

**Public Accounts Committee  
Inquiry into the Regeneration Investment Fund for Wales**

**Response to request for further comments from Amber  
Infrastructure Limited following Committee Session on  
13 October 2015**

## Introduction

Amber Fund Management Limited ("AMFL" or "Amber") is pleased to submit this additional information following the Public Accounts Committee ("PAC") inquiry into the Regeneration Investment Fund for Wales ("RIFW"), Evidence Session 4 on 13th October 2015:

- Comments 1, 2 and 3 below respond to specific requests sent by the PAC's Deputy Clerk following the Evidence Session.
- Comment 4 relates to matters where we have identified from the minutes that further clarity may help the PAC's comprehension and where the time constraints prevented consideration.
- Comment 5 deals with the further request for information sent to us by the Chairman of the PAC in his letter of 22<sup>nd</sup> October 2015.

### 1. Meetings other than Formal Board meetings

Outside of formal board meetings Amber had three sorts of meetings with board members and/or employees of Welsh Government.

These comprised:

- Informal meetings with RIFW board members;
- Meetings with Welsh Government officials relating to RIFW operational matters;
- Meetings with Welsh Government officials respect to possible future investment activities of RIFW.

In addition many meetings were of course held with local government officials and other interested parties relating to potential investment activity.

By their nature most of these meetings were informal and not minuted. The list below sets out the additional meetings that we have a record of from a review of available information (principally diaries) as set out at Table 1 below. It is possible however that there were a few further informal meetings which we do not have records of and which are therefore not recorded below. In addition to these meetings we had regular telephone conversations (notably with the RIFW board chair) but also from time to time with other board members and WG officials throughout the sale process.

We only had one meeting with a minister. This meeting was with Huw Lewis AM on 3rd July 2012 and was focussed principally on WG concerns to ensure that RIFW had sufficient potential regeneration investment opportunities available to it in order to defray its funds within the applicable time limit.

**Table 1 - Meetings Other than Formal Board Meetings**

<b>Date</b>	<b>Form of Meeting and Nature of Discussion</b>	<b>Participants</b>
01/02/2011	Meeting: Quarterly Review	WEFO, Amber
01/02/2011	Meeting: RIFW & State Aid	WG Observer, Amber
18/02/2011	Meeting: Introductions	Cllr Holley, Amber
06/04/2011	Meeting: re RIFW	RIFW Chair, Amber
19/05/2011	Meeting: Periodic Review	WEFO, Amber, LSH
06/07/2011	Meeting: Audit & Risk Committee	RIFW Members, WG (BETS), Amber
30/07/2011	Meeting: RIFW Property Asset Title matters	WGLS, RIFW, Morgan Cole, Amber
01/08/2011	Meeting: Periodic Review	WEFO, Amber, LSH
22/08/2011	Meeting: RIFW Property Asset Title matters	WGLS, RIFW, Morgan Cole, Amber
22/09/2011	Meeting: RIFW Assets	WG Hd of Property, Amber
06/10/2011	Meeting: Audit & Risk Committee	RIFW Members, WG (BETS), Amber
22/11/2011	Meeting: RIFW Property Asset Title matters	WGLS, RIFW, Morgan Cole, Amber
02/12/2011	Meeting: WEFO Programme Monitoring Committee	WEFO, Amber
17/01/2012	Meeting: Audit & Risk Committee	RIFW Members, WG (BETS), Amber
03/07/2012	Meeting: Welsh Ministers - Huw Lewis, AM RIFW Performance review	WM, WG, WEFO, RIFW, Amber

## **2. Confirmation of the Date that the Asset Realisation Plan was Approved**

The ARP was approved at the Board meeting of 28 March 2011. This is recorded by the board minutes which state that *"IT WAS RESOLVED that the Board accept the First Business Plan"*

The Asset Realisation Plan prepared by LSH was a component part of the "First Business Plan"

The portfolio sale (and thus the amendment to the ARP) was approved (subject to conditions) by the Board on 9th June and final approval given by the board in January 2012.

### **3. Advice to RIFW Board on Final Portfolio Sale Terms**

Amber commissioned on behalf of RIFW a formal opinion on the terms of the agreed sale contract relating to the portfolio from the legal advisers Morgan Cole. The purpose of this legal opinion was to provide assurance around the legal process involved in the sale and to provide a concise and accurate summary for RIFW on the terms of what was obviously a complex legal transaction. The reason for its preparation was that the course of the negotiation and the terms of the contract for the disposal of the portfolio were complex and we wanted to have a clear opinion on the appropriateness of the final legal terms of the disposal. The opinion delivered by Morgan Cole is stated as having been “prepared for the sole benefit of RIFW and its fund manager Amber Fund Management Limited and for no other purpose”.

The opinion was requested by us from Morgan Cole in early December 2011. The final opinion report is dated 16<sup>th</sup> February 2012. Prior to this a number of drafts were prepared and circulated by Morgan Cole. It was first issued in draft on 15 December 2011 and progressively updated in subsequent drafts as matters were finalised. A copy of the final version was provided to the WAO in 2012 and we believe that the PAC has seen this.

We are unfortunately unable to identify the date that the final legal opinion was provided to the board but we note that the then current draft was reviewed at the RIFW board meeting of 31<sup>st</sup> January 2012. The final version did not differ materially from this draft. The first draft of this opinion was also referred to in the note sent by us to the RIFW board on 16<sup>th</sup> December 2011 and discussed in subsequent telephone conversations with board members.

### **4. Other Observations**

#### **a. Sale Proceeds Correction**

Reference was made at the start of the Amber evidence session to the suggestion that subsequent to the portfolio sale the purchaser had on-sold “three and a half” of the properties comprised within the portfolio for £16.93m. This figure was contrasted with the amount of £21.75m received by RIFW for the whole portfolio.

We mentioned at the time that we did not recognise these figures and do respectfully note that this comparison is not a like for like comparison. This is unfortunate given the prominence that was given in the media to these numbers.

We understand that the sum of £16.93m quoted by the AG includes an amount of £12.0m from the sale of the Monmouth property. However RIFW is entitled to 50% overage on the Monmouth sale. Accordingly the appropriate like for like comparison should be between the net receipt to SWLDL (which will be £16.93m minus the overage payable) and the net receipt to RIFW (which will be the original £21.75m plus the overage receivable).

We are informed that the overage amount is expected to be in the order of an additional c.£5m so (assuming this is the case) the accurate comparison (before other costs) would be to compare a figure of £11.93m against £26.75m as below:

	<b>RIFW</b>	<b>SWLDL</b>
Headline Price	£ 21.75	£ 16.93
Overage Due (est.)	£ 5.00	£ 5.00
Net Receipt	£ 26.75	£ 11.93

**b. Regeneration Opportunities**

Our evidence session with the PAC was curtailed due to time constraints. As a result we did not have the opportunity to present any evidence about the success of RIFW as a regeneration vehicle nor the continued opportunities that exist for RIFW to achieve regeneration benefits for Wales. While we understand the limitations of time we regret this as we believe that RIFW continues to be a valuable mechanism for the achievement of regeneration goals.

We are reinforced in this belief by the comments of the WAO that *the RIFW investment concept was innovative and has many merits* as well as the success of similar funds elsewhere. The ability of RIFW to demonstrate that it can be a successful agent for regeneration has been obscured by the “pause” put on its activities while the WAO study has been ongoing. However the original justification for the RIFW model remains valid and unchallenged.

We would urge the PAC in its report to consider including some recognition of the WAO’s conclusion that the RIFW model has many merits and for the committee to support a continued role for RIFW (under its revised governance structure) in regeneration activity in Wales.

**5. Matters raised in letter from PAC Chairman on 22<sup>nd</sup> October 2015**

**a. Who had discussions with whom and who was the lead negotiator?**

LSH identified the purchaser, led on the initial discussions with the purchaser and were responsible for negotiating the original transaction terms through to agreement of Heads of Terms on 15 July 2011. LSH maintained an active dialogue with the purchaser throughout the sale process. In this respect we consider they acted in the normal manner of property sales agents seeking to facilitate and deliver the transaction that had been agreed upon in principle. There was extensive contact between LSH and the purchaser throughout the sale process right up until completion of the portfolio transfer.

Until the purchaser’s offer was accepted by the RIFW board in July 2011, LSH led the discussions with the purchaser. Subsequent to that, during what might be described as the “execution phase” (that is from the time of the “subject to contract” acceptance of the purchaser’s offer in July 2011 through to the time contracts were exchanged in 2012), we consider that we led the negotiation process (obviously under the ultimate direction of the RIFW board).

As we explained in our evidence before the PAC, RIFW itself had no executive capacity, so in practice it relied on Amber to provide it with administrative support across areas such as company secretarial, accounting etc. This work expanded to include managing the very complex and time consuming process of perfecting the transfer of RIFW's land assets from WG (see paras 3.10 to 3.13 of the WAO report) as well as the day to day supervision of Morgan Cole (RIFW's lawyers) both in this work and in the process of concluding the sale transaction once it had been approved by RIFW.

As we explained in the PAC session we formed the principal conduit for written information to flow to the RIFW board. While LSH were in attendance personally at board meetings and advised directly at these meetings, written communications were made principally via us.

During the period between the "subject to contract" acceptance of the purchasers offer in July 2011 through to the time contracts were exchanged in 2012 communication with the purchaser took place in two main ways:

- Firstly direct discussions with Langley Davies (who was the purchaser's representative) took place via LSH. These conversations generally tended to relate to matters affecting the property assets themselves or where the purchaser was seeking to discuss or seek change to the terms of the transaction in some way. Where the purchaser raised questions about the transaction terms then LSH would then raise these points with us (the matter referred to in the paragraph below is a case in point).
- Secondly discussions on the terms of the legal contract were generally raised by the purchaser through its solicitor direct to Morgan Cole. Morgan Cole would then contact us where necessary to obtain RIFW's instructions. On some occasions contractual issues also led to direct conversations between Amber and Langley Davies (for instance we attended three meetings with Langley Davies) but such conversations were not frequent.

What we did when points relating to the transaction were raised with us depended on the nature of the point raised. In many cases the position of the RIFW board on these matters was already known to us (either because points had previously been discussed with them or the point being raised by the purchaser was inconsistent with the terms of the "subject to contract" deal agreed). Where this was the case we would respond accordingly without the need to first refer back to the RIFW board. In practice, this would often mean saying "no" to the point raised by the purchaser. Again the matter discussed below is a good example of this.

In other cases, where a reasonable point was being raised by the purchaser (for instance relating to a defect in the legal title to one of the properties) we would report on the position to RIFW but usually with a suggestion as to how RIFW might proceed. Following agreement on that, we would instruct LSH or Morgan Cole accordingly.

#### **b. Questions about Subsequent Valuations raised in LSH evidence**

Please find attached at Appendix 1 a report addressed to Amber from LSH dated 15<sup>th</sup> December 2011. We believe that the PAC already has a copy of this report which reaffirmed the LSH recommendation to sell the property portfolio. This particular question however stems from the contents of the fifth paragraph of section 3 headed "Security".

The background to this section of the report (as noted in the first paragraph of Section 3 of Appendix 1) is that the terms agreed with the purchaser for the sale of the portfolio provided for the price to be paid in three stages. Legal title to the portfolio passed to the purchaser on payment of the first stage payment. The contract therefore provided that RIFW should be granted a mortgage back over the portfolio (granted at the same time that legal title passed over) to secure the payment from the purchaser of the second and third stage payments.

As also noted in section 3 of Appendix 1, under the terms of the contract, the purchaser was allowed (subject to conditions) to sell parts of the portfolio to third parties (free from the mortgage in favour of RIFW) in the period before the final stage payment had been made. Without other protection this would have given rise to the obvious risk that the purchaser might sell on bits of the portfolio and then default on its obligations to make the second and third payments of the purchase price. The contract therefore contained provisions (set out in the four bullet points in Section 3 of Appendix 1) designed to ensure that RIFW at all times retained a mortgage over parts of the portfolio which had a value of at least twice the amount of any deferred payments still to be received from the purchaser. We (and RIFW) had identified the requirements set out in the four bullet points as providing essential protection for RIFW.

The background to the fifth and sixth paragraphs of Section 3 of Appendix 1 was a request made both by the purchaser to LSH and by the purchaser's solicitors to RIFW's solicitors. We have seen an email from the purchaser's solicitors to Morgan Cole on the same point justifying the request on the grounds *"this would avoid constant revaluations which I understand from Langley are difficult to achieve in practice, and would be a pain for all concerned, particularly in the first year."*

However the request being made of RIFW in these paragraphs was based on misconceptions. Firstly it was not the case that RIFW was not seeking to "force" the purchaser to carry out a valuation as suggested in the fifth paragraph of Appendix 1. The only reason the question of possible future valuations arose was because RIFW had acceded to a separate request of the purchaser that it should be allowed in certain circumstances to sell parts of the portfolio at times when it still owed money to RIFW. RIFW had acceded to this request subject to the safeguards set out in the bullet points which were designed to ensure that RIFW retained adequate security for any unpaid amounts due to it. Secondly the "substitute arrangement" referred to in the sixth paragraph was not really an alternative suggestion since it was already part of the terms of the transaction – (see the third bullet point in Section 3 of Appendix 1).

We recall that we explained these points to LSH (as no doubt did Morgan Cole to the purchaser's solicitors) and made clear our view that if the purchaser was to have the ability to sell parts of the portfolio at times when it still owed sums to RIFW then RIFW required the protection of all the safeguards contained in the four bullet points including the ability to require future valuation evidence that showed the remaining unsold parts of the portfolio were worth at least double the remaining amount due from the purchaser. We do not believe that we felt any need to refer this point back to the RIFW board before giving our view as it was already covered in the heads of terms. This view was then accepted by the purchaser and the final contract reflects these arrangements.

**Appendix 1 LSH RIFW Portfolio transaction Report – Supplement**



## RIFW PORTFOLIO TRANSACTION REPORT – SUPPLEMENT

**Property:** RIFW Portfolio comprising 17 assets.

**Transaction:** Freehold Portfolio Sale.

**Proposed Terms:** **Proposed Purchaser:**  
[TBC] a Guernsey Registered Holding Company wholly owned by St Lawrence Property Investments Limited, registered in UK and funded by GST Investments Limited of Guernsey

**Revised Total Bid Price:**  
**£22,190,000 (Twenty-Two Million One Hundred and Ninety Thousand Pounds) plus overage as agreed on Monmouth and Lisvane**, with cash being secured and received over a 24 month period

The total price is to be paid in the following manner:

£22,190,000 to be paid in 3 instalments:

1. £12,500,000 on completion;
2. £5,000,000 on the first anniversary of the sale;
3. £4,690,000 on the second anniversary of the sale.

The second and third instalments will be brought forward if a sale of the Monmouth property is realised before the payments are due.

St Lawrence Property Investments will provide adequate security on the future payments.

In addition the Fund will retain the proceeds realised from the sales of the properties at Penarth (£185,000) and Brackla (£60,000) providing a total receipt of £245,000. These transactions have now completed.

**On this basis the total amount receivable will be £22,435,000 (Twenty Two Million Four Hundred and Thirty Five Thousand Pounds)**

**Overage:**

The purchaser has agreed that overage on both Monmouth and Lisvane will be payable on any sale over and above the original King Sturge asset transfer valuations and the purchaser's reasonable related costs at the following rates:

- **Monmouth** - 50% in the event that it is sold for residential development after any planning consent is granted. This overage provision will run for a period of five years following completion of the sale, with payment to be made within three years following adoption in the LDP and/or planning being granted.
- **Lisvane** – 30% in the event that it is sold for residential development after any planning consent is granted. This overage provision will run for a period of five years from completion of the sale, with payment to be made within five years following

adoption in the LDP and/or planning being granted, subject to a possible extension or transfer of part of the land if the actual sale of any of the plots, and therefore payment of the overage, has not taken place by the longstop date.

***All other terms remain as per the bid set out in the original Transaction Report dated 20 April 2011, amended and recorded in the Supplemental Transaction Report dated 2 June 2011.***

## **1. CURRENT SITUATION**

Terms were agreed with GST Investments Limited, on behalf of St Lawrence Property Investments Limited, for the sale of the portfolio at a price of £22.5m, subject to stage payments.

The legal due diligence is well advanced and it is expected that exchange of Contracts will occur very soon

The price has been revised because one property (Garth Park, Talbot Green) and part of a property (land adjacent to Imperial Courtyard) have been removed from the portfolio sale. The reduced price has been agreed in direct correlation to the original transfer value as follows:

Garth Park, Talbot Green	£210,000
Land adjacent to Imperial Courtyard	£100,000
<b>Total Price deduction</b>	<b>£310,000</b>

**Garth Park, Talbot Green** – has been removed from the sale following its revised designation as Green Wedge and the expectation that this will be upgraded to a SSSI designation. This has a serious effect on value.

**The land adjacent to Imperial Courtyard** – has been removed because RIFW (and Welsh Government) have been unable to confirm ownership. It appears that ownership still rests with Newport Council. The site could be bought separately.

## **2. PRICE APPORTMENTS**

The agreed price of £22.19m will need to be apportioned against each asset. We attach in Appendix 1 a draft apportionment schedule. This has been prepared on the following principles:

- Monmouth and Lisvane are at their original RIFW Transfer Values
- Allowance is made for the sale of part of Gogan Hall Farm, Penarth and Brackla Industrial Estate
- The remaining 'premium value' has been apportioned evenly across the remaining assets at an overall rate of 11.26%
- This will be revised, in discussion with the purchaser, to reflect the VAT status of each of the assets, ie whether they are elected for VAT and/or whether they can be dealt with as a Transfer of a Going Concern (TOGC)

### 3. SECURITY

It was agreed in the Heads of Terms that RIFW would take a first legal charge over the properties for the purpose of securing the two deferred payments to RIFW, with the charge being released on settlement of all the completion monies.

It was also agreed that the purchaser would be entitled to sell properties to third parties and be entitled to release of the security so far as it relates to the part sold, provided that:

- The purchaser pays all costs associated with the application for release
- The sale is at open market value (established to the satisfaction of RIFW, acting reasonably)
- At least 50% of the sale proceeds, net of professional costs, of the part sold are paid to RIFW
- The unpaid part of the purchase price after such sale is less than 50% of the value of the unsold properties, established to the satisfaction of RIFW, acting reasonably.

It was agreed that the purchaser will, at all times during the period, be required to maintain a 50% LTV on any monies outstanding.

These provisions have been subject to recent debate, with the purchaser suggesting that it would harm his interests and could prejudice the portfolio transaction if he is forced to carry out a formal valuation now or is in a position where the portfolio may be subject to a formal valuation within the next two years.

A substitute arrangement has been proposed by the purchaser which includes an arrangement whereby 50% of the sale proceeds or the apportioned price, whichever is the higher, will be paid to RIFW on any sale. This could lead to up to 100% of the sale proceeds being paid to RIFW if the sale price is 50% of apportioned value and provides additional protection to RIFW.

LSH support the adoption of these new arrangements

### 4. Related Parties

LSH confirm that we do not have any related party issues resulting from this transaction.

We have acted for Langley Davies on other projects and do provide property advice to companies where Langley Davies is a Director.

We are aware that a related party disclosure has been made by Jonathan Geen of Acuity Legal Limited (RIFW LLP Board Member), who is acting for St Lawrence Property Investments Limited (the purchaser) in this transaction. We understand this has been recorded in the 'Register of Interests/Conflicts of Interest Log'.

### 5. Recommendation

The economy and the property market have been under severe pressure in the period since terms were agreed, with many deals falling through or terms renegotiated. Investors are becoming more risk averse and will often only proceed if the terms are absolutely right for them.

St Lawrence Property Investments have not sought to renegotiate terms, other than to reflect the assets that have been removed from the sale and to 'tidy up' a few of the other provisions. The portfolio was sold to them on a 'warts and all' basis, and this has been adhered to.

**It is our recommendation that the current terms are accepted, including the revised arrangements for dealing with the payment of a proportion of the sale proceeds on the sale of any of the assets.**

A handwritten signature in black ink, appearing to be a stylized name, possibly 'L. Smith', written over a faint grid background.

**Lambert Smith Hampton  
15 December 2011**

# **APPENDIX 1**

## **DRAFT PRICE APPORTIONMENTS**

## REGENERATION INVESTMENT FUND FOR WALES

### PORTFOLIO SALE

#### APPORTIONMENTS - DRAFT

No	Asset	Transfer Value	Premium 11.26% Apportionment	Notes	VAT Position
1	Imperial House, Newport	5,200,000	5,674,318	Land removed from Portfolio (£100k)	
2	Lisvane, Cardiff	1,835,000	1,835,000	Base Value for Overage	
3	Wrexham Industrial Estate	390,000	433,918		
4	Llantrisant Business Park	330,000	367,162		
5	Upper House Farm, Rhoose	2,700,000	3,004,051		
6	Cogan Hall Farm, Penarth	350,000	333,783	Part sold (£50k book - £185k achieved)	
7	Garth Park, Talbot Green	210,000	-	Removed from portfolio	
8	Goetra Uchaf Farm, Bangor	1,500,000	1,668,917		
9	Ty Mawr, Llanfairpwllgwyll, Anglesey	150,000	166,892		
10	Ty Draw Farm, Pyle, Bridgend	100,000	111,261		
11	Mayhew Foods, Aberdare	300,000	333,783		
12	Anchor Way, Penarth	100,000	111,261		
13	Wonaston Farm, Monmouth	990,000	990,000	Base Value for Overage	
14	Towyn Way East, Towyn	155,000	172,455		
15	Pen y Bryn, St Asaph	230,000	255,901		
16	St Georges Road, Abergele	90,000	100,135		
17	Waenfynydd Farm, Llandudno Junction	520,000	578,558		
18	Brackla Industrial Estate	5,500,000	6,052,606	Part sold (£60k)	
		<b>20,650,000</b>	<b>22,190,000</b>		