

CONFIDENTIAL



Water Authority of the Cayman Islands

Minutes of Extraordinary Meeting held on 05th of March 2012

Members Present:

Chairman:	Mr L Hurlston
Members:	Mr T Hydes Mrs P McGaw-Lumsden Ms A Owens Mr M Smith Ms R Sharma Mr O Watler
Secretary:	Dr G Frederick-van Genderen
Apologies:	Mr J Banks Mr C McLaughlin Mr W Scott Mrs I Simms

Call to Order

The Chairman welcomed members and called the meeting to order at 1:49pm after ascertaining that there was a quorum and acknowledging apologies from Mr J Banks, Mrs I Simms and the absence of Mr C McLaughlin. The Chairman asked members to observe a moment of silence in memory of Mrs Maizie Watler, the late wife of past Chairman, Mr Brainard Watler. The Chairman then opened the meeting with prayer.

Matters Arising

- a) **Divestment of the Wastewater Assets of the Water Authority.**
The Secretary handed out numbered copies of the confidential advice document "Sale of Water Authority Wastewater Assets" provided to the Ministry by the Office of the Auditor General (OAG). She explained that she had received verbal permission from the Auditor General to provide the

hardcopies for members' perusal in the meeting. However, she would have to collect the copies after the meeting and have them shredded. The Chairman allowed all members time to read the document.

The Chairman proceeded to provide a brief overview of the events related to this agenda item since the Authority received the last letter dated 09 November 2011 from the Central Tenders Committee. The Chairman reminded members that on behalf of the Water Authority Board he wrote to the Honourable Minister on 17 November 2011. Subsequently, the Ministry of District Administration, Works, Lands & Agriculture (DAWLA) arranged a meeting with the Honourable Minister, the Director, Deputy Director and himself for 19 December 2011. The Honourable Minister did not show up for the meeting and nothing further was heard from the Ministry on the matter until 30 January 2012 when via a short email the Director was informed that the Ministry wanted the tender process to be restarted. Subsequently, the Authority was requested to attend a meeting at the Ministry on 29 February 2012 to discuss the sale of the wastewater assets.

The Chairman noted that the Cayman Islands Government (CIG) was now bound by the Framework for Fiscal Responsibility (FFR) document required by the UK Government. In the entire public sector budget for 2011/2012, proceeds from the wastewater assets were included to be realized by 30 June 2012.

The Chairman reported that the Ministry meeting he attended with the Authority's Director and Financial Controller was to review a very aggressive timeline proposed by the Ministry to achieve the divestment of the wastewater assets by the end of this fiscal period. Representing the DAWLA Ministry at the 29 February 2012 meeting were Mr Alan Jones, Chief Officer, Mr Tristan Hydes, Deputy Chief Officer, and Mr David Fawcitt, Administrative Officer I. The Chairman advised members that at this meeting he took the opportunity to state his disappointment that there had been no written response to his letter of 17 November 2011 as well as the "no show" of the Honourable Minister at the 19 December 2011 meeting.

The Chairman reported that at the 29 February 2012 meeting, he indicated that the Water Authority was willing to accelerate the divestment process. However this decision should not be taken in isolation. The Chairman stated that to restart the process the Ministry and the Authority would be well-advised to receive guidance and feedback from the key three external agencies, these being the Legal Department, the Office of the Auditor General (OAG) and the Central Tenders Committee (CTC). He noted that the Ministry confirmed that they had met with Mr Nick Freeland, the new Chairman of the CTC, and that they would meet with the OAG and the Legal Department as a matter of urgency. The Chairman reported that the Ministry advised that they had received guidance from the CTC Chairman indicating that to fast track the

divestment process the Authority should ask for updated proposals from the three tenderers based on new financial data instead of completely retendering. Additionally, a business case should be put forward in conjunction with the Evaluation Report. The Chairman advised members that the Ministry staff informed those attending the 29 February 2012 meeting that CTC opined that as the project had gone through the entire process already, the business case need only outline the basic principles for selling the asset.

Furthermore, the Ministry advised that a new Technical Committee was proposed consisting of Water Authority management staff and two Board members. Mr T Hydes confirmed that all stated by the Chairman had been cleared in principle with the CTC. Mr T Hydes also confirmed that the Ministry staff had met with the OAG and discussed the proposed process. Mr T Hydes reported that he understood from the OAG that Cabinet had no remit to appoint a Technical Evaluation Committee (TEC) and that this should be done through the Water Authority. He also advised that the OAG emphasised that although it was important to carry out the divestment the Authority needed to ensure that following the correct process was the main priority. Mr T Hydes confirmed that the Legal Department had been contacted and was presently reviewing whether the RFP had to be sent back out for public tendering or if the Authority could continue the divestment process using the procedures proposed by the CTC.

The Chairman noted that the divestment process had difficulties as the Water Authority Board was subordinated and marginalized by the appointment of the TEC outside of the Authority. The Cabinet set policy which the Authority tried to carry out which in the end resulted in making the professionals feel impotent. If the Authority is allowed to carry out the process according to the relevant legal framework there is a better chance of success. As noted in the Chairman's 17 November 2011 letter to the Honourable Minister, the Board's recommendation was to restart the process with a proper business case and cost benefit analysis.

The Chairman referred members back to his interview with the OAG last year regarding the divestment of the wastewater assets. The Chairman said that he explained to the AOG that the Authority's Board had tried to keep the processes flowing and that the Director was instructed to keep strict details of the timeline of events. The Chairman also mentioned the OAG's recommendations for the future of procurement for Government. The Chairman reminded members that the Authority has to work within the current legal framework for procurement/divestment and thus it is critical that the Authority seeks advice and guidance from the CTC, Legal Department, and OAG. In the recent experience with the Cabinet-appointed TEC, there were significant failures in doing proper due diligence and submitting an evaluation report that met the CTC requirements.

The Chairman pointed out that to all concerned the divestment process should be clear and transparent even if the end result may not be agreed to. Ms A Owens noted that the OAG's advice provided in the confidential document is very valuable and should be heeded by the Water Authority. The Secretary noted that she had advised the OAG that if the report was to be made public there were a few minor corrections the Authority would like to see made but that those would in no way impact the valuable advice and guidance the document provides.

Mr T Hydes reiterated that the CTC said the business case did not need to be robust and that it should give credence to the value of selling the assets as a going concern and consider the potential growth and benefit to the country. The Secretary advised that the Authority's management would do the business case requested however she would not be party to a "rubber stamping" of the business case. Ms R Sharma queried the practicality of doing a business case as the decision has already been made and the process was so far underway. The Chairman said that a business case is useful to provide a record of the reasons for selling the assets, options available, and it documents the implications of those options.

Members agreed that the Water Authority should undertake the preparation of the business case and that Ms A Owens and Mrs P McGaw-Lumsden should be asked to review and provide feedback before it comes to the Board. Members also agreed that the TEC should consist of the following Water Authority management and Board members:

Dr G Frederick-van Genderen, Chairperson
Mr Tom van Zanten
Ms Lori Bergman
Mr T Hydes
Ms A Owens

Ms A Owens said that regarding the TEC she wanted to ensure that the roles and responsibility were clear. Members agreed that all Board members would vote on the acceptance of the business case document. It was also clarified that Board members participating on the TEC would not vote on the Evaluation Report prepared by the committee when it comes before the Board for approval. Mr T Hydes advised that the OAG made it clear that the Water Authority should manage the process and that the Ministry and Cabinet involvement should only be to the point of being informed of the status of the project.

Mr O Watler stated that he was concerned that the Water Authority was being used as a scapegoat to blame for all of the delays in this divestment process and now the Government has turned around and handed it back to the Water

Authority. Mr O Watler said the entire process did not go down well with him and gave him considerable concern.

Mr T Hydes said that the Ministry would write to the Authority with the new directives to be followed for the wastewater assets divestment process after receiving the legal opinion and guidance from the Legal Department. Members agreed that the Board should meet quickly after receiving the Ministry letter so that the process would resume as soon as possible. The Secretary noted that if the process recommended by the CTC Chairman met with the blessing of the Legal Department and the CTC, then the Authority could move very quickly and complete the process before 30 June 2011. Members agreed that so as not to waste time, the Authority's management should commence work on the business case.

The Secretary received back from members the numbered copies of the confidential advice document "Sale of Water Authority Wastewater Assets" provided to the Ministry by the Office of the Auditor General (OAG) handed out at the beginning of the meeting. She advised members that the documents would be shredded as requested by the Auditor General.

The Chairman thanked everyone for their input and then adjourned the meeting at 2:46pm.

This is a true and accurate account of the proceedings.



The Chairman

The Secretary