

MEMORANDUM OF UNDERSTANDING

Between the First Secretary of the National Assembly for Wales and the County Council of the City and County of Cardiff

Cardiff Bay Barrage, Outer Harbour and Inland Lake

1. The First Secretary and the Council have reached the following understanding concerning the management and operation of the Cardiff Bay Barrage, the outer harbour and the inland lake, following the wind-up of Cardiff Bay Development Corporation (CBDC) by 31 March 2000. This Memorandum reflects the intentions of the parties but is not intended by either to create binding legal relations which will be created on the transfer of functions, assets and liabilities to the Council through an agreement under Section 165 of the Local Government, Planning and Land Act 1980.

The role

2. The requirement is to manage and promote the Barrage, the outer harbour and the inland bay following the wind-up of CBDC in conformity with the Cardiff Bay Barrage Act 1993, its relevant "side-agreements" and the requirements of the Environment Agency. It is a permanent responsibility, but will be subject to a review after five years where either party may choose to end the arrangement or to review the terms, subject to agreed alternative arrangements, agreement on these not to be unreasonably withheld.

General

3. The Council will agree that provided the terms of this Memorandum are satisfied, it will take on the roles and responsibilities of Harbour Authority.

Ownership of Assets

4. The Barrage, those parts of the inland bay and outer harbour which CBDC currently own, and some related assets will transfer to the Harbour Authority on wind-up of CBDC. The Council, Assembly and CBDC will resolve the ownership of other associated assets following detailed examination of and agreement on how these would best facilitate the role of the Harbour Authority.

5. For the avoidance of doubt and subject to agreement that the Assembly will guarantee and underwrite all proper and reasonable costs, liabilities and funding arrangements for the Harbour Authority to ensure that no additional costs and liabilities will fall on the Council, the Harbour Authority will meet all statutory functions and non-statutory functions normally expected of such an authority including to:

- maintain and repair the Barrage and other Bay structures;
- operate the barrage. That is the day to day work of opening and closing the locks, sluices and fish pass so as to meet the requirements of Bay users, avoid flooding, and deliver appropriate environmental standards;
- maintain the water level and quality within the prescribed limits;
- implement the groundwater protection and compensation measures;
- issue licences and collect fees from Bay users;
- fulfil the statutory role of a harbour authority as set out in UK legislation (the "harbour master" role) including the banning or removing dangerous vessels; making and enforcing bye-laws; maintaining lights, buoys etc. as required by Trinity House;
- promote use of the Bay in consultation with all interested bodies. In practice this will involve facilitating use by vessels and recreational activities; require a review of the water use strategy which will be inherited from CBDC; and, possibly, running a water-users consultation group;
- provide, or ensure others provide, the necessary infrastructure of car parking, slipways, information points etc; and
- develop and conserve flora and fauna in consultation with the Countryside Council for Wales.

Costs and Liabilities

6. Following detailed examination, future costs and liabilities of management of the Barrage and lake will be categorised and treated as follows, to ensure that no additional costs or liabilities will fall on the Council; will be treated as set out in paragraph 5 above and the funding provided by the Assembly to the Council will be in addition to the local authority settlement for Wales:

- identifiable and quantifiable costs and liabilities - if both parties agree, these costs will be met through payments by the Assembly or other agreed funding;
- identifiable costs and liabilities which cannot be quantified - these will be listed in the Section 165 Agreement with a view to future identification and treatment; and

- unidentifiable costs and liabilities - in such cases the Council and the Assembly will work jointly to resolve them.

Funding

7. Funding will come from 3 sources: sums (whether in cash or in assets at an agreed value) conveyed from CBDC by the section 165 Agreement; a continuing specific grant from the Assembly to meet any agreed deficit funding arising from operating and maintaining the Barrage and the Bay and compliance with the legal requirements of the Barrage Act, and agreed sources of income generated by use of the Bay.

Income

8. The Council will (as far as is reasonably possible within the terms of the proposed S.165 Agreement and any other agreement with the Assembly regarding the Harbour Authority) maximise income from activities in and around the Barrage and lake over which it has control in accordance with an agreed Business Plan.

9. Income will be accounted for to the satisfaction of the Assembly and will be retained by the Council for application to the functions, duties and area of the Harbour Authority.

VAT

10. The Council will retain VAT otherwise payable in respect of Harbour Authority income and expenditure as far as is possible within the law, and will apply such sums to the functions, duties and area of the Harbour Authority, subject to consultation with the Assembly on the proposed spending.

11. The Assembly will facilitate, as far as is possible within current statutory provisions, the maximisation of the recoverable VAT payable to the Council in these circumstances. Overall funding levels will take account of the VAT recovered by the Council to an extent to be determined when the level of VAT recoverable can be quantified.

Management Mechanisms

12. The Council will put in place such arrangements to discharge the functions and duties of the Harbour Authority (which will be accountable to the County Council) as it determines, with the agreement of the Assembly. The Harbour Authority will have ring-fenced funding and will receive funding and income from all the activities and sources described above. The County Council will be responsible for accounting for Harbour Authority expenditure to the Assembly. Suitable fora will be established for consultation with the Assembly and the Vale of Glamorgan County Borough Council.

Timetable & Business Plan

13. The Council and CBDC will agree a comprehensive draft Section 165 agreement covering the transfer of functions, assets and liabilities from the Corporation to the Harbour Authority by 5 November 1999.

14. The Council will commission Arthur Anderson to undertake a due diligence exercise and to produce a draft business plan for the Harbour Authority by 31 December 1999.

15. Both exercises (referred to in paragraphs 12 and 13 above) will include release by CBDC of all information and documents required by the Council and the Assembly, including agreements with third parties.



Rt Hon ALUN MICHAEL AM MP JP
First Secretary
National Assembly for Wales



RUSSELL GOODWAY
Lord Mayor
Cardiff County Council

18 October 1999