rent aligned to % paid of purchase price - 45% Aug 2024, 65% Aug 2025, 85% Aug 2026 and 100% from Aug 2027





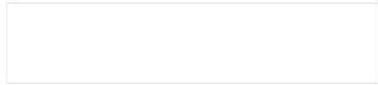
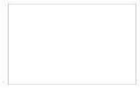
Commercials

- Funding to form part of loan requirements for student accommodation in medium term (ask to Gov €150m over 40 years). Payback 33 years.
- Funding possible from PCC operating income over 4 years without borrowing. Payback 27 years.
- Rental income to pay part of each years liability increasing year on year





Pay Back Period



- Assumptions :

Maintenance	20%
Utilities / Refurb / Gym	14%
Occupancy	95%
Borrowing %	100%
Rental per room year 1	7,500
Rent increase per annum	1%

- Payback would be after 27 years based on the stated assumptions with PCC funding the purchase.



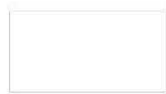
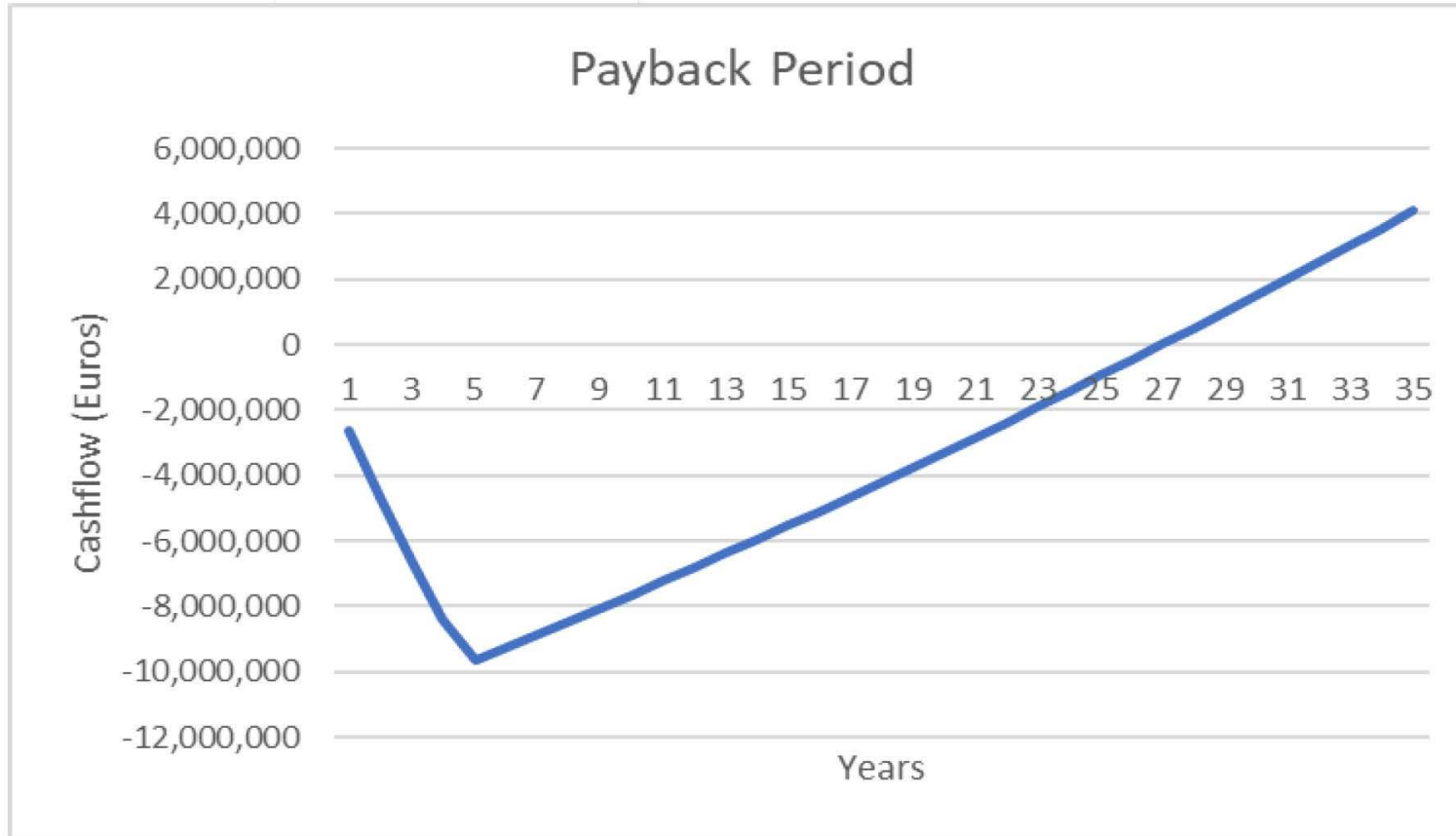
- % Assigned to Maintenance and Refurbishment ensures longevity of property but extends payback period.

- The graph that follows illustrates the cumulative annual cashflow position.





Pay Back Period





Pay Back Period

- Total Cost €10,900,000, but payments spread over 5 years.
- Cashflow projections for the first 10 years are as follows:

1	2	3	4	5	6	7	8	9	10
2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33
-2,630,950	-4,639,967	-6,570,522	-8,421,063	-9,664,587	-9,269,197	-8,869,854	-8,466,516	-8,059,146	-7,647,701

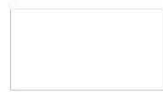
- University Policy on depreciation is that an asset life of between 33 to 50 years would be assigned to the properties. Assume 50 years so that asset value is reduced by €218K per annum.
- After 10 years, depreciation would be €2.18M leaving book value of €8.72M v's outstanding balance of €7.65M.
- After 10 years, it is likely that the value of the properties would have increased, which would mean that if the University wished to sell them that a profit would be realised on the sale of the assets.





Comparable Costs

- Estimated on a build per bedroom basis excluding site costs.
 - [REDACTED] tendered in 2019 and cost per bedroom was €182K
 - [REDACTED] proposing a dormitory style development, pre tender estimate €130k per bed
 - [REDACTED] project estimate of €200k per bed (includes an underground car park as project is being built on a car park).
- Market research indicates build on campus in region €150k
- 80 beds at €136,250 per bed including site cost competitive
- Cost to purchase existing house currently cheaper than building so project based on current housing crises, payback period, quality of house (A rated) and capital value after 10 years



Local Integration



- Site will be owned by UL and can be patrolled by UL security
- Need to give consideration to occupancy type (e.g UG, PG, International, Staff or mix)
- Ability to manage properties as good neighbours to avoid issues similar to off site accommodation not managed by UL;
- Communication and engagement with local residents will be key
- Opportunity to make this an exemplar site for integration
- Self contained nature of site a major plus
- Participating in local residence initiatives and community engagement as an owner gives opportunity for positive UL brand



Property Acquisition Policy - Steps followed

- Proposer : [REDACTED]
- Account taken of circulars and codes
- Need and business case defined slides 5, 6 & 7
- Cost and source of funding slides 9 & 10
- In house and external legal advice engaged early
- B&E engaged with use of external consultants for advice on all applicable areas including planning, design, site services etc.
- Independent valuation reports obtained.
- Build time of 10 months minimum and 12 months maximum committed to by Developer with financial penalty for any deviation

REQUEST



- The Governing Authority are asked to consider the proposition to secure 80 beds as student accommodation for use by UL in September 2023.
- The President seeks permission to enter into binding contracts for the purchase.
- The Governing Authority are asked to approve the proposal to allow the President to enter into binding contracts.





Appendices



Proposed Development & Site Layout





FIRST FLOOR PLAN
HOUSE TYPE 6
SCALE 1:30
GROUND FLOOR PLAN AREA = 143.7sq.m



GROUND FLOOR PLAN
HOUSE TYPE 6
SCALE 1:30
GROUND FLOOR PLAN AREA = 143.7sq.m



FRONT ELEVATION
HOUSE TYPE 6
SCALE 1:30



SIDE ELEVATION
HOUSE TYPE 6
SCALE 1:30



SIDE ELEVATION
HOUSE TYPE 6
SCALE 1:30

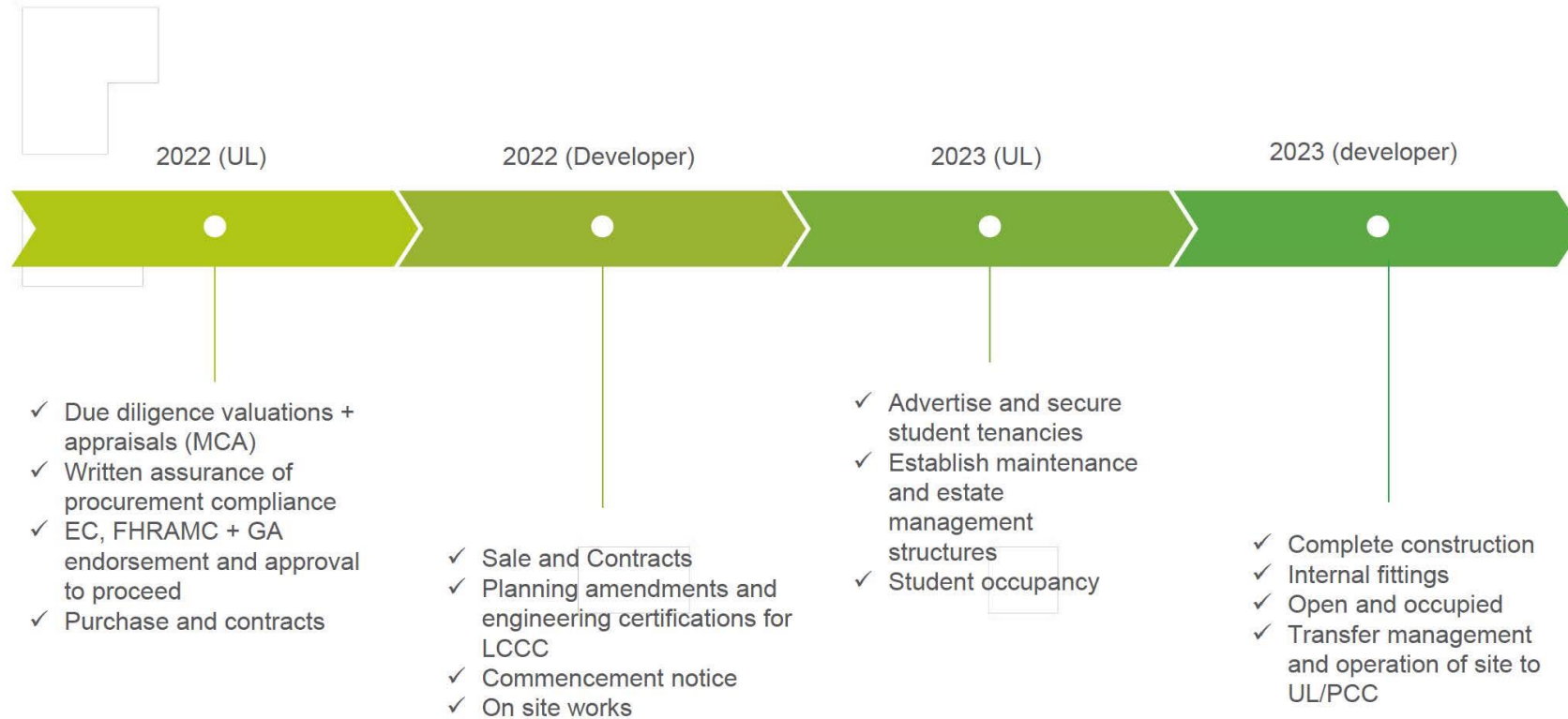
Sample House Type

Schedule
Floor Area - 143.7sq.m.
6no. Bedrooms (All En-suite)
All En-suite Bedrooms over required 12sq.m.
2no. Disabled Bedrooms with En-suites over required 15sq.m.

Project Title: Student Accommodation at Drominbeg, Rhebogue, Limerick.	
Project No.: 2021 - 301	Drawing No.: 07
Drawing Title: House Type 6 (Detached)	Scale: 1:100
Date: December 2021	



Planning, Construction & Occupancy Timeline





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Thank you