

## **Audit Committee**

**Date:** 21 November 2002

**Time:** 13:30

**Venue:** Committee Room 1, National Assembly for Wales

### **AUDIT COMMITTEE REPORT 03-02: SECURING THE FUTURE OF CARDIFF BAY**

**The Welsh Assembly Government's response to the Recommendations of the Audit Committee following the presentation of their report on 16 April 2002**

The Welsh Assembly Government welcomes this report and offers the following response to its conclusions and recommendations.

#### **Recommendation (i)**

**Despite the problems created by the complexities of the wind up process and the intense pressure that all parties involved were under, the process was completed successfully and the affairs of the Cardiff Bay Development Corporation brought to a close with no significant loose ends at the point of transfer. We endorse the Permanent Secretary's comments on this achievement and agree that all those concerned, in particular the staff of the Cardiff Bay Development Corporation, deserve credit for helping to secure this outcome.**

We welcome the Committee's comments.

#### **Recommendation (ii)**

**The Auditor General's Report together with the evidence we heard clearly identified some important lessons for the Assembly and we recommend that officials take full account of these in their future planning of the closure, re-organisation or restructuring of public bodies in Wales. We highlight the following.**

- We endorse the key lesson drawn out in evidence by the Permanent Secretary. Namely in future closures and reorganisations of public bodies in Wales, the governing administration that has the primary responsibility for ensuring a successful outcome should have a fuller role in the process from the outset.**

- **The process of closing or reorganising public bodies inevitably becomes a negotiation between the parties involved and the nature of negotiations is such that they have a tendency to go to the wire. Consequently it is crucial that key decisions are taken as early as possible in the process and that any delay in taking these key decisions is not allowed to weaken the Assembly's negotiating position. In this context Assembly officials are aware, for example, that previous work undertaken by the National Audit Office indicated that in the wind up of other Development Corporations key decisions on successor bodies were needed at least two years before the wind up date.**
- **We welcome the Permanent Secretary's recognition that another reason for making key decisions as early as possible is to avoid the adverse impact of uncertainty on staff. The closure and reorganisation of organisations is a stressful time for staff. This means the process must be managed sensitively and in an open way giving the individuals concerned as much information as possible. The aim should be to give staff an absolute assurance on their future and the prospects for their jobs and, again, this should be done as early as possible in the process.**
- **There is a risk that, in taking forward a process which is in effect a negotiation, officials may lose sight of a range of other related administrative matters. The Auditor General found that this happened in the course of the wind up of the Cardiff Bay Development Corporation in relation to the payment of Stamp Duty, the recovery of Value Added Tax and the handling of doubtful debts. While individually each of these matters may be relatively small, cumulatively they can have an adverse impact on efforts to draw to a close in an orderly way the activities of an organisation and transfer responsibilities to other organisations.**

We accept the principles set out in this recommendation. The Assembly Government endorses the need for adequate lead times in planning any dissolution or restructuring of such bodies. It will take account of the Audit Committee's recommendation (I) in Committee Report 06-00 and the Comptroller and Auditor General's recommendations in respect of the wind up of the Teeside Development Corporation (HC 640 Session 2001-2002: 27 February 2002). In particular we note the need to protect public interests by seeking independent assurance on key transactions, financial commitments and cash flows; and to consider representation on the Board, if appropriate to ensure a successful wind-up.

Central guidance will be prepared, and disseminated within the Assembly. .

*Target for implementation July 2002*

### **Recommendation (iii)**

**The initial reaction of the successor bodies to the new arrangements is encouraging. Nevertheless it serves to emphasise the need for the Assembly to have in place robust arrangements for financial and performance monitoring of the successor bodies. We also believe it illustrates the need for periodic evaluations of the progress which the successor bodies are making against the targets which the Cardiff Bay Development Corporation had developed for its regeneration activities.**

We accept the recommendation. Officials recognise the need to continue to have robust financial and performance monitoring arrangements in place with the successor bodies. These arrangements vary according to circumstances and the relationship between the Assembly Government and the successor body. Their adequacy will be subject to periodic review. There are regular (usually monthly) liaison meetings between Assembly officials and successor body officers on financial and performance issues, as well as regular reports. The successor bodies provide regular financial updates, which are scrutinised in detail. The County Council of the City and County of Cardiff submits a financial statement on a monthly basis, and follow up meetings are arranged if further explanation is required. In the

case of Cardiff Harbour Authority/Cardiff Council, Assembly Government officials also have scheduled monthly meetings with their officers to discuss general issues and to review progress on significant projects. These often include site visits. There are also ad hoc meetings to discuss specific issues.

#### **Recommendation (iv)**

**We support the Permanent Secretary's proposal to carry out a thorough evaluation of how the regeneration of Cardiff Bay has gone and we recommend that the Assembly makes the funds available. In our view this exercise is an essential element of the Assembly's arrangements for ensuring that it secures value for money from the considerable resources that it has invested and will continue to invest in regenerating Cardiff Bay.**

#### **Recommendation (v)**

**We also recommend that the Assembly ensures any evaluation of the regeneration of the Cardiff Bay area is carried out in an open and transparent way. We further recommend that the results of any evaluation should be made available to Assembly Members and that the Auditor General is given access to all the information and material supporting the evaluation.**

The Assembly Government agrees that a thorough review/evaluation needs to be undertaken. We propose that this should take place during 2003-04, after the first three years of succession arrangements are completed. The evaluation report will be published and the Auditor General for Wales will have full access to information gathered.

#### **Recommendation (vi)**

**We take this opportunity to emphasise again the importance we attach to the Auditor General having an unfettered right of access to the books and records of the Cardiff Bay Harbour Authority in accordance with the relevant section 165 Agreement.**

We agree with the principle and will continue to work to ensure the Auditor General for Wales effective means of access.

#### **Recommendation (vii)**

**Given that, in comparison with a body such as the Welsh Development Agency, the Assembly did not enjoy the same degree leverage particularly in relation to Cardiff City and County Council we are concerned that the delay in finalising the Memorandum of Understanding for the Harbour Authority may have further eroded the Assembly's negotiating position on this key issue.**

The Assembly Government does not feel that its negotiating position was eroded as a result of the Memorandum of Understanding (MOU) being finalised in October 1999. There was detailed negotiation in the run up to the signing of the MOU, which set out the principles that would be built on and manifest themselves in the more detailed S165 Agreement. Once the Council and the Assembly had signed up to the terms of the MOU, the basic principles were set out, so there was no reason why the Assembly would be disadvantaged in later negotiations on the S165 Agreement.

#### **Recommendation (viii)**

**We are also concerned about the implications for the future regeneration of Cardiff Bay of the nature of the**

**different relationships between the Assembly and the successor bodies. Accordingly we look to the Cabinet for clarification on the extent to which the Assembly can influence the activities of Cardiff City and County Council and those of the Vale of Glamorgan County Borough Council. In particular we are interested in the options available to the Assembly to respond to any risk that the regeneration targets for Cardiff Bay may be missed or that value for money is not being secured on the considerable resources that the Assembly continues to invest in the Cardiff Bay area.**

From March 2000 Cardiff and Vale Councils regained responsibilities for economic, social and environmental regeneration for the whole of their areas including Cardiff Bay with access, as elsewhere in Wales, to the services of the WDA and other economic development bodies.

The Assembly Government must approve Cardiff Council's regeneration programme, and this will then be made available to the Audit and Economic Development Committees. While this will only refer to Cardiff Council's proposals for the net sum of £150,000 for 'regeneration', they did receive some transitional funding to enable them to complete a number of CBDC projects and have undertaken to inform the Assembly of other investments in the Bay outside these funding arrangements. We will provide that information to the Committee once it is available. As set out above in response to Recommendations (iv) & (v) we will review the situation after the first three years of succession arrangements are completed.

It is important to note that the WDA play a big part in the regeneration of Cardiff Bay, since they assumed responsibility for the former CBDC's development assets. They will contribute to achieving regeneration targets for housing, jobs, non-residential investment and private investment.

#### **Recommendation (ix)**

**We noted with concern the Auditor General's finding that the Development Corporation had not supported the proposal put forward by Cardiff City and County Council to develop a sports village on the Ferry Road site. Also the Corporation were 'unwilling vendors' and its internal auditors were concerned that the procedures adopted in respect of the disposal of the site were not in accordance with the Corporation's standard procedures or with the requirements of its Financial Memorandum.**

The Assembly Government acknowledges that the Corporation were "unwilling vendors", and accept the principle of obtaining value for money in land transactions. We note the Committee's concern over the Auditor General Wales' finding that the Corporation's internal auditors were concerned about the procedures adopted in respect of the disposal of the site. The agreement to transfer the land at the Ferry Road site to Cardiff County Council was, however, dealt with in accordance with the relevant Treasury guidance on the disposal of land by Urban Development Corporations. These guidelines say that the market value of land 'may reflect regeneration objectives rather than necessarily the use which would give the best possible price'. The Welsh Office and subsequently the Assembly Government were satisfied that the transaction was in line with wider regeneration objectives.

#### **Recommendation (x)**

**We were surprised to learn that in addition to receiving this £2 million discount Cardiff City and County Council also benefited from acquiring the Development Corporation's Ferry Road site in what was, in effect, a cashless transaction - an arrangement that arguably cost the Assembly up to £850,000 in terms of interest foregone.**

The Assembly Government took the view that the potential loss of interest on the sale of the Ferry Road site was more than offset by the interest saved on the agreement with Cardiff County Council to phase the payment of the £6.1 million Regeneration Fund over three years.

#### **Recommendation (xi)**

**We are troubled that the favourable terms given to Cardiff City and County Council, specifically the discount on the price of the land at Ferry Road and the subsequent cashless transaction, beg the question whether the Council now has a sufficiently strong financial incentive to push ahead with the redevelopment of the Ferry Road site. Secondly it remains far from clear to the Committee whether Cardiff City and County Council is expected to replenish the regeneration fund to the tune of £5.95 million, the amount used to offset the cost to the Council of buying the Development Corporation's interest in the land at the Ferry Road site. In these circumstances, it must be doubtful whether those functions that the Cardiff Bay Development Corporation regarded as central to the continuing regeneration of the Bay area are adequately funded.**

The Cardiff Harbour Authority Business Plan 2000-2005 sets out the Authority's commitment to help facilitate the continuing regeneration of Cardiff Bay and has made the plans for a Sports Village on the Ferry Road site a key development priority. The Harbour Authority will need to explore partnerships with the private sector and grants as a means of funding the development of the Ferry Road site.

Cardiff County Council has a financial incentive to develop the Ferry Road site through the contract governing the sale of the land. If the proposed sports village development is not substantially complete within ten years the Welsh Development Agency will be able to recover the £2 million "discount" given to the County Council.

One of the Section 165 Agreements between the Council and the former CBDC provides for a Regeneration Fund in the sum of £6.1 million to be made available to Cardiff County Council over the period 2000-01 to 2002-03 but it also provides for this sum to be reduced by the amount payable for the Ferry Road land which was £5.950 million. Thus the Regeneration Fund is reduced to £0.150 million and the £5.950 million should be seen as part of the Council's contribution to the regeneration of this important site. It was never the case that the Council would be required to replenish the Regeneration Fund.

#### **Recommendation (xii)**

**We welcome the fact that the Assembly must agree the regeneration programme developed by Cardiff City and County Council. We are however concerned about the wide definition used for some regeneration activities in Cardiff Bay, in particular whether there may be a risk that some initiatives labelled as regeneration may not actually contribute to the sustained regeneration of the Cardiff Bay area. We believe therefore that it is essential that Assembly officials work within a framework that sets out the goals the Assembly wants to see achieved in terms of the resources it has invested and continues to invest in the regeneration of Cardiff Bay; that Cardiff City and County Council makes it clear how its regeneration programme will contribute to the achievement of those goals; and that there are agreed measures of performance that allow effective monitoring of the progress being made. We are concerned that without arrangements of this kind there is a risk that work to regenerate the Bay area may lose direction and, as a consequence, the Assembly and the Corporation's successor bodies may fail to maximise the impact of the resources invested in the Cardiff Bay area.**

The 'non-developable assets' provisions of the Section 165 Agreement require the Council to submit a programme to which the Regeneration Fund will be applied. The agreement provides for the programme to be agreed with the

Assembly Government. The Council's Regeneration and Project funds have been merged to form one Regeneration programme, and Assembly Government officials have been in discussion with the Council's officers about finalising this programme. The expectation is that it will be submitted formally soon. This programme will be copied to the Audit and Economic Development Committees when submitted by the Council.

In the wider context, the outcome of the above mentioned review/evaluation, of the progress in relation to the Regeneration Targets/Objectives for the Cardiff Bay have been achieved, will be important in framing future policy in this area.

#### **Recommendation (xiii)**

**We accept without reservation that Assembly officials sought to ensure the process of selling the Ferry Road site was undertaken in a thoroughly professional way.**

The Assembly Government welcomes this confirmation.

#### **Recommendation (xiv)**

**Currently we have the Assembly's version of the Ministerial Code to guide us on handling potential clashes of interest. But we are a small country and we also have Members who represent regions rather than constituencies. This in itself, to use the Permanent Secretary's words, raises 'a tricky issue' in relation to identifying potential clashes of interest or a duality of interest. This is an area where all Members must constantly combine vigilance and openness. Accordingly, we would welcome in the Cabinet's response to our report some assessment of current arrangements for dealing with potential clashes of interest on the part of Ministers and whether the Assembly collectively needs to look again at the adequacy of those arrangements.**

The Welsh Assembly Government agrees strongly that a Minister should never allow constituency or electoral region considerations to influence their official decisions. That is reflected both in the Ministerial Code and in the Protocol on Partnership Government in the Assembly, both of which require Ministers to refer decisions to the First Minister if there is an irresolvable conflict of interest. Assembly Standing Order 4 also provides clear advice on the registration of Members Interests

Whether to do so must in the first instance be a matter for each Minister's judgement. It would not be practical for Ministers to debar themselves from taking any decision which had any impact on their constituencies or regions. But where a Minister believes it is impossible for him or her to act without at least risking the perception of bias, then the formal requirements are clear.

Major decisions or announcements are generally the subject of consultation between cabinet members, which means there is little or no scope for one Minister alone to take a significant decision. The procedures for collective Government responsibility are set out in the above code and protocol.

The Welsh Assembly Government having considered the recommendation and whilst endorsing the principle that underlies it considers the existing guidance on conflict of interest to be effective and robust.

#### **Recommendation (xv)**

**We welcome the assurance that the Permanent Secretary gave us on the overall cost of the Cardiff Bay**

**Barrage project. We believe that this reinforces the recommendation in our previous report that Assembly officials maintain firm oversight of the remainder of the project to ensure that the overall estimate for the cost of the project, £220 million, is not exceeded.**

Officials continually monitor progress against the £220m Barrage Cap. The latest total cost estimate is still about £220 million, but uncertainties will remain about the final out-turn cost until all contract claims have been settled.

#### **Recommendation (xvi)**

**We also expect Assembly officials to exercise a high level of vigilance in monitoring the day to day management of the Barrage and the Bay. In particular we expect them to ensure that in providing services under the relevant section 165 Agreement, Cardiff City and County Council lives within the cap of £19,313,191 placed on annual running costs and the cost of oxygenating the Bay and so secures the saving of £3 million over three years compared with the equivalent figure submitted by Thames Water. Clearly this will mean scrutinising very carefully claims from Cardiff City and County Council for Assembly funding of additional expenditure.**

Through regular liaison meetings and reports from the Council, Assembly Government officials monitor the day to day running of the Barrage and the Bay and related expenditure. This includes an ongoing analysis of the Council's performance against the £19,315,191 cap for running costs and the capital costs of oxygenating the Bay during the first 3 year period.

#### **Recommendation (xvii)**

**On the issue of the risk of cross-subsidising functions, we note that the relevant section 165 Agreements are explicit about the purposes for which funding provided by the Assembly can be used. We also recommend that as the Assembly develop the practical implementation of funding arrangements, it should be prepared, where appropriate, to ring fence resources to ensure that the funds which it provides are only used for the purposes intended.**

The funding that the Assembly Government gives to Cardiff County Council for its Harbour Authority and other responsibilities, and to the Vale of Glamorgan CBC for its obligations, is ring fenced and so cannot be used for other purposes. Budgets and monitoring arrangements are clearly related to the functions and responsibilities set out in the s165 Agreements. The Councils also maintain separate accounts on that basis. The reviews carried out by the District Audit service will seek to certify that expenditure is incurred in accordance with the section 165 Agreement responsibilities.

#### **Recommendation (xviii)**

**We expect Assembly officials to ensure that District Audit complete as quickly as possible a thorough audit of the set up payments made to the City and Council of Cardiff and the Vale of Glamorgan County Borough Council. We will be very interested to know the outcome of both audits.**

Assembly Government officials are working closely with the Audit Commission on finalising the audit 'Certificate Instructions' in respect of the grant paid to Cardiff County Council. Expenditure by Vale of Glamorgan Council has already been reviewed by the District Auditor. In doing so, the District Auditor specifically tested whether that Council received and correctly accounted for all sums due in respect of 'preparatory matters and initial inspections'.

The Audit Certificate was signed in November 2001. Similar tests will apply to set up payments made to Cardiff County Council.