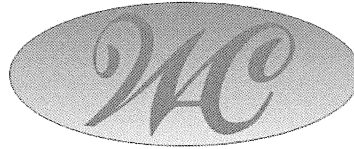


**CONFIDENTIAL**



**Water Authority of the Cayman Islands**

**Minutes of Extraordinary Meeting held on 06<sup>th</sup> of October 2010**

**Members Present:**

Acting Chairman:	Mr T Hydes
Members:	Mr J Banks Mrs P McGaw-Lumsden Mr C McLaughlin Ms A Owens Mr W Scott Mrs I Simms Mr M Smith Ms R Sharma Mr O Watler
Secretary:	Dr G Frederick-van Genderen
Special Guests:	Mr Tom van Zanten, Deputy Director

**Call to Order**

Mr T Hydes informed members that Cabinet had not yet decided on who would be appointed as Chairman of the Water Authority. Members were asked whether they accepted Mr T Hydes to act as Chairman for this meeting. There was no objection and Mr T Hydes as Acting Chairman welcomed members and especially recognised Mr M Smith as it was his first meeting. The Acting Chairman called the meeting to order at 1:40pm after ascertaining that there was a quorum. The Secretary noted that Mr Tom van Zanten, Deputy Director would be called in to go over the Request For Proposal (RFP) documents with the Board during the meeting.

**Matters Arising**

- a) **Review and approval of Draft Request For Proposal (RFP) Document for the Divestment of the Wastewater Assets of the Water Authority.**

The Acting Chairman reported that much work has been completed on the RFP as well as on the legislation required to facilitate the divestment of the Authority's wastewater assets. The Acting Chairman reported that the Authority met with Caucus on 16 September 2010 and at that meeting it was agreed that the Authority's timeline of allowing an 8 week period to tender was acceptable. It was agreed that the first advertisement would be placed on Friday 08 October 2010. Subsequently, the Authority and the Ministry agreed to a timeline that takes the completion of the entire process, i.e. signing of the licence to 19 January 2010.

### *Regulatory Frame Work*

The acting Chairman noted that it is imperative that Ministry works with Government to have the relevant legislation go through the appropriate accelerated process towards being approved in the Legislative Assembly. These should be well on the way before the licence is signed. The Acting Chairman advised that as the Water Authority was not familiar with the process of consultation it is expected that the Ministry and Legislative Drafting Department would deal with this if it is deemed necessary in the timeframe allowed. The Acting Chairman noted that the Ministry was working on getting the three bills (including the amendment to the Water Production & Supply legislation) to Cabinet on 12 October 2010.

### *Water Authority Law (WAL) Amendment Bill*

The Acting Chairman reported that the clean final draft WAL Amendment Bill prepared by the Legislative Drafting Department was received 04 October 2010 and had been provided to members for their review.

The Acting Chairman reported that the WAL Amendment Bill is to amend the Water Authority Law (1996 revision) to provide a regulatory framework so as to allow the divestment of the water authority's wastewater assets and operations; to provide for the regulation of concessionaires; and for incidental and connected purposes.

The Secretary advised that the Memorandum of Objects and Reasons in the draft WAL Amendment Bill provided to members explains what each clause of the proposed amendments intends to allow or facilitate. These amendments will allow the Authority to issue a licence to a wastewater operator once CIG has issued a concession. There was brief discussion on the Bill and members had no issues with the WCT Bill.

### *Wastewater Collection & Treatment (WCT) Bill*

The Acting Chairman reported that the clean final draft WCT Bill prepared by the Legislative Drafting Department was received 04 October 2010 and has been provided to members for their review.

The Secretary reported that the WCT Bill is for a law to provide a regulatory framework for the privatisation of wastewater collection, conveyance and treatment; and for incidental and connected purposes. When enacted this law will allow operators other than the Water Authority to provide and charge the general public for wastewater services.

The Secretary advised that the Memorandum of Objects and Reasons in the draft WCT Bill provided to members explains what each clause of the proposed law intends to allow or facilitate. Under this law, the CIG would issue a concession to an approved provider who would then have to obtain a licence under the amended WAL. The WCT Bill is based somewhat on what is in the Water Production and Supply Law (WPSL). In light of the Cayman Water Company licencing process, a number of amendments are required to the WPSL. The Acting Chairman reported that these will be provided to the Ministry before the end of this week. There was some discussion on the Bill and members had no issues with the WCT Bill.

#### *RFP Document*

Mr T van Zanten joined the meeting at this point.

The Acting Chairman reported that the draft RFP has been revised as per recommendation by the Authority's lawyers whom have no further comment on the RFP. The Acting Chairman reported that the CIG's Legal Department had provided some guidance but stated that they did not have time to review the RFP in conjunction with the proposed legislation (WCT Bill) and amendments to the WAL. Communications from the CIG's Legal Department and the Authority's lawyer were provided to members.

The Acting Chairman requested Mr van Zanten to take Board members through the RFP document. Mr van Zanten explained the tendering process and the requirement for all potential bidders to attend a Pre-Tender Conference in November 2010. The Pre-Tender Conference would be an opportunity for potential bidders to tour the wastewater facilities and to ask questions relating to the RFP and the Authority's wastewater operations.

Mr van Zanten took members through the sections of the RFP document and provided explanation on various sections as requested. The Acting Chairman reported that the RFP document includes general liability insurance requirements against damage or injury to any person or property due to or arising out of or attributable to the Works or operation thereof.

The Acting Chairman noted that some of the potential bidders indicated that, as they would own all wastewater upon its entry into the Works, they would be potentially liable for any consequential damage due to the (illegal) discharge of hazardous materials, e.g., flammable /explosive compounds could cause explosions/fires which could damage portions of the wastewater

collection system, while radioactive discharges could contaminate the Works, both of which would require expensive corrective actions. These potential risks could have a serious impact on the financial stability and profitability of the company, to such an extent that they may decline to provide a proposal.

The Acting Chairman reported that the Legal Department and Risk Management Unit were asked whether Government should limit the liability to the company of any consequential damages (e.g., limit insurance coverage to a certain amount per occurrence, and in aggregate per year, whatever is deemed acceptable/reasonable). Of course, this would mean the Government would assume some of the risks.

The Acting Chairman reported that Mr John Ebanks of the Risk Management Unit (RMU) responded that (1) the fire/explosion risk element is a common cover available in any property insurance market, and (2) liability to the company could be limited by contract or by statute, although he was not specific but indicated (in his e-mail dated 21 September 2010) that he would need to go to a broker who will have to see underwriters in London/Cayman. No further comments were received from the RMU.

The Acting Chairman reported that the Authority consulted with Mr John Cameron, Assistant General Manager of British Caymanian Insurance Co Ltd (the Authority's Insurers) and he indicated that their London brokers advised that contamination due to illegal discharge of toxic waste in the wastewater system, or radioactive material in the sewer line contaminating the system and the sewer, and the resulting environmental impact if the North Sound is contaminated, and clean up costs are standard exclusions of insurance cover. Although there may be alternative markets prepared to offer this coverage, it will be extremely difficult to get this coverage. And, even if it is available it is likely to be very expensive.

The Secretary suggested that, in the absence of any guidance from Government, to include the following in Section 18(1)(a) (Insurance) of the RFP Document:

- (v) Carry and maintain in full force and effect Pollution and Remediation Liability Insurance for an amount not less than two (2) million United States dollars (US\$2,000,000) per incident and four (4) million United States dollars (US\$4,000,000) in aggregate per annum. The insurance policy shall provide that, in the event of cancellation or non-renewal, the Extended Reporting Period (Discovery Period) for claims shall be no less than two (2) years (*this is 3 years in the Waste-to-Energy (WTE) RFP*).
- (a) Pollution and Remediation Liability Insurance including the cost of defense for a period of three (3) years (*this is 5 years in the WTE RFP*) following the expiration or termination of the Insurance. Such

coverage shall include but shall not be limited to Pollution Legal Liability (legal liability arising out of the discharge, dispersal, release, seepage, migration or escape of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gasses, hazardous materials, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water including groundwater at, under or emanating from the Works); and

- (b) Remediation Legal Liability/Expense (expenses incurred for or in connection with the investigation, monitoring, removal, disposal, treatment or neutralization of a condition arising from the discharge, dispersal, release, seepage, migration or escape of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gasses, hazardous materials, waste materials or other irritants, contaminants or pollutants into or upon land the atmosphere or any watercourse or body of water including groundwater at, under or emanating from the Works, as well as the cost to repair or replace real or personal property damaged during the course of Remediation Expense in order to restore the property to the condition it was in prior to the Remediation Expense.

Mr T van Zanten noted that the latter is based on the similar phrasing in the Government's Solid Waste RFP document that was recently published. During the meeting the Acting Chairman contacted the Director of the Department of Environmental Health (DEH) and inquired regarding the reasoning for the limits on liabilities placed in the WTE RFP. The DEH Director advised that the amounts were based on internal discussions and review of similar RFPs out of Florida.

Members then discussed the wording of Section 18(1)(a) (Insurance) of the RFP Document and agreed to accept the following insertion to Section 18(1)(a):

- v. Carry and maintain in full force and effect Pollution and Remediation Liability Insurance for an amount not less than two (2) million United States dollars (US\$ 2,000,000) per incident and four (4) million United States dollars (US\$ 4,000,000) in aggregate per annum. The insurance policy shall provide that, in the event of cancellation or non-renewal, the Extended Reporting Period (Discovery Period) for claims shall be no less than two (2) years.
  - (a) Pollution and Remediation Liability Insurance including the cost of defense for a period of three (3) years following the expiration or termination of the Insurance. Such coverage shall include but shall not be limited to Pollution Legal Liability (legal liability arising out of the discharge, dispersal, release, seepage, migration or escape of smoke, vapors, fumes, acids, alkalis, toxic

chemicals, liquids or gasses, hazardous materials, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water including groundwater at, under or emanating from the Works); and,

- (b) Remediation Legal Liability/Expense (expenses incurred for or in connection with the investigation, monitoring, removal, disposal, treatment or neutralization of a condition arising from the discharge, dispersal, release, seepage, migration or escape of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gasses, hazardous materials, waste materials or other irritants, contaminants or pollutants into or upon land the atmosphere or any watercourse or body of water including groundwater at, under or emanating from the Works, as well as the cost to repair or replace real or personal property damaged during the course of remediation in order to restore the property to the condition it was in prior to the remediation.

The Company's total aggregate Pollution and Remediation liability shall be limited to eight (8) million United States dollars (US\$ 8,000,000) in aggregate per incident. This limit of liability shall be deemed to cover the legal liability arising out of the discharge, dispersal, release, seepage, migration or escape of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gasses, hazardous materials, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water including groundwater at, under or emanating from the Works; and any expenses incurred for or in connection with the investigation, monitoring, removal, disposal, treatment or neutralization of such a condition, as well as the cost to repair or replace real or personal property damaged during the course of remediation in order to restore the property to the condition it was in prior to the remediation.

The Acting Chairman advised members that before seeking the approval from CIG to proceed with the timeline, the Authority required the approval of the RFP and accompanying advertisement by resolution. Mrs P McGaw-Lumsden moved the motion to accept the RFP amended with the agreed insertion to Section 18(1)(a).

The motion was seconded by Ms A Owens and passed unanimously. The Secretary indicated that the amended RFP would be sent to the Ministry and CTC on the morning of 07 October 2010 to seek their approval of the document to proceed.

The Acting Chairman reported that the Central Tenders Committee (CTC) provided a project number and the advertisements will be placed in the local newspapers on Friday 08 October 2010 and on 15 October 2010. Additionally, all five interested parties that communicated previously to the Authority via the Expression of Interest (EOI) advertisement early this year as well as direct communication to the Authority have been contacted and advised that they do not have to respond to the advertisements as the documents will be sent directly to them. The Authority also sent letters to seven companies overseas that are known to be in the wastewater operations business inviting them to indicate whether they are interested. In addition, KPMG forwarded the invitation to their known contacts in the utility business that may be interested in providing proposals.

The Acting Chairman reported that the Authority is working to have all the other information that potential bidders may require available electronically on a file transfer protocol site (FTP) site and accessible using a password.

#### *Compilation and VDD Engagements with KPMG*

The Acting Chairman reported that subsequent to the Board's direction, the Authority formally engaged KPMG in September 2010 to secure their services to provide three distinct reports:

1. IFRS compliant financial statements for the Water Utility Operations (Approximate Cost CI\$ 4,000)
2. IFRS complaint financial statements for the Wastewater Utility Operations (Approximate Cost CI\$ 4,000)
3. Vendor Due Diligence (VDD) report on the Wastewater Utility Operations (Approximate Cost CI\$ 45,000)

The Acting Chairman reported that all three engagements were well under way, the Water Utility and Wastewater Utility financial statements had been drafted and would be finalized upon receipt of the 30 June 2010 Consolidated financial statements signed off by the Auditor General's office, and the VDD engagement was ongoing. The Acting Chairman noted that information was being compiled for the VDD and that on 05 October 2010 the Deputy Director and Financial Controller met with representatives from KPMG to discuss the documentation required.

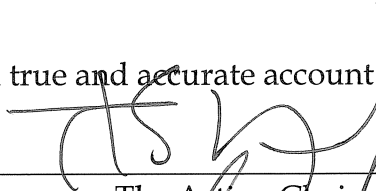
The Acting Chairman assured members that the Authority is working diligently with KPMG to ensure that the VDD is completed and available to prospective buyers of the WW assets. The Secretary noted that the VDD should be available to potential bidders simultaneously with the RFP or no later than a day or two thereafter.

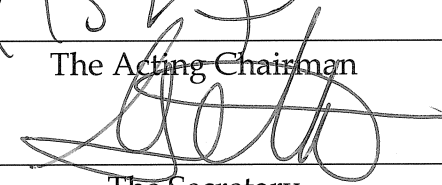
The Acting Chairman noted that the Authority was cautiously optimistic that the AG's office would release the 30 June 2010 Financial Statements by 08

October 2010 which would allow KPMG to conclude their separate engagements.

The Acting Chairman thanked everyone for their input and then adjourned the meeting at 3:30pm.

This is a true and accurate account of the proceedings.

  
\_\_\_\_\_  
The Acting Chairman

  
\_\_\_\_\_  
The Secretary