

10 March 2006

REPORT 4
(1215/52/01/IM)

REVIEW OF PROCUREMENT AND PROJECT MANAGEMENT RELATING TO WAITANGI PARK

1. Purpose of report

The purpose of this report is to update the Audit and Risk Management Subcommittee on the findings of the Audit New Zealand review of Procurement Processes and Project Management for the Waitangi Park Development.

2. Executive Summary

There have been a number of issues with the Waitangi Park project concerning the project management of the development and the extent and frequency of project reporting by Wellington Waterfront Limited (WWL).

The Council raised these concerns with the Controller and Auditor-General who asked Audit New Zealand to investigate as part of their standard audit. Audit New Zealand carried out their audit in September 2005 and made 12 recommendations.

This paper reports on the current status of issues and outlines Council officers and WWL's response to those issues and upcoming actions.

3. Recommendations

It is recommended that the Subcommittee:

1. *Receive the information;*
2. *Agree to Risk Assurance carrying out an audit of WWL in April 2006 to review:
 - i) *WWL's progress in addressing the findings of the Audit New Zealand report on Procurement Processes and Project Management for the Waitangi Park Development;*
 - ii) *the robustness of revised cost forecasts in relation to Waitangi Park;**
3. *Note that WWL and the original contractor are currently in mediation and that this process aims to address the issues in dispute between the two parties;*
4. *Note that in accordance with an earlier Council directive, the Chief Executive has commissioned PriceWaterhouseCoopers to review the structure, monitoring and reporting mechanisms of the Council Controlled Organisations;*

5. *Note that communication processes between WWL and the Council have been strengthened and that senior Council officers meet with WWL officers regularly to monitor progress of the Waterfront development.*

4. Background

There have been a number of issues with the Waitangi Park project concerning the project management of the development and the extent and frequency of project reporting by Wellington Waterfront Limited (WWL).

The Council raised these concerns with the Controller and Auditor-General who asked Audit New Zealand to investigate as part of their standard audit. Audit New Zealand carried out their audit in September/October 2005 and made 12 recommendations.

Given the project difficulties, Council officers requested confirmation from WWL of the expected consequential cost impact on the project. Confirmation back to Council that costs were to overrun the approved budget by \$5 million took some time due to the complexities of the project and the need for WWL to investigate cost mitigation strategies (such as scope and design changes).

ARMS was briefed by the Chief Executive at the previous ARMS meeting of 5 December 2005. At that time, ARMS members were provided a copy of the Audit New Zealand report, supported by a briefing from Audit New Zealand.

From the ensuing discussion, the Subcommittee raised a number of concerns and requested that Council officers seek assurance over those concerns and report back to the Chair. Assurance was obtained from WWL and was then provided back to the Chair within two weeks of the meeting.

The Chief Executive has also been directed by Council to initiate a review of the structure and monitoring and reporting mechanisms of all Council Controlled Organisations, and to put in place an interim system that ensures appropriate communication between WWL and the Council occurs.

This paper reports on the current status of issues and outlines Council officers and WWL's response to those issues and upcoming actions.

5. Current Status

5.1 Audit New Zealand Review

Appendix One contains the 12 recommendations arising from the Audit New Zealand review of Waitangi Park. Also included in Appendix One is WWL's initial response to those recommendations; these were as at 5 December 2005.

WWL's Audit and Risk Subcommittee met on 22 February 2006 and accepted the report as final but also resolved to provide feedback to Audit New Zealand on the report.

WWL accepts that given the significance of the Waitangi Park development and the Audit New Zealand findings, there is a Council need for independent monitoring of their implementation of the Audit New Zealand recommendations. WWL has agreed to an independent audit by the Council's Risk Assurance unit in April 2006. This will ensure WWL has not only addressed the recommendations related to Waitangi Park (as indicated by their initial responses) but also to ensure these responses are extended to all areas of the company.

5.2 Cost of the project

Council management continue to meet with WWL staff fortnightly to discuss progress with Waitangi Park (amongst other things) and the status of the cost overrun situation. WWL continue to assure the Council that the project is on target, that is, to meet the revised target of \$5 million over budget. The final costs of the project will not be known until mid June, after the completion of the project in May.

5.3 Mediation with Construction Services Company (CSC)

WWL removed CSC from the Waitangi Park development because of poor contractor performance and inferior quality of work. WWL cited this as the main reason for the delays and cost overruns with the Waitangi Park development. CSC is disputing this via a formal mediation process. We understand that this mediation process has been initiated. WWL has agreed to keep Council management apprised of progress.

5.4 PriceWaterhouseCoopers Review of CCOs

In response to the instruction by Council to review the structure, monitoring and reporting mechanisms of all our CCOs, Brian Roche from PricewaterhouseCoopers (PWC) was engaged to lead this review, working with the CCO and Risk Assurance units. A copy of their terms of reference is attached as Appendix Two.

PWC has commenced its review, which has two stages. The first stage involves information gathering and evaluation through interviewing CCO personnel, councillors and officers. PWC is also reviewing all documentation relating to the reasons for establishment of an entity, and the objectives for them.

In stage two PWC will identify steps that can be taken to improve the effectiveness of current arrangements. This will include considering alternative structures, and the option of bringing functions back within Council. We expect a report back from PWC in early April.

6 Conclusion

There have been a number of issues with the Waitangi Park project leading to cost overruns and delays.

Audit New Zealand carried out an audit of procurement processes and project management for the Waitangi Park Development in September/October 2005 and made 12 recommendations. Risk Assurance proposes to carry out an audit in April to confirm that actions have been taken by WWL to address those recommendations

The Chief Executive has initiated a review of the structure and monitoring and reporting mechanisms of all Council Controlled Organisations, and this review is due for completion by 31 March 2006.

The Chief Executive has also put in place an interim system that ensures appropriate communication between WWL and the Council.

Supporting Information
1) Strategic Fit/Strategic Outcome
<i>This project supports Key Achievement Area 9 Governance and Citizen Information: As per the Annual Plan, Governance and Citizen Information includes all those activities that make the Council accountable to the people of Wellington and ensure the smooth running of the city. That includes all meetings of the Council and its committees.</i>
2) LTCCP/Annual Plan reference and long term financial impact
<i>Relates to C534: Committee and Council process</i>
3) Treaty of Waitangi considerations
<i>There are no Treaty of Waitangi implications</i>
4) Decision-Making
<i>This is not a significant decision</i>
5) Consultation
a) General Consultation
<i>Not required</i>
b) Consultation with Maori
<i>Not required</i>
6) Legal Implications
<i>None</i>
7) Consistency with existing policy
<i>This report is consistent with existing Wellington City Council policy</i>

Appendix One

Audit New Zealand Recommendations and WWL Responses

Recommendation	Response
For large, significant or high risk projects a procurement plan be prepared and agreed prior to the commencement of the tendering process.	Agreed. The new CEO initiated this process when he began his job in June and the template for this high level plan is already prepared. Waitangi Park process was recommended by consultants and agreed by WWL. Elements of any procurement plan will in future be collated into a single document.
For major procurements a robust process should be used for evaluation of tenders. Should include range of criteria and appropriate weightings. Should be documented prior to EOI or tender and disclosed in tender documents.	Agreed. As for previous recommendation, CEO has put in place. Also Terms of Reference for Audit and Risk Committee were changed in April to include overview of contract procurement planning/award and committee now includes seconded external construction expertise.
Comprehensive records of significant procurement process should be produced and retained.	Agreed. This already occurs. Full records of our process have been kept and were available to the auditor.
Quality should always be a consideration in a procurement process.	This finding by the auditor is strongly disputed by the Board. WWL and the Council have quality control standards significantly above industry standards. All our design and delivery work is reviewed by the Technical Advisory Group.
Consideration be given to undertaking additional planning for the project in the form of Project/Quality Plans and a contract procedures manual.	Fletchers are managing the project very efficiently and there is no point in this now. The CEO has already drafted a contract procedures manual which will be used in future projects and cover all points relating to contract procurement/management.
WWL discuss and agree with WCC the reporting requirements.	Agreed. We are currently reviewing the reporting process with council.

Recommendation	Response
Formal reporting by the contractor should be a requirement of all significant contracts and steps should be taken to ensure compliance.	Agreed. Formal reporting is always a requirement of our contracts. It is a standard condition of NZS3910 which is the standard conditions of contract used by WWL. In the case of CSC the failure to report adequately was part of the wider non-compliance with the contract which resulted in WWL taking steps to remove CSC from the site.
WWL should monitor its capacity to manage large contracts and ensure it has the full range of competencies required for a project of this size.	Agreed. In the case of Waitangi Park significant extra resource was brought in to monitor the job. Also, the new CEO has already brought on new staff with relevant competencies and introduced more training to WWL. However, it should be noted that WWL will continue to rely heavily on contractors/consultants because the varied nature of the work does not justify full-time, permanent staff positions for a number of jobs.
Whenever any significant change is proposed to procurement arrangements or business plan, a detailed business case describing advantages and disadvantages should be prepared for the Board.	This is current practice. In the case of the change in contracting strategy for Waitangi Park, the Board was fully informed and participated with management in detailed scenario planning involving multiple financial spread sheets and also extensive legal advice. The situation was highly complex and fluid but Board and Audit Committee fully informed.
WWL should ensure it avoids all actual and potential conflicts of interest with its commercial arrangements and manage any perceptions of conflicts.	Agreed. WWL has conflict of interest policies in place for board, staff and consultants. These will be extended to include contractors and their consultants.
WWL should seek advice confirming its view that WPL has no obligation in respect of taxation or other matters.	Agreed. Legal advice has been sought.
WWL should ensure that WCC is kept fully informed about the financial and programme related aspects of the project.	Agreed.

Appendix Two

Extract from Terms of Reference for PriceWaterhouseCoopers Review of CCOs

Review of Council Controlled Organisation Structure

You have indicated that the objectives for the review are to:

- determine the most appropriate model(s) for carrying out the activities currently undertaken by CCOs; and
- identify areas where the reporting to, and monitoring by, Wellington City Council needs to be amended/enhanced.

One of the general objectives that the Council has with respect to CCOs is to foster a partnership approach. Further, Council expects each CCO to effectively contribute to Council outcomes to enable the city's visions to be achieved. Based on our discussions with Wayne, we understand that the Council has concerns that, at least in respect of some CCOs, the nature and functioning of the relationship between the CCOs and the Council is not as effective as it needs to be and nor is there the necessary alignment and shared understandings required for robust and well-functioning relationships.

The review is intended to address these concerns. In short, and as outlined in your letter, the review requires that the appropriateness of the current CCO model be assessed.

Options to consider include:

- retaining the model as is;
- retaining the model but amending it to better achieve Council's objectives;
- developing a new model; and
- bringing activities undertaken by CCOs in-house.

The evaluation of the appropriateness of the CCO model needs to be considered in generic terms as well as in relation to each of the specific CCOs that fall within the scope of the review (the entities covered by the review are listed in Appendix One to this letter).

Approach

To complete this review, we propose that the work be broken down into three main stages.

Stage 1: Information Gathering

Work undertaken in this initial stage will provide us with context and background within which to subsequently evaluate the options for CCOs. In particular, we will want to:

- examine the specific reasons for the establishment of each CCO and consider if this remains relevant within the legal framework under which each operates;
- scope the nature of concerns with existing arrangements to ensure that we have a clear understanding of the nature of the problems and issues; and
- identify future roles and functions for the CCOs and assess what implications, if any, changes in these may have for the CCO model and its application.

This stage of our work will involve reviewing documentation and interviewing the various Council and CCO personnel indicated in your letter of 20 December. We recognise the need to interview Council and CCO personnel reflecting the partnership objective that is intended to underpin the relationship. We will also meet with the Council's legal advisers (Phillips Fox) to obtain a legal perspective on the environment and issues for CCOs. The initial interviews undertaken during this stage of the review are likely to be supplemented by follow-up discussions with interviewees as part of the evaluation stage.

Stage 2: Evaluation

We will assess current governance arrangements with a view to:

- identifying whether there are steps that can be taken to improve the effectiveness of current arrangements;
- assessing the need for a new, or modified, CCO model; and
- assessing the option of bringing functions back within the Council.

Analysis will address both the design of the CCO model and its application. We note, however, that there is a risk of focussing too heavily on organisational form and not focusing enough on the actual application of institutional arrangements. Organisational form matters, but it is a wider set of factors influencing organisational behaviours that usually need to be addressed.

To facilitate the evaluation, it will be helpful to develop, and then agree with you, criteria for assessing the appropriateness of the CCO model. In this regard, we note that Council has already developed various evaluation criteria including political independence, decision making flexibility, focus, access to funding, cost, tax and control. We will assess these criteria against best practice benchmarks. While the list of criteria is comprehensive, it is important that it be revisited to ensure that all relevant factors are captured. Given that some of the elements are in potential conflict with one another (e.g. decision making flexibility versus control) it will be helpful to try and obtain a sense of the weighting attaching to each of the criteria relative to the Council's objectives. To confirm the criteria and establish weightings, it may be best to conduct a focus group meeting with a small number of Council personnel.

Once the scope of criteria has been determined, an evaluation of the CCO model can be undertaken. This will be done in both a generic sense for the model as a whole and in a specific sense for each of the CCOs.

We expect this process to highlight areas where the CCO model is not working as well as required. In this regard, the process will be a useful check on the issues raised during Stage 1 of the review. Where concerns are identified, further work will be undertaken to identify underlying causes.

In this regard, we will review and assess the mechanisms by which the CCO model is implemented including, but not necessarily limited to:

- board selection and appointment processes;
- board induction processes;
- board evaluation processes;
- the processes through which Council expectations are communicated to CCOs;
- the specification of expectations in operating, financial and other terms;
- relationship protocols and processes;
- delegations;
- processes for preparing and agreeing business plans, Statements of Intent and, if any, service agreements;
- arrangements by which:
 - roles and responsibilities of CCOs and the Council are defined
 - the activities of CCOs are aligned with the interests and objectives of Council;
 - Council can influence the direction of CCOs;
 - Council can review the roles and functions of CCOs;
- reporting and accountability arrangements (from both purchase and ownership perspectives); and
- governance and monitoring arrangements.

We will examine practices in these areas and compare them against practices in other contexts including other local authorities, central government (in relation to Crown entities and SOEs) and the private sector. This will allow us to identify opportunities for enhancing the effectiveness of the CCO model.

To complete Stage 2, we suggest that it would be helpful to present and “test” our initial findings and suggestions for improvement to relevant parties (possibly in a workshop style of forum).

Stage 3: Reporting

We will:

- document our findings and prepare a draft report for your review and comment; and
- receive feedback and complete our final report.

Basis of Engagement

Personnel

The work required by the review’s terms of reference will be undertaken by a small team of senior personnel who have many years experience of advising on governance and related matters in the public sector. Brian Roche will take overall responsibility for ensuring the successful completion of the review. He will be assisted by Chris Gould and Tom Gott.

Brian is well known to the Council. Through his roles as advisor to many senior government officials and elected representatives and as a former CEO of the Crown Company Monitoring Advisory Unit, Brian is ideally placed to provide sound and practical

advice aimed at strengthening the partnership and alignment between the CCOs and the Council.

Chris is a director in our public sector advisory practice. He has advised public sector clients here and internationally on governance and accountability issues in relation to (local and central) government owned entities. Prior to joining PwC in 1994, Chris was a manager with the Treasury where, among other roles, he was responsible for monitoring a range of Crown entities and SOEs. Chris was heavily involved in the public sector management and accountability reforms of the 1980s and 1990s and has continued to specialise in this area since that time.

Tom is also a director in our public sector advisory group and has recently re-joined the firm following several years with a specialist strategic advisory firm. Tom brings extensive experience in advising public sector clients on governance and accountability issues. Relevant work includes advice on strategy development and performance monitoring in departments and Crown entities as well as advice to local government on a range of issues including procurement and performance effectiveness

Timing and Resources

Taking into account the number of CCOs involved in the review and the scope of work required, we estimate that approximately 30 person-days will be needed to complete the tasks outlined above.

Days	Brian Roche	Chris Gould	Tom Gott	Total
Stage 1: Information Gathering	1	4	4	9
Stage 2: Evaluation	2	5	7	14
Stage 3: Reporting	1	3	3	7
Total	4	12	14	30

Key milestones would be as follows:

- agree scope of work by 1 February;
- planning meeting with key Council staff in the week beginning 7 February (noting 6 February is a public holiday);
- interviews in the weeks beginning 7, 13 and 20 February;
- workshop to present initial findings in week beginning 6 March;
- draft report tabled in week beginning 20 March; and
- final report following consideration of Council feedback on or about 31 March 2006.

This is a tight timetable and is subject to timely availability of relevant information and Council/CCO personnel.