



LOCAL GOVERNMENT AUDIT SERVICE

Statutory Audit Report

to the

Members of Kilkenny County Council

for the

Year Ended 31 December 2016



An Roinn Tithíochta, Pleanála agus Rialtais Áitiúil
Department of Housing, Planning and Local Government

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AUDITOR'S REPORT TO THE MEMBERS OF KILKENNY COUNTY COUNCIL

1 Introduction

- 1.1** I have audited the Annual Financial Statement (AFS) of Kilkenny County Council (the Council) for the year ended 31 December 2016, which comprises the Statement of Accounting Policies, Statement of Comprehensive Income, Statement of Financial Position, Statement of Funds Flow and Notes on and forming part of the Accounts. The financial reporting framework that has been applied in its preparation is the Code of Practice and Accounting Regulations for Local Authorities, as prescribed by the Minister for Housing, Planning and Local Government.

My main statutory responsibility, following the completion of the audit work, is to express my independent audit opinion on the AFS of the Council, as to whether it presents fairly the financial position at 31 December 2016 and its income and expenditure. My audit opinion, which is unmodified, is stated on page 4 of the AFS.

The Council is by law, responsible for the maintenance of all accounting records including the preparation of the AFS. It is my responsibility, based on my audit, to form an independent opinion on this statement and to report my opinion. I conducted my audit in accordance with the Code of Audit Practice.

An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the AFS. It also includes an assessment of the significant estimates and judgements made by the Council's management in the preparation of the AFS, and of whether the accounting policies are appropriate to the Council's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations, which I considered necessary to provide sufficient evidence to give reasonable assurance that the financial statement is free from material misstatement, whether caused by fraud or error.

- 1.2** This report is prepared in accordance with Section 120(1) (c) of the Local Government Act, 2001 and should be read in conjunction with the audited AFS.

2. Financial Standing

- 2.1** Statement of Comprehensive Income (Income and Expenditure Account)

The Council recorded a surplus of €23,464 for the year ended 31 December 2016 which resulted in a small accumulated surplus of €5,231 at that date.

The members, at the Council meeting held in April 2017, approved (by resolution in accordance with section 104(2) of the Local Government Act, 2001) the expenditure incurred in 2016 that was in excess of the adopted budget for the year.

Chief Executive's Response

The Council continues to ensure that expenditure matches the income available each year.

2.2 Statement of Financial Position (Balance Sheet)

2.2.1 Fixed Assets

I have highlighted the inadequacies of the property and land registers at previous audits and I note, following a further examination during the current audit, that these registers remain incomplete.

As previously advised, it is imperative that the internal review currently underway is completed without further delay so that all land and property in the beneficial ownership of the Council are both safeguarded and adequately insured. Regular reviews of the property register should be implemented as a formal internal control procedure to ensure that all income derived from the renting and leasing of property is properly recorded in the Council's financial management system.

It is a requirement of the Accounting Code of Practice for local authorities that these registers be maintained.

Chief Executive's Response

Work is continuing on developing the Property Register. The Property Registration Authority database has been acquired and mapped to the Council GIS (Geographical Information System) mapping system. The process of updating the register is very time consuming and a number of alternative options are being investigated to establish if the detailed information can be gathered more efficiently.

2.2.2 Work in progress

Accumulated expenditure on the work in progress and preliminary expenses account amounted to approximately €13m at 31 December 2016. This account continues to record the cost of the property (€7.4m) located on John Street, Kilkenny that was purchased in 2007. The property was originally acquired for the purpose of re-locating the county library. In 2016, the revenue account contributed a further €310k thus eliminating the deficit arising on acquisition.

Although the property was acquired some ten years ago, no formal decision has yet been made in respect of its long term use. Consequently, it is now overdue for the Council to develop a long term strategy on how it can finally obtain a return on the significant investment made in this property.

Chief Executive's Response

The future use of this site is being considered in the context of the current capital programme and various options will be discussed with the elected members in the coming months. Any future use will also be dependent on available funding sources.

2.2.3 Development Contributions

Included in trade debtors and prepayments at 31 December 2016 was €8m (2015 €6.8m) in respect of development contributions due to the Council (note 5 to the AFS).

A provision for bad debts of €6m (representing 75% of the debt book) has been made and is included in the overall 2016 year-end bad debts provision of €9.9m.

At the previous audit, I recommended to management that a review was required into the status of special contributions payments that were advanced in prior years to the Council in

respect of planning permissions granted. Section 48 (12) (b) of the 2000 Planning & Development Act requires the repayment of special contributions to the planning applicant (together with any interest arising) where the specific infrastructure works were either not commenced within five years or not completed within seven years of the date that the payment was made to the local authority.

The purpose of the review that I requested was to obtain clarity in respect of whether repayments, as provided for under the 2000 Act, were required and also to confirm the Council's legal obligations to organisations that may no longer be in existence. Following an initial examination of the files, two repayments have been made to date to two different planning applicants totalling €0.92m. Included in the amounts paid to date was interest due to the planning applicants of €0.21m.

I have been advised that a final determination on the Council's obligations in respect of additional special contributions received in prior years has yet to be made. It is imperative that the review exercise is completed without further delay particularly given the risk to the Council of being required to pay further significant interest penalties.

I have again advised management that the database used to record the financial information in respect of Part V contributions needs to be improved to ensure that the amounts recorded are both accurate and up to date. The review of these files needs to be completed without further delay.

I will review progress made in this area again at the next audit.

Chief Executive's Response

All outstanding monies owed to the Council are being pursued for collection irrespective of the level of provision in the annual accounts. The income from development contributions is due on receipt of the commencement notice and is recorded on the Council's financial system at that stage. There are still a significant number of old balances remaining on the system for developments that did not proceed or for developments that entered some type of insolvency process. It is Council policy not to write off any of these balances. Developments may restart after being dormant for a long period of time. Planning compliance cannot be granted until the outstanding balance is paid to the Council.

The review of special development contributions is almost complete. Requests for refunds can take a considerable amount of time to resolve as the organisation requesting the refund is not necessarily the organisation that paid the contribution in the first place. Refunds can only be processed once the legal due diligence has been completed.

Further work will be undertaken on the Part V database.

2.2.4 Loans Payable

The Council owed €55.6m at 31 December 2016 (2015 €42.6m) in the form of medium to long term loans. The year on year increase is mainly attributable to the additional loan facilities secured from the Housing Finance Agency (HFA) of €13.5m during 2016.

The loan of €13.5m was utilised as follows:

- Costs associated with the Kilkenny Central Access Scheme €5m (paragraph 5)
- Site acquisition and development of the masterplan plan costs associated with the Abbey Creative Quarter development €3m

- Funding the final account settlement of the construction of the Watershed Leisure Centre €2.5m (paragraph 8.1)
- Funding of the Medieval Mile museum €2m
- Funding land acquisition for housing and infrastructural development €1m.

The costs of servicing these additional loans are estimated at €0.8m per annum.

Chief Executive's Response

The new loan drawn down was approved by the Council at the September 2016 meeting.

The annual servicing cost was funded from existing loans that expired and commitments on completed capital projects which were fully paid up in 2016.

3 Income Collection - summary of the major revenue collections

A summary of the collection performances showing the 31 December arrears position in respect of the main income categories with the comparative figures for the previous year are as follows;

	2016		2015	
	Arrears €m	Yield %	Arrears €m	Yield %
Rates	1.10	94	1.41	92
Housing Rents & Annuities	0.59	93	0.59	92
Housing Loans	0.62	80	0.57	82

There were further improvements in some categories of income in 2016 that resulted in arrears, as outlined above, reducing to €2.31m at 31 December 2016 (2015 €2.57m).

The dedicated arrears collection unit, located within the central finance directorate, continues to contribute to this increase in collection levels across all of the main income categories. It is important that the level of resources currently available to the unit is maintained and strengthened where possible.

While the amounts outstanding at year-end remain significant and despite the increase in the arrears on housing loans, it is commendable that the percentage yields on all three of the above categories of income continues to be significantly higher than the national average for local authorities.

Chief Executive's Response

Income arrears on commercial rates, housing rents and loans have been reduced by €3m (56%) in the last four years. The Council has the second highest collection rate of all local authorities on commercial rates.

The reduction of the remaining arrears balances remains a priority for the Council.

4. Capital Account

The capital account recorded a credit balance on the account of €7.3m at 31 December 2016, an increase of €3.2m on the previous year.

Following the drawdown of the additional loan facilities from the HFA, the deficits being carried on some of the capital schemes have been significantly reduced. However, there remained some residual deficits at 31 December 2016, as outlined below, that will require additional revenue budgetary funding unless alternative sources can be identified.

- Refurbishment of the Kilkenny City Parade €5.2m
- Medieval Mile museum €0.8m
- Kilkenny Central Access Scheme €0.6m
- Watershed Leisure Centre €0.2m

The revenue account contributed approximately €0.5m in 2016 to the deficit arising on the refurbishment of the completed Kilkenny City Parade scheme.

Chief Executive's Response

An allowance is made on the Income and Expenditure account each year to clear the outstanding balances.

5. Kilkenny Central Access Scheme

The scheme provides for the construction of a new central access street in addition to the new bridge across the river Nore for the purpose of easing traffic congestion in the city.

I have reported on this scheme in my previous reports in which I highlighted some contractual and procurement matters arising particularly in respect of the retention of the main consultant engineers to the scheme.

The main contract for the construction of the bridge was awarded in 2014 following the completion of a competitive procurement process. The costs incurred to date, associated with this element of the scheme, amount to €7.6m and are €2.9m in excess of the agreed tender price (an increase of 62%). As I have previously reported, delays in construction works were encountered in the early stages that contributed to the increased costs. These additional costs were adjudicated upon by an independent conciliator in accordance with the terms of the contract and were agreed by both parties. The contract is currently at final account stage with retention of 2.5% being withheld by the Council.

The total fees paid to the scheme's main consultant engineers (as at July 2017) amounted to €1.53m which equates to nearly 300% of the amount provided for in the 2012 contractual agreement between the Council and the consultant firm. Included in the amounts paid to date are payments totalling €0.52m in respect of archaeological services undertaken by third parties that were charged and invoiced by the consultants to the Council. As stated in my previous audit reports, the contract with the consultant engineers was agreed without recourse to a competitive tendering process.

As the scheme is now nearing completion, I have recommended to management that the dedicated procurement unit should undertake a full review of the procedural and procurement compliance issues arising with a view to establishing a template that can be used for future capital schemes of a similar nature and complexity to this development.

Chief Executive's Response

In 2005, following notice in the Official Journal of the European Commission (OJEC) and in accordance with standard procurement rules, the Council appointed consultants for the Kilkenny Inner Relief Road project.

The scope of the appointment included all services required in relation to planning design, Environmental Impact Statements (EIS) and site supervision for the duration of the project.

Following a very long statutory approval process one of the consultants, acting on behalf of the two partnering firms, and the Council voluntarily renegotiated the original agreement in 2012. This was done in order to reflect changes to the scheme as approved by An Bord Pleanála and to include the requirements of the new Conditions for Engagement for Consultancy services as set out by the Department of Finance in the Capital Works Framework (Construction Procurement Reform, 2009).

The Council confirms it has received legal advice in relation to the services contract and confirms there is no financial or legal exposure to Kilkenny County Council.

The amount of fees paid by the Council since 2005 reflects the slow and difficult progress in developing the design and statutory approval documents for the Central Access Scheme over the nine years in question. The fees include provision for preparation of two EIS', several changes to design, site investigations, archaeological investigations and ecological and environmental monitoring and investigations.

6. Transfer of Water and Sewerage functions to Irish Water

The Council continues to deliver services on behalf of the national utility company, Irish Water (IW) under a service level agreement. The current position with regard to the Council's obligations to the company is set as follows:

Of the 166 registered assets identified for transfer, some 78 individual parcels of land and property have been completed to date. I have been advised that a further 20 assets are ready for transfer in the next Ministerial Order.

Further work is still required to facilitate the transfer of the remainder of the assets to the utility company. Since the date of my last report, IW has advised the Council that it will not now be taking over the ownership of some twelve land assets. Consequently, the Council should review each of these sites to ensure that all are adequately safeguarded and insured. Furthermore, these assets need to be valued and brought back onto the fixed assets register. In compliance with national protocols, the book value of the entire water services related assets were removed from the Council's fixed assets as noted in the 2014 AFS.

Chief Executive's Response

The twelve land plots not transferring to IW are mainly small plots of land not required by the utility company and will be of use to the Council in the future. The value of the plots is minimal. The fixed assets register will be updated accordingly.

7. Purchasing and procurement procedures

7.1 Purchasing and invoice payments

I have highlighted weaknesses to management at previous audits with regard to the manner in which invoices and related payments are processed by the Council.

Since my last audit, management has reiterated to all staff the requirement to comply with the organisation's purchasing and procurement procedures. However, while I acknowledge the improvements recorded in respect of the approval of purchase orders (65% of purchase orders raised in the first quarter of 2017 were considered compliant with the organisation's purchasing procedures), compliance levels remain at an unacceptable level.

The delays in raising and approving purchase orders can have an impact on the relevance and accuracy of the Council's budgetary and financial reports that are issued regularly to both senior management and to the Council members. I have reiterated to management that the designated budget holders need to be reminded of their responsibilities to comply in full with the organisation's purchasing and payments procedures. This is a critical area where improvements are still required to ensure that adequate budgetary compliance is being implemented across all of the Council's administrative divisions.

I have also again recommended to management that consideration be given to establishing an adequately resourced purchase order processing section.

Chief Executive's Response

The upgrade of the new financial management system was completed in 2016. This did result in lower compliance levels for a period of time.

All staff involved in the administration of purchases have been fully trained on the new system. Compliance levels are reviewed each month and the issues arising are discussed with staff responsible and their supervisors if necessary.

All suppliers to the Council were also advised of the new procedures. Overall compliance levels have improved during 2017.

The option of a centralised purchase order processing department will be considered in the middle of 2018 depending on progress made on compliance.

7.2 Procurement

I have highlighted issues with procurement compliance at previous audits. While some progress has been made in improving compliance levels since my last audit, there remain a number of areas where contracts are still being awarded without recourse to full compliant tendering processes. I note again in particular, expenditure incurred on housing refurbishment contracts (amounting to approximately €1m) being incurred in 2016 without recourse to a compliant tendering process. These are similar to the levels of non-compliance previously reported.

I also noted other areas where procurement practices need to be improved. These include the awarding of minor civil works and roadway maintenance contracts where adequate tendering procedures were not applied in respect of expenditure incurred in 2016 amounting to €1.3m. I acknowledge that some of this expenditure could be deemed to be emergency in nature as a result of the severe weather conditions prevailing at that time. However, the Council should

establish relevant framework agreements from which firms could be appropriately selected to undertake such emergency works on a pre-agreed pricing structure.

As a public organisation, the Council (including all of its subsidiary companies) is required to comply, in all respects, with both the national and EU procurement regulations and directives. There is an overdue need to improve internal procedures with regard to this vital area of public governance.

Chief Executive's Response

The Council acknowledges that there are issues with regard to housing refurbishment contracts. These issues were previously identified and this Council actively engaged with the Local Government Operational Procurement Centre to help devise suitable national competitions. The activation of these national competitions was delayed for reasons outside the control of the Council. The Council now expects these to be active in September 2017 and will begin to use them as soon as possible, once available.

With regard to minor civil works and roadway maintenance contracts the Council will seek to use suitable available national frameworks or if necessary, implement suitable local framework agreements for emergency works.

8. Interest in companies associated with the Council

The Council has an interest in a number of companies, the details of which are disclosed at Appendix 8 of the AFS.

8.1 Kilkenny Local Authorities Leisure Complex Limited

This company oversees the day-to-day management of the Watershed Leisure Centre and is wholly owned by the Council.

The company's audited accounts for the year ended 31 December 2016 recorded an operating profit of €11k (2015 operating loss of €227k) before depreciation and amortisation of Government grants. The net loss recorded for 2016 after adjusting for depreciation and Government grants was €220k. The Council's interest in the company is disclosed at note 3 to the AFS, at a value of €6.8m.

I note that the company's auditors included an emphasis of matter paragraph in their audit opinion (issued without modification). The auditors drew attention to note 3 to the company's AFS which stated that even though the company did report a loss for the financial year that it was appropriate for the accounts to be prepared on a going concern basis. This note outlined that the company has the support of its principal shareholder (i.e. the Council) and that should it experience any operating difficulties it will be assisted by the Council. The auditors stated in their audit opinion that these conditions indicate the existence of an uncertainty which may cast doubt on the company's ability to continue as a going concern.

Chief Executive's Response

Kilkenny Local Authorities Leisure Complex Limited continues to trade successfully without an operating subvention from the Council. Funding support is provided by the Council for capital expenditure items as they arise.

8.2 The Watergate Theatre Company Limited

This company oversees the day-to-day management of the Watergate Theatre. It is a company limited by guarantee and not having a share capital.

The company's audited accounts for the year ended 31 December 2016 recorded a surplus for the year of €4k thereby reducing the accumulated losses at that date to €93k. The negative value of members' funds at the balance sheet date was €60k.

I have recommended that management again request the firms responsible for the audits of all companies associated with the Council to ensure that the respective financial statements are completed by the time the Council is required to have its draft AFS prepared, i.e. by 31 March annually.

Chief Executive's Response

All companies associated with the Council are required to submit their annual financial statements by the end of the first quarter in the following year. A new board of directors is now in place at the Watergate and significant progress has been made in developing the activity at the theatre.

9. Governance

Corporate governance comprises the systems and procedures by which enterprises are directed and controlled. The Chief Executive, her management team and the elected members all have a role in ensuring that there are sound systems of financial management and internal control in place.

9.1 Risk management

An effective risk management framework provides the executive management and the Council members with assurances that major organisational risks are identified and appropriately managed.

Following an internal review undertaken since my last report, updated registers have been agreed and implemented across all of the Council's administrative areas.

In accordance with best practice, risk management should be a standing agenda item at all management team meetings.

Chief Executive's Response

The risk register will be reviewed by the management team on a regular basis. A full review of the risk register is planned for quarter 1, 2018.

9.2 Internal Audit

As a result of the resignation of the Internal Auditor in October 2016, there was no member of staff assigned to the internal audit function between that month and February 2017. As a temporary measure, the Council contracted a private firm of auditors to provide one of the firm's staff two days per week to fill this role.

A new head of internal audit has recently been appointed and I note the further deployment of a second member of staff to the unit. These new appointments are welcome and will help to further strengthen the governance structures of the Council.

Chief Executive's Response

The audit staff have now been appointed.

9.3 Audit committee

The committee met on four occasions during 2016 and issued its annual report for that year in March 2017.

I commend the work undertaken by the committee which continues to contribute to the independent oversight of corporate governance within the Council.

10. Payroll – payments of acting up allowances

There continue to be members of staff that are performing duties at a level higher than their substantive grades, five of whom have been in receipt of acting up allowances for some considerable time.

The Council is currently in the process of seeking to regularise these payments through the implementation of the agreed work force plan. I will review progress on this matter at the next audit.

Chief Executive's Response

Acting up allowances have been reduced in 2017 as positions have been filled in line with the approved workforce plan.

11. 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.



Eamonn Daly,
Local Government Auditor
29 September 2017.