

**REPORT TO MR. RUAIRÍ QUINN T.D.,  
MINISTER FOR EDUCATION AND SKILLS,  
UNDER SECTION 20 OF THE INSTITUTES OF  
TECHNOLOGY ACTS**

**ON**

**THE RELATIONSHIP BETWEEN  
WATERFORD INSTITUTE OF TECHNOLOGY  
AND COMPANIES PROVIDING CAMPUS SERVICES TO IT**

**JUNE 2013**

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## Chapter 1: Introduction to Report

1.1 A number of financial and governance issues in regard to the relationship between Waterford Institute of Technology (WIT) and companies providing campus services in WIT had been under consideration between the Institute and the Higher Education Authority (HEA) and the Department of Education and Skills since 2010.

1.2 In a report dated February 2012 entitled “Matters Arising out of Education Audits”, the Comptroller and Auditor General concluded, in relation to non-academic services at WIT, that

*“The patterns of interaction between WIT and a range of companies that provide services (canteen, residences, recreation facilities, retail outlet and sports hall) on campus suggest that the related activities are part of the normal services typically provided on the campuses of third level institutions and that they should be included in consolidated accounts produced by the Institute.*

*In relation to this, the HEA stated that it shares the view that there are issues to be considered and it has engaged with the Institute setting out its concerns in relation to the operation of the company and requesting that WIT review the position and submit proposals for any necessary changes in the Institute’s corporate governance.”*

1.3 On 13 November 2012 the Minister for Education and Skills announced that he had appointed me to carry out a statutory inspection in relation to companies providing a range of services in WIT. The terms of reference of this statutory inquiry, under Section 20 of the Institutes of Technology Acts 1992 – 2006, are set out in full at Appendix 1. They require me to inquire into the relationship, including the financial relationship, between WIT and the companies concerned as well as a number of related issues; and to consider the possible impact on the governance, operations and financial position of WIT.

1.4 Section 20 provides that

*“The Minister, following consultation with An tÚdaras<sup>1</sup>, may authorise any person or persons as the Minister may deem appropriate to report to the Minister on any matters regarding the operation of a college and such person or persons shall be entitled at all reasonable times to enter the college concerned and shall be afforded every facility by that college, including access to all records, to perform their functions.”*

1.5 I adhered to the terms of reference set by the Minister in carrying out the inspection.

1.6 The Minister stressed in his statement that the inspection related solely to the relationship between the Institute and the companies in question and did not relate to the academic reputation or day-to-day operations of its academic programmes.

1.7 WIT is an Institute designated under the Institutes of Technology Acts. In the 2011/12 academic year, it had a student population of over 8,000 students and staff of around 900 and its overall budget was some €87 million. The current Governing Body was appointed on 1 April 2010. The current Chairman of the Governing Body was appointed on 14 February 2011 and the current President of the Institute on 17 January 2012. WIT’s financial statements are audited by the Comptroller and Auditor General.

1.8 The companies providing the main services to WIT comprise a number of companies headed by WIT Diverse Campus Services Limited (DCS) which is effectively a holding company for the other companies. The associated companies of DCS are:

- Waterford College Recreation Partnership Limited
- WIT Sports and Social Club Limited
- College Residences Limited
- WIT Campus Accommodation Limited
- Manor Retail Limited
- Carraiganore Developments Limited.

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<sup>1</sup> Higher Education Authority

There are also two other relevant companies:

- OneCard Solutions Limited, also known as OneCard Total Solutions Limited, and
- One CS Investments Limited.

1.9 The terms of reference required me to submit an interim report to the Minister within one month of my appointment. A copy of the interim report which I submitted on 12 December 2012 is attached as Appendix 2. This was essentially a scoping report indicating the initial steps that I had taken and the process which I had put in train.

1.10 The inspection process involved:

- Examination of all the documentation that I received, on request, from WIT and DCS as well as documents made available to me by the HEA and the Department of Education and Skills.
- Identification of issues requiring scrutiny within the terms of reference.
- A series of meetings with relevant people, details of which are set out in Appendix 3. The immediate former President of the Institute initially indicated willingness to meet with me for the purposes of the inspection. He subsequently informed me on 18 March 2013 that he was precluded from accepting the invitation to participate in the inspection at this time.
- Analysis of financial accounts and other information relevant to the inspection.
- Consideration of the issues in the light of the information received and preparation of findings and recommendations.

1.11 I had the benefit of access to a review prepared by Grant Thornton, Chartered Accountants, at the request of a Sub-Committee of the WIT Governing Body on matters falling within my terms of reference. I had a helpful meeting with Grant Thornton to discuss its review which I drew upon as appropriate for the purposes of the inspection.

1.12 In all, the inspection process involved some 20 meetings in Waterford and Dublin.

1.13 I also received written submissions from a number of individuals that I met in the course of the inspection and took account of these, as appropriate.

- 1.14 I received two further submissions on an anonymous basis. One related to a staff matter at WIT which did not come within my terms of reference. I referred the papers to the President of WIT for appropriate action. Similar documentation had been received by the Department of Education and Skills in 2009 and had been referred to WIT. The other anonymous submission received related to the question of WIT participation in an EU research project. The matter was also brought to my attention by academic nominees to the Governing Body. This issue is dealt with in Chapter 4.
- 1.15 There were also approaches, following the announcement of the inspection, from two persons (one on an anonymous basis) about the possibility of making submissions with a view to their providing information to me. It was indicated to the parties concerned that it was open to them to make written submissions if they wished to do so and that any such submissions would have to be examined for relevance to the terms of reference. No submissions from these persons were received.
- 1.16 I wish to acknowledge the cooperation I received from all concerned in the course of the inspection. As part of this I generally had access to records that I sought to examine. There were some papers which were no longer available and some papers deemed confidential to certain investors in particular companies. The absence of these papers did not impede my work. I appreciate that the requests for information and clarifications, as well as meetings, placed heavy demands on WIT and DCS and I greatly appreciate the assistance provided by them.
- 1.17 On the basis of my consideration of the information and clarifications that I obtained in the course of the inspection, I prepared draft findings and recommendations on the matters falling within the scope of the terms of reference and included these in a draft of my final report.
- 1.18 The draft report or portions of it, as considered appropriate, was made available to WIT and DCS and other affected parties for checking of factual accuracy and for any comments they might wish to make. The responses received were considered by me and I amended the draft report as I considered necessary to take account of them.

- 1.19 The report includes a summary of findings and recommendations and a number of subsequent chapters dealing with each of the matters contained in the terms of reference.
- 1.20 I want to emphasise that the report is not, and does not purport to contain, a forensic examination of all the expenditures or other financial transactions undertaken by WIT or DCS companies nor is it an assessment of particular aspects (e.g. company law or taxation aspects) of individual transactions. Such an examination or assessment would be outside the remit of this inspection.
- 1.21 Finally, I want to express my deep appreciation of the work carried out as part of the inspection by Mr. Stewart Roche, Management Accountant in the Higher Education Authority, who undertook a detailed analysis of the financial accounts, and by Ms. Laura Casey, of the Higher Education Division in the Department of Education and Skills, who provided strong administrative support. Both participated with me in meetings and their assistance and advice was invaluable. I also appreciate the legal advice made available to me throughout the inspection.
- 1.22 I hereby submit the report on the inspection to the Minister for Education and Skills.

Dermot B Quigley

7 June 2013

## **Chapter 2: Executive Summary**

### **2.1 Findings**

#### **General**

- 2.1.1 The relationship that exists between WIT and the companies providing campus services to it is unique in the Institute of Technology sector.
- 2.1.2 The financial resources generated by these companies, and by the Development Committee under which they operated, have undoubtedly facilitated the funding of significant infrastructural improvements and the provision of excellent student facilities at the Institute in a cost effective manner.
- 2.1.3 This has assisted with the impressive development of the Institute, with major benefit for students and staff.
- 2.1.4 In my view, however, the relationship is not an appropriate one and has had adverse effects on governance at the Institute and on the management of its financial affairs. It needs to be changed as a matter of urgency so as to introduce greater transparency and accountability and avoid any further confusion about governance roles and financial responsibilities. The companies are also entitled to early clarification of their position and of the future relationship with WIT. Current uncertainties are causing difficulties for them.

#### **Relationship between WIT and companies**

- 2.1.5 While the companies are legally separate from WIT, and are not controlled by WIT in a legal sense, the linkages between them and the Institute are extensive.
- 2.1.6 It was unsatisfactory for WIT over the years to maintain that the companies were independent of the Institute without giving a fuller account of the close connections, including the financial connections, between them.
- 2.1.7 I have no doubt that the complicated arrangements were well-motivated from the point of view of allowing the Institute to grow and develop. Their effect, however, was to allow development projects to proceed with the assistance of borrowed



funds to which WIT itself would not have had access because of the restrictions on borrowing in the governing legislation.

2.1.8 Over a period of twenty years, former Presidents of the Institute served not only as Chairman of the Development Committee, under the aegis of which the companies have operated, but also as a Director and Chairman of each of the companies concerned (with the exception of the two card technology companies).

2.1.9 This practice gave rise to a blurring of roles and responsibilities and created the potential for conflicts of interest.

2.1.10 The practice was discontinued in 2011 by the then Acting President, who did not join the company boards or the Development Committee. The current President also declined to take on these positions.

### **Financial Relationship**

2.1.11 The close and unusual financial linkages are evident from the following:

- The annual transfer by WIT to these companies, under a 1998 Disbursement Agreement, of a large amount of the resources generated from student charges. The transfer in 2011/12 was €2.46 million.
- There was insufficient review of these arrangements over the years, contrary to what was envisaged in the original agreement with the Development Committee. The arrangements were unique in the sector and lacked accountability in respect of the funds transferred.
- Two senior academic staff from WIT are working on a full-time basis with the companies, with their salaries still met by WIT without any recoupment from the companies.
- The transfer to the companies of significant amounts of monies received by WIT under bank franchise arrangements entered into by WIT (a total of €7,040,000 since 2007).
- The ability of WIT in at least one instance to require the companies to provide funding for a WIT project.
- The Governing Body's knowledge of, and acquiescence by it in, all the major infrastructural projects undertaken by the companies and, in some instances, its specific approval for developments. All these projects involved

bank borrowing and WIT senior management and Governing Body were well aware of this over the years, even if the borrowing was being undertaken by the companies.

- The issue by the former President of the Institute of letters to the bank in support of borrowings by the companies to finance the construction of student accommodation.

## **Governance**

- 2.1.12 While there was periodic questioning of the appropriateness of the arrangements by individual members of the Governing Body, as well as a number of periods of tension with the Students Union over the years, the arrangements have continued for a period of over twenty years.
- 2.1.13 During this time the activities of the companies grew from modest proportions to become much larger operations involving significant amounts of money.
- 2.1.14 A review in 2001 of the relationship with the Development Committee, prompted by action taken by students, resulted in the maintenance of the status quo. This was deemed to be in the best interests of the Institute. Some action was taken at the time to improve relationships and provide more information to the Governing Body.
- 2.1.15 Over the years since then, the governance system did not ensure adequate or robust reviews of the arrangements. In a sense the fact that the companies were seen as separate and independent may have given rise to complacency about governance aspects, especially as the arrangements were generally perceived to be working well and delivering good outcomes for the Institute.
- 2.1.16 Financial reporting by WIT management to the Governing Body on issues arising from the relationship over the years was inadequate.
- 2.1.17 There was a reduction in the percentage of student charges income transferred to DCS since 2003/04, as a result of arrangements being put in place by all institutions arising out of changes in the charge. The reduction was apparent from the figures in WIT's annual accounts but was not substantively discussed by the Governing Body until 2011 nor was it specifically brought to the attention of DCS in the earlier period.

2.1.18 The WIT Audit Committee, while not responsible for the DCS companies, should have sought more information on the relationship with them and ensured that the risks were better assessed.

### **Role of Department and HEA**

2.1.19 While the Department of Education was aware as far back as the mid-1990s of the existence of the Development Committee structures, and issues were raised with it by both the Students Union of Ireland in 2001 and the Teachers Union of Ireland in 2010, it did not pursue the matter adequately.

2.1.20 Since 2010, financial tensions came to a head between the companies and WIT because of:

- the retention by WIT of a larger portion of the increased student charges, in accordance with the instructions from the Department of Education and Skills and the HEA;
- questioning by the Comptroller and Auditor General and the HEA of the appropriateness of the relationship from the point of view of governance and accountability; and
- most recently, difficulties relating to the funding of the latest phase of the Carriganore Sports Complex development which has caused significant financial problems for both DCS and the Institute.

2.1.21 In the period since 2010 more urgent and decisive action could have been taken by the Higher Education Authority and the Department to ensure that the problems emerging at WIT were dealt with more quickly. It has to be acknowledged, however, that there was good engagement between the authorities and WIT since 2011 and that full information on the issues was not available to all concerned prior to this inspection.

## **Relations on Specific Issues**

### **Bank Franchise Monies**

- 2.1.22 The Governing Body was not properly informed since 2007 about the transfer to DCS of large amounts of money received by WIT under its bank franchise agreements, nor was its approval specifically obtained.
- 2.1.23 The bulk of the amount of €7,040,000 transferred since 2007 has been used to help finance the Carriganore Sports Complex.

### **Manor Village Student Accommodation**

- 2.1.24 Drafts of the letters issued by the former President to the bank, as part of the arrangements for obtaining financing for the construction of this important student accommodation project, should have been submitted at the time to the Governing Body for approval. This was not done.
- 2.1.25 WIT should have obtained legal advice in 2001 to ensure that the letters did not contravene the requirements of its governing legislation.
- 2.1.26 This is a self-financing project with a considerable rental income. I am satisfied that it could support the further borrowings of about €7 million that will be needed in September 2013 to buy out the current investors in the scheme.

### **Carriganore Sports Complex**

- 2.1.27 It is regrettable that the most recent phase of the Carriganore Sports Complex was allowed to proceed without the Governing Body having a clear assessment of the financial implications for the companies and the Institute, including the nature of the support expected by the companies from WIT.
- 2.1.28 The financing of this phase of the development at an estimated cost of about €10 million, construction of which went ahead in early 2012, has caused major financial headaches for both DCS and WIT. Completion of the project has now had to be deferred and this will result in additional costs.
- 2.1.29 As well as bank franchise monies, large amounts of surpluses generated by DCS have been devoted to the Carriganore project without clear discussion of the

implications for other priorities. The overall expenditure on the project to date comes to over €16 million.

- 2.1.30 DCS had arranged in late 2011 for loan facilities to finance the work but these were dependent, inter alia, on further letters being provided by WIT to support the borrowings. When these letters could not be provided there should have been earlier and better communication with all concerned, including the bank.

### **Gallery Restaurant**

- 2.1.31 The Institute management felt they were in a position to effectively require DCS to provide funding for the completion of the extension of the Gallery restaurant, a project initiated by the Institute itself with funding support from the Department of Education. This money, which was borrowed by DCS, was never repaid by WIT and has had to be written off in the company accounts.

### **Card Technology Companies**

- 2.1.32 WIT management did not adequately implement the decision of the Governing Body, when OneCard Solutions Limited was being established as a private company with WIT employee involvement, that the Institute should protect its position by obtaining royalty payments or setting up franchise arrangements, following the work undertaken in the Institute on smart card research.
- 2.1.33 The securing of a minority shareholding in the company was later proposed but was not adequately pursued by WIT. This resulted in a loss to WIT of a share in the funds paid to shareholders when the company was sold.
- 2.1.34 The Governing Body should have been informed by WIT management of the subsequent arrangements involving the sale of the company and the substantial amounts received by a number of WIT employees from the sale of their shares.

### **European Educational Student Connectivity Project (EECS)**

- 2.1.35 Although WIT was not involved in the project, there were serious lapses at WIT in relation to authorisation and financial control procedures in respect of the participation of OneCard Solutions Limited and the Card Technology Research Centre in DCS in this EU-funded research project.

2.1.36 The corrections that had to be made with the EU authorities, because of confusion about the role of WIT, risked reputational damage.

### **Financial Position of the Companies**

2.1.37 On the basis of the audited accounts for the year ended 30 June 2010 there were, in the opinion of the auditors, no material uncertainties about the ability of the companies to continue trading as going concerns.

2.1.38 While trading continued satisfactorily in 2011, the finalisation of accounts was delayed because of uncertainties arising in the relationship with WIT, the status of the 1998 Disbursement Agreement and the implications for the financing of a number of projects.

2.1.39 The recently filed accounts for 2011 include an emphasis of matter statement by the auditors in relation to the companies' ability to continue as going concerns. Without qualifying their opinion on the accounts, the auditors indicate that DCS requires banking facilities, including overdraft facilities, which have yet to be negotiated and put in place because of the uncertainties mentioned above.

2.1.40 The overall surplus generated by the DCS companies came to €1.5 million in the management draft accounts for the year ended 30 June 2012. The corresponding surplus in 2011 was €1.9 million.

2.1.41 The net assets of the companies in the draft 2012 accounts were almost €23 million comprising fixed assets of €17.5 million and financial assets of about €7 million, less a working capital deficit and bank loans. The financial assets comprise a sinking fund and related bank deposit available to part finance the purchase of the Manor Village student accommodation.

2.1.42 The current borrowings by the DCS companies, including bank overdrafts, amount to €3.2 million.

2.1.43 Borrowings would have risen by a further €7 million in 2012 if, as originally envisaged, the current phase of the Carriganore Sports Complex had been financed by borrowing. In the event, alternative means of financing – in the main bank franchise monies paid over to DCS by WIT – were used as well as the working capital of the DCS companies. The objective was to protect the

commercial value of what has been completed to date by achieving a sealed and secured building.

- 2.1.44 There is a further liability of about €7 million that would arise for DCS in September 2013 in order to buy out the investors in the Manor Village student accommodation.
- 2.1.45 There is also a potential borrowing liability or direct funding requirement of about €2.5 million to bring the Carriganore project to completion stage.
- 2.1.46 The DCS companies are currently experiencing some pressures on cash flow arising from the unanticipated need to use surplus funds for the Carriganore Sports Complex, as well as a decline in trading income.

### **Use of Resources**

- 2.1.47 The surpluses accumulated in the DCS companies together with the capital reserve have as their counterpart the fixed and financial assets of the companies.
- 2.1.48 While there was an annual report by the Development Committee/DCS to the WIT Governing Body there was no systematic check that the appropriate amount of surplus funds was accruing to the benefit of the Institute as envisaged in the original agreements establishing the Development Committee.
- 2.1.49 A separate account was not kept by DCS to show receipts and expenditure of the Development (Building) Fund monies financed from student charges. Total receipts were entered in the company's Income and Expenditure account.
- 2.1.50 I should note that I have seen no evidence of any misappropriation of funds in the course of this inspection nor has any misappropriation been suggested by any of the parties whom I met.
- 2.1.51 While DCS has indicated that all its assets will ultimately belong to WIT, I noted that specific decisions by the relevant companies will be required to implement this disposition of property, taking account of the charitable status of some of the companies.

## **Conclusion of Findings**

- 2.1.52 The financial relationship between WIT and the companies has now become contentious and there is a lack of clarity on roles and responsibilities.
- 2.1.53 While the primary responsibility was on WIT to remedy matters, more urgent and decisive action could have been taken by the HEA and the Department, although it has to be acknowledged that there was good engagement between the authorities and WIT since 2011 and that full information on the issues was not available to all concerned prior to the inspection.
- 2.1.54 Urgent action must now be taken to ensure that the continued development of the Institute, which is of such importance to students and staff and to the region generally, is protected and that financial issues affecting the companies can be brought to a successful conclusion.



## **2.2 Recommendations**

### **Restructuring of Companies as WIT Subsidiaries**

- 2.2.1 Reactivate immediately the steps required for the acquisition and restructuring of the seven DCS companies as subsidiaries of WIT. The WIT position would then be in line with that in other third level institutions as regards such companies.
- 2.2.2 Such restructuring to take place by agreement with the companies concerned and on the basis of open processes and communication. All necessary legal procedures to be followed. Employees of the companies to remain as employees of those companies following the restructuring.
- 2.2.3 As part of this process, the Memorandum of Association of each of the DCS companies should be reviewed and amended as necessary to ensure consistency with WIT objectives.
- 2.2.4 The staff of both the companies and of WIT to be fully briefed on what is involved and of any possible implications for them immediately or over a period ahead.
- 2.2.5 Consultation to take place with the Revenue Commissioners to ensure as far as possible that the charitable status of the relevant companies is maintained and to clarify the steps needed to establish ultimate ownership by WIT of the assets of such companies in due course.
- 2.2.6 As well as WIT nominees, the board of each of the subsidiary companies should include as directors suitably qualified persons external to WIT and DCS.
- 2.2.7 All managers should be employees of subsidiary companies rather than of WIT. Suitable arrangements accordingly to be agreed by WIT with the two WIT employees working with the DCS companies.
- 2.2.8 After a short transition period following the formal restructuring, the Governing Body should undertake a review to establish what further restructuring of the subsidiary companies and their management may be required to optimise performance and efficiency. An early amalgamation of the two companies dealing with student accommodation would seem an appropriate initial step.

## **Existing Borrowings**

- 2.2.9 In the light of the proposed restructuring there should be early discussion with the lenders to the existing companies and the representatives of the investors in Manor Village to brief them on what is envisaged and on the financial status of the companies, and to ensure that existing facilities provided to the companies remain in place.
- 2.2.10 Existing borrowings of €3.2 million should remain on DCS company books when they are reconstituted as WIT subsidiaries and should continue to be serviced from DCS cash flow. Legal advice provided to me has confirmed that this will not run counter to the provisions in the Institutes of Technology legislation dealing with borrowing.
- 2.2.11 In the light of current pressures, the cash flow position of the companies should be reviewed immediately by them and WIT and any necessary remedial action taken.

## **Development Committee and Students Services**

- 2.2.12 Steps should be taken immediately, by agreement with the parties involved, to discontinue the Development Committee and associated structures and trustee arrangements.
- 2.2.13 The 1998 Disbursement Agreement should be terminated in consultation with the Development Committee/DCS and the Students Union. An interim arrangement may be necessary during this process to ensure no cash flow difficulties arise in DCS.
- 2.2.14 WIT should establish the appropriate consultative groups for implementing the “Framework of Good Practices – Student Services” recommended by the HEA in January 2012. These would include:
- a Central Forum, on which students are well represented, which would be consulted by Institute authorities in relation to the proposed disposition of the allocation of funding for student services;
  - a Students Finance Committee, with at least 50% student representation, for the allocation of funding for certain specified areas within student services (e.g. Students Union, Clubs and Societies); and

- a Student Services Consultative Group which would have a more general remit to make recommendations and proposals in relation to existing or new student services.

### **New Arrangements for Provision of Services**

- 2.2.15 Services provided by the subsidiary companies should be provided on the basis of dedicated Service Level Agreements between each of them and WIT, with appropriate performance targets and quality assurance and pricing arrangements.
- 2.2.16 There should be no general transfer of monies to these companies. All student charges income should form part of WIT receipts and all funds earmarked for building or other capital developments should be accounted for in the WIT accounts in accordance with HEA recommendations on accounting treatment.
- 2.2.17 Companies providing services to the campus should receive appropriate payment or should be authorised to provide services on the basis of agreed commercial franchises.
- 2.2.18 The Governing Body should ensure periodically that the wider market is tested, through the subsidiary companies or otherwise, for procurement of services, taking account of National and EU requirements.

### **Manor Village Student Accommodation**

- 2.2.19 I recommend that if possible this valuable and income-yielding asset should be purchased from the investors and maintained as an asset of WIT. The full rental income would then accrue to the Institute.
- 2.2.20 Purchase will cost €15 million, of which approximately €7.75 million is likely to be available from the relevant sinking fund and associated deposit built up by DCS.

### **Carriganore Sports Complex**

- 2.2.21 Given the significant expenditure that has already taken place on the latest phase of this development, and the importance attached to it by the WIT authorities, I recommend that the development should be completed as soon as possible so as to minimise increased costs.
- 2.2.22 An estimated sum of the order of €2.5 million will be needed for this purpose.

## **Financial Options for Addressing Change**

- 2.2.23 I recommend that consideration be given by the authorities, in the particular circumstances of this case, to allowing the proposed WIT subsidiaries to borrow a total further amount of the order of €10 million in long-term borrowings, if necessary supported by a WIT guarantee, to finance the purchase of Manor Village and the completion of the Carriganore Sports Complex.
- 2.2.24 If the long-term borrowing option is not considered appropriate by the authorities, I recommend that the Minister for Education and Skills consider providing exceptional funding, on appropriate terms and conditions, for the purposes indicated in the preceding paragraph.
- 2.2.25 A fall-back option would be to allow the WIT subsidiaries to borrow the necessary funds on a temporary short-term basis, with a view to repayment of the loan from the proceeds of the sale of Manor Village student accommodation and possibly other assets to new investors.

## **Consolidation of Accounts**

- 2.2.26 Once the restructuring of the companies as subsidiaries has taken place, the consolidation of their accounts with those of WIT should be implemented as early as possible. At this stage it seems unlikely that consolidation can occur earlier than in respect of accounts for 2013/14.

## **Governance in Subsidiary Companies**

- 2.2.27 As subsidiaries, the companies should take early action aimed at ensuring compliance with the Code of Governance of the Irish Institutes of Technology which should now apply to each of the subsidiary companies.
- 2.2.28 The companies should immediately put in place robust procurement policies that comply with National and EU requirements.

## **Governance in WIT**

- 2.2.29 While WIT has achieved a high degree of compliance with the individual items of the Code of Governance of the Irish Institutes of Technology, I would recommend that the Governing Body should undertake a comprehensive review of the position. This requires a robust review to test the effectiveness of the procedures and controls that have been put in place.

- 2.2.30 The Governing Body should also undertake an early review of its own effectiveness, as envisaged in the Code, including the manner in which issues are raised and decided at meetings and whether contrarian views are facilitated.
- 2.2.31 The Chairman of the Governing Body should specify in detail, for approval by the Governing Body, the management information in respect of WIT and the proposed subsidiaries, and especially the financial information and data, that should be included in the pack circulated to members in advance of each meeting of the Governing Body.
- 2.2.32 Responsibilities of the respective members of the management team in reporting on financial issues to the Governing Body should be clearly specified, so as to assist the Governing Body in discharging its overall role as outlined in the Code of Governance of Irish Institutes of Technology.
- 2.2.33 The Audit and Finance Sub-Committees of the WIT Governing Body should be amalgamated under a new charter and external chairperson with relevant experience and at least one other external member, on lines already discussed by the Committees themselves and in the Governing Body.
- 2.2.34 The charter for the revamped Audit Committee should be consistent with the guidelines in the Code of Governance of Irish Institutes of Technology.
- 2.2.35 Risk management policy should be reviewed and revised. At Governing Body level the main focus should be on the principal corporate risks facing the Institute.

### **Implementation**

- 2.2.36 Within three months of decisions being made by the Minister for Education and Skills on matters arising from this report, the Chairman of the Governing Body should furnish a report to the Minister and the HEA on the actions taken on foot of those decisions and a timetable for completion.

## **Wider Issues**

- 2.2.37 Although my terms of reference are focussed on specific issues, they allow me to refer to such other matters as I consider necessary or expedient.
- 2.2.38 While I have not examined the question in detail I would recommend that there should be a review of the size and composition of the Governing Bodies for the Institutes of Technology, including the merits or otherwise of having nominees from particular groups, the possible need to reduce the overall size of these bodies and the case for greater external representation.
- 2.2.39 The arrangements for interactions between the HEA and Department of Education and Skills arising from their respective oversight roles in regard to the institutions should be reviewed.
- 2.2.40 The Strategic Dialogue process on institutional performance as envisaged in the National Strategy for Higher Education to 2030 may provide a useful vehicle for discussion between the Institutes and the HEA on major governance issues that have been identified.
- 2.2.41 I have made no recommendation in relation to the two card technology companies referred to earlier, but I note that the WIT Governing Body is itself seeking clarification on the matter and on the relationship between these companies and DCS in the light of information brought forward in the course of the inspection. This review should be concluded at an early date and the outcome included in the report to the Minister and the HEA.
- 2.2.42 The Department of Education and Skills should review arrangements for bringing details of financial controls and requirements laid down by central Government Departments to the attention of third level institutions, so as to ensure that the current arrangements are satisfactory.

## **Chapter 3: Background on Development Committee and its companies and the relationship with WIT**

### **3.1 Establishment of the Development Committee and Related Companies**

#### **Waterford Institute of Technology**

3.1.1 Waterford Institute of Technology (WIT) is one of the fourteen Institutes of Technology. The Regional Technical Colleges Act, 1992, established Waterford RTC as an independent college with its own governing body appointed by the Minister. The new Governing Bodies established under the 1992 Act replaced the Vocational Education Committee (VEC) Boards of Management which controlled the affairs of regional technical colleges prior to 1993. In 1997 the name of the college was changed to Waterford Institute of Technology by Ministerial Order.

3.1.2 In terms of governance, accountability and finance, WIT is now subject to the provisions of the Institutes of Technology Acts, 1992 to 2006.

#### **Development Committee**

3.1.3 The genesis of the current companies lies in the Development Committee which was established in the college in October 1989. I have been informed that this Committee was formed by a number of staff of the college, at their own initiative and on a voluntary basis, with a view to taking over the canteen services from the then staff committee which had become defunct. At that time, the VEC was not itself empowered to engage in commercial activities or borrowing.

3.1.4 Legal advice obtained by WIT in 2001, and confirmed on a number of occasions since, states that the Development Committee is an autonomous unincorporated association which is legally separate from the Institute although linked with it.

3.1.5 It was envisaged that the Development Committee would:

- Facilitate the development of non-academic facilities for the college community

- Oversee the operation of all such facilities, either directly, or indirectly through other bodies as it deemed appropriate
- Establish a company limited by guarantee and/or shares or empower trustees appointed on behalf of the Committee to carry out the business of the Committee. In addition, the company or trustees should have the power to borrow at the discretion of the company or trustees
- Engage in fund-raising, borrowing and acquisitions of sponsorship in promoting its objects.

3.1.6 These objectives were included in a Constitution for the Development Committee that was put in place in September 1991. The Constitution provides for the name of the Committee, its membership, and its functions and powers. The Committee members included college management (including the college President then known as the “Director”), the chaplain, and nominated staff and student representatives.

3.1.7 While a group of four trustees was originally set up, my understanding is that it never operated as a separate governance entity and no minutes of trustees’ meetings were available when I requested them from DCS; in fact, I was told that there had been no meetings of the trustees since 1990.

3.1.8 In 1990, the VEC Board of Management granted a sole franchise to the Development Committee to provide non-academic services on campus. The agreement is recorded in the VEC minutes of its meeting on 27 November 1990. The VEC unanimously agreed, based in large measure on a proposal put forward by the Development Committee itself, to provide the following assurances that the Committee had sought in return for its commitment to support the development of facilities for students at the college:

- the Development Committee be granted the sole franchise for all approved trading activity of a non-educational nature (such as food, beverage, entertainment, student supplies, etc)
- the Development Committee be accorded the right to sub-contract all such franchises as it deems necessary, subject to adequate controls



- agreements entered into from time to time in relation to the allocation to be made to the Development Committee from the Capitation Fund be fully implemented
- the Development Committee will have the right to operate any of its franchises at times which would not be restricted by the official opening and closing hours of the college, by agreement
- if for any reason the VEC wished to terminate the agreement or to substantially alter it, appropriate notice would be given, by agreement with the Development Committee, to enable it to meet any outstanding liabilities or to re-assign them to another party
- the operation of the agreement would be reviewed every five years to enable adaptations to be made in the best interest of the college community.

3.1.9 The VEC minutes also note that the Development Committee for its part undertook to:

- operate all services within its franchise in the best interests of the college community
- maintain standards of conduct to the best of its ability in keeping with the good name of the college
- operate on a non-profit making basis and to apply all its surplus income to the development of services to the college community
- provide full annual accounts in whatever form might be requested by the Board of Management of the VEC
- effect all appropriate public liability and employers liability insurances to indemnify the Board of Management, VEC and their officers in all such insurances.

3.1.10 At its meeting on 10 December 1997 the Governing Body of the Institute was informed by the Director that, following an increase in the student services charge, the brief of the Development Committee was to be amended to cover:

- major projects in the student services area
- the management of student services which are provided on a trading basis
- facilitating the Institute in achieving its objectives.

There were no other significant changes in the remit of the Committee. My examination of the papers indicates that over the years consideration was given to bringing in a new constitution for the Committee but I have been informed that this never happened.

### **Development Committee Operations**

- 3.1.11 The Development Committee initially operated through two companies, viz. Waterford College Recreation Partnership Limited established in April 1991 and College Residences Limited, incorporated in May 1991. There was also a registered Sports and Social Club which also dates from 1991. While initially it seems to have been envisaged that the Development Committee would itself be incorporated as a company and that the Committee as such would cease to exist, this did not happen.
- 3.1.12 While its legal advice is that DCS has succeeded to the role of the Development Committee, the Development Committee still met as a Committee a number of times each year up to early 2011. Its membership has comprised the directors of DCS, the DCS General Manager, the WIT Capital Projects manager, Students Union representatives and, up to May 2011 when the practice was discontinued, the WIT President who also chaired the Committee over the years. The Development Committee has not published accounts since 2002.
- 3.1.13 In the course of reviewing the available minutes of meetings of the Development Committee, I noted that it was agreed at a meeting in October 2003 that the primary functions of the Committee include solving problems and improving student services and acting as policy maker on student services.
- 3.1.14 Not all the minutes of meetings of the Development Committee, going back to 1990, were available at this stage. My examination of the available minutes indicates an emphasis on operational matters in discussions as well as on the progress of capital projects. In 2010/11 there was a focus on the emerging issues concerning the agreement with WIT for the disbursement of funds to DCS.

## **Development Committee Companies**

3.1.15 A corporate restructuring of Development Committee companies took place in 2000/01 to meet the requirements of the bank involved in the Manor Village student accommodation project. The company now named WIT Diverse Campus Services Limited (DCS) was incorporated by the Development Committee in March, 2000. Legal advice by DCS solicitors states that this company has assumed the responsibilities of the Development Committee in relation to the provision of services to WIT. While it would appear that no formal assignment of those rights and obligations had been entered into, legal advices to both WIT and DCS is that DCS has acquired these rights through operation of law and that there is a contractual relationship now between WIT and DCS for the provision of the relevant services. DCS began trading with effect from July 2002. The WIT Governing Body was informed of the new company structures proposed.

3.1.16 The other companies now associated with DCS and referred to in this report collectively as “DCS companies” are:

- Waterford College Recreation Partnership Limited
- WIT Sports and Social Club Limited
- College Residences Limited
- WIT Campus Accommodation Limited
- Manor Retail Limited
- Carraiganore Developments Limited

All the companies are now limited by guarantee. Some were previously limited by shares. Further details of the relevant companies, including changes in type of companies and in names, are outlined in Appendix 4.

3.1.17 Initially, the accounting in respect of financial transactions for all activities was undertaken in Waterford College Recreation Partnership Limited but separate accounts for each company are now prepared. All employees of DCS companies are, however, employed by DCS and the payroll function is performed by Waterford College Recreation Partnership Limited. There are at present some 170 employees.

3.1.18 While the company Carraiganore Developments Limited is formally still in existence, it is not trading and its operations are effectively handled by DCS itself.

Carraiganoire Developments Limited acts as a Management Company, which operates in partnership with the GAA in managing the Carriganore Sports Complex developed by DCS.

- 3.1.19 With the exception of Manor Retail Ltd., WIT Sports & Social Club Ltd. and Carraiganoire Developments Ltd., DCS and the other associated companies are recognised as charities by the Revenue Commissioners for tax purposes.
- 3.1.20 There are two other technology companies which are relevant to the inspection. These are OneCard Solutions Limited, also known as OneCard Total Solutions Limited, which is involved in providing smart card services to WIT and other educational institutions, and a related company, One CS Investments Limited. One CS Investments Ltd. is the sole shareholder in the operational company. The two card technology companies are dealt with separately in Chapter 4.6.
- 3.1.21 The services and facilities provided to the WIT campus have grown in conjunction with the expansion and growth of WIT. The portfolio of services within individual DCS companies has also grown and changed over the years. Currently there are 26 different trading units providing services to WIT students. The services include provision of catering and student accommodation and retail services; recreational and sports activities; student support services; transport; administrative, printing and publishing services for students and staff; and WIT smart card facilities.

#### **Role of Development Committee in DCS Companies**

- 3.1.22 I obtained minutes of DCS Board meetings going back to August 2011. When I sought earlier minutes, DCS stated that the Development Committee acted as the quasi-board of DCS up until June 2011. In its view, the Committee was the policy-making body for DCS which then implemented those decisions. DCS added that when the WIT Acting President made the decision in May 2011 not to act as Chairman of the Development Committee, the Committee no longer met and the board of DCS became more active from then on.
- 3.1.23 The minutes of meetings of the Governing Body still refer to reports or presentations to it by the Development Committee rather than by DCS.
- 3.1.24 Nevertheless, the role of the Development Committee seems rather incongruous at this stage, especially in the light of the general acceptance that DCS has assumed

the role of the Committee. This confusion in roles is undesirable from a governance point of view and needs to be addressed.

## **3.2 Structure and Management of DCS Companies**

### **Introduction**

- 3.2.1 The legal advice received by both WIT and DCS is that DCS and its associated companies are independent legal entities. They prepare separate accounts and they have their own legal advisers and auditors. The financial results of the DCS companies are included, however, in a note to the financial statements of WIT. The WIT financial statements are audited by the Comptroller and Auditor General.
- 3.2.2 The WIT Internal Audit Unit and Audit Committee (a Sub-Committee of the Governing Body) do not have a role in relation to DCS or its associated companies. DCS has its own Audit Committee since 2009. This is composed of a DCS director and the general manager of DCS and two non-executive external persons, one of whom chairs the Committee.

### **Directors and Membership of DCS Companies**

- 3.2.3 The directors of DCS comprise two academic staff employees of WIT who are working full-time with DCS and, over the past two years, two officers of the WIT Students Union. Each of the other six companies currently has only two directors, the two DCS directors who are employees of WIT.
- 3.2.4 Prior to May 2011, the President in office of WIT also sat on the Board of DCS as Chairman of the company. The President was also a member of the board of each of the associated companies.
- 3.2.5 In May 2011, the then Acting President of the Institute (the current Secretary/Financial Controller), on legal advice, did not agree to sit on the Board of DCS or to chair the Development Committee because of potential conflict of interest.
- 3.2.6 The current President of WIT also declined, following his appointment as President in January 2012, to take up these positions.
- 3.2.7 There is a common membership of all the companies. The seven members of DCS and each of the associated six companies comprise the two directors of DCS who

are WIT employees and four representatives drawn from the companies and one staff member from WIT (who has responsibility for capital projects in WIT).

### **Management of DCS Companies**

- 3.2.8 Leaving aside the role of former Presidents as directors of the companies, the inspection did not provide any evidence that WIT or its officers were, over the years, involved in any significant manner in the actual day-to-day operation and management of the companies providing services to WIT.
- 3.2.9 The companies operate essentially as private sector companies. It is undoubtedly the case, however, that the whole basis for their existence and activity profile is the provision of the services required by students attending the Institute. The single most important element in the cash flow of the companies is the student charges monies paid over to them by WIT. These factors inevitably result in a close working relationship with WIT, the extent of which would be unusual for private companies.
- 3.2.10 Because of the growth of company activities, the DCS directors arranged for a review to be undertaken by Mazars in 2010 to assess whether the operational framework in place to manage the activities of the companies remained fit for purpose. The report on the review was finalised in November 2010 and suggested a revised organisation structure with tighter reporting, management information and financial processes to improve performance. I was informed in the course of the inspection that the action plan recommended in the report had been fully implemented.
- 3.2.11 As private companies the DCS companies are not subject to public sector procurement guidelines and regulations. Only very sparse policy rules on procurement were provided in response to my request. I drew attention to the fact that the question of gifts that might be offered in the course of procurement was dealt with in a very unsatisfactory manner in the available policy/procedural documents. I was informed by DCS that, in practice, careful checks are made in this area.
- 3.2.12 There was recognition in DCS that to some extent the scale of operations in the DCS companies had outgrown the governance arrangements in the companies. They informed me that they were open to the idea of having a number of external

directors on the boards of the companies and had included such proposals in the ideas they had advanced for review and adaptation of the arrangements with WIT in July 2011 (see Chapter 3.5).

- 3.2.13 DCS and its associated companies, as private companies, are not subject to the Irish Institutes of Technology Code of Conduct unlike the subsidiary companies of other Institutes of Technology.



### **3.3 Fund Transfers and Other Financial Links**

#### **Introduction**

3.3.1 The very close financial links between WIT and the DCS companies are reflected in:

- The annual transfer of funds from student charges received by WIT to DCS for the provision of a range of student services
- Arrangements for payment by WIT of salaries of WIT employees who are working full-time with DCS
- Transfer of WIT receipts from bank franchise agreements to DCS
- Support by WIT for DCS borrowings
- Funding which DCS had to provide for a project undertaken by WIT
- Investments undertaken by DCS for the benefit of WIT.

#### **Annual Transfers from Student Charges**

3.3.2 Since the Development Committee was established, a portion of the Institute's receipts from charges imposed on students for services has been transferred to the Committee each year. This, together with surpluses generated by the trading units, was intended to finance the provision by the Committee of the relevant services for students. The funds were disbursed under agreements between WIT, the Development Committee and the Students Union. The receipts were allocated to the "Students Services Fund" in WIT (earlier referred to as the Capitation Fund) from which they were disbursed as agreed.

3.3.3 The initial agreement dates from September 1990 and indicates that its purpose was:

- to provide certainty and consistency of income to all parties to the agreement
- to enable the parties to offer secure employment contracts
- to secure long term borrowings
- to establish order in the relationships between the parties on an equitable basis.

3.3.4 The position became more formalised in 1998 with agreement between the Institute, the Development Committee and the Students Union on a new fixed

formula to underpin such transfers. This followed the publication by the HEA of a framework of good practice in respect of the use of student charges income. At the meeting of the Governing Body of the Institute on 24 February 1998, the then Director tabled an agreement which he said had just been finalised between the parties within the previous few days. This provided for a new formula for distributing the Students Services Fund from 1997/98 onwards. Under this formula, after deducting examination entry fees payable to the National Council for Educational Awards (NCEA) and the cost of personal accident insurance, the balance would be transferred to the Development Committee who would allocate the monies as follows:

- 12% to Student Affairs,
- 54% to a Development Fund, and
- the remaining 34% to be apportioned as follows:
  - 36% to the Students Union,
  - 26% to the Development Committee, and
  - 38% to Clubs and Societies.

3.3.5 The agreement was for an initial period of five years which could be extended further. The Governing Body meeting of 24 June 2003 noted the continuation of the existing agreement for a further five years. I understand, however, that a comprehensive review to assess whether adjustments might be needed, as provided for under the original franchise agreement, was not carried out on that occasion or subsequently prior to 2010. The question of having a review became more active from 2010 onwards.

3.3.6 The overall amount transferred to the Development Committee/DCS each year since 1998 was as follows:

<b>Year</b>	<b>Transfer</b>	<b>Year</b>	<b>Transfer</b>
<b>1997/1998</b>	€1,117,000	<b>2001/2002</b>	€1,817,000
<b>1998/1999</b>	€1,303,000	<b>2002/2003</b>	€2,051,000
<b>1999/2000</b>	€1,471,000	<b>2003/2004</b>	€2,293,000
<b>2000/2001</b>	€1,754,000	<b>2004/2005</b>	€2,157,000

<b>2005/2006</b>	€2,246,000	<b>2009/2010</b>	€2,674,000
<b>2006/2007</b>	€2,248,000	<b>2010/2011</b>	€2,623,000
<b>2007/2008</b>	€2,331,000	<b>2011/2012</b>	€2,464,061
<b>2008/2009</b>	€2,477,000		

3.3.7 These annual payments represented the single biggest item of receipts each year in the DCS accounts.

3.3.8 The amounts paid each year are net of sums deducted and held back by WIT for specific purposes. Initially, up to and including the year 2002/03, the amounts retained by WIT were to cover the costs of examination fees and personal insurance for students, deduction of which was specifically envisaged by the 1998 Disbursement Agreement as indicated above. When a new Awards Office was established in the Institute in 2002/03 the amount withheld to cover its cost, as approved by the Executive Board in January 2004, replaced the previous payment to the NCEA for its services.

3.3.9 From 2003/04 onwards, the amount of the student charge was increased significantly by Government, and the Exchequer grant for recurrent expenditure was reduced on the basis that the increase in the charge brought the amount contributed by students more in line with the real cost of providing student services. The number of students in WIT also increased significantly over the period. Both of these factors resulted in a sizeable increase in student charges income, increasing from €4 million in 2003/04 to over €12 million in 2011/12. The amounts retained by WIT (i.e. nearly €10 million in 2011/12) are reflected in the figures for net transfers to DCS set out in the table above.

3.3.10 WIT has confirmed to me that the amount withheld each year from 2003/04 to 2010/11 by the Institute from the gross receipts, before passing the balance to the Development Committee/DCS, was the amount to be retained by all institutions as required by the Department of Education and Skills and the HEA. As indicated in Section 3.5, retention of these funds subsequently became a serious issue of contention between the Institute and DCS. For 2011/12 onwards, the charge was

replaced by a student contribution and the internal allocation of these funds is a matter for institutions.

3.3.11 In accordance with the 1998 agreement, the monies received by DCS were to be used to finance agreed activities in the proportions specified in the agreement as set out in paragraph 3.3.4. It will be noted that 54% of the amount transferred to DCS each year was earmarked for a Development Fund for capital development projects.

3.3.12 Our analysis of DCS accounts shows that the student charges income received by DCS was expended as follows:

	2012	2011	2010	2009	2008	2007	2006	2005	2004
	€	€	€	€	€	€	€	€	€
<b>STUDENT UNION</b>	301,601	321,278	343,934	284,589	275,696	279,909	261,936	305,510	255,326
<b>CLUB AND SOCIETIES</b>	318,357	338,948	363,042	300,399	291,013	285,640	276,488	322,484	269,511
<b>STUDENT AFFAIRS</b>	322,417	389,570	237,129	279,008	270,291	274,421	256,800	299,520	250,320
<b>CAPITAL 54%*</b>	1,330,593	1,416,420	1,443,960	1,337,580	1,258,740	1,213,920	1,212,840	1,164,780	1,238,220
<b>BALANCE</b>	191,093	156,784	285,935	275,424	235,260	194,110	237,936	64,706	279,623
<b>TOTAL</b>	2,464,061	2,623,000	2,674,000	2,477,000	2,331,000	2,248,000	2,246,000	2,157,000	2,293,000

\* *Notional allocation as distinct from actual spend*

The above figures for Student Affairs represent the figures shown in the DCS accounts. The company has informed me that actual expenditure under these headings for 2011 and 2012 was of the order of €900,000 per annum, representing a subsidy of the order of €500,000 by DCS each year for the cost of these services.

3.3.13 There was no particular system or procedure in place to monitor the use of the transferred funds by DCS or to check that the percentage distribution set out in the 1998 agreement was being respected. I noted that the funds intended for the Development (Building) Fund were accounted for by DCS as part of its general receipts and were not allocated to a particular or identifiable fund in their accounts. The Secretary/Financial Controller has indicated that he was able to

verify the Students Union and Clubs and Societies figures by comparing the figures in the DCS statements with those in the accounts of the bodies concerned.

- 3.3.14 I was informed by the HEA that to the best of its knowledge no other higher education institution operates a system where student services funding is allocated directly (i.e. without a tender) to an external company to provide those services. The HEA indicated that other institutions can and do use campus companies to provide some elements of services but that these are subsidiary companies within the control of the institution.

### **Arrangements for payment of Directors' Salaries**

- 3.3.15 The two persons who are staff of WIT but who are working full-time with DCS and its associated companies continue to receive their normal salaries from WIT. While only one of them has been formally seconded, we have confirmed from WIT that neither of them has been timetabled for work in WIT over the past ten years. It was clear from the papers that I saw that the intention, certainly from 2000 onwards in dealing with the position of one of the individuals involved, was that the Development Committee would be required to reimburse the Institute for the replacement cost of the services of that person.
- 3.3.16 The total amount paid by WIT on the salaries of the two people concerned over the past 10 years is €1,750,000 approximately.
- 3.3.17 While it was originally intended that these monies would be recouped from DCS at least in one case, this has not happened. I asked the WIT Secretary/Financial Controller whether efforts had been made to recoup the amounts from the companies. He said that the matter had been raised on a number of occasions with the companies but that agreement could not be reached. DCS said the matter was never followed up by WIT. The current President of the Institute agreed that in most instances such salaries would be recouped.
- 3.3.18 I noted that in the proposals they put forward in July 2011 as part of the efforts to resolve the difficulties that had arisen under the Disbursement Agreement, DCS proposed that the DCS Chief Executive should in future be an employee of the company.

### **Transfer of Bank Franchise Money to DCS**

3.3.19 WIT went to tender on a number of occasions for the right to operate banking services on campus. This is discussed in more detail in Chapter 4.2. Concession fees received by WIT were transferred to the Development Committee/DCS as follows :

2009	€1,500,000
2010	€750,000
2011	€750,000
2012	€750,000 (regular payment)
2012	€3,290,000 (further payment being a frontloading of payments under an extended agreement with the bank)

3.3.20 These amounts were used to finance capital projects and ongoing research into smart card technology. The bulk of the funds received in the period 2009 to 2012 were used on the Carriganore Sports Complex (see Chapter 4.4 for more detailed discussion). WIT senior management became directly involved with the bank on the financing of this project after the decision to consolidate the DCS companies with WIT.

3.3.21 In his report of February 2012 on Matters Arising out of Education Audits, the Comptroller and Auditor General mentioned that some Institutes of Technology have transferred lump sum fee concessions to a subsidiary company or to a restricted reserve. In this instance the funds were transferred to a separate private company, albeit one linked to the Institute. Approval of the Governing Body was not sought in all instances for these transfers, specifically from 2007 onwards.

### **Support by WIT for DCS Borrowings**

3.3.22 When the financing arrangements for the construction of the Manor Village student accommodation were being put in place in 2001 the bank sought, as part of the security required for the financing, agreement from the Institute that the annual payment arrangements with the Development Committee/DCS could not

be rescinded (for the term of the proposed financing facilities) without the consent of the bank.

3.3.23 In November 2001, the then President of WIT issued three letters to the bank as follows:

- Letter 1 stated, inter alia, that the capitation monies received by the Institute are paid to DCS in accordance with the provisions of the capitation fee agreement approved by the Governing Body at its meeting dated 24 February 1998; and that the Institute will not alter any licence or capitation fee arrangements without the approval of the Governing Body and the consent of the bank.
- Letter 2 referred to the fact that DCS was, as part of the student accommodation proposal, incorporating a number of companies which were part of its structure and in respect of which DCS would be the ultimate parent; and that DCS would be guaranteeing the obligations of a separate company under a guarantee in favour of the bank. The letter stated that all existing agreements in relation to capitation fees and franchise agreements, which were previously made between the Governing Body and the Development Committee, have now been assigned to DCS.
- Letter 3 confirmed the assignment by the Development Committee of all its rights in relation to the sole franchise for all trading activities of a non-educational nature both on and off campus to DCS.

3.3.24 It was confirmed during the inspection that these letters were not submitted to the Governing Body for approval. I also understand that legal advice was not obtained at the time.

3.3.25 I enquired whether any consideration had been given as to whether the issue of these letters was consistent with the restrictions on the issue of “Letters of Comfort” contained in the Department of Finance Circular 4/84 and also referred to in the Public Financial Procedures. The main principle contained in the instructions in these procedures is that a letter which expressly, or by implication, gives a guarantee or undertaking not already authorised by legislation should not, in any circumstances, be issued. Prior approval of the Department of Finance is

required under the Circular in every case where the issue of a letter of comfort is proposed.

3.3.26 The WIT Secretary/Financial Controller told me that, while he had not a clear recollection, he may have seen a draft of one of the letters and inserted suggested manuscript changes on it. He said that he had not seen the final versions of the three letters; that he had not given any advice on the matter to the then President; and had not become aware of the letters as issued until 2010 after which he sent them for legal advice. He also commented that -

- It was not clear that Circular 4/84 was addressed to, or had application to, the Institute.
- The Circular did not define what was meant by “letters of comfort”.
- The three letters concerned did not purport to be a guarantee and the extent to which they contained an undertaking in the sense used in the Circular 4/84 would require further interpretation including possible legal interpretation.

3.3.27 I was not in a position to ask the former President about the issue of these letters and as to what advice he had received as Chief Officer of the Institute before providing them to the bank.

3.3.28 The former Chairman of the Governing Body, who did not take up office until February 2003, said that he had not previously seen the letters but had been aware of their existence. He viewed them as simply confirming to the bank that the long-standing arrangements for payment of student charges income to the Development Committee/DCS, under legally contracted arrangements that could be changed only by agreement, would continue.

3.3.29 While the letters may not constitute a guarantee, my understanding from the Department of Finance is that all letters of comfort related to borrowings require the prior approval of that Department. I am not, however, making a finding of non-compliance with the requirements of Circular 4/84, or of the Public Financial Procedures which refer to that Circular, because I have not been able to confirm that these requirements were brought to the attention of the Institute.



### **Funding Provided by DCS for a WIT project (Gallery restaurant)**

- 3.3.30 In one instance that came to attention during the inspection, there was strong evidence that DCS was effectively required to provide funding of €1.5 million in 2004 for completion of a WIT project.
- 3.3.31 This related to the construction of an extension to the Gallery restaurant at the Institute. It was a project which the Institute itself undertook. It was part-financed by funds obtained by WIT from the Department.
- 3.3.32 While the amount of money involved is small relative to other amounts covered in the report, the manner in which the Institute looked to DCS to provide the money gives another indication of the way in which WIT viewed the relationship. The money was never repaid by WIT.
- 3.3.33 This issue is discussed in more detail in Chapter 4.5.

### **Investments made by DCS for benefit of WIT**

- 3.3.34 Under the 1989 agreement establishing the Development Committee, the Committee undertook to operate on a non-profit making basis and to apply all its surplus income to the development of services to the college community.
- 3.3.35 DCS informed me that its investment in fixed and financial assets was largely financed by its accumulated surpluses. In the consolidated balance sheet as at 30 June 2012, the total net assets came to €22.8 million. A total of €6.3 million of DCS surpluses and monies obtained under the “Development Fund” heading of the Disbursement Agreement has gone towards the cost of the Carriganore Sports Complex. The financial position of the companies is discussed in greater detail in Chapter 5.
- 3.3.36 As noted earlier, there were no arrangements in WIT to check systematically that the use of DCS surplus funds was in accordance with the 1989 agreement establishing the original Development Committee. The Chairman of the WIT Audit Committee informed me that the Committee had no role in relation to DCS (see Chapter 3.4.14).
- 3.3.37 I noted from the minutes of the Governing Body meeting on 24 May 2011 that a DCS director indicated that the Institute ultimately owned all the assets developed by DCS. When I asked in the course of the inspection whether there was formal

documentation on ownership, DCS told me that it did not possess legal title to company assets as they are built on WIT property, with the exception of Manor Village and the associated shop and a small guesthouse for students. They said that on the winding down of the companies all assets would be distributed to a “like-minded” charity. This would require a decision by the members of the companies concerned.

## **3.4 Relationship with WIT Governing Body**

### **Overview**

- 3.4.1 Although the DCS companies operated as private companies, the special relationship with WIT was apparent not only in the WIT President's presence until 2011 on the boards of these companies, but also in the close connection between DCS and the WIT Governing Body. This reflected itself in an annual presentation by DCS – typically still labelled as the “Development Committee” even in very recent times – on the financial results for the previous year and the developments envisaged for the period ahead. The accounts were not approved by the Governing Body.
- 3.4.2 There were also presentations to the Governing Body, whether in conjunction with the annual results presentation or otherwise, on major development projects affecting the services provision to the campus. On occasion, DCS also made separate presentations to the Executive Board of the Institute.
- 3.4.3 As part of these presentations, the Governing Body was made aware of the surpluses generated by the DCS companies and the manner in which these funds were being used to finance development of campus facilities. It was also informed by the Development Committee/DCS representatives about the need for borrowings to support such projects, particularly in the case of significant infrastructural developments.
- 3.4.4 While in some instances (e.g. lease arrangements for Carriganore Sports Complex) the Governing Body made specific decisions to authorise the actions proposed, in most instances it gave a general welcome to the reports it was hearing and wished the DCS representatives continued success with their work.
- 3.4.5 It is clear from the papers I examined dating back to the early 1990s that, over the years and sometimes following change in the composition of the Governing Body, questions were raised about the precise relationship between the Development Committee, DCS and the Governing Body. Specific concerns were raised about disbursements from the Student Services Fund, the accounting treatment of the DCS activities and lack of transparency, and on the desirability of putting some of the services out to tender.

- 3.4.6 In the early stages, the serving WIT Director (President), in his capacity as Chair of the Development Committee, frequently led the response in answering questions raised about the Committee. The Director indicated in a 1994 discussion that the Development Committee was a commercial operation and had to be viewed on commercial principles. On another occasion in 1995, the then Director said he was in a compromised position having effectively two mandates and that the other two Directors of the Development Committee saw him as their protector.
- 3.4.7 The relationship merits more detailed description. This is done in Appendix 5 which provides a summary of a number of instances when the relationship was discussed at the Governing Body and also refers to correspondence in 2001 with the Minister for Education and Science about the matter. Appendix 5 should be read in conjunction with this Chapter.
- 3.4.8 In the balance of this Chapter I summarise views obtained in the course of the inspection on the governance relationship between WIT and the Development Committee/DCS.

### **Discussions with Students Union**

- 3.4.9 In the course of the inspection I held a meeting with representatives of the Students Union at the Institute.
- 3.4.10 They indicated that they were happy to be working with both the Governing Body and DCS in the interests of the students at the Institute. They had no major issues to raise with me about governance but said that there had been some delays this year and in 2012 in getting the monies from DCS that were allocated to them under the Disbursement Agreement. They also noted that they had requested on a number of occasions that DCS would attend recent meetings of the Governing Board but this has not happened.
- 3.4.11 As regards the quality and pricing of services provided to WIT students by the companies serving the campus, including the provision of food and accommodation, they told me that WIT compared very favourably with other institutions. They said they were able to assess the position at first hand from their frequent trips to other institutions around the country. They were high in their

praise for the student accommodation at Manor Village and the excellent security attaching to it.

3.4.12 The representatives attached major importance, both from the point of view of the students and the local community, as well as the reputation of the Institute, to early completion of the Carriganore Sports Complex.

3.4.13 In commenting on the draft report, DCS stated that they had disbursed the capitation money to recipients within five days of its receipt from WIT.

#### **Audit Committee**

3.4.14 It was noted by the Governing Body's Audit Committee on a number of occasions in 2011/12 after the difficulties with DCS had arisen, that its remit, as contained in its charter, did not extend to DCS and related companies. The Committee suggested at the same time that any identified risk in relation to these areas should be recognised in the Institute's Risk Register but this had not happened up to the time of the inspection, pending completion of a new Strategic Plan for the Institute on which a new Risk Register will be based.

3.4.15 I was surprised that over the years the Audit Committee did not seek more information on the relationship between WIT and DCS given the amounts of money being paid by the Institute to the company and its clear role in advising on the effectiveness of risk management. The Chairman of the Audit Committee made the following comments:

- the Committee's terms of reference were not construed by the Committee or WIT senior management as including the relationship between WIT and the DCS companies
- the Audit Committee's terms of reference did not include financial matters (the remit of the Finance Committee) which encouraged a belief that, while the Audit Committee was not looking at every risk in WIT, there was another committee charged with ascertaining financial risks
- the relationship with the DCS companies was never raised with the Audit Committee by internal or external auditors
- it was not until 8 March 2011 that the extent of the relationship between DCS and WIT came to be considered by the Audit Committee, when the 2010 financial statements for WIT were provided to the Committee.

### **Views of Academic Nominees to Governing Body**

- 3.4.16 In the course of the inspection I also had a meeting, at their request, with the academic staff nominees to the Governing Body.
- 3.4.17 Their comments on specific issues or projects are included as appropriate when dealing with those issues elsewhere in the report. They did, however, comment on the general question of governance in the Institute.
- 3.4.18 They said that their experience over the years was that it had been difficult at the Governing Body to get detailed information on the relationship with, and the activities of, the DCS and card technology companies. Their view was that there had been unequivocal support for DCS from the immediate former President and former Chairman of the Governing Body. The representatives also said that the reviews of the relationship with the Development Committee and DCS tended to be pro forma. They expressed concern too about the potential for conflicts of interest arising from the arrangements and stressed that it was essential that the Institute should have full control of the Institute's budget. They were in favour of consolidation of DCS activities with those of the Institute under new management and governance arrangements.
- 3.4.19 I put it to them that, as members of the Governing Body, the academic nominees could have pressed these matters if they had concerns over the years and indeed the records show that the academic nominees had raised various issues over several Governing Body terms. Their response was that over the years robust questioning or disagreement had not been encouraged at the Governing Body meetings and issues of concern had not been taken on board. They added that the concerns were being addressed in the current Governing Body.

### **Views of the former Chairman of the Governing Body**

- 3.4.20 I put these comments to the former Chairman of the Governing Body who served in that position, on the usual voluntary pro bono basis, from early 2003 to early 2011. He strongly rejected them. While noting that the role of Chairman in WIT was a non-executive one, he outlined his wide experience of effective corporate governance and the importance he attached to it. There were ample opportunities during his tenure for people to raise issues at the meetings themselves or en marge of those meetings. As far as he was concerned, the arrangements with the

Development Committee and DCS represented legal contractual arrangements which were operating effectively for the benefit of the Institute.

3.4.21 The former Chairman said that the improvements to the facilities at the Institute were critical to the efforts to promote the case for university status at the Institute by demonstrating that WIT could match the facilities at other third level institutions. He was very proud of what had been achieved during his period in office. In that sense he would not have seen a pressing need for more robust review or change because the arrangements, legally contracted between the parties, were working very well and on an arms length basis. He would have derived considerable reassurance from the fact that the then President of the Institute was chairing the Development Committee and its companies, thus ensuring that the Institute's interests were being safeguarded. Legal advice to WIT over the years had been to operate on an arms length basis and in that sense the question of consolidating DCS into WIT would not have been seen as desirable from a legal standpoint, not to mention the potential staffing and cost implications of doing so.

#### **Views of the current Chairman of the Governing Body and President**

3.4.22 Neither the current Chairman of the Governing Body nor the President of the Institute regarded the current arrangements involving the Development Committee and the relationship with DCS as satisfactory from a governance perspective. They pointed to the steps taken over the past two years during their respective terms of office to review the position and, following the Grant Thornton report, to achieve restructuring of the companies and consolidation with WIT. The President said he was rather frustrated that the initiatives they had taken had not already resulted in consolidation of the companies into WIT, for reasons outside their control including concerns about how borrowings by the companies were to be treated.

#### **Views of current Governing Body**

3.4.23 I received a letter on 21 March 2013 from the Chairman of the current Governing Body and the current President concerning matters I had raised with them at an earlier stage in the inspection process. The letter conveyed the views of members of the current Governing Body on a number of specific issues and I refer to their

specific comments in dealing with these issues in Chapter 4 of the report. More generally the letter made the following points:

- The current Governing Body was neither asked for, nor provided approval for, any activities undertaken by DCS.
- The Governing Body was always advised that the DCS companies were separate from WIT with their own management, governance and audit arrangements and, as such, WIT had no responsibility for any financial transactions undertaken by DCS.
- The current Governing Body remains committed to the completion of a consolidation process of DCS under new management and governance and to the regularisation of relationships between WIT and DCS.



### **3.5 Increased Tensions since 2010**

3.5.1 Three interlinked matters have caused significant tensions especially in the financial relations between WIT and DCS over the past two years: the amounts being given to DCS under the 1998 Disbursement Agreement; the question of the links between DCS and WIT and whether their accounts should be consolidated; and the major issue of the financing of the latest phase of the Carriganore Sports Complex project. This latter issue is discussed in detail in Chapter 4.4.

#### **Amounts of Disbursement to DCS**

3.5.2 DCS maintained during the inspection that, although the relationship between the Development Committee/DCS had operated smoothly for over twenty years, tensions emerged in 2010. They attributed this to DCS becoming aware in May 2010 that the amount being allocated to DCS out of student charges income was not in line with what was envisaged in the 1998 Disbursement Agreement. The reasons for this are outlined in Chapter 3.3. DCS told me that it had emerged that the reduction had been taking place systematically since 2003 and they said that this had not been discussed with them or approved by the Governing Body. The DCS representatives viewed this development very seriously, not least because of the assurances given to the bank by WIT about the continuation of the capitation arrangements which had underpinned DCS's financial transactions with the bank. They pointed out that, contrary to the undertakings given, the consent of the bank had not been obtained for any change to the arrangements. When I asked why they had not noticed the reductions sooner, they said they had taken the WIT figures on trust. The WIT Secretary/Financial Controller told me that DCS knew that the student charges were increasing and would have been aware that DCS would not be getting the increased amount.

3.5.3 At a meeting of the Development Committee on 18 November 2010, the Chairman (President of WIT) stated that he would give DCS a letter to confirm that the 1998 capitation agreement was still in place. A letter, in these terms, was subsequently provided by the then President of WIT for the purposes of the financing arrangements for the Carriganore Sports Complex.

### **Concerns over WIT – DCS Relationship**

- 3.5.4 On 28 May 2010 the Teachers Union of Ireland (TUI) Waterford Colleges Branch wrote to the Department of Education and Skills expressing concerns about the relationship between WIT and DCS in terms of transparency and accountability. This letter was apparently not received in the Department and was sent again on 15 September 2010. Following discussions with the Department, the HEA wrote to WIT on 10 January 2011 requesting a response on the issues raised. WIT responded on 13 January 2011 replying that the Development Committee (which defined its operational arm as DCS) was an autonomous unincorporated association which was legally separate from the Institute although linked to it. The letter confirmed that the Development Committee's (DCS's) financial statements are audited by independent auditors, reflecting the independence and autonomy of the Committee.
- 3.5.5 In February 2011, arising out of this response, the HEA wrote to WIT with detailed questions about the relationship between the companies and WIT, including issues concerning the companies' accounts, their borrowing, transfer of funds from WIT and reporting to the Governing Body. The HEA also had a meeting with WIT and DCS representatives at which they expressed concern that the current governance arrangements were inappropriate.

### **Establishment of Sub - Committee of Governing Body**

- 3.5.6 The directors of DCS outlined their concerns in relation to the Disbursement Agreement in detail to a meeting of the Governing Body on 24 May 2011. They indicated that total bank finance obtained over the years to finance capital infrastructure investment was €18 million and that all borrowings were based on the agreement relating to the transfer of student charges income being honoured. They suggested that the options for resolution of the problem were:
- full implementation of the 1998 Disbursement Agreement
  - an independent review or
  - the Institute to take control of the campus services companies (i.e. staff, borrowings, assets and liabilities).

The Governing Body agreed that a review of the arrangements would be carried out as a matter of urgency by a Sub-Committee of the Governing Body.

3.5.7 The Sub-Committee of the Governing Body begun its deliberations in June 2011 and undertook consultations with the various stakeholders. In a letter of 27 July 2011 to WIT, dealing with a number of matters, the HEA referred to the question of the consolidation of the accounts of the Development Committee and its companies with the accounts of WIT and related governance aspects, and noted the Acting President's commitment to ensuring the Institute meets best practice in this regard. Over succeeding months the HEA continued to liaise with WIT on the matter, sought progress reports and nominated an external representative to assist with the work of the Sub-Committee.

3.5.8 The HEA subsequently met with WIT in September 2011 and wrote to WIT in October 2011 expressing concern at the pace of events in addressing the issues raised.

#### **Unsuccessful Efforts to Resolve Matters**

3.5.9 In conjunction with the work of the Sub-Committee, proposals were put forward by both DCS and WIT to try to resolve matters by changing existing agreements.

3.5.10 The essential features of proposals for change made by DCS were as follows:

- in view of the financial constraints facing the Institute there was an opportunity for WIT to seek additional support from the campus companies, e.g. seeking to give these companies responsibility for some services currently carried out by the Institute itself
- some activities being undertaken by the campus companies did not need any support from student services funds
- on the other hand, student affairs services were not generating any revenue and were being subsidised heavily. It was proposed that a larger subvention of €1 million per annum should be paid by WIT to DCS to run these services
- WIT should pay a minimum amount of €1.6 million per annum towards the cost of ongoing capital development
- the boards of the campus companies should contain a number of non-executive directors and the confusion under current arrangements should be

dealt with by disbanding the Development Committee. There should also be a smaller number of companies

- the CEO of DCS should be an employee of DCS rather than of WIT so as to demonstrate independence
- arrangements to be made to ensure Development Committee trustees are not required to provide personal guarantees.

3.5.11 In its draft proposals, WIT stressed the need to recognise the very significant changes that had occurred since the Development Committee had been established. It indicated that to ensure the Institute meets its financial obligations it must have some discretion over the income from student charges. It proposed that a new disbursement agreement should reflect:

- the major reduction in the Institute's recurrent grant
- the reduction in building costs
- reduction in public sector pay costs
- necessity to address funding of replacement salary costs for trustees seconded to the Development Committee
- disbursements for students union and clubs and societies to be based on external third level benchmarks
- arrangements to be made to ensure Development Committee trustees are not required to provide personal guarantees. I understand that no such guarantees are now in existence.

3.5.12 These proposals from DCS and WIT did not secure agreement.

### **Preparation for the Grant Thornton Review**

3.5.13 In the latter part of 2011, the Sub-Committee of the Governing Body brought in an external facilitator to assist in diagnosing the issues and to help frame terms of reference for a formal review. The HEA was kept informed both directly and through their representative working with the Sub-Committee and was consulted on the draft terms of reference. The HEA and the newly appointed President of WIT met in mid-February 2012 and discussed the need for early progress. Following a procurement process the accountancy and consultancy firm, Grant Thornton, was engaged in April 2012 to carry out the formal review.

## **Grant Thornton Report**

- 3.5.14 The Grant Thornton report was presented to the WIT Governing Body on 14 June 2012. The report detailed the WIT Development Committee, its activities, financial controls and governance structures since its establishment.
- 3.5.15 The report recommended, as the preferred option, to revise the structure of the Development Committee and the campus services companies, making them subsidiary companies of WIT under new management arrangements. It stated that on the basis of its consultations, and the review of all documentation received, the recommended option most adequately meets the needs of all parties with a vested interest in the future development of the Institute, including WIT, Development Committee/Campus Services, HEA and external financial providers and was best suited to the future development of WIT.
- 3.5.16 At its meeting on 14 June 2012, the Governing Body approved the Grant Thornton proposals (the nominee members of the Students Union abstained, advocating maintenance of the existing structures). The Governing Body put in train arrangements to be led by a designated official for implementation as soon as possible. Grant Thornton and the WIT legal advisers were to assist with the process. The HEA wrote to WIT on 14 June 2012 stressing the need to bring matters to a full and comprehensive conclusion without any further delay.
- 3.5.17 It became clear at this time that as the consolidation process was now underway further borrowing should not be undertaken by DCS. This was the view of WIT and the HEA, who also confirmed to WIT that it should not issue any letter of comfort to support additional borrowing. This caused major concerns in relation to the financing of the next phase of the Carriganore development in respect of which a financing facility had already been arranged by DCS with its bank, subject to satisfying the conditions precedent to drawdown of funds including the provision of letters by WIT in support. Alternative sources of funding, including possible access to sinking fund monies for the student accommodation scheme (later ruled out on legal grounds) had to be examined as a matter of urgency at the request of the HEA. WIT, as well as DCS, was actively involved in the subsequent discussions with the bank.

3.5.18 In a letter of 12 July 2012 to WIT, the HEA expressed concerns in relation to matters disclosed in the Grant Thornton report, especially as regards the liabilities of the DCS companies. The position was subsequently discussed at a meeting later that month between the HEA and WIT. The latter provided further information on 30 July 2012 and suggested that the date for achieving consolidation might be extended.

### **Consolidation Process**

3.5.19 On 21 June 2012 the WIT transition manager leading the consolidation process wrote to DCS Directors indicating the initial steps that needed to be taken. These included the appointment of three nominees (names to be supplied) of the Institute as directors of DCS companies, as well as the appointment of the Institute and six of its nominees as members of the companies in place of the existing members. The letter added that when the process had commenced the Institute would be in a better position to put in place a solution to overcome the funding difficulties, particularly those associated with the Carriganore development.

3.5.20 On 27 June 2012 the legal advisers to DCS wrote to WIT to confirm the cooperation of DCS with the consolidation but requiring that details of the process and details of how the liabilities of the existing directors would be discharged be set out in writing.

3.5.21 In July 2012 the President of WIT wrote to all WIT staff and DCS employees informing them of the proposed restructuring/consolidation, the process for which had commenced. He acknowledged the contribution which DCS and its staff had made to date in providing student services across a range of activities. He informed DCS staff about briefing arrangements that had been made, promising comprehensive communication. The WIT President and the CEO of DCS later jointly briefed DCS staff.

3.5.22 A joint meeting between WIT nominees and the DCS directors – which appeared at the time to be a first formal meeting of the new board of directors - took place on 16 July 2012. In early November 2012 disagreement emerged as to the status of that meeting. WIT said that it had been an information meeting and that the nominated persons could not yet act as directors of DCS, while DCS took the view that the July meeting was the first meeting of the restructured board.

- 3.5.23 On 7 November 2012 the President of WIT again wrote to the HEA seeking agreement to proceed with consolidation based on the legal advice obtained by WIT about borrowings and which had been sent on to the HEA. My understanding from the HEA in the course of the inspection is that they had concerns about the borrowing implications for WIT of proceeding with consolidation of some of the companies and required a better understanding of these implications. I understand that the Department of Education and Skills, who had discussions with both the HEA and WIT in October 2012, shared those concerns.
- 3.5.24 DCS intimated to me that they were informed by WIT at a meeting on 7 November 2012 that the consolidation process could not proceed.
- 3.5.25 On 13 November 2012 the Minister for Education and Skills announced that the inspection was to be undertaken.
- 3.5.26 There has been disagreement between WIT and DCS about who is in control of the DCS companies and communications between them became quite strained. While DCS maintained that WIT was in effective control of the companies, WIT in response outlined the formalities necessary for integrating the companies with WIT, as outlined to them by their legal advisers, which had not been completed. I understand, however, that all parties now agree that the original DCS Board is still in place.
- 3.5.27 In comments made to me, the current President stressed that in the course of 2012 the Institute was taking all the steps necessary to achieve the desired consolidation. He expressed some frustration at what had transpired in the period up to the announcement of the inspection.

## **Chapter 4: Relationship between WIT and Companies on Specific Issues**

### **4.1 Introduction**

4.1.1 I considered it necessary in this chapter, within my terms of reference, to explore the relationship between WIT and DCS in more concrete terms in relation to a number of significant issues with financial implications, so as to give a better insight into how the relationship worked in practice. These issues are:

- Receipts from franchise agreements with the Institute's bank
- Manor Village student accommodation
- Carriganore Sports Complex
- Gallery restaurant
- Card technology companies
- European Education Connectivity Solutions (EECS) project

### **4.2 Franchise Agreement with Bank**

4.2.1 The bank concerned has had a franchise agreement with WIT since 1994 for the provision of banking services at the campus. WIT has received considerable franchise fees from the bank over the years, and the majority have been transferred to DCS for the provision of student services or capital projects.

#### **1994 Agreement**

4.2.2 The bank was selected to provide banking services to the Institute (then the Waterford Regional Technical College) for a ten-year period beginning in 1995 as a result of a tender competition in 1994. As part of its tender offer, the bank made a donation of IR£175,000 towards the cost of building projects. This was in lieu of rent for the period. Acceptance of the offer was approved at the meeting of the Governing Body on 6 December 1994. This money was passed to the Development Committee. The money was used for the construction of accommodation (still in use) for student services.



4.2.3 On 30 April 1999 the Governing Body approved a two-year extension to the franchise on the basis of a once-off corporate donation to the Institute of IR£500,000, which involved the bank becoming a partner in the implementation of the smart card system in the Institute. This followed a visit to the USA earlier that month by a former Director of WIT, the current CEO of DCS and the current WIT Secretary/Financial Controller, to evaluate use of smart card technology in four US universities. The money was earmarked and used by WIT for the purchase of hardware and software and for development of infrastructure to enable the establishment of smart card facilities in WIT.

### **2007 Agreement**

4.2.4 The same bank was successful again in a tender competition undertaken in 2007 for the provision of on-campus banking facilities and banking services for WIT. The bank undertook to pay a concession fee of €8.5 million for a multi-year agreement commencing in November 2007. The response from the bank to the tender indicated that the bank would agree with WIT a detailed allocation of the monies but envisaged that the monies would represent an:

- annual concession fee for banking services
- annual concession fee for on-campus banking facility
- annual rent for on-campus office facilities
- annual rent for on-campus ATM space
- annual contribution to continued research and development of card and related technology
- annual contribution to the continued development of superior student/campus services.

There was no record in WIT that acceptance of the offer was submitted to the Governing Body for approval or that any further detailed allocation of the monies had been agreed with the bank.

4.2.5 Under a sponsorship agreement which formed part of the arrangements, an amount of €100,000 each year out of the total of €850,000 is retained by WIT and is devoted to the funding of a Business and Finance Centre in the School of Business at WIT, including the support of research students.

- 4.2.6 The balance of the receipts - €750,000 - has been paid to DCS by WIT each year. DCS told me that agreement to transfer this amount to them followed a number of meetings between them and the WIT Secretary/Financial Controller. They provided me with a table dated 6 April 2009 which listed amounts they said were agreed for transfer each year to DCS for the purposes of the Carriganore Sports Complex, a student centre (which did not proceed) and card technology research. The table was signed by the then directors and general manager of DCS and by the then President of WIT; the table did not indicate whether the latter was signing in his capacity as a director of DCS or as President of the Institute. DCS representatives also pointed out that the bank contribution and bank funding/loans were mentioned in presentations made by them to the Executive Board of WIT and Governing Body, respectively, in 2009 and 2010 in discussing the financing of the Carriganore project.
- 4.2.7 When I showed this table to the WIT Secretary/Financial Controller he informed me that he had never seen it previously. Both the current Chairman and current President of WIT also indicated to me that they had not seen it previously.
- 4.2.8 In the period 2007 to 2012 a total amount of € 3,750,000 was transferred by WIT to DCS under this agreement. In requesting transfers from WIT in 2009 and 2010 the WIT President, writing in his capacity as Chairman of the Development Committee, requested the WIT Secretary/Financial Controller to transfer the first three tranches of €750,000 each. The letters to the WIT Secretary/Financial Controller requested the transfers “In line with previous practice, in accordance with (name of bank) recommendations, communicated during the tendering process, and subsequent correspondence to me,....”. No such correspondence could be located for me in the course of the inspection. The Secretary/Financial Controller said that he had complied with the directions to transfer the funds. I noted also that in correspondence with DCS on cash flow projections on 19 July 2011, the Secretary/Financial Controller queried that DCS were assuming the ongoing transfer of bank franchise monies to them and said that “I am at a complete loss to know how this could have happened since the Institute went to tender for the provision of banking services completely independent of Campus Services/ Development Committee”.

- 4.2.9 Of the amount received by it in the period to 2012, DCS spent €3,250,000 of bank franchise income on the Carriganore Sports Complex project.
- 4.2.10 In July, 2012, when the financing of the Carriganore project had become more problematical, and following direct discussions with the bank involving the current Chairman and President and the Secretary/Financial Controller of WIT, the bank agreed to frontload the remaining payments under the existing franchise agreement. It was also agreed in July 2012 that the new lease would be from 1 October 2012 to 1 January 2019.
- 4.2.11 The old lease had been due to run until November 2017, so the new agreement represented an effective extension of the agreement by just over a year. In return, the bank was to make a single payment of €3,290,000 to WIT. This money was paid by the bank to WIT in August 2012 and has since been transferred to DCS towards the financing of the Carriganore project. While I did not locate any reference to discussion of these most recent arrangements in the minutes of Governing Body meetings I was assured by the Chairman and President that the Governing Body was informed of them and this has been confirmed in a subsequent letter from them on behalf of the Governing Body. The letter indicates that early release of the bank franchise monies was considered the best option for the financing of the project in the circumstances that arose in 2012.

## **4.3 Manor Village**

### **Introduction**

- 4.3.1 Manor Village provides accommodation for students at WIT. The accommodation was built in 2002 under a tax-based scheme involving a bank and external investors. Letters were provided by the then President of WIT to the bank in support of borrowings by DCS as part of the financial arrangements for the scheme. The accommodation is built on land, outside the WIT campus, which was purchased by DCS and is not owned by the Institute. A number of special purpose companies were originally set up to undertake the project. The project is now run by one of the DCS companies, WIT Campus Accommodation Limited. A separate company, College Residences Ltd., runs separate accommodation that was built earlier.
- 4.3.2 DCS, under the scheme, may purchase the accommodation from the investors within a month following the “termination” date of 31 August 2013, under a “call” option, for a price of €15 million. They can also be obliged to make the purchase under a “put” option which vests in the investors and which can be exercised by them within two months of the August date.
- 4.3.3 This is an important investment and the impending termination date has significant financial implications for both DCS and WIT. There are currently no borrowings outstanding for DCS in relation to this project.

### **Background**

- 4.3.4 The genesis of the project goes back to 1999/2000 when there was a shortage of suitable student accommodation in Waterford. The DCS representatives told me that the initial concept was discussed in November/December 1999 between a local developer, the then Director (President) of WIT (Chairman of the Development Committee) and themselves. Following further design and costing work the matter was considered at the meeting of the Development Committee on 15 November 2000. The proposal was to build accommodation for 400 students at a cost in the region of IR£ 17 million.
- 4.3.5 The Governing Body was informed of the proposal at its meeting on 5 December 2000. A number of concerns were raised including the cost and borrowing

implications, ownership of the property by the Development Committee, and the fact that the property would be off-campus. The then Chairman of the Governing Body welcomed the initiative and believed that, in the light of the demographic changes envisaged over the next ten years, having such a facility on its doorstep would greatly enhance the Institute's ability to attract students. At the January 2001 meeting the Governing Body approved a continuation of negotiations.

4.3.6 A detailed presentation was made to the WIT Executive Board on 14 November 2001 which included details of funding and of the security requirements by the bank. The arrangements included an undertaking from WIT to pay over capitation fees to the Development Committee or its successor. It was agreed that the risks would be assessed further and the approval of the Governing Body obtained. I have not received any subsequent documentation containing such an assessment of the risks and I understand from the Secretary/Financial Controller that initial concerns were eased by the provisions requiring payments to a sinking fund to help in the ultimate purchase of the property. The Governing Body noted at its meeting on 20 November 2001 that the contract would be signed in the next two weeks.

4.3.7 The construction of the accommodation was completed in 2002 and occupation by students commenced in September 2002. In their annual presentation to the Governing Body on 9 December 2003 the Development Committee/DCS representatives said that Manor Village was open and fully operational.

### **The Scheme Financing**

4.3.8 A group of investors were assembled to participate in the scheme and the bank itself provided the loan finance. The value of the tax advantages deriving from the scheme – which was based on Section 50 of the Finance Act 1999 – was shared equally between DCS and the investors. This was in line with the practice in other such schemes for the provision of student accommodation. As was required under the scheme, WIT issued preliminary certification to the developer for the project on 13 March 2001.

4.3.9 The documentation relating to the scheme was originally executed in July 2002 but was amended and restated in September 2003 following changes made to the relevant tax legislation.

4.3.10 During the construction phase the cost was met mainly through loan finance from the bank borrowed by DCS. On completion, the ownership of the building was acquired by the investors who took on the loan finance from the bank in the form of a term loan. The net effect of the financing arrangements was that the cost of the building, at €19.48 million, was funded by the investors' contribution of €4.48 million and bank lending of €15 million approximately. In addition, the site for the building was purchased by DCS from own resources and the company was also required to lodge €2.5 million in the bank, to which the investors had access in certain circumstances. It was also required to make quarterly payments to a sinking fund over which the investors, and in turn the bank, had a charge. It appears that additional amounts, over and above the stipulated payments, have been accumulated in the sinking fund and are now available towards the purchase of the building.

#### **Letters of Assurance for Bank**

4.3.11 On 23 November 2001 the then President of WIT issued three letters to the bank in connection with the Manor Village scheme. The contents of these letters are outlined in Chapter 3.3.

4.3.12 Some aspects of the security arrangements for the borrowings were changed when the transaction was restructured in 2003 but I am informed by DCS that the assurances in the letters continued to apply.

#### **Put and Call Options**

4.3.13 Under the terms of the agreement as restated in 2003 there is a put and call option agreement.

4.3.14 DCS has a call option to buy the building at a price of €14,931,000. DCS may exercise this option in the period of one month after the tenth anniversary of the first drawdown of funds by the investors under the relevant lending facility. DCS has informed me that the date of first drawdown is 31 August 2013, so that its option must be exercised before end-September 2013.

4.3.15 For their part, the investors have a put option to require DCS to acquire the investors' interest in the property for the same price. They can exercise this option within the period of two months after the tenth anniversary of the first drawdown

i.e. by end- October 2013. Given their need to exit the arrangement and repay their loan finance to the bank it seems highly likely that, in the event of the call option not being exercised, the investors would exercise the put option.

### **Current Trading position**

- 4.3.16 At present the student accommodation is generating rental income of approximately €1,600,000 per annum. Rent paid over to the investors in accordance with the agreements is just short of €800,000 per annum. After allowing for expenses, Campus Accommodation Limited is generating an annual profit of the order of €200,000 in the 2011 and draft 2012 accounts, which is remitted to DCS. DCS is responsible for making the payments into the sinking fund from its surpluses.
- 4.3.17 Following my discussions with DCS about the cash flow figures and financing projections for the project they provided me with a recent review, prepared by Mazars in the course of the inspection, of the current trading position of Manor Village and the viability of the DCS plan to purchase the building later this year under the arrangement outlined above.
- 4.3.18 The Mazars review refers to the balance of over €4.5 million in the sinking fund built up by the company and which would be available in due course to meet part of the purchase cost. In addition, there is an amount of €2.5 million in a separate savings account which is currently held as security for the investors. The Mazars review states that the DCS management expect that the total amount that will be available to them from these two sources will be approximately €8 million by August 2013 but I understand that this figure is now likely to be €7.75 million. This would leave a balance of the order of €7 million to be raised to complete the purchase of the building. With purchase, the full rental income would accrue to the DCS company under existing structures.
- 4.3.19 The Mazars review concludes that Campus Accommodation Limited has demonstrated that it is a self-financing entity. Based on interest rate assumptions, the review shows that the company could meet the repayments on a loan of €7.25 million over a 10/15 year period to finance the purchase from the investors. The position on borrowing will need to be reviewed in the light of the decisions to be made following this report.

4.3.20 DCS indicated that they had an agreement with the bank, as part of the Manor Village financing arrangements concluded in 2003, for the bank to provide a term loan to finance the exercise of the call option. Further discussions will no doubt be needed with the bank in the light of recent developments and decisions to be made following this inspection.

#### **Possible Sale of Manor Village**

4.3.21 In the course of the inspection discussions I raised the possibility that, in conjunction with the exercise of its call option, DCS could dispose of the Manor Village asset so as to realise value from the asset and reduce its borrowings.

4.3.22 A number of different views were expressed to me. Some considered that disposal was a real option and I understand that WIT has been made aware of interested parties. Others felt that it would not make commercial sense to dispose of such a valuable and bankable asset that has done so well from its direct association with WIT/DCS. There was also the view that it might be difficult to attract new investors to purchase the Manor Village complex, in the present economic climate, especially as breaking the direct link with WIT/ DCS might lessen the attractiveness of Manor Village to WIT students.



## **4.4 Carriganore Sports Complex Project**

### **Introduction**

- 4.4.1 Since 2007, DCS has been undertaking a phased development of a sports complex on WIT-owned land at Carriganore. The first phase of the development was officially opened in February 2010.
- 4.4.2 It is quite clear that this development, which has involved expenditure of over €16 million to date, has been undertaken over the years with the prior knowledge and support of the Governing Body of WIT. The current Governing Body is strongly in favour of the development. Financing arrangements became problematical in 2011/12.

### **Background**

- 4.4.3 Arrangements were made by the Institute in 1998 for the purchase of land at Carriganore to facilitate future expansion. The Governing Body was informed of this decision on 27 June 1998. The then Chairman indicated that the funding for the acquisition was being provided by the Department of Education and Science. Sports development was not specifically mentioned at the time.
- 4.4.4 The Department approved the development of a West Campus for the Institute on 3 December 1998 through the acquisition of 170 acres of lands at Carriganore to facilitate the expansion of WIT. This was subject to WIT undertaking a feasibility study to ascertain the most appropriate section of the site totalling 50 acres which would be retained by WIT, and the disposal of the remainder of the site.
- 4.4.5 In its annual presentation to WIT Governing Body on 5 December 2000, the Development Committee outlined the case for development of sports/playing facilities. In the presentations to the Governing Body in the period 2004 to 2006 the development of the Carriganore Sports Complex was mentioned each year under the heading “Planned and in progress”.
- 4.4.6 In updating the Governing Body on 19 June 2007 the representative of the Development Committee said that the Institute had been unable to progress the sports facilities initiative due to lack of funds; that the Development Committee,

on the other hand, having regard to its mandate to provide student services was much better positioned to do so; and that to enable it to obtain the necessary funding from its bankers it required a lease from the Institute to transfer the land for a period of seven years after which the enhanced development would revert to the Institute. He added that the borrowings would be cleared over a number of years through student capitation and income from trading units. The then Chairman mentioned that he had received an email prior to the meeting from a WIT officer dealing with capital projects expressing some reservations in relation to the proposed lease arrangement. The then Chairman, while fully supporting the initiative, proposed that the Director and Secretary engage with the officer concerned and report back to the next meeting. Agreement in principle to enter a lease arrangement was approved by the Governing Body.

- 4.4.7 A further update was given by the Development Committee representatives at the meeting of the Governing Body on 30 October 2007. They advised that a contractor had been appointed (by competitive process) to develop three football pitches and one all-weather pitch with excellent progress made; the next phase would include the provision of floodlights as well as the provision of temporary dressing rooms. They said that the potential for a state-of-the-art sports stadium was at an early stage of discussion with would-be investors and sought approval to progress discussions with potential partners in the venture. Approval in principle was given subject to a more detailed report being given to the Governing Body within the next three months. The Chairman and Director thanked the Development Committee representatives for the “outstanding progress made to date”.

### **Indicative Costings**

- 4.4.8 A more detailed presentation was made to the Governing Body meeting on 1 April 2008 which included indicative costings for each of the phases of the project. The figures at the time represented a total indicative cost of € 25.28 million.
- 4.4.9 At its meeting on 9 December 2008 the Governing Body were informed that to enable the Development Committee to negotiate additional borrowings from its bankers it would be required to provide security by extending the existing lease agreement with the Institute. The Governing Body noted the need for a long term lease, over twenty years. Agreement in principle to extend the lease was given by

the Governing Body following further discussion at its meeting on 20 January 2009. The lease as executed was subsequently assigned by Carraiganore Developments Limited, which had been incorporated in 2006 to undertake the project, to DCS under a licence to assign which was signed by the former President of the Institute. Carraiganore Developments Limited became a management company for the sports facility.

4.4.10 In a presentation in February 2010, the Governing Body was informed that Phases 1 and 2 of the Carriganore project had been completed. The Development Committee representatives noted that work was scheduled to commence in October 2010 on a multi - purpose sports arena at a capital cost of €6 to €8 million (to include examination centre, conference facilities, regional conference centre and concert hall). There was also to be a Student Centre development but this did not proceed. The representatives advised of the funding mechanism to support construction of the capital projects including funding from the student service charge, bank funding/loans, together with a proposed student levy (which did not proceed); and that the GAA had committed to an investment of €1 million to support the development of the all – weather pitch.

4.4.11 I asked both WIT and DCS for a copy of the original business case for the Carriganore development but none was available. I understand from DCS that a detailed business case was not prepared for the initial phases of the development because these phases related to essential infrastructure needed for the students of the Institute and not a commercial development. In extensive comments supporting the Carriganore development in a letter to me on 21 March 2013, members of the current Governing Body indicated that they believed it would be unreasonable to propose that the development of Carriganore should be based on a business plan that would depend on the generation of external income. They added that they understood that developments similar to Carriganore at other higher education institutions were developed as a result of a defined student need as opposed to being based on a financial model relying on external investments.

### **Total Cost and Funding**

4.4.12 The total expenditure on the sports facilities to date is of the order of €16 million. The first two phases (pitches and changing rooms) cost a total of €8.425 million.

The contract for the completion of the third (sports complex) phase was for €9.7 million. Total expenditure to date on the latest phase is €7.7 million.

4.4.13 Expenditure on the overall project has been financed as follows:

GAA Grant	€1,000,000
EIB Loan	€2,000,000
Bank Annual Franchise payments received from WIT 2008- 2012	€3,250,000
Bank Frontload of future franchise payments via WIT	€3,290,000
Surplus from DCS Trading Units/ Development Fund (financed from receipts from student charges)	€6,304,737
WIT	€318,530
<b>Total</b>	<b>€16,163,267</b>

4.4.14 It had been envisaged that the bulk of the finance for the current phase of the development, involving completion of the sports hall complex, would be raised by borrowings with the balance coming from DCS resources. A loan facility was in fact arranged by DCS with the bank in November 2011 in the amount of €7,500,000. Prior to seeking that facility DCS had sought assurances from WIT management in November 2010 that, as part of the security for the loan, a letter would be provided by WIT on the lines of the letters of assurance given in 2001 (in connection with the Manor Village development), confirming that the agreement with WIT for disbursement of student capitation funds to DCS was still in place. An assurance that the Disbursement Agreement would continue in place for the duration of the proposed borrowings for the next phase of Carriganore was given by the then WIT President in a letter dated 18 November 2010 to the CEO of DCS. The letter said that this development work had previously been approved by the Governing Body.

### **Developments from 2012**

4.4.15 When delivery of a more formal letter of assurance was sought by DCS at the request of the bank in May 2012, the position was more difficult. At that stage efforts were well under way to alter the relationship between WIT and the Development Committee to meet concerns raised by the HEA and, in particular, to

consolidate the accounts of DCS with those of WIT. The Governing Body was informed of the position at its meeting on 29 May 2012. In June 2012 the current President of WIT informed DCS that the Governing Body was unlikely to be in a position to provide a letter of comfort similar to that given in the past. It is understood that the HEA had indicated to the President that a letter of comfort could not be provided and that WIT and DCS needed to resolve the financing problem from within their own resources i.e. without recourse to borrowing.

- 4.4.16 In the absence of further borrowing, discussions took place between WIT senior management (including the current Chairman of the Governing Body, the current President and the Secretary/Financial Controller) and the bank on possible alternative non - loan funding to bring the building to a safe and weathered condition, with a view to its completion over a longer period. In a progress report to the HEA on 9 July 2012, WIT indicated that bank franchise funding had been identified as an alternative to partially fund the project and that the Institute had initiated negotiations with the bank to release this funding. The bank frontload payment of €3,290,000 referred to in the table in paragraph 4.4.13 above was secured in these negotiations, bringing to €6,540,000 the total amount of bank franchise monies devoted to the Carriganore sports facilities project.
- 4.4.17 It should be noted that in other Institutes of Technology it is not unusual for bank franchise monies to be received in a lump sum or to be transferred to a subsidiary company or a restricted reserve, rather than treating the income as revenue funds. The WIT Bank Franchise arrangements are considered in more detail in Chapter 3.3.

### **Shortfall in Funding**

- 4.4.18 Even with the bank franchise monies, there was still a shortfall in funding to complete the project. At the request of the HEA the Institute had sought clarification on whether sinking fund monies earmarked for the purchase of Manor Village from investors could be used for Carriganore. This did not prove legally feasible.
- 4.4.19 The Chairman and President wrote to the building contractor on 26 October 2012. They indicated that an earlier letter of 12 September 2012 - noting that €9.029 million of funding had been earmarked for the project - was now withdrawn as

consolidation of the companies has not occurred and further funding was not available; and that the amount available up to end 2012 was €7 million. In November DCS presented a proposal to complete the project by borrowing, based on altering existing borrowing arrangements, but this did not proceed.

4.4.20 The financing of the balance of the third phase contract continued to be an issue while the inspection was proceeding, with correspondence and discussion between the HEA and WIT and the Department. I understand that, in the event, when no alternative sources of funding were available, it was agreed to pause the work under procedures provided for in the contract. The building has been brought to a safe and weathered state and its completion has been deferred. WIT provided an amount of €318,530 for the project arising out of these arrangements.

4.4.21 In addition, WIT informed me that the Institute itself has spent a total of €1.5 million on infrastructure works (e.g. road works and lighting) at Carriganore and that, as well as the sports facilities, these works service two other buildings used for research and innovation.

#### **Relationship with GAA**

4.4.22 WIT clubs have first priority for the use of the Carriganore facilities with the GAA next in line. The latter pays agreed commercial fees for all bookings (an amount of €10,500 in 2011/12). The partnership company formed between DCS and the GAA – Carriganore Developments Ltd. – has entered into a service level agreement with DCS for the management and day-to-day operation of the sports facilities.

4.4.23 On 10 December 2010 DCS wrote a letter To Whom It May Concern indicating that a twelve and a half acre site had been designated as a potential stadium site for Waterford GAA. It said that this followed recent discussions between the then Director (President) of WIT and the President of the GAA. The letter indicated that it had been agreed in these discussions that the Institute and the GAA should initiate a plan to progress this development to the next stage in the early parts of 2010. Based on my examination of papers and on discussions, it appeared that this matter did not come before the Governing Body.

## **Timing of Sports Complex Project**

- 4.4.24 The former Chairman of the Governing Body commented that it was his understanding that the latest phase of the project could have been finalised in time and on or under budget if the process that had worked so well for some 23 years had not been interrupted.
- 4.4.25 I asked the current Chairman of the Governing Body whether, in view of the current economic and financial climate, any consideration had been given in the course of 2011 to deferring or cancelling the latest phase of the project given its heavy financial commitments and reliance on funding (whether DCS surpluses or bank franchise monies payable to WIT) that would otherwise have been available to meet other priorities at the Institute.
- 4.4.26 He said that the question of deferring had not been considered, perhaps partly because the project was seen as being handled by a separate entity, DCS, and possibly also because the project was viewed as strategically so important not only to the Institute but also to the region.
- 4.4.27 The current President expressed surprise that the building programme for the latest phase had commenced without all the funding being secured and given the concerns that were being raised by the HEA in regard to the relationship between WIT and DCS. He also noted that when the financing difficulties emerged, the project had already commenced and WIT was of the view that it could not be left in a mid-construction condition and needed to be brought to a sealed and secure state.
- 4.4.28 Finally, in a letter sent to me on 21 March 2013 conveying views of members of the current Governing Body, the Chairman and the President indicated that the facilities currently under development at Carriganore, namely the indoor hall, gym and meeting rooms, have a dual purpose to support not only sport and recreation activities but also mainstream educational activities, including examination and graduation functions and teaching activities relevant to the School of Health Sciences.
- 4.4.29 It should be noted also that other third level institutions have undertaken major acquisition or development of sports facilities in recent years.

## **4.5 Gallery Restaurant**

### **Introduction**

- 4.5.1 In March 2002, the then WIT Director/President submitted an application for funding for expansion of student restaurant facilities at the Institute to the Department of Education and Science. The estimated cost of the project was €3,200,000. A detailed brief and cost report followed in May 2002.
- 4.5.2 Following the provision of further information by WIT the Department accepted the cost estimate for the project and indicated to WIT that the contribution from the Department would not exceed €1.6 million.
- 4.5.3 I noted from the minutes of a Development Committee meeting on 12 February 2003 that there was discussion on the proposed new student canteen, and it was recorded that the funding being made available by the Department for the canteen of €1.6 million needed to be “matched by the Institute (comprising of €800,000 investment by the Institute and the same amount from the DC)”. The minutes also noted that the Development Committee would probably need to divest itself of Roncalli House (which provided accommodation for students) to raise the funds needed. At a previous meeting in December 2002 the Chair of the Development Committee said that the new canteen would need support and planning from the Committee.

### **Further Details**

- 4.5.4 DCS provided me with a detailed account of their involvement with the financing of this project as they saw it. They told me that all elements of the project including the funding arrangements were handled by WIT. They said that they were invited to attend a meeting of the WIT Planning Coordinating Group (a Sub – Committee of the Executive Board of the Institute) on 21 April 2004, to discuss the shortfall of funding to complete the project. At that meeting, they claimed, the Development Committee was asked formally for the first time to make a funding contribution to the project: initially €0.5 million had been proposed but subsequently an amount of €1.5 million was requested. The DCS representatives added that they had stated at the meeting that bank borrowing would be required to meet the funding and were informed that any funding from the Development



Committee would only be required on a short term basis and would be repaid from the imminent sale of an Institute building.

- 4.5.5 The minutes of the relevant meeting of the Planning Coordinating Group simply say that a further meeting would be arranged to look at the issues surrounding the balance of funding for the restaurant project. The minutes of the subsequent meeting of the Group noted that the balance of funding had been put in place.
- 4.5.6 There was no indication in the Department of Education file that WIT informed the Department of borrowed funds being involved nor of a role for DCS. The indications from the then WIT President were that the non – Exchequer 50 % of the cost was to come from the Institute’s “private sources”.

### **Bank Loan**

- 4.5.7 The DCS representatives informed me that loan approval for an amount of €1.5 million had been obtained from their bank in May 2004 and the funds paid over to WIT as reflected in the DCS 2004 accounts. The money was never repaid by WIT.
- 4.5.8 The records of this transaction made available to me by WIT in the course of the inspection were less complete than those provided by DCS. While the Governing Body was regularly briefed on building projects generally I could find no specific reference to this transaction in the minutes of Governing Body meetings during this period.
- 4.5.9 When asked about the financing of this transaction in the course of the inspection the WIT Secretary/Financial Controller indicated that it was always his understanding that the then President of the Development Committee (President of the Institute) had agreed that the balance of the funding – after the 50% State contribution – would come from the Development Committee, since the Institute was not in a position to provide funding and, as a student canteen, the Development Committee would be managing the facility. He said that while members of the Development Committee were part of a task force established to determine the scope and other details of the project, there were differences of opinion as to the extent to which they should be involved.
- 4.5.10 The recollection of the Secretary/Financial Controller was that, after the meeting of the Planning Coordinating Group in April 2004, a separate meeting was held

with representatives of the Development Committee and that it had become clear that the latter had not been aware of the expectation that the Development Committee would part fund the project. The Development Committee was asked to finance the remainder of the project, which was a project coming within its mandate, but he commented that it was a matter for the Development Committee as to how that should be done.

- 4.5.11 The current Governing Body has indicated that it was not aware of the involvement of DCS in the Gallery restaurant project in 2004.

## **4.6 Card Technology Companies**

### **Introduction**

- 4.6.1 In outlining the financial links between WIT and DCS it is necessary to discuss also the position of the two private card technology companies now owned by the WIT employee directors of DCS and its general manager. These are OneCard Solutions Limited (OCS), also known as OneCard Total Solutions, and One CS Investments Limited (OCSI).
- 4.6.2 It has proved quite time-consuming to obtain the information summarised below which sets out the position as best as I could establish it from the people concerned in both WIT and DCS.

### **Background**

- 4.6.3 By 2002 WIT had made considerable progress in developing a multi - functional smart card, known as the WIT Card, for use on campus. As already mentioned in Chapter 4.2, this followed a trip which was made to the USA in 1999 by the then WIT Director, the current Secretary/Financial Controller and the current Chief Executive of DCS to see multifunctional card technology in use at a number of universities there, and an investment by the Institute's bank in card technology development at WIT of £500,000 as part of the extension of its then bank campus franchise.
- 4.6.4 Following a tender competition undertaken by WIT and the Development Committee, a contract for the installation of the smart card technology on the campus was awarded to a US company. The work was in fact undertaken by its UK partner company. The system included card production, access control, library use, point of sale in bar and restaurants, printing and photocopying, vending and other features.
- 4.6.5 Apart from the bank funding to meet the infrastructural and hardware costs of the development of the system, I was unable to ascertain any additional cost to WIT from the development.

4.6.6 The WIT Secretary/Financial Controller informed me that the Institute had benefited very significantly from the introduction of the WIT Card. The benefits included the introduction of a student ID card, reduction of printing and photocopying costs, better access control and security.

### **2002 Decisions by Governing Body**

4.6.7 It was felt in WIT that there were opportunities to exploit the card technology commercially. A memorandum submitted to the Governing Body in May, 2002 stated, however, that the Institute was advised by the Department that at the time it would be difficult for it to form a campus company itself in which it would hold a minority shareholding – which is what it wanted to do.

4.6.8 The memorandum submitted to the Governing Body made two proposals:

- that a Research Unit on card technology, to be known as a Card Technology Research Centre, be established as an extension of the Institute's existing research centre and within which research and development of the existing software would be carried out;
- that, following an approach by private investors, it was proposed to set up an independent separate legal entity, a company named OneCard Solutions Ltd. to carry out research and development of new products, to produce software and hardware for card systems, to provide pilot testing and consultancy and to design systems for customers. It was stated that private individuals and commercial interests would fund the company and that the Institute would not wish to invest in the company because of practical difficulties in doing so. It was envisaged that the Institute would get some payments, the memorandum stating that based on legal advice "It is clearly within the remit of the Institute to charge a royalty fee or other fee in respect of licensing or sale of the Campus Card Technology research, which has been carried out by the Institute".

4.6.9 The presentation to the Governing Body was made by the two WIT employees who are directors of DCS.

4.6.10 At the meeting on 28 May 2002 the Governing Body fully supported the establishment of a research centre to exploit the technology and the setting up of

links to commercial outlets subject to the Institute being able to protect its intellectual property by means of royalty or other franchise agreements.

### **Establishment of OCS**

4.6.11 In July 2002 the company OneCard Solutions and also known as One Card Total Solutions (OCS) was established as a private company limited by shares. The seven original shareholders, including the two WIT employees, put a sum of €25,000 into the new company in working capital. WIT did not provide any money and did not take a shareholding. The intention was that the company would engage in external work for other third level institutions.

### **Setting up of Research Centre in WIT**

4.6.12 It is understood that a card research unit, known as SCORE, was established in WIT in 2002 as envisaged in the memorandum approved by the Governing Body. I was informed by the WIT Secretary/Financial Controller that one of the Institute's academic staff members became involved in the centre from a research perspective, assuming these additional responsibilities on top of his lecturing duties without additional pay. He supervised a Masters degree student and some other students and the centre also received grant funding from Enterprise Ireland for a research project undertaken with other companies. One additional staff member was employed on contract for the duration of the project.

4.6.13 The SCORE unit ceased to operate in WIT around 2006. I was told by the Secretary/ Financial Controller of WIT that the reason was that the manager no longer had the time to support it.

4.6.14 Subsequently, DCS established a card research centre called "Card Technology Research Centre" (CTRC), similar to the name used in the 2002 memorandum submitted to the WIT Governing Body for the research centre it proposed should be set up in WIT itself. There were no staff transfers or transfers of funds from WIT to the CTRC in connection with the establishment of the centre in DCS. This centre did receive an annual transfer of €100,000 from WIT each year from 2007 to 2012, inclusive, out of bank franchise monies (see Chapter 4.2). These funds were used on activities benefiting DCS companies and also in some computer applications for WIT. CTRC was also involved in an EU FP7 Research

project in 2009-2011 known as European Education Connectivity Solution (EECS) (see Chapter 4.7) which yielded a new card system for WIT.

#### **Question of a Shareholding for WIT in OCS**

- 4.6.15 In the course of 2005 OCS were engaged in discussions with an outside investor on the sale of the company to that investor. The sale involved the setting up of a new holding company, subsequently called One CS Investments Limited (OCSI), as a vehicle in which to hold the investment. An application was made to the Companies Registration Office to set up OCSI on 18 January 2006.
- 4.6.16 OCS had discussions with WIT on the proposed sale. In a letter of 8 April 2005, OCS stated that the participation of WIT in the newly owned company “will be in recognition (of) historic record, the culture and goodwill and in recognition of the historic generic intellectual property, and that participation may well represent the non – contribution of cash, and may be in the form of shareholding”. The letter indicated that a very critical element in the relationship would be a continuation of the research and development activity which operated in the WIT SCORE unit.
- 4.6.17 In a response on 26 April 2005 to OCS, the WIT Secretary/Financial Controller proposed that WIT receive a 15% shareholding in OCS with a right to participate in any sale of shares to a third party. WIT also sought a shareholding in the new holding company.
- 4.6.18 The Department of Education was consulted by WIT and had no objection at that stage to the Institute taking a minority shareholding in OCS “in return for intellectual property rights supplied to the companies by WIT”. The Department stipulated a number of conditions including WIT being satisfied that the companies concerned would operate in compliance with companies legislation and the requirements of the Revenue Commissioners, as well as other corporate governance requirements.
- 4.6.19 Detailed discussions continued in 2005 and into 2006 with WIT consulting its legal advisers on draft share purchase agreements and draft articles of agreement for the proposed new holding company. The draft share sale agreement envisaged a payment of €50,000 to WIT on completion of the transaction and a further payment of €50,000 contingent on certain profitability performance by OCS.

Based on the legal advice WIT was initially challenging this contingency element, as against an increased upfront payment, but later agreed to it.

- 4.6.20 On 21 October 2005 the WIT Secretary/ Financial Controller wrote to the external investor confirming the continued support from SCORE for the companies in the context of the proposed share purchase agreement.
- 4.6.21 In the event, WIT did not obtain a shareholding in either OCS or OCSI. When I asked about this the Secretary/Financial Controller said that it did not materialise because there was a view that, unlike normal campus companies where they are established on the back of intellectual property emerging from Institute-specific research, in this case no IP was ever developed by SCORE; and that the IP for the WIT smart card software was owned by a UK company that licensed its use for the WIT card. The OCS representatives adopted a similar position in relation to the IP question saying that it was more a question of “know how” which resided in the DCS chief executive and general manager who had worked on the smart card for WIT. It is clear, however, that there was some disagreement at the time as to whether or not intellectual property had effectively passed from WIT to OCS or CTRC. I would note also that there is a definite tension between the view now put forward by WIT and OCS representatives and the background references to intellectual property as described above for example in paragraph 4.6.10.
- 4.6.22 I understand that while at the time there was no national protocol in operation, it was common practice for higher education institutions to take a share in a “spin-off” campus company. Furthermore, it was clearly the intention of the Governing Body in 2002 that it should obtain some benefits from research carried out at the Institute.
- 4.6.23 The WIT Secretary/Financial Controller informed me during the inspection that when the discussions aimed at securing a shareholding in OCS dragged on he had requested that the Institute be recompensed by OCS for services rendered to it by two WIT staff members. An invoice (copy supplied to me) was issued by WIT in early 2006 to the new owners of OCS for an amount of €50,403 and payment was received from OCS.

## **Financing of Purchase and Resale of OCS**

- 4.6.24 When OCS was purchased by the external investor in 2006 the seven shareholders received an aggregate amount of €639,000. The investment vehicle used to purchase OCS was One CS Investments Ltd (OCSI). I have been informed that the purchase was financed by a non- interest-bearing loan of €389,000 provided by OCS – the company whose shares were being acquired – with the balance of €250,000 of the purchase consideration being provided by the external investor with loan finance from his company. The OCS audited accounts as at 31 May 2005 show that OCS had accumulated revenue reserves of €569,089 at that point from profits it had made from its operations. Business with WIT would have accounted for only a small part of these accumulated profits.
- 4.6.25 I have been informed that the investment did not go as planned and that the external investor withdrew after a few months. The external investor was paid the sum of €150,000 - provided again by a non-interest-bearing loan from OCS - in full and final settlement of the amount of €250,000 brought in originally by the investor to part finance the purchase of the OCS shares.
- 4.6.26 A note provided at my request by the auditors of OCS and OCSI, in the course of the inspection, stated that the external investor lost €100,000 on the transaction plus fees and that, in all, loan finance of €539,000 was provided by OCS. This met the bulk of the payments to shareholders. The note commented that the two companies cannot be looked at in isolation as long as the loan balance remains outstanding between the two. The value of the OCS balance sheet is in part underpinned by the loan of €539,000 due to it from OCSI.
- 4.6.27 When the external investor left the holding company, OCSI was reacquired by three of the original shareholders – the two WIT employee directors of DCS and the general manager of DCS.
- 4.6.28 In my findings I have commented on the links between these companies and WIT, within my terms of reference. I have not pursued any other aspects of the relevant transactions affecting these private companies.



4.6.29 The main service that OCS provides to WIT at present is the administration of the WIT smart card. The card is multifunctional and is used for identification; access, control and security; library services; printing and photocopying; payment in canteens and shops and so on. OCS manages card registrations, card accounts and general administration. OCS also provides annual maintenance on the access control systems for all doors on campus. OCS generated income of €527,000 in the year to May 2012 and a surplus after tax for that year of €86,933. The company showed an accumulated surplus of €1,018,558 in the Profit and Loss Account in 2012.

## **4.7 European Education Connectivity Solutions Project (EECS)**

### **Introduction**

4.7.1 In the course of discussion with the academic nominees to the current Governing Body they expressed concern to me that WIT had wrongly been described as a participant in an EU – funded project into campus card technology, entitled European Education Connectivity Solutions (EECS), and that correct approval and financial procedures had not operated.

4.7.2 An anonymous complaint about this project, with details supplied, was also brought to my attention in the course of the inspection.

### **Background to the Project**

4.7.3 This was a collaborative research project running from December 2008 to May 2011, under the EU Seventh Framework Programme (FP7). The project brought together three SMEs and three “academic researchers” (known as RTDs or Research and Technological performers) in order to develop a prototype campus card management system that would serve the unique needs of European higher education institutions. It was envisaged that the project would give the participating SMEs access to trans – European research and development.

4.7.4 The objectives of the project were to:

- research the current and potential European card market
- research and design modules for an EECS prototype, to include card management, client application interface, data exchange and information transmission systems, to provide interoperability between card systems
- build and test a full working EECS prototype, and
- develop a marketing and dissemination plan to inform potential customers.

4.7.5 The total estimated cost of the project was €1,483,402. The EU contribution was €1,001,087, leaving a net contribution of €482,314 to come from partner organisations. The project documentation specified the payment to be made to each RTD and each SME to whom work was subcontracted under a detailed work assignment and implementation programme. It also indicated the contribution to

be made by each of the SME participants to bridge the gap between their total costs and the EU contribution to them. All monies were allocated by the EU to OneCard Solutions Ltd. as project coordinator and it was then the responsibility of OCS to distribute monies to partner organisations.

4.7.6 The project coordination and management role of OCS included acting as a single point of contact between the participants and the EU Commission, overall planning, quality control procedures, IP management and protection, administering the EU financial contribution in regard to its allocation between beneficiaries and keeping records and financial accounts.

### **Further Details of Complaints**

4.7.7 The complaints made to me related to the question of whether or not WIT was involved in the project and the role of OneCard Solutions (OCS) as the coordinator and project manager and of the Card Technology Research Centre (CTRC), which is part of DCS, as one of the RTD performers. The essential elements of the complaints received were that

- WIT had been named as a participant in the project
- no funds had accrued to WIT
- the contract had not been signed by a WIT authorised signatory
- WIT funding and control procedures had not been followed in relation to the project

### **Documentation**

4.7.8 I examined the grant agreement of May 2009 in respect of the project which was made available to me as part of the complaints that I received. This agreement was between the EU Commission and OCS (as project coordinator) on the one hand, and each of the other organisations that were participating in the project. In the case of work to be undertaken in Ireland the beneficiary's full name was shown as "Waterford Institute of Technology" and the beneficiary short name was given as "CTRC".

4.7.9 The total amount to be paid through OCS to CTRC in respect of personnel costs and overheads for the work to be carried out was shown as €474,658. This grant agreement was signed by the CEO of DCS, stated to be representing WIT, and by

representatives of OCS. The DCS CEO was not one of the two authorised persons to sign such contracts on behalf of WIT.

- 4.7.10 A revised more up-to-date version of the relevant EU project document, which I was told by DCS gave the final position, again shows OCS as the project coordinator but indicates that the RTD beneficiary was, in its full name, “WIT Diverse Campus Services” and in the short name “CTRC” which is part of DCS. The CTRC activities accounted for about one- quarter of the overall activities of all participants and those of OCS as coordinator also for about a quarter of total activities. Even this more up-to-date document refers elsewhere in the text to “Waterford Institute of Technology’s Card Technology Centre” and clearly states that CTRC is located at WIT. The WIT smart card features prominently in the document.
- 4.7.11 The final project document indicates that the total costs of OCS under the project were €680,396 of which the EU contributed €419,984. I understand that the total amount paid to CTRC (out of OCS receipts) for its work on the project was €486,254.

#### **Comments by WIT**

- 4.7.12 As part of additional material I received on request, I noted a letter of 17 September 2008 from the WIT Secretary/Financial Controller to the Manager of CTRC (also CEO of DCS) which stated that he was writing to advise that a decision has been made to assign responsibility for the management of the EECS project, including regulatory and financial aspects, to WIT Campus Services. It added that this decision was made in the light of the company’s achievements over a ten year period. I asked the WIT Secretary/Financial Controller about this.
- 4.7.13 In response he said, in regard to the use of the word “assign”, that the letter should more properly have stated that he was confirming that responsibility for management of the EECS project rested with DCS where the CTRC was located. The letter was intended to be a letter of reference and support for an application that was being made by DCS to participate in the EU project. His view was that if the Institute was not involved he would support DCS and OCS in making an application. He added that he was well aware that any application would be properly vetted by the EU; and that since the Institute was not getting any funding

he did not want any involvement in the financial administration or governance of the project. He was also aware that the EU has accepted that WIT was not a participant and has recognised DCS instead.

- 4.7.14 I noted from my examination of the papers that on 15 March 2012 the current President of WIT and the current Legal Entity Appointed Representative (LEAR) for EU research projects at WIT issued a “To Whom it May Concern” letter confirming that WIT is not a participant in the EECS programme and did not receive any funding for this project.
- 4.7.15 I was informed that this letter was issued in response to internal queries about WIT’s involvement. It was also to provide a formal clarification to EU authorities. I was told that no written response was received by WIT from the EU.
- 4.7.16 I was informed also that, in response to the queries I raised in the course of the inspection, WIT had now initiated an investigation into the authorisation processes associated with the EECS project.
- 4.7.17 There was one procedural aspect which caused particular confusion and concern in WIT and was brought to my attention. This relates to the appointment of the Legal Entity Appointed Representative (LEAR) for research projects at WIT. This is a general or standing appointment and does not relate to a specific project. The role of the LEAR is to perform certain tasks in the context of an institution’s dealings with the Directorate General for Research of the EU Commission, including the provision and checking of financial data.
- 4.7.18 It was brought to my attention that on 23 September 2008 the former President appointed the CEO of DCS as LEAR for WIT. There was already a LEAR in place at the time; the Institute had in 2008 appointed the Senior Project Accountant as LEAR for all WIT research projects. I was informed that the matter came to light in late 2009 or early 2010 when WIT research personnel could not access the LEAR system and that the Senior Project Accountant was then reinstated by management as LEAR for WIT projects.

#### **Comments by DCS**

- 4.7.19 DCS responded to my queries by saying that the original designation in relation to WIT participation had been made in error. They pointed out that this was the first

application by OCS for an EU grant and that there was a significant volume of documentation involved. They made the application as part of a consortium with Polish and Swedish SMEs. Under the FP7 programme the SMEs are the beneficiaries: they invest in the project, subcontract most of the research work and receive in return the technological know-how they need for improving their systems.

- 4.7.20 DCS said that on discovery of the error about the WIT designation, which related to the ownership of CTRC, the position was corrected immediately. They provided copies of formal letters they had sent to the EU authorities on 5 March 2012 asking for the EU documentation to be amended. They also indicated that the Chief Executive of DCS had been designated as LEAR for CTRC.
- 4.7.21 DCS pointed out that in the final version of the relevant EU documentation WIT has been removed and replaced as beneficiary by DCS where the CTRC is located.
- 4.7.22 DCS also made the following additional points:
- OCS was a net contributor to the EECS project to the tune of €260,000
  - There has been no activity to establish intellectual property rights or to commercialise the results from the project
  - As an outcome of the EECS project WIT received a new card management system in January 2012 at no capital cost to it. The new system involved two of the EECS prototype models being further developed and up-scaled to a full working system, so as to meet the needs of the WIT campus.
- 4.7.23 One of the documents I received from DCS, as part of a series of enquiries to try to establish the facts, made a request to the EU authorities that the “suspension of the project” be lifted. When I enquired about this, OCS replied that the project itself had not been suspended and that the reference was to a temporary suspension of the time limit for the payment of the final amount due, so as to allow the correction of the error that had been made in designating the ownership of CTRC. They said that all payments due had since been received.

## **Chapter 5: Financial Position of the Companies**

### **Introduction**

- 5.1 The terms of reference for the inspection require an assessment of the financial position of the companies providing services to WIT, including the nature and extent of their assets and liabilities as they relate to operations in WIT.
- 5.2 The assessment carried out was based on a detailed analysis of the available audited accounts of DCS and its five main associated trading companies and the most up to date unaudited management accounts. It also involved detailed discussions with DCS representatives and with its current auditors, PWC. The latter were appointed in 2009 following a tendering competition. I also had an opportunity to meet with the external Chairman of the DCS Audit Committee which has been in existence since 2009. Within my terms of reference, the assessment did not involve any forensic examination by me of particular expenditures or revenues.
- 5.3 Accounts were analysed for the following six companies for the years 2003 to 2012:
- WIT Diverse Campus Service Ltd. (DCS)
  - Waterford College Recreation Partnership Ltd. (WCRP)
  - WIT Sports and Social Club Ltd. (WITSSC)
  - WIT Campus Accommodation Ltd. (WITCA)
  - College Residences Ltd. (CR)
  - Manor Retail Ltd. (MR)
- 5.4 Consolidated accounts for the six companies are not prepared by management. At my request, DCS arranged for its auditors to prepare a consolidated balance sheet for the companies for the past five years. The aim was to provide a clearer picture of the overall financial position of the companies, given the extent of intercompany trading as reflected in the individual accounts. The auditor stressed that this work did not constitute an exercise made in accordance with generally applicable auditing standards and did not result in any expression of assurance by the auditors. Consolidated income and expenditure accounts have not been

prepared. In order to have the report as up to date as possible I also obtained, towards the end of the inspection, DCS management's draft accounts for the year ended 30 June 2012. These have not yet been audited.

- 5.5 A summary financial position in respect of the DCS companies is given each year in a note to the WIT accounts under the heading "Ancillary Activities" which shows, inter alia, the receipts from student services charges that are allocated by WIT to DCS.

### **Overall Financial Position of the DCS Companies**

- 5.6 The audited accounts for the year ended 30 June 2010 indicated that the companies were in a satisfactory financial position. The post – audit report by PWC stated that no material uncertainties related to events or conditions, including the companies' ability to continue as going concerns, had been noted.

- 5.7 The DCS companies' accounts for the year ended 30 June 2011 have only recently been finalised. The accounts indicate a satisfactory trading position but with a reduced surplus. I understand that the finalisation of these accounts was delayed pending the assessment, in the first instance by the company directors and then by the auditors, of uncertainties arising from the relationship with WIT and the implementation of the Disbursement Agreement with WIT in respect of receipts from student charges and any implications for prospective borrowings by the companies.

- 5.8 The recently filed accounts include an emphasis of matter statement by the auditors in relation to the companies' ability to continue on a going concern basis. Without qualifying their opinion on the accounts the auditors indicate that DCS requires banking facilities, including overdraft facilities, which have yet to be negotiated and put in place.

### **Latest Position**

- 5.9 The draft management accounts for 2012 showed a significant deterioration in the cash position of the companies, with the overall cash at bank of the relevant DCS companies declining from €4.3 million at end June 2011 to €2.6 million at end June 2012.



- 5.10 The reduction in cash balances was particularly pronounced in DCS itself. Its cash at bank fell from €2.2 million at end June 2011 to €0.1 million at end June 2012.
- 5.11 The fall in cash balances reflects heavy use of available company funds as part of the financing of expenditure on the latest phase of Carriganore Sports Complex (the financing of this project is discussed in detail in Chapter 4.4 of the report). Such expenditure, some of which had not been budgeted, has continued into the current financial year with further drain on cash balances at the companies. The overall balances of the companies had further declined to €2.1 million as at end March 2013.
- 5.12 There has been a decline in income from €13.3 million in 2011 to €11.3 million in the year to 30 June 2012 with a further decline projected for 2013. DCS have explained that the main reason for the reduction in 2012 was the move of the architecture students off campus with resultant loss of business, completion of the EECS research project in mid-2011 and a general reduction in spending by students. The projected further reduction in 2013 is due to the frontloaded receipt in 2012 of the bank franchise fee (normally paid annually) as part of the Carriganore project financing, the expected loss of bank deposit interest when the sinking fund is used to buy-out the investors in Manor Village and reduced surpluses from the trading units.
- 5.13 Based on DCS cash flow projections it appears that the company will experience some pressures on cash flow at certain points in 2013 which will require careful management of receipts and expenditure and may well necessitate new overdraft facilities. The position will require careful monitoring in coming months.
- 5.14 Clearly, the future overall position of the companies will be affected significantly by decisions to be made on the matters dealt with in this report.
- 5.15 The main elements in the financial analysis are reviewed in more detail below.

### **Surpluses**

- 5.16 In recent years the DCS companies have generated a total surplus of €1 - €2 million per annum. The surplus in 2012 was €1.5 million, a decrease of €0.4 million on the previous year. While each of the companies is a standalone entity all the surpluses arising in the companies are transferred to the main company,

DCS. The practice is that a surplus in an individual company is offset by a franchise charge imposed by DCS, with a deficit being offset likewise by a transfer from DCS. These amounts are credited/debited to DCS through an intercompany account.

5.17 The surplus/(deficit) funds from operating units excluding DCS itself were as follows:

	2012*	2011	2010	2009	2008	2007	2006	2005	2004	2003
	€	€	€	€	€	€	€	€	€	€
<b>WCRP</b>	34,163	253,708	305,744	336,373	271,861	82,071	217,518	409,499	400,499	74,081
<b>WITSSC</b>	(27,230)	(21,362)	(146,332)	(34,884)	2,492	960	34,021	23,992	99,658	(18,844)
<b>WITCA</b>	182,615	235,036	140,851	66,494	3,327	10,129	2,904	(105,558)	(7,391)	480,786
<b>CR</b>	77,412	60,519	72,055	8,643	(15,947)	7	7,743	(27,828)	(12,233)	53,657
<b>MR</b>	26,676	33,351	5,981	38,128	67,891	9,911	(133,650)	0	0	0
<b>Total</b>	293,636	561,252	378,299	414,754	329,624	103,078	128,536	300,105	480,533	589,680

\* Draft Management Accounts

5.18 The overall surpluses generated in the companies as a whole are set out below. The DCS figures reflect its own position and takes account of students services receipts and other funding paid to it by WIT:

	2012*	2011	2010	2009	2008	2007	2006	2005	2004	2003
	€	€	€	€	€	€	€	€	€	€
<b>DCS</b>	1,225,209	1,417,363	1,741,983	1,925,407	247,812	935,290	865,928	1,274,736	997,210	851,675
<b>Other Units</b>	293,636	561,252	378,299	414,756	329,624	103,078	128,536	300,105	480,533	589,680
<b>Total Surplus</b>	1,518,845	1,978,615	2,120,282	2,340,163	577,436	1,038,368	994,464	1,574,841	1,477,743	1,441,355

\* Draft Management Accounts

## Income

5.19 As previously stated, consolidated income and expenditure accounts (with the elimination of intercompany trading) were not available. Purely as a guide, but with the foregoing caveat on the non-elimination of intercompany trading, the income of the various units was as follows before payment of franchise charges to DCS:

	2012*	2011	2010	2009	2008	2007	2006	2005	2004	2003
	€'000	€'000	€'000	€'000	€'000	€'000	€'000	€'000	€'000	€'000
<b>DCS</b>	3,682	4,096	4,205	3,876	2,535	2,544	2,375	2,702	2,206	2,036
<b>WCRP</b>	3,819	5,092	5,275	5,901	5,698	5,440	5,470	5,066	4,624	4,608
<b>WITSSC</b>	493	488	652	675	691	704	827	761	834	650
<b>WITCA</b>	1,502	1,646	1,625	1,588	1,374	1,315	1,310	1,183	1,329	868
<b>CR</b>	242	264	274	301	340	334	432	409	439	455
<b>MR</b>	1,555	1,705	1,795	1,982	2,329	2,261	508	-	-	-
<b>Total</b>	11,293	13,291	13,826	14,323	12,967	12,598	10,922	10,121	9,432	8,617

\* *Draft Management Accounts*

5.20 The combined gross income of the various units ranges from €8.6 million in 2003 to €11.3 million in 2012.

## Consolidated Balance Sheet

5.21 The details of the Proforma consolidated balance sheet for the years 2008-2012 for the DCS companies as prepared by PWC are set out below:

	2012*	2011	2010	2009	2008
<b>Fixed Assets</b>	€	€	€	€	€
Tangible Assets	17,548,765	14,702,864	15,029,701	11,272,937	11,853,304
Intangible Assets	823,652	936,202	1,049,752	1,161,802	1,295,711
Financial Assets	6,926,552	6,332,585	5,685,426	5,132,879	4,601,599
	<b>25,298,969</b>	<b>21,971,651</b>	<b>21,764,879</b>	<b>17,567,618</b>	<b>17,750,614</b>
<b>Current Assets</b>					
Inventory	142,774	151,909	211,298	242,187	258,700
Debtors & Prepayments	604,458	1,195,586	1,292,700	1,230,071	547,213
Cash at Bank	2,635,687	4,313,731	3,346,194	2,937,606	2,582,618
	<b>3,382,919</b>	<b>5,661,226</b>	<b>4,850,192</b>	<b>4,409,864</b>	<b>3,388,531</b>
Creditors within one year	(3,574,235)	(3,138,743)	(4,795,128)	(2,774,516)	(3,855,160)
<b>NET Current Assets (liabilities)</b>	<b>(191,316)</b>	<b>2,522,483</b>	<b>55,064</b>	<b>1,635,348</b>	<b>(466,629)</b>
Creditors more than one year	(2,273,219)	(3,182,689)	(2,487,113)	(1,990,418)	(2,411,600)
<b>Total Net Assets</b>	<b>22,834,434</b>	<b>21,311,445</b>	<b>19,332,830</b>	<b>17,212,548</b>	<b>14,872,385</b>
Represented by:					
<b>Capital Reserve</b>	<b>7,768,088</b>	<b>7,768,088</b>	<b>7,768,088</b>	<b>7,768,088</b>	<b>7,768,088</b>
<b>Accumulated Funds</b>	<b>15,066,346</b>	<b>13,543,357</b>	<b>11,564,742</b>	<b>9,444,460</b>	<b>7,104,297</b>
	<b>22,834,434</b>	<b>21,311,445</b>	<b>19,332,830</b>	<b>17,212,548</b>	<b>14,872,385</b>

\* Draft Management Accounts

The foregoing tables demonstrate quite substantial activities relevant to, but external to, WIT which are undertaken by these companies.

## Assets

5.22 As will be seen from the tables, consolidated assets net of liabilities as at 30 June 2012 were €22,834,434. Fixed assets, comprising the assets of all of the companies net of depreciation, were €17,548,765. This included land and buildings of €8,259,964, Carriganore sports facilities of €5,784,469 (additional to amounts for Carriganore included under land and buildings), fixtures and fittings of €1,677,352 and other Fixed Assets of €1,826,980.

5.23 Financial assets as at 30 June 2012 included as the main item a sinking fund and associated deposit of €6,926,552 in respect of the prospective purchase from investors of the Manor Village student accommodation property, which is discussed in more detail in Chapter 4.3 of this report. Cash at bank was €2,635,687.

### **Borrowing**

5.24 Outstanding bank borrowings and overdrafts as at 30 June 2012 amounted to €3,454,705. These comprise borrowings undertaken in respect of the Spar Manor Village shop, extension of a restaurant, work on the Dome Bar and earlier work on the Carriganore Sports Complex.

5.25 The current (10 April 2013) figure in respect of the same borrowings is €3,184,191. This includes bank overdrafts of €1,318,881. On the basis that the investors in the Manor Village project will be bought out by DCS, and the transaction is financed by borrowing the balance of the funds required, borrowings would increase by a further €7 million in September 2013 (further details in Chapter 4.3).

5.26 Borrowings did at one point reach a figure of €18 million. This reflected a temporary increase to provide finance via bank borrowing during the construction phase of the Manor Village student accommodation project. The financing was subsequently taken over by the investors in that project.

5.27 As part of the borrowing arrangements the bank has a fixed and floating charge over all the assets of DCS.

5.28 Outstanding borrowings would have increased by some further €7 million if DCS had proceeded with plans to finance the second phase of the Carriganore Sports Complex project with new bank borrowings under a facility it had arranged with the bank. In the event, expenditure to date on this phase of the project has been financed by alternative funding for reasons discussed in Chapter 4.4.

5.29 DCS has indicated that it is in a position to continue to service its borrowings from surpluses generated by the companies. The position as regards new borrowings will have to be reviewed in the light of decisions taken on foot of this report.

## **Other Comments**

- 5.30 The companies operate a Defined Contribution pension scheme for employees. I was told during the inspection that there were no financial issues in relation to it.
- 5.31 It is noted that in the PWC post audit reports for 2010 and 2011 there are a significant number of internal control weaknesses within the campus companies which need to be addressed. The level of adjustment required to be made by PWC to the accounts submitted for audit each year would also signify some weaknesses in the preparation of management accounts. This may have implications for the accuracy of interim financial reports sent to management for review.
- 5.32 The auditor indicated in discussion that similar weaknesses can arise in certain SME companies with limited staffing. The Chairman of the Audit Committee intimated that he had been prioritising these matters for remedial action. As part of this, a policy on the use of the company internal payment cards is now in place.

## **Individual Companies**

- 5.33 DCS has increased its annual income from €2 million in 2003 to €3.7 million in 2012. The main source of income is the receipt under the Disbursement Agreement with WIT which was €2.5 million in 2012. The balance of income in 2012 comprised surpluses from the operating units, €750,000 bank franchise income received from WIT, bank deposit interest of €342,584 and other income.
- 5.34 DCS is supporting a number of the associated companies through the non-payment by the latter of the intercompany debt due to DCS. The company had a cash balance at 30 June 2012 of €0.1 million.
- 5.35 Waterford College Recreation Partnership Ltd had overall gross income of €3.8 million in 2012. The company is principally engaged in the provision of student services. It generated surpluses of €2.38 million from 2003 to 2012 all of which were credited to DCS. There were cash balances in this company of €1.3 million at 30 June 2012. Costs of repairs and maintenance at Carriganore Sports Complex are defrayed by this company.
- 5.36 WIT Sports and Social Club Ltd. generated gross income of €493,000 in 2012. The company is principally engaged in the provision of college bar and restaurant

services. The company received a franchise credit from DCS of €87,528 for the years 2003-2012 without which it would have incurred a loss.

- 5.37 WIT Campus Accommodation Ltd. had gross income of €1.5 million in 2012. The company is principally engaged in the provision of student accommodation at Manor Village. It has generated surpluses of €1,009,000 from 2003-2012 after payments to investors. It had cash at bank of €336,000 at 30 June 2012. The surpluses were credited to DCS through the intercompany account. DCS was responsible for making payments to the sinking fund set up under the arrangements.
- 5.38 College Residences Ltd. had gross income of €242,000 in 2012. This company is principally engaged in the provision of student accommodation on campus at WIT. It generated surpluses of €224,028 for years 2003 to 2012 which again were credited to DCS.
- 5.39 Manor Retail Ltd. had gross income of €1.56 million in 2012. A franchise was given by DCS to the company to operate as a general retailer and off license, trading as Spar Supermarket, providing services to residents of Manor Village student accommodation. The company commenced trading in 2005 and in the period 2006 to 2012 it generated surpluses of €48,000 although this included a loss in the first year of €134,000.

## **Chapter 6: Utilisation of resources of the companies**

### **Introduction**

- 6.1 Total surpluses of €15,066,346 have been generated in all DCS units from 2003-2012, as per the PWC Proforma consolidated balance sheet for the year ended 30 June 2012.
- 6.2 The surplus amount would be higher but for a significant subsidisation of the cost of providing Student Affairs services. It is understood that the cost to DCS of providing services under the Student Affairs heading in 2012 was of the order of €900,000, whilst the funds allocation (on the basis of applying the agreed portion of the total funds transferred by WIT under the Disbursement Agreement) was €295,687. DCS representatives indicated in discussion that subsidisation of the cost of Student Affairs services over a number of years – to a level that was known about and accepted by WIT – had significantly reduced available surpluses. DCS agreed with WIT in September 2011 that, pending the outcome of the review of the Disbursement Agreement then underway, the Student Affairs services would be maintained at current levels.
- 6.3 There was a pre-2003 surplus of €7,768,088. This was accumulated during the period when accounts were produced by the Development Committee and before DCS effectively took over the Committee's role. Inclusion of this earlier declared surplus from the Development Committee's final accounts gave total surplus funds available for investment of €22,834,434. However, the pre- 2003 surpluses had already been used in the period from 1990 (when the Development Committee commenced operations) to finance Fixed Assets of €8,572,422. This comprised mainly land and buildings - including provision of initial student accommodation and other facilities - of €7.9million and the financing of a working capital deficit.

### **Investment financed from Surpluses**

- 6.4 During the period 2003 to 2012, the surpluses accumulated of €15,066,346 contributed to the funding of gross investments (i.e. before depreciation) in Fixed Assets of €20,488,324. In addition, they also contributed to financing the building up of a sinking fund of €6,926,552 (inclusive of an associated deposit) earmarked



for the proposed purchase of the Manor Village student accommodation from the investors in that project.

- 6.5 The overall amount invested in Fixed Assets and the sinking fund over the period 2003 to 2012 – a total of €27,414,876 – was derived from the surpluses generated of €15,066,346, loans received of €5,766,000, disposal of assets of €2,800,000, a grant received of €1,000,000 and use of working capital.

### **Assets Acquired**

- 6.6 The major part of the investment in Fixed Assets for the period 2003 to 2012 was in Land and Buildings €5,044,279 (of which Carriganore Pavilion Building accounted for €1,626,339), additional investment in Carriganore of €8,269,858 in respect of playing pitches and floodlighting and investment in Fixtures & Fittings of €3,876,525. In addition, there was expenditure on Computers, Plant and Machinery and Motor Vehicles.

### **Impact on WIT**

- 6.7 The accounting treatment of the funds paid by WIT each year to DCS under the 1998 Disbursement Agreement is that DCS takes the full transfer as income in its Income and Expenditure account. It is to be noted, however, that the annual transfer includes an amount (54% of the total) which under the Disbursement Agreement is for capital development purposes. No separate account is established to track use of this capital element in DCS nor is an allocation made to capital reserves.
- 6.8 The accounting treatment of capital grants in the Institutes of Technology Format of Accounts, approved by the HEA, is that any State capital grants would be transferred to the deferred capital account and thus match the fixed assets in the balance sheet.
- 6.9 Notwithstanding paragraph 6.7, it is noted that the total of investment by DCS in fixed and financial assets in the period since 2003 significantly exceeds (as a result of borrowings and operational surpluses) the capital allocation derived by applying the agreed 54% key to the total of the disbursement funds received from WIT each year.

- 6.10 There is no evidence in this inspection that WIT has not benefited from all the investments undertaken by DCS. The company itself has of course developed and grown on foot of these investments.
- 6.11 The consolidated Proforma Balance Sheet figures of DCS for 2011, when compared with the latest available annual accounts for WIT (2011), demonstrate the significance of the DCS operations in relation to WIT in a number of areas.

	<b>WIT</b>	<b>DCS</b>
	€'000	€'000
<b>Fixed Assets</b>	124,436	21,972
<b>Cash at Bank</b>	3,334	4,314
<b>Borrowings/Loans</b>	0	4,163
<b>Revenue Reserves</b>	3	13,543

- 6.12 The DCS consolidated balance sheet is showing cash balances of €4,313,731 which is in excess of balances in WIT. There were little or no Revenue Reserves in WIT accounts as against €13.5 million in the accounts of DCS. WIT has no loans/borrowings outstanding as against the figure of €4.2 million for DCS in 2011.
- 6.13 In summary, the position is that WIT has benefited significantly from the investments financed by DCS out of the disbursement funds transferred to it by WIT, the DCS surpluses as generated by its own operating units, and borrowings which could be undertaken by DCS. It is undoubtedly the case also that the particular arrangements in WIT and the associated Development Committee and Disbursement Agreement have had negative effects on the evolution of WIT's own financial position and balance sheet profile.

## Chapter 7: Options for Change

### Introduction

- 7.1 It is clear that the DCS companies are inextricably linked with WIT. They are providing services for students that the Institute itself would otherwise have to provide direct to students or via subsidiary companies or commercial franchise arrangements. The financial connections and interdependencies between the Institute and the companies are strong and there is overlap or duplication in some of their activities (e.g. capital projects and marketing activities).
- 7.2 Based on the analysis in this report I do not consider that a continuation of existing structures – even with a renegotiation of the contractual arrangements involved – would provide the best solution in terms of the appropriate degree of governance, financial control, accountability and transparency. This approach, which was mentioned in the Grant Thornton report but was not their preferred option, might however have to be revisited in the event of other options being ruled out.
- 7.3 I also considered the possibility of the companies being fully assimilated by agreement into WIT. I think, however, that this would represent a radical approach that would cause problems. It would run counter to trends in public sector reform (including the reduction in numbers and pursuit of possibilities for outsourcing) and it would not provide the appropriate framework for managing commercial operations. In the circumstances I did not examine such an approach in detail.
- 7.4 It seems to me that there is a good business case for a restructuring of the companies as subsidiaries of the Institute as was already envisaged. This would represent a simplification of existing structures, would allow the difficulties that have arisen to be addressed, would bring the relationship with service providers more into line with that found in other third level institutions, would ensure continuity in the provision of core services and would leave open opportunities for further review and rationalisation over a period ahead. It would also allow the accounts of the subsidiaries to be consolidated with those of WIT.

- 7.5 The core option that I envisage for change, therefore, is the dismantling by agreement of the current Development Committee structure and the restructuring of the DCS companies as subsidiaries of WIT. The variants of this core option, outlined below in order of preference, differ only as regards the approach to dealing with the specific financial issues that require early resolution.
- 7.6 It would be possible to envisage a phased approach to this restructuring, with individual companies being restructured only as they become free of borrowings. I would not favour such an approach which would be difficult to manage and which would not be consistent with the need to put the governance and financial relationship between WIT and all the companies on a proper footing as a matter of urgency.

#### **Option 1: Long Term Borrowing Option**

- 7.7 The legal advice obtained by me for the purposes of the inspection confirms that there is no legal obstacle to WIT acquiring, as subsidiaries, companies that have outstanding borrowings. Such borrowings would in the normal course remain as liabilities of the acquired companies (with their separate legal personality) and would not be liabilities of WIT. Early discussion would be needed with existing lenders/ investors to ensure continuity of existing agreements in the new situation.
- 7.8 New borrowings could also be undertaken by the subsidiary companies. Before the recent difficulties arose the companies envisaged new borrowings to finance the completion of the Carriganore Sports Complex and the purchase of the Manor Village student accommodation from investors. They and their advisers provided me with data to demonstrate that it would be possible for them to service such borrowings. The total amount involved would be of the order of €10 million. In principle, borrowing would be an appropriate means of financing these important infrastructural projects and spreading the costs over a period of years.
- 7.9 The companies are currently experiencing some pressure on cashflow arising from the heavy expenditure on the Carriganore project in 2012; they had to draw down their own resources rather than borrow because WIT was not in a position to guarantee or underwrite the borrowings. Their ability to service new borrowings

will have to be confirmed in the light of whatever new structures are settled with WIT and the future financial relationship with the Institute.

- 7.10 In terms of procedures, the legal advice is that borrowings by subsidiaries of the Institute would not require Ministerial approval under current legislation. However, if existing contractual funding arrangements between WIT and the companies were discontinued or significantly altered, it is likely that a lending institution would seek a guarantee or other security from WIT in respect of new borrowings by its subsidiary companies. The provision of any such guarantee or security by the Institute, as well as any borrowings by WIT itself, would require the approval of the Governing Body in the first instance. It would then necessitate in turn the approval of the HEA following consultation with and approval of the Minister for Education and Skills, the Minister for Finance and the Minister for Public Expenditure and Reform under the Institutes of Technology Acts.
- 7.11 I understand that such borrowing by the subsidiaries might well also require the approval of the Minister for Finance under the Credit Institutions (Stabilisation) Act 2010. Application of this latter requirement would be influenced, inter alia, by the classification of subsidiaries' expenditure (see paragraphs 7.20 and 7.21). In any event, a guarantee provided by WIT, which is secured by WIT on its assets or revenues, in support of borrowings by its subsidiaries would require the approval of the Minister for Finance under these provisions.
- 7.12 The issue for decision in this option is whether the authorities would be prepared to approve borrowing on a once-off basis in this case to help resolve the difficulties that have arisen and to protect investments already made.

### **Option 2: Provision of Capital Funding**

- 7.13 Under this variant the Minister for Education and Skills would provide exceptional funding to WIT, as an addition to the normal capital allocation to the Institute, to allow it and the new subsidiary companies to finance completion of the Carriganore Sports Complex and the buying out of the investors in the Manor Village student accommodation.
- 7.14 Specific conditions could be attached to the provision of funds so as not to advantage WIT over other Institutes of Technology e.g. WIT could be required to

repay the funds over a period from student contributions or future surpluses accumulated by its subsidiaries.

- 7.15 Before deciding to make exceptional funding available the Minister would have to consider the implications of doing so for other funding programmes. Consultation with the Minister for Public Expenditure and Reform might be required.

### **Option 3: Sale of Assets and Short term Borrowing**

- 7.16 I am satisfied that the Manor Village student accommodation is a valuable asset with a high rental income. It is possible that, in conjunction with the buy – out of existing investors in the project, the asset could be sold to new investors. I understand that WIT has been made aware that there would be interest in the asset.
- 7.17 While I do not have a current professional valuation for Manor Village it is likely that, even in current market conditions, its sale to new purchasers should yield a substantial amount of funding over and above the net cost of buying out the current investors i.e. a net cost of about €7 million after applying the proceeds of the sinking fund and associated deposit that have been accumulated for this purpose. The amount might be sufficient to pay off existing borrowings in the subsidiaries. If this option is pursued, valuations from a number of professional firms should be sought.
- 7.18 Another possibility would be to sell a share in the Carriganore Sports Complex to a sporting organisation or other interested party. As indicated earlier, the GAA has already donated some funding towards the cost of this project and has an interest in its further development.
- 7.19 Even with sale of assets, timing differences would necessitate borrowing in this case also, albeit on a shorter bridging finance basis. This would require approval as already outlined.

### **Application of EU Stability Pact Rules**

- 7.20 There are possible implications for compliance with the EU Stability Pact Rules on monitoring and coordinating budgetary policies in any of the options outlined here for dealing with the DCS companies. The issue relates to the question of whether expenditure and borrowing by the companies falls to be reckoned in

measuring the General Government Balance and General Government Debt under the EU Rules, given their close financial links with WIT.

- 7.21 The essential question is whether the companies derive, or will derive when restructured, the bulk of their funding from private market sources as against public funding. This would require detailed analysis. If the outcome indicated that the expenditure of the companies did not pass this market test their expenditure and borrowing would in principle have to be counted towards the national expenditure and borrowing limits taking account of any exclusions and flexibilities allowed. I have been informed that these issues are considered on a case-by-case basis. While I have obtained helpful clarifications from the Departments of Public Expenditure and Reform and Finance on the general position, its application in this instance is a matter for the relevant authorities and is beyond the scope of this report. The decision on classification is made by the Central Statistics Office. It is a dimension that will need to be taken into account under all of the options. Clearly, the actual extent of new expenditure or borrowing would vary as between the options.

## Appendix 1: Terms of Reference

### Terms of Reference for Inspection, Waterford Institute of Technology

1. I, Ruairí Quinn, Minister for Education and Skills, having consulted with An tUdaras, pursuant to Section 20 of the Institutes of Technology Acts, 1992 to 2006, do hereby authorise Mr Dermot Quigley (hereinafter referred to as “the Inspector”):
  - (a) *to inquire into the following matters and their possible impact on the governance, operations and financial position of Waterford Institute of Technology (WIT):*
    - (i) *the relationship, including the financial relationship, between the Institute and the range of companies providing campus services in WIT;*
    - (ii) *the financial position of these companies including the nature and extent of their assets and liabilities as they relate to operations in WIT;*
    - (iii) *utilisation of resources of the companies including the extent to which they were applied for the purposes of the Institute;*
    - (iv) *options for addressing changes that may be considered desirable in the relationship between the Institute and the companies in line with best practice;*
    - (v) *any and all other matters which the Inspector considers to be necessary or expedient to the carrying out of the terms of reference at paragraphs (i) to (iv) above.*
  - and*
  - (b) *to provide an interim report to me within one month and a final report as soon as possible thereafter on his/her inquires and in that report to make such findings and recommendations as he/she considers appropriate.*
2. These Terms of Reference may be subject to such addition or amendment as I consider appropriate, having regard to any findings made by the Inspector.
3. The Inspector may be required to furnish such interim reports as I deem necessary.

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Ruairí Quinn  
Minister for Education and Skills  
13 November 2012



## Appendix 2: Interim Report

### Interim Report to Minister for Education and Skills on Statutory Inspection in relation to Waterford Institute of Technology (WIT) and companies providing services to it

1. In accordance with the terms of reference set for the above statutory inspection under Section 20 of the Institutes of Technology Acts, in regard to the relationship between WIT and companies providing a range of services to the Institute, I am as requested making this necessarily brief interim report to you within a month of my appointment as Inspector.
2. The companies providing services are a group of companies headed by Diverse Campus Services Limited (DCS).
3. It is important to underline again that the inspection being undertaken relates solely to the relationship between WIT and the companies concerned, including the financial relationship, and does not relate to the academic reputation of WIT or day - to- day operation of its academic programmes.
4. Following the announcement of my appointment as Inspector I made contact with the Chairman of the Governing Body and the President of the Institute to outline generally my approach to the task. Both assured me of their full cooperation. In subsequent days the Governing Body of the Institute passed a motion confirming full cooperation with the inspection.
5. I have also received assurances of full cooperation from DCS.
6. On 22 November 2012, following an examination of documents immediately available to me, I held an initial meeting in Waterford with the Chairman of the Governing Body and the Secretary/Financial Controller of WIT. This meeting covered the scope of the inspection as well as the general background. At my request the Institute agreed to nominate a liaison person for the purposes of the inspection.
7. I also presented to the Chairman of the Governing Body an initial formal request for an extensive list of documentation and financial information – in regard to both WIT and the DCS companies.
8. A substantial amount of documentation has since been made available to me by both WIT and DCS.
9. The process I have initiated so as to conduct the inspection comprises
  - Examination of all relevant documentation as it becomes available
  - Identification of issues requiring further scrutiny
  - More detailed meetings with the relevant parties
  - Analysis of Financial Accounts and other relevant documents

- Preparation of findings and recommendations and of final report.
10. As part of the preliminary work I have also met with the Office of the Comptroller and Auditor General. The Office briefed me on matters in relation to non – academic services at WIT, which had been the subject of comment in the Office’s Special Report of February 2012 on “Matters Arising out of Education Audits”.
  11. I have held a number of other preliminary meetings. Further meetings with WIT and with DCS are being arranged.
  12. Appropriate administrative and professional support to assist me in the work has been arranged with the Department of Education and Skills and the Higher Education Authority.
  13. It is my current assessment that the programme of work will require a number of months to complete.
  14. Subject to any unforeseen developments I will be aiming to try to conclude the inspection and submit a final report in the first quarter of 2013.

Dermot B Quigley

12 December 2012.

## **Appendix 3: List of parties met during the Inspection Process**

### **Waterford Institute of Technology**

Dr. Donal Ormonde, Chairman of the Governing Body

Dr. Ruaidhrí Neavyn, President of WIT

Mr. Tony McFeely, WIT Secretary/Financial Controller and Ms. Elaine Sheridan, Finance Manager

Ms. Anne Marie Caulfield, Dr. Frank Dolphin, and Ms. Mairead Meagher, Members of the Governing Body Sub-Committee established in June 2011

Ms. Mairead Meagher, Dr. Joe Power, Academic staff nominees to the Governing Body

Mr. Brian Staunton, Mr. Stephen O'Rourke, and Ms. Cassandra Kelly, WIT Students Union representatives

Cllr. Jack Walsh, Chair of WIT Audit Committee and Ms. Eileen Healy, Deloitte, Internal Audit Manager for WIT

### **DCS**

Mr. Eugene McKenna, CEO, Mr. Barry Kennedy, Director, Mr. Conor Doyle, Director, and Ms. Sinead Nealon, General Manager, DCS

Mr. Geoff Meagher, Chair of DCS Audit Committee

Mr. Martin Freyne, Partner, and Ms. Karen Coady, Manager, PWC, (DCS Auditors)

### **Other relevant parties**

Mr. Redmond O'Donoghue, former Chairman of Governing Body

Mr. Colin Feely, Partner, Grant Thornton, Chartered Accountants

Mr. John Malone, HEA representative to work with Governing Body Sub-Committee

Mr. Seán Ó Foghlú, Secretary General, Ms. Mary Doyle, Deputy Secretary General, and Mr. Christy Mannion, Principal Officer, Department of Education and Skills

Mr. Tom Boland, CEO, and Mr. Fergal Costello, Principal Officer, Higher Education Authority

Department of Public Expenditure and Reform & Department of Finance

Office of the Comptroller and Auditor General

## Appendix 4: List of DCS Companies

<b>Company Name</b>	<b>Date of Incorporation</b>	<b>Previous company names</b>	<b>Date Name Change</b>	<b>Charity Status</b>
WIT Diverse Campus Services Ltd.	20/3/2000	Boxyband Ltd.	1/9/2001	Yes
Waterford College Recreation Partnership Ltd.	19/04/1991	Dramatist Ltd.	1/9/2001	Yes
WIT Sports and Social Club Limited	29/3/2000	Goldenage Ltd.	1/9/2001	No
College Residences Ltd.	21/5/1991	Twohills Ltd.	12/11/2001	Yes
WIT Campus Accommodation Ltd.	21/11/2001	n/a	n/a	Yes
Manor Retail Ltd.	20/10/2005	n/a	n/a	No
Carraiganore Developments Ltd.	29/6/2006	n/a	n/a	No

All the companies are now limited by guarantee.

Two companies – College Residences Limited and Waterford College Recreation Partnership Limited – previously had a share capital held on a non-beneficial basis by company shareholders.

## **Appendix 5: Instances when the relationship between WIT and the Development Committee/DCS was raised at WIT Governing Body (Chapter 3.4)**

### **Earlier Period**

1. The question of consolidation of accounts arose as far back as 1995. At the meeting of the Governing Body on 28 March 1995 a member said that as the Development Committee accounts were not consolidated they should in future be presented to the Governing Body for approval. Such a procedure was never adopted, presumably on the basis that the Development Committee was independent. Another member commented that the Development Committee was tied more closely to the college than he was previously aware in that capitation fees were collected by the college and passed over to the Development Committee for disbursement.
2. There was considerable tension with the Students Union during the period 1996 to 2000. A number of Presidents of the Students Union resigned their position on the Development Committee during this period.
3. Relations became particularly frayed arising out of the introduction of a smart card for security and payment on the campus between 2000 and 2001. The Students Union complained about lack of consultation and lack of cash alternatives for payment purposes. They made representations to the Minister for Education in February 2001 about the smart card issue as well as their overall concerns about the legal status of the Development Committee and the manner in which it was operating. The students undertook a boycott of lectures, supported by the Teachers Union of Ireland, on foot of their grievances. Some 1,600 students signed a petition to the Minister.
4. At the monthly meetings of the Governing Body in December 2000 and May 2001 assurances were sought by members nominated by the Students Union as regards, inter alia, the genesis of the Development Committee, the relationship between the Institute and the Committee, the continuation of a former Director of the Institute as a member of the Development Committee following his retirement, proposed changes to the structure of the Committee and the activities of the Committee generally. There were clear tensions at the time about the amount of information on the Development Committee being made available to the Governing Body. It was agreed that

clarification would be sought from the legal advisers on the existing structures of the Committee vis-a-vis the Institute.

5. A number of special meetings of interested parties were arranged to deal with the issues and to try to address concerns. At the meeting of the Governing Body on 27 March 2001 a report was made by the Temporary Director on the outcome of the special meetings and the actions being taken to improve relationships. As part of these, the Secretary reported that legal advice had been obtained by WIT. This advice expressed the view that
- the Development Committee is an autonomous unincorporated association
  - the Committee is legally separate from the Institute
  - it engages its own legal advisers and auditors
  - it is not and has never been a sub – committee of the VEC or of the Governing Body
  - it operates in accordance with its constitution.

The legal advisers also outlined the role of the Governing Body which they said was to monitor the activities of the Committee.

6. Around the same time a member of the Governing Body expressed concerns at a meeting and in a subsequent note about the accounting policies of the Development Committee and its associated companies and questioned their consistency with those of the Institute. He also raised questions about the Students Union accounts which were showing a large deficit. He queried too the appropriateness of having employees of the Institute as trustees of the Development Committee. The note was referred to the Development Committee for its attention. Subsequently, at a meeting in November 2001 the same member voiced concern that questions raised previously by him had not been satisfactorily answered.
7. In November 2001, in response to correspondence from the Department of Education and Science about the issues raised by the Students Union, the new President of the Institute informed the Department that the students' concerns had been allayed. The matter was not pursued further by the Department. Concerns about the WIT structures had in fact been raised in the Department in the mid-1990s, based on a general examination of ancillary services being provided at Regional Technical Colleges but these were not pursued at that time.

8. A five-year review of the arrangements between WIT and the Development Committee took place at the Governing Body meeting on 24 June 2003. The Governing Body approved the continuation of the arrangements with the Development Committee for another five years. The representative of the Development Committee said that a new constitution was being drafted to include an expansion of membership, but I understand that this did not proceed.
9. On the occasion of a review in June 2005, it was agreed by the Governing Body that the existing arrangements with the Development Committee would be continued for a further five years.
10. At the meeting of the Governing Body on 20 January 2009 a member, referring to the serious financial situation facing the Institute, suggested that consideration be given to greater cross subsidisation between the Development Committee and the Institute; and, in the context of the new Code of Governance for the Institute, he recommended that the trading units within DCS should be subject to internal audit.
11. In the corresponding meeting in February 2010, the Governing Body considered a detailed breakdown it had sought on how student charges income was disbursed by the Development Committee. A member requested also that the Institute should consider tendering for the provision of student services. Subsequently, at the meeting in March 2010, it was agreed to review the existing agreement between the Institute and the Development Committee over the coming months. This followed a proposal by a member, which was supported by the then President, that a consultative group be established to engage with the Development Committee on ongoing issues of concern. However, no immediate steps were taken to progress such a review.
12. The next significant discussion, based on my examination of the minutes of Governing Body meetings, took place at the meeting on 24 May 2011. The Development Committee/DCS representatives provided an update on their activities. They expressed concern about the operation of the Disbursement Agreement between the Institute, Development Committee and Students Union which dated back to 1998 and was used, inter alia, as security to the bank for borrowing purposes by DCS.
13. Members of the Governing Body raised questions with the representatives of the Development Committee/ DCS on the structure of the Committee, the title to land on which the Committee had commissioned various buildings and the implications for

the Institute if the Committee was unable to service its borrowings. The Chief Executive of DCS said that the Committee was open to a new structure or agreement. It was decided to establish a Sub-Committee of the Governing Body to undertake as a matter of urgency a review of the Development Committee and of its relationship with the Institute and of all agreements in place. This matter is pursued in Chapter 3.5.