

Appeal No. VA11/4/008

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Commissioners of Public Works in Ireland

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2204783, Office(s) at Lot No. 16 (incl 8 Gardiner Row) Flr 0,1, Parnell Square, East, Rotunda A, Rotunda, County Borough of Dublin.

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Brian Larkin - Barrister

Member

James Browne - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF APRIL, 2012

By Notice of Appeal dated the the 26th day of october, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valaution of €1,084 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are as follows:

"The valuation is excessive, is not reflective of the tone of the list and undue allowance has been made for quantum. By reason of the fact that the office in question is occupied by the National Economic and Social Development Office (NESDO), which should be regarded as an 'office of state' and directly occupied by the State thereby enjoying the exemption from rating as provided under section 15(3) of the Valuation Act 2001."

The appeal proceeded by way of an oral hearing at the offices of the Valuation Tribunal, Holbrook House, Holles Street, Dublin 2. At the hearing the appellant was represented by Mr. Noel Whelan BL, instructed by Mr. Peter Byrne, CSSO. Ms. Grainne O'Neill BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent and Mr. Dan Donovan, a valuer at the Valuation Office was also present. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered the following emerged as being the facts relevant and material to the appeal.

The property is a building at 16, Parnell Square, Dublin 1 which is occupied, in part, by National Economic Social Development Office (“*NESDO*”) on whose behalf the Appellant brings this appeal.

THE ISSUE:

Prior to the hearing, the parties agreed the Tribunal should decide by way of preliminary issue whether the subject property was a “*relevant property*” not rateable being a part of a building occupied by “*the State*” (or in the alternative by “*an office of State*”), the provisions of Section 15(3) of the Valuation Act of 2001 making it clear that such a property is not rateable.

THE APPELLANT’S CASE:

Having drawn the Tribunal’s attention to various High Court decisions and Tribunal determinations in his opening, Mr Whelan BL referred to the building which is held on long lease by the OPW and is, in turn, sublet to the Office of the Director of Corporate Enforcement (“*ODCE*”), the Department of Social and Family Affairs (“*the Department*”) and NESDO. He drew our attention to various features of the National Economic and Social Development Office Act of 2006 (“*the 2006 Act*”) which established the National Economic and Social Council (“*NESC*”), the National Economic and Social Forum (“*NESF*”) and the National Centre for Partnership and Performance (“*the Centre*”). While NESDO is, in effect, the umbrella body for all three entities, both NESF and the Centre have been abolished since April 2010, with NESC remaining in situ.

Mr Whelan made various opening submissions - which will be referred to in more detail later in this Determination - and then called his only witness, Dr Rory O'Donnell, the Chief Officer of NESDO.

Dr O'Donnell indicated that the entity now known as NESC had existed from 1973 onwards with the NESF body having existed since 1993. He noted the abolition of NESF and the Centre in April of 2010, confirming that NESC is, in effect, the occupier of the relevant section of the building.

Dr O'Donnell drew our attention to various elements of the 2006 Act. He noted NESDO was established by Statute under Section 6 of the 2006 Act, though the Taoiseach was empowered under Section 7 (after consultation with the Minister for Finance and other Ministers as he saw fit) to establish within NESDO such other bodies as he considered appropriate to prepare advice and reports on any aspect of any matter in relation to the functions of the office. He noted the functions of the office set out in Section 8 of the Act were to provide administrative support to and to transmit to the Taoiseach and to the Government, the outcome of the work of the various bodies established under Statute.

Dr O'Donnell told us the Chairman of NESC was the Secretary General of the Department of An Taoiseach; he also indicated that the Vice Chairman of the Council was the Assistant Secretary in the Department of An Taoiseach.

Dr O'Donnell then referred to the functions of the NESC. By way of background, he explained that the concept of social partnership had evolved over a number of years. The concept of social partnership had flourished, in particular between 1987 and 2008. The role of NESC as provided for under Section 9 of the Act was to discuss and analyse various strategic issues; this, he said would take the best part of a year. The Council would then provide a report which provided significant input into partnership agreements made between the Government and the social partners. He distinguished the social partnership concept from agreements such as the Croke Park Agreement which was, in effect, a bilateral agreement between the Government on the one hand and unions representing public service employees on the other.

Of significance in understanding the functions of the Council is the position of the Council as provided for under Section 14 of the Act. The Council has 32 members from various sectors of society. These include:-

- (a) Four representatives of employer organisations;
- (b) Four representatives from ICTU;
- (c) Four representatives from community and voluntary organisations;
- (d) Four representatives from agricultural farming organisations (e.g. IFA);
- (e) Four representatives from environmental or governmental organisations;
- (f) Four Secretary Generals (previously five) from Finance, Environment, Skills and Enterprise, and Social and Family affairs.

In addition there is a Chairperson and Deputy Chairperson as referred to above. All members including those listed above from the various sectors are appointed by An Taoiseach.

Dr O'Donnell explained that while civil servants working with the Council prepared various analyses on a monthly basis for the Council in the form of a report, the report would then be discussed at Council. Having been agreed amongst the Council, the report would then be submitted to the Government and would in due course be noted by the Government and later put before the Oireachtas. Dr O'Donnell noted that the Chief Officer's terms and conditions were, in accordance with Section 24, approved by An Taoiseach with the consent of the Minister for Finance. In similar terms, Section 26 provided for the engagement by the office of staff as it may determine with the consent of the Taoiseach and the Minister for Finance. In this regard, Dr O'Donnell confirmed that the staff of NESDO were economists and/or analysts who were either:-

- (a) On secondment from government departments; or
- (b) Hired on five year contracts through the Public Appointment Service as temporary non-established civil servants.

Dr O'Donnell also noted that Section 27(4) provided that the pension scheme for members was subject to approval by An Taoiseach and the consent of the Minister for Finance.

Dr O'Donnell also referred to the various funding arrangements made to fund the office. While there had previously been a tiny income from the sale of publications, this had ceased;

most of NESC's publications are now available free online. Our attention was drawn to the "vote" of funding for the Department of An Taoiseach, and it was noted that the funding for the Appellant had been cut by 30% between 2010 and 2011. Dr O'Donnell indicated that the abolition of NESF and the Centre was likewise undertaken in an attempt to cut back on spending. It was noted that the funding of the office comes from the Taoiseach with the consent of the Minister for Finance under Section 29 of the 2006 Act.

In addition there are various requirements imposed on the office by Section 31 (the obligation to keep accounts and to be available for audit). Dr O'Donnell indicated there was now an obligation to prepare monthly accounts to be submitted on a monthly basis to the Department of An Taoiseach in an effort to control expenditure. Section 32 requires the Chief Officer or a Director of one of the constituent bodies of NESDO to give evidence to the Committee of Dáil Eireann on expenditure. Section 33 imposes an obligation on NESDO to submit a strategic plan to the Taoiseach and to the Oireachtas. In addition to furnishing of a report every financial year of its activities to the Taoiseach (which report is then laid before the Houses of the Oireachtas), NESDO is under an obligation to furnish any information requested by An Taoiseach relating to its activities if and when so asked (Section 34(3)).

In addition, Dr O'Donnell indicated that it would be customary for the NESC to provide draft answers for An Taoiseach to answer to questions in the Dáil in relation to the role of the NESC.

Dealing with the day-to-day position, Dr O'Donnell indicated that because the Secretary General of the Department of An Taoiseach was the Chairman of the Council, no project, in reality, proceeded without the approval of the Department of An Taoiseach. The Head of Administration and two other colleagues are career civil servants seconded from the Department of An Taoiseach to administer the Appellant office.

Dr O'Donnell indicated the Department was conscious it was short of analysts and may consider seconding staff back to the Department, there having been an apparent surplus because of the abolition of NESF and the Centre. At present, Dr O'Donnell said there were 17.2 whole time equivalent staff; this was made up of 20 persons but a number were on half time. Of this was himself and 11 analysts; the balance were administrative staff. In practice, he indicated, the Office's day-to-day work was more and more "*knitted in*" to the

Department of An Taoiseach. However, other departments had an input through the composition facilities described above. In 2010, for example, in the course of working on a report on “*the Euro*”, the NESC obtained information and assistance from the Department of Foreign Affairs. Likewise when working on a project in relation to migration, the office received assistance from the Department of Justice. Dr O’Donnell said it was common that it would carry out research and develop strategies with input from relevant departments.

In cross examination, he agreed that research projects could be suggested by the NESC itself or by the Department of An Taoiseach, but noted that these could not go ahead without sanction from the Department of An Taoiseach. He indicated that if the Government, through the Department of An Taoiseach requested NESC to do something, it would automatically be undertaken. In effect, he said the Government’s expressed wish on a matter was taken by NESC as a command. It would be then up to the Chairperson and himself as Chief Officer to assign the work programme to put into effect any such request by the Government.

In concluding submissions, Mr Whelan BL referred again to **HSE –v- Commissioner for Valuation** (McMenamin J); **PIAB –v- Commissioner of Valuation** (McCarthy J) and **Fingal County Council –v- Commissioner of Valuation** and **NSCDA (Operations) Limited** (“National Aquatic Centre”) (Peart J) as well as certain previous determinations of the Tribunal.

He concluded by submitting that in his view, NESDO was a limb of the Department of An Taoiseach. In his submission, the process of engagement with the social partners carried out by NESC/NESDO was itself part of the functioning of the State and represented an implementation of policy. He accepted that the carrying out of research and the provision of analysis to the Government of itself did not necessarily exempt a body under Section 15(3). However, in his view, the establishment of NESDO and NESC represented the implementation of government policy to involve social partners intimately and at a deep level in the process of policy formation and implementation.

THE RESPONDENT’S CASE:

On behalf of the Respondent Ms O’Neill indicated that she did not propose to call evidence in relation to the preliminary issue as to whether or not the property in question is not rateable having regard to the provisions of Section 15(3).

On behalf of the Respondent, Ms O'Neill submitted it was irrelevant that the building was let by the OPW; likewise the identity of the other tenants was irrelevant. In her submission, the most critical issue was the issue of function.

While issues such as staffing and the provision of funding were closely controlled by the Department of An Taoiseach, Ms O'Neill submitted that this was a situation which existed in respect of many other bodies established by Statute. However, that, in her view, did not determine the issue of whether or not the Appellant came within the provisions of Section 15(3) of the 2001 Act.

In her submission, the question to be asked is what does this body do? Ms O'Neill submitted that NESDO did what a number of other bodies do. In this regard, she noted that the Government had numerous special advisers. It approached various consultative bodies in order to obtain views on policy. It also consulted universities and other colleges. In her submission, the fact that this body was established by Statute was irrelevant since all it was was a consultative body which formulated advice which it gave to the Government. It was then up to the Government to decide whether or not to convert such advice into policy. By way of example, she submitted that accounting firms such as PWC were advising government bodies in relation to the conduct of NAMA. That of itself, however, did not make the PWC a body within the meaning of Section 15(3) of the 2001 Act.

It was also significant, she submitted, that the Department of An Taoiseach had, by the 2006 legislation, expressly divested itself of the obligation to engage with the social partners. Instead, this obligation was an obligation imposed not on the Government but on another body established for this purpose. In the circumstances, therefore, her submission was that the Appellant body was a body which formulated and gave advice; which as a function, could not be regarded as a State function.

In response, Mr Whelan, for the Appellant, suggested that the Appellant body fitted all four of the tests set out by McMenamin J in **HSE –v- Commissioner of Valuation**. NESDO was a body made up of social partners but was as close to the Centre of Government as it was possible to get. In his submission, the comparison of the Appellant with outside entities such as PWC or academic universities or even a special adviser was a fallacy since the Appellant body was set up by Statute to facilitate social partnership and social inclusion and also

referred to the decision of Peart J in **The National Aquatic Centre** in which it was held that the establishment of the National Aquatic Centre constituted the implementation of government policy towards elite athletes.

Both sides also made Written Legal Submissions which were of very considerable assistance to the Tribunal.

THE LAW.

Section 15(3) of the Valuation Act of 2001 provides that, subject to Section 16:-

“Relevant property, being a building or part of a building, land or a waterway or a harbour directly occupied by the State (including any land or building occupied by any Department or office of State, the Defence Forces or the Garda Síochána or used as a prison or place of detention) shall not be rateable”.

The issue of what constitute the State (or indeed an office of State) has been dealt with by the High Court on three occasions in recent years in the **HSE –v- Commissioners for Valuation** (High Court, unreported 13th June 2008, McMenamin J), **The Personal Injuries Assessment Board –v- Commissioner of Valuation** (High Court, unreported []day of [] 2008, McCarthy J) and **Fingal County Council –v- Commissioner of Valuation and NSCDA (Operations) Limited** (High Court unreported 21st December 2011, Peart J) (“*the National Aquatic Centre*”) Decision.

While there have been a number of Determinations of the Valuation Tribunal on this issue also, those Determinations are not binding on this Division of the Tribunal. On the other hand, the Decisions of the High Court are obviously binding on the Tribunal as rulings on issues of law (being the interpretation of Section 15(3) of the Act). In the circumstances, we do not believe it is helpful or necessary to refer to previous Determinations of the Valuation Tribunal, as more than adequate guidance is given to us by the High Court Decisions referred to above.

The principles in question are admirably summarised in the most recent Judgment of the High Court, that of Peart J in the **National Aquatic Centre** case:-

“These issues have been the subject of decisions by the High Court in relation to the Personal Injuries Assessment Board, and in relation to the Health Service Executive - the former being found to be rateable, while the latter was found to be not rateable. Each of those bodies is set up by an Act of the Oireachtas and the relevant Minister exercises a degree of control, both in terms of finance, appointment of board members, and policy. The nature of the body, the degree of such control, and whether the body exercises functions which are at the core or epicentre of government policy were relevant to those decisions, and are so in the present case too. Certain indicia have been identified in these cases as useful in deciding whether the property is occupied by the State or an office of State. Previous decisions of the Valuation Tribunal have identified a number of factors which are considered by the Tribunal to assist in establishing whether or not a property is occupied by the State or an office of State for the purpose of Section 15 (3) of the Act. These are:

- (a) Was the body occupying the premises established under an Act of the Oireachtas or a Ministerial Order?*
- (b) Is there a level of integration by the body with and control over the body by the State?*
- (c) Does the body have a national or State character?*
- (d) Is the body close to the epicentre of Government policy?*
- (e) Are the functions performed by the body integral to Government policy?*
- (f) Is there a strong level and wide evidence of Government/Ministerial control?*
- (g) Do accounts have to be submitted to the Controller and Auditor General for audit each year and do reports have to be sent to the Minister and laid before the Houses of the Oireachtas?*
- (h) Are the Chairman and members of the body appointed by the relevant Minister?*
- (i) Are the members of the body civil servants or, alternatively, are the members of the body public sector employees with Ministerial involvement in their appointment and*

remuneration? In this regard, however, the fact that staff are not civil servants is not determinative.

- (j) Are expenses incurred by the Minister in the administration of the governing Act paid out of monies provided by the Oireachtas?*
- (k) Does the body receive government funding?*
- (l) Are funding and governance of the body Government controlled?*
- (m) Does the Minister have power to issue general policy directives or, in the alternative has to be consulted in respect of nearly all the body's functions?*
- (n) Is Ministerial approval required for the purchase or sale of land?*

Referring to these various indicia, McMenamin J. in his judgment in Health Service Executive v. Commissioner for Valuation, unreported, High Court, 13th June 2008 approved them as useful and condensed them into four categories, namely “(1) its nature and function; (2) its proximity to central government [and Ministerial control]; (3) its finance, control of expenditure, funding, financial and administrative accountability; (4) its staffing arrangements and functions.”

It may be noted that Mr Whelan in submissions on behalf of the Appellant suggested that if the questions (a) to (n) set out by Peart J are asked of this client, the answer would in each case be “yes”. It seems to us, however, that the condensing of these various issues into the four categories suggested by McMenamin J is a helpful way of examining the matters in issue in this case.

Before examining how the Appellant fares when considered under each of these four headings, it may be helpful if we rule on certain matters which appear to be suggested by implication in the submissions made by the Appellant. We accept submissions made by the Respondent to the effect that the fact the building is let by the OPW to the Appellant is of no relevance to our determination of the applicability or otherwise of Section 15(3). Likewise the identity of the other tenants sharing the building is irrelevant to our decision in relation to this issue and again, we agree the submissions made by the Respondent in this regard.

It may also be helpful if in considering the various four headings proposed by McMenamin J we deal firstly with the headings to which answers in the instant case seem clear.

FINDINGS

STAFFING ARRANGEMENTS AND FUNCTIONS.

In our view, the finance, control of expenditure, funding, financial and administrative accountability of the Appellant body make it “*the State*” within the meaning of Section 15(3) of the 2001 Act. While the office may appoint persons to be members of staff, it can only do so with the consent of the Taoiseach and the Minister for Finance. Likewise the remuneration and allowances payable to any such staff require to be approved by the Taoiseach with the consent of the Minister for Finance (as indeed does any pension scheme put in place for staff). While NESDO is permitted to engage consultants, it must only pay them out of the funds available to it which funds are made available on the vote of the Department of An Taoiseach.

It is notable also that the numbers and even the grades of staff require consent of the Taoiseach and the Minister for Finance. The unchallenged evidence on behalf of the Appellant is that the staff are made up of persons either on secondment from Government Departments or else temporary non-established civil servants contracted through the Public Appointments Service. Apart from the provisions referred to above which are set out in more detail in Section 26 (Staff of Office), Section 27 (Superannuation) and Section 28(Consultants and Advisers), it is clear that the Chief Officer (whose role is expressly provided for in Section 24) is likewise subject as far as his terms and conditions are concerned to the approval of the Taoiseach and the consent of the Minister for Finance. Again, the Chief Officer is paid out of the funds made available from the vote of the Department of An Taoiseach (and again with the consent of the Minister for Finance).

It is clear also that the staff operate by the direction of the Chief Officer and in the circumstances, therefore, it seems to us that the autonomy given to the Department of An Taoiseach and the Minister for Finance is such that staff in question must be regarded as civil servants carrying out a civil service role in all but name. Indeed, it is clear that the staff in question are either permanent or temporary civil servants.

Notably, the evidence by Dr O'Donnell suggests the staff are accustomed - as is the entire Council - to act in accordance with the direction of the Government, any request by which is regarded by the Appellant as a "*command*". We will examine this issue in more detail below.

It, therefore, seems to us safe to conclude that insofar as staffing arrangements and staff functions are concerned, the Appellant is "*the State*" within the meaning of Section 15(3).

THE FINANCE, CONTROL OF EXPENDITURE, FUNDING, FINANCIAL AND ADMINISTRATIVE ACCOUNTABILITY OF THE BODY IN QUESTION.

The Appellant is totally and exclusively dependent for its finance on the funds it receives from the Department of An Taoiseach. It has no other source of income.

The evidence of Dr O'Donnell suggests that extremely tight control is exercised by the Government in general and the Department of An Taoiseach, the Minister for Finance in particular, in relation to its expenditure. In addition to having to prepare monthly budgets, it is clear that the form of accounts it keeps must be approved by the Taoiseach and the Minister for Finance. Accounts must be submitted on an annual basis to the Comptroller and Auditor General for audit, whose report thereon must be laid before the Houses of the Oireachtas. The Chief Officer may be asked to give evidence to the Public Accounts and other Oireachtas Committees in relation to the expenditure of the office and is clearly accountable for the performance of the office, financial and otherwise.

It is thus clear that, both as a matter of statute (having regard to the provisions of Section 31 and 32 outlined above), and as a matter of day-to-day practice, any expenditure by the Appellant body is carefully controlled and rigorously analysed by the Government through the Department of An Taoiseach and the Minister for Finance. This is relevant also to the issue of financial and administrative accountability. It is clear to us that the statutory requirements imposed on the Chief Officer set out in Section 32 mean that the Chief Officer and the office itself is in a very real way accountable for expenditure of finances and for the performance of the functions of the Appellant generally.

It is also notable that under Section 34, the Taoiseach can request the office to give any information which the Taoiseach specifies concerning or relating to the scope of its activities;

this requirement is not limited to income and expenditure but is of a far more general and wide-ranging nature. It is also clear that the office is obliged to prepare a strategic plan under Section 33 for submission to the Taoiseach which is then put before the Houses of the Oireachtas. This is a strategic plan for each of the bodies under the umbrella of NESDO (now being only one NESC), but again, the statutory obligation to, in effect, seek the *imprimatur* of the Taoiseach for any plan which the office may have as to how it might wish to organise itself for the future is striking.

It is also abundantly clear that the only source of funding which the Appellant body has is State funds. Notably, two of the three bodies initially established under the Act have been dissolved as part of the economic cutbacks being put in place in the current recession. This we are told was done by Statutory Instrument. It would, of course, be open to the Government to “downsize” or abolish altogether the one remaining body (NESC) and/or NESDO if it saw fit; indeed if the NESC were to be abolished, it is hard to see what function NESDO would have.

What is clear, however, is that without State funding provided to it, the Appellant could not and would not continue to exist. In these circumstances, it seems to us the finance, control of expenditure, funding, financial and administrative accountability aspects of the Appellant body make it “*the State*” within the meaning of Section 15(3) of the Act.

PROXIMITY TO CENTRAL GOVERNMENT AND MINISTERIAL CONTROL.

In **HSE –v- Commissioner of Valuation**, McMenamin suggested:-

“The question is whether the body or authority performs a “core” (as opposed to peripheral) function of government”.

It appears to us in a very real practical sense, the activities of the Appellant body are “controlled” by the Government through the Department of An Taoiseach with a degree of input from the Minister for Finance. The Taoiseach can establish other bodies as he considers appropriate to prepare advice and reports. The Taoiseach can amend the functions of the NESC. He can request reports to be made to it (which “request” is usually treated by the Appellant as a “command”). Importantly, the Taoiseach appoints the Members of the

NESC by deciding the makeup of same. He is also empowered to alter the composition of the Members of the Council if he considers it appropriate, pursuant to Section 17 of the Act. The Taoiseach, as well as appointing members of the various bodies (the remaining body in this case being the NESC) can also under Section 18 remove a person from membership and appoint a successor also.

In addition, as indicated previously the Chief Officer is appointed by and holds office pursuant to terms and conditions fixed by An Taoiseach.

It therefore seems to us that the day-to-day management and control of the Appellant is the responsibility of and is carried out by the Department which is at the heart of the Government, being the Department of An Taoiseach. The statutory provisions referred to above, as well as the unchallenged evidence of Dr O'Donnell, suggest a very high degree of direct central control exercised by the Department of An Taoiseach as to the day-to-day running of the organisation. In the course of his evidence, Dr O'Donnell made it clear that since the Secretary General of the Department of An Taoiseach is Chairperson of the Council, no project proceeds without the approval of the Department of An Taoiseach.

It therefore appears to us that the Appellant body is proximate to Central Government in two ways:-

- (a) It is clearly controlled by the Department of An Taoiseach insofar as its funding, membership and ongoing existence is concerned;
- (b) In addition, tasks which it carries out are as a matter of practice, directed by and sanctioned by the Department of An Taoiseach which has an effective veto over all activities carried out by the Appellant.

THE NATURE AND FUNCTION OF THE APPELLANT.

Counsel for the Respondent submitted that for a body to qualify as "*the State*" under Section 15(3), it was insufficient to qualify only under one or two or even three of the four headings proposed by McMenamin J in **HSE –v- Commissioner of Valuation.** We agree. We note the Respondent's submission that many entities established by Statute have reporting obligations to a department or departments; In addition, many such bodies are dependent

solely or largely on State funding for their continued existence. While the day-to-day control of the activities by the Department of An Taoiseach with the consent of the Minister for Finance is significant here, we agree with the submission of the Respondent that this will not be sufficient for the Appellant body to qualify under Section 15(3) unless it can also establish that by its nature and function the Appellant is “*the State*” within the meaning of the Section of the Act.

In order to consider the nature and function of the office, it may be helpful to look at certain aspects of the 2006 Act. Section 2 “*Social Partners*” is defined as meaning:-

“Persons participating in arrangements put in place by the Government to assist in the formation of economic and social policy, and which the Taoiseach considers to be representative of the main business and employer, trade union, farming and community and voluntary sectors and, in particular, those organisations of persons which enter into arrangements approved by the Government, from time to time, to promote economic and social development through the co-ordination of their respective activities” and “social partnership” shall be construed accordingly”.

While the function of the office is described at Section 8 as being “*to advise the Taoiseach on all strategic matters relevant to economic and social development in the State*”, it is notable that the functions of the NESC described at Section 9 are:-

“to analyse and report to the Taoiseach on strategic issues relating to the efficient development of the economy and the achievement of social justice and the development of a strategic framework for the conduct of relations and the negotiation of agreements between the Government and the social partners”.

It is perhaps also worth noting in passing that the description of the functions of the now defunct NESF refer to an obligation to advise the Taoiseach on policies to achieve greater equality and social inclusion in the context of social partnership arrangements; likewise the description of the functions of the now defunct Centre, refer to organisational change and innovation based on partnership, better public services, higher living standards, a better quality of life and the development of the workplace of the future.

The powerful argument made on behalf of the Respondent is that while the Appellant body is a worthy and extremely useful entity, it does no more than advise the Department of An Taoiseach on potential policies which the Department of An Taoiseach (and in turn the Government) may or may not then implement. The Respondent compares the Appellant to a university or an accounting firm or other specialised body which provides specialist economic advice as to the types of economic policies which the Government might wish to put in place in the future. There is no doubt that the fact simply that a body gives advice to the Government does not and could not of itself make it “*the State*” within the meaning of Section 15(3) of the 2001 Act.

However, it does appear to us the Appellant body is not simply a body set up to get advice on economic matters. Rather, it seems to us to be a living implementation of a central government policy, being the policy of engaging in a consultative process with the various social partners in formulating governmental economic and social strategies for the future.

It is in our view inappropriate to characterise the Appellant as simply a group of economists giving economic advice. Indeed, the title of the body itself refers not just to economics but to the concept of “*social development*”. It seems to us the enactment of the 2006 Act reflects a deliberate and strategic government policy to engage in a formal consultative process with all of the social partners in formulating social and economic strategies in the future. This is not the same as a bilateral coming together of e.g. the Government and the trade unions such as occurred in the Croke Park Agreement. Rather, it seems to us the NESDO and the NESC were established expressly to embody this principle on an ongoing basis. We note the obligations imposed on NESDO to co-ordinate, support and service the activities of the (formerly three and now one) body established under the Act. NESDO is also required to submit to the Government, any reports, recommendations or conclusions of a body given to it which may arise from any research, survey or study carried out by such a body and arrange for the publication of such reports, recommendations or conclusions.

It may be helpful in this regard to note the Mission Statement of the Department of An Taoiseach, which is:

“To provide the Government, Taoiseach and Minister of State with the support, policy advice and information necessary for the effective conduct of Government for the dynamic leadership, co-ordination and strategic direction of Government policy”.

Manifestly this is a function allocated to a Government Department. In our view, the Appellant body plays a central role in implementing this function by providing support, policy advice and information to the Department of An Taoiseach which is then transmitted to the Government. While the activities of the Appellant are not carried out directly within a Government Department they are undoubtedly carried out for the exclusive benefit and attention of Government Departments. In addition, they are carried out by civil servants (permanent and temporary) with the executive direction of the Chief Officer and – in NESC – under the overall direction of the Chairperson who is the Secretary General of the Department in question.

While we accept the argument that setting economic and social policy is a core function of the State, the fact that the State has, by Statute, divested this core policy to a statutory body (albeit one tightly controlled, regulated and exclusively financed by Government), does not mean that the function carried out by that body is any less central as a result. Indeed, as observed by McMenamin J in **HSE –v- Commissioner of Valuation:**

“The fact that the HSE is a distinct legal entity is no more germane than that a Minister is a corporation, save that a Minister or a Department of State are, nonetheless, “the State” as defined and recognised. The fact that an entity is legally distinct from the State is not dispositive of the issue here. The State acquires, holds and disposes of land generally not via the State but generally through a corporation sole, a minister, a department of State or through a statutory body such as the Commission of Public Works”.

We are, therefore, of the view that the Appellant body, NESDO, is as a matter of law and fact, “the State” within the meaning of Section 15.3 of the Act. It has features which appear to us to be otherwise unique to governmental departments or bodies very closely otherwise integrated into the process of Government.

“OFFICE OF STATE”.

We note the suggestion made by McCarthy J in **PIAB –v- Commissioner of Valuation:**

“Obviously the term in question must be interpreted by reference to and in the context of the other terms used, or entities referred to, in the sub-section i.e. Departments, the Gardaí and the Defence Forces. I would have thought that the disputed term must be defined as an entity cognate to these three which, after all, one would have thought constitute entities which are unambiguously “the State” (since the State cannot occupy save by servants or agents, whether those are incorporated bodies or not). Or, to put the matter in another way, I do not believe that the term could be interpreted as anything other than a body analogous to the other three, both because of the fact that it is used in that context since the term, if considered in comparison with those, imports the greatest degree of directness of which one could conceive”.

We note also that McMenamin J did not find it necessary in **HSE –v- Commissioner of Valuation** to consider in detail what might constitute an “*Office of State*” having regard to the fact that he concluded the HSE was “*the State*” within the meaning of Section 15(3) of the 2001 Act. In fairness to both parties, it seems to us the real argument before the Tribunal is whether the Appellant constitutes “*the State*” as distinct from “*Office of State*”. Since we have determined the Appellant is “*the State*” within the meaning of Section 15(3), we propose to follow the course adopted by McMenamin J and deeming it unnecessary to decide what the phrase “*Office of State*” means for the purposes of the Act.

Finally we should add that we share the concern evident in the concluding remarks expressed by McMenamin J in the HSE case that the Appellant and the Respondent, being both State bodies in a broad sense (irrespective of our finding in relation to the applicability of Section 15(3)) could not find a more cost-effective method of resolving what is in effect a dispute involving the accountability of one State body to another.

DETERMINATION

The Tribunal determines the subject property occupied by the Appellant is occupied by the State within the meaning of Section 15(3) of the Valuation Act of 2001 and, accordingly, is not rateable.

And the Tribunal so determines.