LOCAL GOVERNMENT AUDIT SERVICE

Statutory Audit Report

to the

Members of Dublin City Council

for the

Year Ended 31 December 2011

Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government

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AUDITOR'S REPORT TO THE MEMBERS OF DUBLIN CITY COUNCIL

1. Introduction

I have completed the statutory audit of the accounts of Dublin City Council for the year ended 31 December 2011. My audit opinion on the Annual Financial Statement (AFS) of the Council, which is unqualified, is stated on page 8 of the AFS. This report is issued in accordance with Section 120 of the Local Government Act, 2001.

2. Main Issues

Attention is drawn to the following main issues in this report:

- Poolbeg Waste to Energy Project: As part of the 2011 audit a review of expenditure to date on this project was carried out. Matters arising from this review, as referred to in paragraph 5.3, are set out in detail in Appendix 1 to this report.

- Pyrite problems: Pyrite problems have been identified, or are being investigated, in a number of Council and Ballymun Regeneration Limited properties. (paragraph 5.5 and 5.6)

- Ballymore Eustace Extension Phase 3: After numerous claims submitted by the contractor, this contract was renegotiated providing for a fixed sum of €98.9m, which was significantly above the original tender amount. (paragraph 5.7)

- Priory Hall: Substantial accommodation and other costs are being incurred in relation to the evacuation of residents of the Priory Hall apartment complex. (paragraph 5.8)

- Sale of Waste Collection Service: The Council entered into an agreement to dispose of the waste collection service to a private operator in December 2011. (paragraph 5.10)

3. Financial Performance

The Income and Expenditure Account with comparative figures for the previous year may be summarised as follows:

	2011	2010
	€m	€m
Expenditure	823.7	860.0
Income	852.5	896.2
Surplus /(Deficit) for Year before Transfers	28.8	36.2
Transfers from / (to) Reserves	24.1	30.6
Overall Surplus /(Deficit) for Year	4.7	5.6
Opening Balance at 1st January	15.4	9.8
Closing Balance at 31st December	20.1	15.4

As can be seen from the above, revenue expenditure, and revenue income decreased by a further 4% on the previous year. This is the third year in which revenue expenditure fell from its peak in 2008.

4. Financial Standing

The Balance Sheet shows net assets of €12,376m at 31 December 2011, consisting of the following:

	2011 €m	2010 €m
Fixed Assets	11,749	11,851
Work In Progress and Preliminary Expenses	827	899
Long Term Debtors	673	831
Net Current Assets/(Liabilities)	79	45
Long Term Creditors	(952)	(989)
Net Assets	**12,376**	**12,637**
Financed by:		
Capitalisation Account	11,749	11,851
Income WIP	769	834
Specific Revenue Balance	37	31
General Revenue Balance	20	15
Other Balances	(199)	(94)
	12,376	**12,637**

4.1 Fixed Assets

The net book value of fixed assets decreased from €11,851m in 2010 to €11,749m in 2011. This decrease in the value of completed assets is mainly due to a reduction in the value of housing assets as a result of the demolition of a large number of properties, including those in Ballymun and St. Michael's Estate. All other assets constructed since 2004 are shown at historical cost in the annual financial statement.

The €827m classified as work in progress and preliminary expenses represents expenditure on capital schemes not completed at that date. The income accrued on these schemes of €769m is shown in the balance sheet as income work-in-progress.

4.2 Other Balances

Included in other balances are project and non-project balances, which are split between funded and unfunded, tenant purchase annuities, development levies and other reserves and provisions for future liabilities. During 2011, the net position on these accounts deteriorated by €105m. This was mainly due to changes in the accounting treatment for affordable housing in 2011. (See paragraph 5.4).

4.3 Development Contributions Debtors

The development contributions system records balances outstanding of €135m at the close of 2011. These balances are reflected in the Annual Financial Statement as follows:

	2011 €m	2010 €m
Short Term Debtors	38	34
Less Bad Debt Provision	(19)	(7)
Total Short Term Debtors (Note 5)	**19**	**27**
Long Term Debtors	97	104
Less Phased Debtors Bad Debt Provision	(49)	(31)
Total Long Term Debtors (Note 3)	**48**	**73**
Long Term Creditors – Deferred Income	48	64
Creditors & Accruals – Deferred Income	-	9
Total Deferred Income	**48**	**73**

The amount included in short-term debtors of €38m represents amounts now due that have been accrued as income. The long-term balance of €97m represents phased payments due in future periods that have not been accrued as income to date. The bad debt provision for both short and long term debtors has been increased substantially in 2011.

5. Capital Account

The capital account records income and expenditure in respect of the acquisition and provision of assets related to services provided by the council. A breakdown of the capital account balance into the relevant balance sheet headings is shown in Note 12 to the AFS. Note 12 includes a summary of movements on the capital account for the year with further details in Appendix 5 and 6 to the AFS. Loans for assistance to persons housing themselves are excluded from the capital account as these are accounted for separately in the balance sheet.

A summary of the transactions on the capital account, with comparative figures for 2010 is as follows:

	2011 €m	2010 €m
Expenditure (Including Transfers)	361.1	334.8
Income (Including Transfers)	368.0	320.6
Outturn for the year	6.9	(14.2)
Opening Balance	0.7	14.9
Closing Balance	7.6	0.7

5.1 Capital Programme 2012 – 2014

A report on proposed capital projects for the period 2012 to 2014 was prepared under section 135 of the Local Government Act, 2001. The level of investment at €898m over these three years shows a 14% decrease compared to previous years (€1,042m for 2011 – 2013).

5.2 Capital Projects

Expenditure on the major capital projects in 2011 was as follows:

Project / Activity	**€m**
Voluntary Housing	50
Purchase of Second Hand Houses	40
Affordable Housing	33
Local Authority Housing Construction and Improvement	32
Ballymore Eustace Water Treatment	31
Ballymun Regeneration	28

5.3 Thermal Treatment Plant at Poolbeg

Expenditure to the end of 2011 on this project amounted to approximately €80m and concerns in relation to this project were expressed at previous audits regarding whether the project would proceed or not. As part of the current audit, a review of the total expenditure to date on this and related projects was carried out. The findings from this review, which includes a brief history and background, a timeline of critical events and an analysis of the total expenditure to date, together with responses of Management, are shown in Appendix 1 to this report. Expenditure on this project will be kept under review at future audits.

The final decision date for the commencement of construction on this project has again been deferred to April 2013.

5.4 Affordable Housing

Total expenditure on affordable housing in 2011 amounted to almost €33m (compared to €37m in the previous year) and included the purchase of housing units under Part V of the Planning and Development Act, 2000. At the end of 2011 the Council had 449 unsold affordable housing units on hand.

The accounting treatment for affordable houses changed in all local authorities in 2011 (see Note 18 in the Statement of Accounting Policies in the AFS). In the annual financial statement of Dublin City Council, this resulted in a reduction of €93m in long term debtors and a corresponding increase in other debit balances in the balance sheet. The purpose of this change is to reflect the lack of demand for affordable units and the fact that these units will have to be funded if used for social housing or other purposes. The expenditure and income on these projects remains in the capital account in the 2011 AFS and there are plans to reflect these in fixed assets in the 2012 AFS.

Manager's Response

The 449 unsold affordable housing units have been utilised for social housing purposes in accordance with Circular AHS1 2009 dated 7th April 2009. Under this Circular the Department is funding the interest payments on the unsold affordable units for a period of five years. After this period Dublin City Council must review the use of the units in accordance with the Circular.

There are robust reporting procedures in place to ensure the effective management of the unsold units and the loans associated with them.

5.5 Ballymun Regeneration Limited (BRL)

Expenditure on the regeneration scheme amounted to €28m during 2011, bringing the total cumulative project costs to €869m. I have been advised that the company remains on target to complete the scheme by 2014. The costs of the necessary improvement works to complete the project are currently estimated at €72.6m, while the Department has approved funding of €51m. It is vital that funds are in place to allow the satisfactory completion of the required outstanding works and the orderly wind-down of the company.

The project is being implemented through Ballymun Regeneration Limited which manages the project on an agency basis. The company is limited by guarantee and does not have a share capital. Dublin City Council has three members on the Board of Directors. The transactions of the company are included in the capital account of Dublin City Council. The company's accounts for the year ended 31 December 2011 have been audited by a firm of accountants, and I have relied on their audit report of the company for that year.

As reported previously, one section of the redevelopment, consisting of the construction of 124 new dwellings was suspended due to the discovery of pyrite. Agreement has been reached between BRL and the construction company to remediate the site thus facilitating the completion of the homes. It is now anticipated that these works will be completed by the end of 2013.

The presence of pyrite in two other BRL developments is currently being investigated. These developments are currently occupied. Discussions are ongoing with the developer to identify a solution to the remediation required.

Manager's Response

The final four Social Housing Schemes (245 units) in the Regeneration Project are on target with handover of keys in progress; it is expected that 215 units will be occupied by mid-2013 with the final 30 at the end of 2013. Five blocks remain to be demolished. The issues in relation to funding to completion are the subject of ongoing discussions with the Department both for the period up to 2014 and beyond.

The pyrite affected houses at Sillogue 4 are included in the completion figures given above; all the floors have now been cut open, the noxious fill removed and the floors relaid; internal refit (kitchens, stairs etc) is now in progress. Remediation of the two other housing schemes now being tested for pyrite is likely to fall to Dublin City Council as BRL is now in wind up mode with a termination date of 2014.

5.6 Pyrite in Council owned houses

In addition to cases of pyrite identified in BRL properties, a small number of cases have come to light in other council-owned properties. The full extent of the problem is as yet unclear in all of these developments and investigations are continuing. In most cases the Council is in discussions with the developers with a view to resolving the problems.

Manager's Response

Housing and Residential Services have identified the City Council developments that contain pyrite. Discussions are on-going with the contractors who built these developments with a view to having remedial works undertaken to remove the pyrite.

5.7 Ballymore Eustace Water Treatment Plant Extension – Phase 3

The extension involves the upgrade of the water treatment works to deliver an increased capacity. The works include upgrading the buildings, processes and equipment within the existing live production facility where full continuous output is required to meet daily water demands in the Dublin water supply area.

Phase 3 of the upgrade involves the civil works and mechanical and electrical contracts. The original civil works contract, awarded in 2006, was based on the IEI Conditions of Contract for Works, 3rd Edition with CONDOC amendments as approved by the Government Contract Committee (Department of Finance). The lowest tender received for €48.9m was approved and the contract commenced in January, 2007.

From an early stage, substantial claims were submitted to the City Council by the contractor and, by 2010, the contract was 18 months behind schedule. I am advised that while the City Council and the contract engineer strongly contested the bulk of the claims, it was both their views, based on best professional, technical and legal advice available, that the optimum way of achieving price and programme certainty for the project was to negotiate with the contractor and to enter into a new agreement.

The amended agreement, based on a commercial settlement signed in 2011 and approved by the Department, allows for a revised civil works fixed sum of €98.9m. The revised amount takes account of an estimated settlement under the contract including certified claims (€75.7m); settlement of claims to date (€11.4m) and buy-out of the risk of future claims (€11.9m).

The Department continues to fund the contract pending normal review at the final account stage. The civil works element of phase 3 is expected to be substantially completed by March, 2013.

Manager's Response

The Ballymore Eustace Water treatment plant extension – Phase 3 involves a major construction of the water treatment plant, while at the same time ensuring no interruption at any time to existing water treatment. This is a complicated piece of infrastructure being built on a live water treatment plant. The Ballymore Eustace Water Treatment Plant produces almost 60% of the drinking water for the Greater Dublin Area. Dublin City Council had to keep water production going and build major infrastructure through and around the existing water production plant.

This is a major logistical exercise with complex interactions between the plant operator, civil works contractor, mechanical and electrical contractor and the engineering consultants procured to manage the contracts.

To date the output from the plant has delivered water to the Dublin region to meet household, commercial and Industrial demand.

The original civil works contract, awarded in 2006, was based on the IEI Conditions of Contract for Works, 3rd Edition with CONDOC amendments as approved by the Government Contract Committee (Department of Finance). This is not a fixed price contract but is a "measure and revalue" contract with significant provision for price increases and claims. This form of contract was chosen based on best professional advice. The form of contract is now superseded by new Government fixed price contracts as the older form of contract was seen as affording significant scope for contractor claims.

The methodology for addressing contractor claims is set out in Department circulars and involves preparation of financial and legal risk assessments. These were submitted to the Department and a contract amendment agreement was supported by the Department in order to provide certainty on cost and programme for this contract.

The amendment agreement has resulted in certainty on cost and programme being delivered by the Civil Contractor. The Department continues to fund the contract pending normal review at the final account stage. The civil works element of phase 3 is expected to be substantially completed by March, 2013.

5.8 Priory Hall Development

The development at Priory Hall is a private development of apartments where residents have been evacuated because of the failure of the developer to satisfactorily carry out remedial works to address fire safety concerns. The High Court has ruled that Dublin City Council has a responsibility for accommodating the evacuated residents, although this ruling has been appealed by the Council. A resolution process, involving all parties involved, including the City Council, and chaired by a former Supreme Court Judge, is currently underway.

The Council has incurred substantial costs to date, including the costs of excess rents incurred by tenants of the complex and the full cost of alternative accommodation for owner occupiers. Additional costs in respect of maintenance and security of the apartment complex have also been incurred. Total costs incurred to the end of 2011 amounted to approximately €950k.

Manager's Response

Until such time as the issue has been determined by the Supreme Court, Dublin City Council must pay the accommodation costs of the evacuated residents. The resolution process is not yet concluded.

5.9 Land Aggregation Scheme and Loans Payable

The Land Aggregation Scheme, introduced by the Department, allows local authorities to apply to transfer ownership of housing lands to Housing and Sustainable Communities Limited. In return funds are made available to repay the related Housing Finance Agency loans. In 2010, the Council approved the application to transfer three parcels of lands, with outstanding loans of approximately €31m, under this scheme. To date no transfers of Dublin City Council lands have been made under this scheme.

Included in the loans payable outstanding at the end of 2011 are a number of loans, where interest charges are being rolled up i.e. added to the principal outstanding, and no repayments are being made. These loans were drawn down for land acquisition purposes in the period 1999 to 2002 and amounted to €39m at the end of 2011.

Manager's Response

Discussions are on-going with the Department and the Housing Finance Agency with a view to transferring the main land loan to the Land Aggregation Scheme.

5.10 Sale of Waste Disposal Service

In December 2011 the Council entered into an agreement with a private waste operator for the sale of the waste collection and disposal service. Legal advice obtained by the Council indicated that the sale was not subject to procurement law and the sale was conducted by means of a competitive process. Prospective bidders were identified and those interested were assessed based on a number of pre-qualification criteria. These criteria included assessing if the party had sufficient capacity to undertake the proposed transaction, if they had experience of carrying out transactions of similar size and if they possessed the operational capability to provide services of expected quality to the customers. The Council, through its financial advisors, negotiated commercial terms with the final bidders; leading ultimately to the signing of a binding agreement with one operator for the sale of the business, including the collection of the final quarter charges for 2011 and the outstanding arrears.

The Council had a Framework Panel for Financial Advisors in place. Instead of tendering from the panel the Council appointed a Consultant directly from the panel in light of their previous experience and the price being offered. The cost of this consultancy was €258,373 excluding VAT.

Manager's Response

Having examined the waste collection service during 2011 and having regard to the financial constraints leading up to the 2012 budgetary process management decided that due to the continuing loss of customers to the private sector waste operators, the cost of delivery of the service including increasing landfill levies, that Dublin City Council was no longer in a position to subsidise the waste collection service previously provided. To have stayed in the service the Council would probably have had to double the charge. That would have caused a further problem as customers would have left our service for cheaper private alternatives and our service would still not have been viable. The alternative would have been to maintain existing price levels but cut up to €50m from other services (where no private sector alternative is available) in the period to 2017. Accordingly, a decision was taken to exit the waste collection service.

5.11 Housing Capital Accounts

Expenditure on housing capital projects represents over 55% of all capital expenditure in 2011. A number of issues had been raised in previous audit reports relating to the identification of individual scheme balances and the inadequate matching of loan finance to related projects. Further significant progress has been made in this regard since my last audit.

However, the work done to date has highlighted a number of significant debit balances being carried on accounts for which sources of funding will have to be identified including:

- Projects not progressing at a current date
- Public Private Partnership Schemes
- Affordable Housing Schemes
- Extension and Improvement of local authority houses
- Land and site purchases and
- Various other housing related projects

There are also significant loan balances payable to the Housing Finance Agency, mainly in respect of affordable housing schemes.

Manager's Response

All housing capital accounts with debit balances and loan balances are reviewed on a monthly basis to ascertain if funding is available. We expect that further progress will be made in 2012 in reducing these debit balances. Dublin City Council has commenced a process of matching outstanding debit and credit balances on housing capital projects. This process will conclude in 2013.

6. Summary of Major Revenue Collections

The percentage yields from the main revenue collection accounts were as follows:

	2011	2010
Rates	80%	82%
Housing Rents and Annuities	79%	79%
Housing Loans	71%	77%
Domestic Refuse	58%	50%
Commercial Water Charges	57%	51%

6.1 Commercial Water Charges

The collection performance in this area was highlighted in previous audit reports and while showing a further improvement in 2011, remains low at 57%. The arrears fell from €22m at the close of 2010 to €17m in 2011, due mainly to substantial write-offs during the year.

Manager's Response

Aged debtors which were bad debts were managed in 2011 with a significant improvement in the BDP. The total debtors including the 2011 debit for 2011 was €45.5m with an amount discharged of €28.5m i.e. 62.6% discharged at year end.

6.2 Rates

There was a further deterioration in the collection of rates in 2011 compared to 2010, resulting in an increase in arrears from €63m to €74m.

Manager's Response

Cash collection for 2011 was €301m, up from €297m in 2010. Increased numbers of payment arrangements exceeding 12 months, increase in receiverships which are taking longer to finalise and increased vacancies in rated properties impact on collection. Dublin City Council must collect 50% of the rates per month for vacant properties from landlords who are not trading or receiving rent.

6.3 Domestic Refuse Charges

There was an improvement in domestic refuse charges collection performance in 2011, bringing the arrears at the year-end to €13m, compared to €17m in 2010. These arrears have now been transferred to the private company operating the refuse service. The provision for bad and doubtful debts may need to be reviewed to reflect the likelihood of collecting all of these debts.

Manager's Response

To date in 2012, approximately €2.715m of the arrears/charges have been collected. Legal proceedings are commencing to recover outstanding amounts. The provision for bad debts will be reviewed on an annual basis and be provided for as part of the budgetary process.

6.4 Housing Loans

The collection of housing loans deteriorated further from 77% in 2010 to 71% in 2011, with arrears increasing from €6.5m in 2010 to €8.7m at the end of the 2011.

Manager's Response

A Mortgage Arrears Resolution Process (MARP) is in place that is managed by the Mortgage Support Unit. This Unit makes early engagement with borrowers who are experiencing difficulties in making their monthly repayments and makes them aware of the various options under MARP. Every effort is being made to reduce the level of arrears but the current economic situation, particularly with regard to mortgages, is not yet improving.

6.5 Debtors and Bad Debt Provisions

The level of bad debt provision was raised at the last audit. The total provision in respect of current debtors was increased substantially from €48m to €79m in the 2011 AFS. I have recommended that the provision in respect of each revenue collection area be identified and regularly reviewed.

7. Specific Matters

A number of other specific matters, arising at audit, have been referred to management at the close of the audit. These matters included the following.

7.1 Procurement

The central procurement unit of the Council has carried out an extensive review of expenditure across a number of departments and has made recommendations to achieve better value for money through tender advertising and increased contract-based purchasing. Opportunities for efficiencies, through the implementation of corporate contracts across a number of Council departments, have also been identified.

In the course of the audit, I reviewed procurement procedures in a number of divisions and, while generally it was found that procurement procedures were followed, a small number of instances of non-compliance were found. Where such instances were identified, these have been referred to the relevant divisions for review.

At the previous audit, it was agreed that steps would be taken to introduce new procedures to procure selected legal services from outside providers. To this end the Council had prepared an invitation to tender and it was agreed that the tender would be advertised in 2011. Although no further progress has been made in this regard, the Law Department has been investigating the possibility of a shared procurement process with other Dublin local authorities. Every effort should be made to improve procedures as soon as possible.

Manager's Response

An extensive review of the procurement and provision of legal services within the sector is currently being undertaken by Cork City Council as part of the programme of work undertaken by the Programme Management Office and it is prudent to await the outcome of this process. Following the recommendations of the review, the appropriate mechanisms will be agreed in regard to the procurement of legal services.

7.2 Grants and Contributions

In the previous audit report, the payment of grant and contributions to voluntary and other bodies were examined. It was found that the level of monitoring, checking and audit of this expenditure varied and I recommended that the Council carry out a comprehensive review of procedures in this area. Such a review was carried out within the housing division and a number of new measures were put in place to address concerns raised at audit. An examination of grants and contributions paid to voluntary bodies is currently in progress.

Manager's Response

As stated above new procedures are in place to monitor, check and audit the payment of grants and contributions to approved housing bodies.

7.3 Local Authority Companies

The Council's interest in companies, which includes a note on whether or not the transactions of these companies are reflected in the AFS, is set out in Appendix 8. The transactions of a number of these companies are significant and it is important that proper governance arrangements are in place. Internal Audit is currently carrying out a review of governance arrangements in a sample of these companies.

7.4 Accounting and Control Issues

In the course of the audit a number of accounting and control issues were identified. Adjustments to the 2012 accounts have been agreed with management. Other issues have been discussed and, where further action is required, this has been highlighted and agreed with management.

8. Governance

Corporate governance comprises the systems and procedures by which enterprises are directed and controlled. It is the responsibility of the Manager and the elected members to ensure that sound systems of financial management and internal control are in place.

8.1 Value for Money

The Value for Money Unit of the Local Government Audit Service issued Report No. 27 – "Management and Maintenance of Vacant Dwellings in Local Authorities" in May 2011. Other recent reports include Report No. 25 – "Part V of the Planning and Development Acts, 2000-2007, Social and Affordable Housing" and Report No. 26 – "Development Contributions". These reports contained a number of recommendations, which drew on best practice to be implemented by local authorities.

A review of the actions taken by local authority management in implementing the recommendations contained in these reports has since been carried out and are summarised in Value for Money Progress Reports No. 3, 4 and 5, which are due to issue later this year. These show that Dublin City Council has made substantial progress in implementing the recommendations relevant to this authority contained in these three VFM reports.

8.2 Risk Management

The corporate services division of the Council co-ordinates the review and update of the Corporate Risk Register on an annual basis and also the mid-year review of action plans each June. Departmental risk registers are in place in all seventeen (17) departments / areas. In addition, 60 risk registers are in place at business unit level across the organisation. A Corporate Risk Management Policy has been approved by the City Manager and a Risk Management User Guide is in place for staff training purposes. The Corporate Risk Management and Business Continuity Steering Group monitor progress in relation to risk management issues in the Council. A risk maturity assessment was completed in January 2012 and the report has been submitted to the City Manager and the steering group. Implementation of the recommendations contained in this report has commenced.

8.3 Internal Audit

Internal Audit completed 10 reports in 2011 and 10 to date in 2012. A review of recommendations, made in reports produced during 2011, carried out in 2012 found that eighty-six percent (86%) of these had been implemented by June of this year. Ninety three percent (93%) of recommendations made in the years (2009 – 2011) had also been implemented.

In the course of my audit, I placed reliance on the work carried out by the Council's Internal Audit Unit and a number of audit assignments were included in the 2012 audit plan as a result of suggestions made at audit.

8.4 Audit Committee

The Council's audit committee met on four occasions in 2011 and issued its most recent annual report in June 2012.

9. Acknowledgement

I wish to record my appreciation for the courtesy and co-operation extended to the audit team by the management and staff of the Council.

Richard Murphy
Principal Local Government Auditor
20 November 2012

Appendix 1

Review of Expenditure to 31 December 2011 on Thermal Treatment Plant

As part of the current audit I decided to review cumulative expenditure to date in respect of the proposed thermal treatment plant, although some aspects of this project were reviewed at previous annual audits. The reasons for this review include the delays in the commencement of the construction stage and the materiality of expenditure incurred to date.

Dublin City Council's current estimate of construction costs is approximately €400m.

The results of my review are set out below, under a number of headings:

1. Background and timeline for project
2. Financial Management of the Proposed Thermal Treatment Plant at Poolbeg
3. Summary of Total Expenditure on Proposed Thermal Treatment Plant
4. Analysis of Expenditure on Client Representative
5. Site Assembly at Poolbeg Peninsula
6. Poolbeg Site Management Expenditure
7. Project Funding
8. District Heating Project Expenditure

A number of acronyms used in this appendix are shown below:

DCC: Dublin City Council
DECLG: Department of the Environment, Community and Local Government
DONG: Danish Oil and Natural Gas
DPC: Dublin Port Company
DWEL: Dublin Waste to Energy Limited
EPA: Environmental Protection Agency
HLCL: Hammond Lane Company Limited
NDFA: National Development Finance Agency
PPP: Public Private Partnership
RWMP: Regional Waste Management Plan
TTCDLDPS: The Trustees of Clearway Disposals Limited Directors Pension Scheme
WTHL: Westway Terminals Hibernian Ltd

1. Background and timeline for project

A Regional Waste Management Plan (RWMP) was adopted by the four Dublin local authorities in 1998. A Waste to Energy Facility was proposed as an integral part of the RWMP. Dublin City Council (DCC) acted as the lead authority on behalf of the other Dublin authorities and appointed RPS as client representative (following a competitive public tender) for the Thermal Treatment Plant at Poolbeg. A project agreement was signed in 2007 by Danish Oil and Natural Gas (DONG) and Covanta Energy Limited (together called "Dublin Waste to Energy Limited") and DCC for the design, build, operate and finance of a proposed Waste to Energy Plant on the Poolbeg peninsula.

Important timelines in relation to the Waste to Energy Project are as set out below:

Date	Event
1996	Four Dublin local authorities issue OJEU Notice for consultants to prepare a waste management strategy for the Dublin region.
1998	Dublin local authorities adopt the Regional Waste Management Plan.
2001	DCC appoint RPS as client representatives for the Thermal Treatment Plant Project.
2002	DCC advertise for expressions of interest to participate in the project.
2004	January: Project Board (an advisory board), comprising representatives of DCC, DECLG, NDFA and client representatives, established. Project Executive Board, made up of members of DCC management, with responsibility for project management, established.
2005	April: Agreement in principle reached with Elsam AS and heads of agreement signed.
2006	September: DECLG granted approval to project agreement. Elsam AS subsequently merged with Danish Oil and Natural Gas (DONG).
2007	January: DONG proposes to invite Covanta Energy, a US company, to join the consortium. May: Project Board approve proposal from Covanta / DONG consortium (now called DWEL), who are awarded the contract for the project in accordance with the original sanction. September: The Project Agreement between DCC and DWEL was signed. November: An Bord Pleanala grants planning permission for the Thermal Treatment Plant. CPO to acquire site at Shelly Banks Road also confirmed.
2008	December: Environment Protection Agency issue final waste licence.
2009	September: Authorisation from Commission for Energy Regulation received for the construction of a generating station at Poolbeg.
2010	September: Deadline for commencement of contract passed as conditions were not met. October: An Bord Pleanala confirmed CPO on lands acquired in the absence of foreshore licence.
2011	June: Hennessy Report, examining the potential financial risks associated with the project, published.
2012	November: Decision date on commencement of construction contract deferred further to April 2013.

2. Financial Management of the Proposed Thermal Treatment Plant at Poolbeg

Based on the information and explanations provided by DCC as part of my review, it is evident that the financial management, as part of project management by the Environment and Engineering Department for this project, has been weak. There needed to be evidence of much more comprehensive oversight in monitoring and controlling expenditure. No proper classification of expenditure on an invoice basis was available to account for monies spent on this project at the initial audit stage (April 2012). A full retrospective analysis on an invoice basis was subsequently provided (August 2012). The lack of financial reports from the outset of the audit indicated that the financial control procedures in place were not adequate for such a project. There is no evidence of monitoring of detailed budgets or financial forecasts tied into project schedules or that detailed monthly/quarterly reports were examined to control expenditure apart from client representative summary reports and cumulative cost centre reports presented to DCC Management. It is also noted that the Project Executive Board did not meet on a formal basis and therefore no minutes of meetings were retained.

The total paid to the client representative amounted to €28.4m (including PR costs) compared to the original contract for €8.3m. The continued appointment of the Client Representative should have been reviewed as far back as 2005 in accordance with procurement guidelines. In relation to the construction of new premises for Westway Terminals Hibernian Limited (WTHL), which was contracted in 2004, the Council did not procure their own Consultant but relied on reports and invoices produced from WTHL consultants on the overall relocation expenditure. The Consultants were appointed in agreement with DCC to carry out this work.

3. Summary of Total Expenditure on Proposed Thermal Treatment Plant

Table 1 outlines the cumulative expenditure incurred on the Thermal Treatment Plant to 31 December 2011:

Table 1 - Overall Expenditure on Project	**€**
Client Representative	28,442,827
Purchase of Land at Poolbeg Peninsula	9,887,923
Relocation of Westway Terminals Hibernian Limited	31,003,745
Relocation of Hammond Lane Company Limited	1,480,787
Site Management	3,015,785
DCC Payroll Costs*	1,986,197
Legal Costs	1,722,789
Local Office, Community Consultation and PR	1,675,449
Specialist Advice re: Site Procurement	973,965
Other Expenses	1,556,337
Total	**81,745,804**

* DCC Payroll costs include Council project staff and staff in the public office in Ringsend.

4. Analysis of Expenditure on Client Representative

The original contract with the Client Representative Team agreed on the 2nd March 2001 was for €8,327,510 incl. VAT. The lead consultant on the Client Representative team is RPS/COWI JV (formerly MCOS/COWI JV). The Sub-Consultants would have included PWC and Durango Browne (Commercial/Financial), McCann Fitzgerald (Legal), EC Harris (Procurement) and Mary Murphy and Associates (PR/Public Consultation). The total paid to 31 December 2011 was €28,442,827 (including for PR). This client representative contract was not re-advertised when it breached the 50% threshold rule in 2005.

The analysis in Table 2 was provided by the Environment and Engineering Department in DCC. This involved a retrospective analysis of invoices from the client representative. The client representative also carried out work directly for the PPP Company (DWEL) in seeking statutory approvals. This work was billed through DCC and recouped from the DWEL in 2007 and amounted to €2.364m. It is included in the overall client representative expenditure.

Table 2 - Client Representative Expenditure	**Amount to 31/12/2011**
	€
Mobilisation & Review	708,849
Update Background Data	888,589
Public Communication	10,307
PPP Assessment & Procurement Procedures	840,551
Contract Documentation	899,807
Procurement Pre-qualification	497,335
Tendering & Award of Contract	3,835,195
Project Meetings & Management Reporting	2,485,162
Legal Advice	1,972,235
Administration of Agreement	1,954,646
Licences/Complete Conditions Precedent	1,921,668
Design Review & Certification	1,466,656
Planning Applications	1,241,339
Finalise Project Agreement	877,415
Environment Impact Statement	777,125
Programme Review & Strategy	730,127
Miscellaneous	686,344
Variation of Project Agreement	458,664
Ground Investigation & Site Clearance Works	357,638
Baseline Monitoring	301,290
Air Monitoring	263,354
Renegotiate Reconciliation For Effective Date	255,196
Clearway Planning	123,852
Expenses	1,880,047
Public Relations (See below)	3,009,437
Total	28,442,828

Client Representative – Public Relations

The original contract in March 2001 provided for €1,296,783 (excluding VAT) for the public involvement aspect of the client representative service. This was to be paid in amounts of €43,226 (excluding VAT) bi-monthly for 5 years. Due to the delays in the project, RPS was paid a total of €3,009,437 on this basis up to April 2011. Managers Orders should have been raised for the additional cost of this service at the time. A new public consultation retainer of €14,000 (excluding VAT) per month was agreed from May 2011 to February 2012. This has now been discontinued.

5. Site Assembly at Poolbeg Peninsula

Pigeon House Road/Shelly Banks Road Area (€9,887,923)

DCC paid Dublin Port Company (DPC) €8.5m for their interest in the Pigeon House Road/Shellybanks Road site under a Compulsory Purchase Order in September 2011. This freehold interest covered an area of 5.239 hectares out of a total area of 6.239 hectares required for the WTE plant. The award was agreed with DCC's Chief Valuer's Office. Other payments included interest of €925,918.

Site Purchase and Relocation of Westway Terminals Hibernian Limited (WTHL)

A site of one hectare was purchased by agreement from Westway Terminals Hibernian Ltd. As part of the agreement DCC was to acquire an alternative site and pay for the construction of a new premises for WTHL.

Table 3 outlines the total expenditure incurred in relocating WTHL:

Table 3 - Construction & Relocation Expenditure	**€**
Cost of Land and Stamp Duty	3,432,000
Construction Works	22,091,277
Engineering Services	2,825,426
Site Works/ Running Costs	630,149
Planning & Feasibility of Project	210,513
Other Expenses	1,814,380
Total	31,003,745

The ESB was paid €2.4m for the purchase of a site on Whitebank Road/South Bank Road in order to relocate this business. The award was agreed with the DCC Chief Valuer's Office. Stamp Duty of €432,000 was paid in respect of this purchase. DCC also purchased the Pigeon House Generating Station from the ESB at a cost of €600,000.

Table 4 outlines the construction expenditure incurred to provide alternative premises for WTHL:

Table 4 - Construction of New Premises for WTHL	Final Account November 2008	Original Tender November 2003
	€	**€**
Civil Engineering Contract Price inc. VAT	22,091,277	11,912,254
Contract Price includes Sub-Contracting Work Outlined Below		
Mechanical Sub Contractors	5,916,668	4,043,398
Tank Sub Contractors	3,947,074	2,871,482
Electrical Sub Contractors	506,916	395,804

Consultants were engaged by WTHL, in agreement with DCC, to certify the expenditure paid to the principal contractor. The original contract price was €11,912,254 incl. VAT. I have requested a detailed report outlining the reasons for the differences between the original tender and the final account.

Purchase of Leasehold Interest and Relocation of Hammond Lane Company Limited (HLCL)

There were leasehold interests held on 4.704 hectares of the DPC lands. The Trustees of Clearway Disposals Limited Directors Pension Scheme (TCDLDPS) held the primary lease, and Hammond Lane Company Limited (HLCL) held a sub lease. DCC acquired these interests by way of CPO and provided an alternative premises.

Up-to the end of 2011 a total of €1,480,787 was spent by DCC on relocating this business. This included €339,117 on consultancy fees and €858,495 on moving the business to a temporary site.

The Compulsory Purchase Order on the leasehold interest went to arbitration. During 2012, arbitrators awarded €5,075,000 and €1,525,000 plus interest and costs to the claimants HLCL and TCDLDPS, respectively. These amounts are not included in the expenditure to 31 December 2011.

6. Poolbeg Site Management Expenditure

Site management costs to 31 December 2011 total €3,015,785. Initial costs paid in 2006 and 2007 were €1,045,778, this was for work carried out by Dublin Waste to Energy Limited (DWEL) on behalf of DCC. Costs to DCC since DWEL took over the site total €1,970,007, for expenses such as site clearance, consultancy, security, insurance and administration fees.

7. Project Funding

The funding for this project is provided by the four Dublin local authorities together with a grant of €7.5m from DECLG. The Council also received a refund of expenditure from Dublin Waste to Energy Limited of €4,537,048 for works carried out by DCC on its behalf. The funding contribution from the local authorities, as set out below, is based on the 2006 population census figures.

Dublin City Council	42.64%
South Dublin County Council	20.80%
Fingal County Council	20.22%
Dún Laoghaire / Rathdown County Council	16.34%

Table 5 outlines the funding of the project to 31 December 2011 as shown in DCC accounts:

Table 5 - Overall Funding on Project	**€**
Dublin City Council	16,198,703
South Dublin County Council	14,444,799
Fingal County Council	14,038,799
Dún Laoghaoire / Rathdown County Council	11,350,389
Department of Environment, Community & Local Government	7,561,838
Refund of Expenditure from DWEL	4,537,048
Total	68,131,576

Debtors in respect of these contributions from the other Dublin authorities amounted to approximately €8m at the end of 2011.

Manager's Response

The Waste to Energy Project has proved extremely challenging indeed more challenging than other controversial projects that the Environment and Engineering Department has been involved in such as the Regional Waste Water Treatment Plant.

A separate project management arrangement was put in place by DCC at the outset of the project in 2002. It involved the Project Engineer working in tandem with the Client Representative to directly manage all aspects of the project including financial management. A full retrospective analysis on an invoice basis was prepared when requested at audit and is set out in this report. The Project Engineer certified all expenditure based on his intimate knowledge of the project. However given the issues that have arisen with the project, the DCC Project Management Office was given a greater involvement earlier this year and revised project financial procedures were put in place. These revised procedures deal with the issues raised at audit. The Project Executive Board was to consist of the Assistant City Manager, City Engineer and the Project Engineer. However given that there was constant contact among this group in order to progress the project it was not done on a formalised or documented basis. Ongoing project costs were discussed at monthly meetings of the Assistant City Manager DCC and the Directors of Services of the other three Dublin Authorities.

Regarding the length of time the Client Representative has been in place, the circumstances which have prevailed during this project have involved unexpected and unforeseeable lengthy delays. It was not possible to change the Client Representative Team due to the ongoing pressure of work in dealing with the obstacles placed in the path of the delivery of this vital infrastructure project. The initial procurement of the PPP Company (DWEL) was a very lengthy process as were the procedures to obtain planning permission, the EPA Waste Licence and approval of the Commissioner for Energy Regulation. The site acquisition process spanned almost 10 years. The history in relation to the Foreshore licence is well known and caused further delays to finalising the project agreement which persist to the present time. The previous Minister appointed an Authorised Officer to examine the potential financial risks associated with the project. Complaints to the Competition Authority and the EU Commission have all required the experience of the Client Representative to prepare the responses. The length of engagement of the Client Representative is the subject of queries from the EU Commission, which are in process at the moment.

Arrangements have now been put in place to engage separate Client Representative services for the Construction and Commissioning phase of the project.

In relation to the construction of new premises for Westway Terminals Hibernian Limited (WTHL), it should be noted that following the lodgement of the Compulsory Purchase Order for the main site in 2002, An Bord Pleanala indicated that the CPO would be dealt with in tandem with the planning application for the plant. This was not dealt with until 2007 at which point the CPO was also confirmed. In the interim it was considered prudent to begin to assemble the site through negotiation where possible. Securing the WTHL site was crucial to the site assembly and agreeing the terms of the relocation resulted in their objection to the CPO being withdrawn. DCC approved of the Consultant Engineering firm appointed by Westway Terminals Hibernian Limited (WTHL) to monitor and certify the expenditure paid to the principal contractor (who was appointed in September 2004). The Consultant was deemed to have experience relevant to the processes involved in the particular business. The Consultant liaised with the City Engineer at the time. Some of the issues that gave rise to increased cost included having to increase pile lengths and dealing with contaminated ground which delayed commencement and finalising the wayleave for the pipeline to the Docks, which delayed completion. However as requested by the auditor a report will be prepared by the Consultants outlining in more detail the reasons for variations between the tender price and the final account.

8. District Heating Project Expenditure

Introduction

At the outset of the Waste to Energy project, DCC identified the possibility of using energy from the incinerator as part of a District Heating system and this was confirmed by An Bord Pleanala when a feasibility study was required as one of the conditions of approval. To facilitate this project, DCC incurred construction and consultancy expenditure. Although the proposed District Heating system can run on conventional fuel, the realisation of the greatest potential benefits would be achieved by utilising the energy from the Waste to Energy Plant. Expenditure on the District Heating project included:

- Widening, at design stage, of the Liffey Services Tunnel close to the East Link Bridge to accommodate heating pipes; and
- Construction of infrastructure in the apartment blocks at Spencer Dock and the surrounding area to accommodate district heating.

Expenditure

Table 6 outlines the cumulative expenditure incurred on the District Heating project at 31 December 2011:

Table 6 - Expenditure on District Heating	**€**
Consultancy Costs	1,274,665
Construction Costs	5,379,713
Liffey Tunnel Works	2,936,116
Misc. Expenses	442,402
Total	10,032,896

Consultants Expenditure

DCC did not adhere to normal procurement legislation and guidance in appointing RPS/COWI Consultants for this work in 2004. DCC stated it made the appointment due to COWI's experience in Denmark, where district heating is commonly used.

Construction Costs

DCC made payments to the construction company for district heating works conducted in developments in the Docklands Area. No contracts were signed with the construction company but COWI/RPS certified the expenditure as the works were completed.

Liffey Tunnel Works

The Liffey Services Tunnel was originally part of an overall plan to deliver enhanced water and sewerage infrastructure to the Docklands area. The plan was changed to accommodate district heating.

Manager's Response

The proposed District Heating offers significantly reduced carbon dioxide (CO2) emissions, energy efficiencies and reduced operating and maintenance costs over standard heating systems. The appointment of RPS/COWI Consultants in 2004 was made due to COWI's experience in Denmark, where district heating is commonly used and also in view of the fact that 200,000 sq metres of development in Spencer

Dock was imminent and the time line for normal procurement procedures would have precluded any alterations to the design.

In order to reduce future costs to the district heating project, design changes to heating systems were agreed by COWI/RPS and monitored/reviewed by Dublin City Council. Because it was not possible to have open tendering on the private development sites referred to above, open book systems were used where work was underway. An open book system is where there is free access to all purchase orders and invoices and any other information associated with the work being undertaken. Where work had not commenced budget prices were agreed in advance.

Regarding the Liffey Tunnel Project the most significant change to the original plan was the addition of two district heating pipes that resulted in the requirement to increase the internal tunnel diameter. All of this work was incorporated into the tender documents for this project and procured in accordance with the EU Directives.