

Construction Clients Group Wellington  
20 November 2013

# Clearwater Wellington

## Long Term FM Management Case Study

Paul Westbury  
WestburyLaw

# Contact Details

Paul Westbury

WestburyLaw

Wellington

Tel: 04 473 0140

Mob: 027 223 3812

Email: [paul.westbury@westburylaw.co.nz](mailto:paul.westbury@westburylaw.co.nz)

# Disclaimer

These notes have been prepared for seminar presentation purposes only. They are suitable as a first point of reference but should not be used as a substitute for specific legal advice or consideration.

# Overview

1. DBO ethos
2. Term
3. Contract form
4. Pricing model
5. Credit risk issues
6. Performance assurance
7. Resource Consent
8. Insurance
9. Maintenance
10. Handover
11. Variations
12. Step in rights
13. Audit and inspection
14. Partnering

# DBO Ethos

- Output Spec
- Contractor tendered solution
- Rupturing DB warranty
- Who owns

# Term

- 25 years
- LGA s.136 – 35 years max term
- escalation

# Contract Form

- No standard form in 1995
- Bespoke contract
- Now FIDIC DBO form

# Pricing

- Pricing structure
  - Mixture fixed and variable tariffs
- Construction cost
  - paid on construction completion
  - Not a BOOT



# Credit Risk

- Opex component paid on fixed monthly payment
- Contractor opex payment lumpy
- Mismatch and potential for 'overpayment'
- Contractor credit exposure particularly important
- Significant Operations term bond
- Significant parent company guarantee
- Construction and proving bonds

# Performance Assurance

- Non compliance regime
- Pre-set Tariff deductions for performance failure
- Approach to enforcement
  - Non mandatory
  - Belief regime will be applied

# Resource Consents

- Resource Consent alignment
- Mid term expiry
- Resource Consents as definer of service quality
  - Minimum performance specification

# Insurance

- DBO ethos – Contractor arranges
- Contractor takes insurance adequacy risk
- EQ too hard – arranged by WCC
- Practical disadvantage – global insurer mismatch
- Annual renewal approval

# Maintenance

- Ongoing maintenance obligations
- All Opex and Capex to keep to spec and design life on contractor
- Needs monitoring

# Handover

- Handover on expiry:
  - fully maintained and to spec
  - With balance of specified design life
  - Subject to scheduled refits and replacements
- Final 12 month asset condition assessment regime

# Variations

- Need for mandatory variation regime

# Step In Rights

➤ Needed!



# Audit and inspection rights

➤ Needed!

# Partnering

- Good idea!
- (But did it work??)

End