

**QUESTIONS TO BE ASKED OF THE PRESIDENT OF THE POLICY AND RESOURCES  
COMMITTEE ON TUESDAY 9th SEPTEMBER 2003, BY SENATOR E.P. VIBERT**

**Question 1**

Would the President confirm that he has attended a series of meetings with the Chairman of C.I. Traders Limited, in the company of Senator Michael Vibert, for the purpose of attempting to reach a settlement of the legal action with Les Pas Holdings Limited over the ownership of the foreshore within the Fief de la Fosse, and, if the answer is in the affirmative, would he advise members –

- (a) when and where these meetings were held;
- (b) whether any minutes were taken;
- (c) whether H.M. Solicitor General was informed that these meetings were taking place;
- (d) whether the Policy and Resources Committee was aware that these meetings were taking place; and,
- (e) whether reports were given to members of the Policy and Resources Committee regarding what had been discussed.

**Answer**

“1. (a) Following consideration of legal advice received from H.M. Attorney General and H.M. Solicitor General on 17th January 2003, and recognising that court case was scheduled to come before the Royal Court in March 2003, the new Policy and Resources Committee agreed that it was prepared for there to be ‘without prejudice’ discussions with representatives of Les Pas Holdings Limited with a view to seeing whether agreement to an out of court settlement might be reached. At that same meeting the Committee agreed that I and Senator M.E. Vibert should act on behalf of the Committee in this matter, in consultation with H.M. Attorney General, H.M. Solicitor General and Advocate Binnington as appropriate.

Senator Vibert and I subsequently attended meetings with Mr. Tom Scott and others representing Les Pas Holdings Limited on 21st and 31st January, 18th March, and 1st and 27th May 2003. In addition, there were two further meetings which I attended with Mr. Scott on 24th March and 15th May 2003, which, although he was aware that these meetings were taking place, were not attended by Senator M.E. Vibert due to diary clashes.

For the record, I also confirm that the process of discussion with representatives of Les Pas Holdings Limited, about a possible settlement, actually begun in September 2002 with two informal and without prejudice meetings, which I attended with the then President of the Policy and Resources Committee. Those meetings were themselves inconclusive, but were instrumental in paving the way for the work the Committee had to take on, when it came into being in December last year.

- (b) Minutes of these meetings were not taken as these were informal discussion meetings.
- (c) H.M. Solicitor General was generally aware that the said meetings between 21st January and 8th May 2003, were taking place and attended the meetings of 31st January, 18th March and 1st May 2003. She was on leave between 10th and 26th May 2003, so she would not have been specifically aware of the meeting held on 27th May 2003, until her return to work on that date.
- (d) Members of the Committee were, as far as was practical, kept aware of each forthcoming meeting. However, due to the difficulties with making arrangements to suit all attending parties, and with meetings being organised at sometimes short notice, some individual members may not have been

notified of precise times of meetings before they occurred.

- (e) The Policy and Resources Committee was at all times kept up to date with what had been discussed at each of these meetings at the next available Committee meeting. As the Senator E.P. Vibert will have seen from the minutes of the Committee, the Committee considered progress on this matter at its meetings of 6th February, 6th March, 3rd April, 1st, 16th 23rd and 29th May, 26th June and 3rd, 10th and 25th July 2003.

## Question 2

- (a) Would the President confirm whether the former Solicitor General, Mr. Terry Sowden, wrote to the then Chief Adviser to the States on 23rd December 1993, recording his concern at the possible serious consequences of delay in taking up his offer to help prepare the case against Les Pas?
- (b) Would the President make this letter and any others from the same source available to members of the States prior to the debate on the proposition concerning the proposed settlement with Les Pas Holdings Limited?

## Answer

- (a) I confirm that the then Chief Adviser to the States received a letter from the then Solicitor General dated 23rd December 1993.
- (b) This letter and any relevant other letters forms part of the legal advice received by the Committee of the day and as such it is not possible to divulge its contents in the way requested at this time. However, the present Solicitor General will be able to advise the Assembly of all relevant legal advice available to the Policy and Resources Committee, past and present, when the States meets next week, as a Committee of the Whole House and in camera to hear such advice.

## Question 3

- (a) Would the President provide members with a full detailed breakdown of the £7 million figure quoted in paragraph 35 of the report accompanying P.117/2003 which is stated to be the cost even if the States were to win the action, and a full detailed breakdown of the estimated cost of £12 to £14 million if the States were to lose, as stated in the report.
- (b) Would the President further advise members of which parts of this case the States have successfully defended where it has not been awarded costs.

## Answer

- (a) All of the costs broadly identified within paragraphs 38-40 of the report accompanying P.117/2003, may be summarised as follows, to arrive at the quoted figure of £7 million:

### **Estimated costs to end of trial**

£ million

External costs 2.80  
Funding of Court and judiciary 0.10  
Officer time and associated resources 0.20  
Contingency 0.20  
3.30

### **Estimated additional costs of appeal**

£ million

External costs 2.80  
Funding of Court and judiciary 0.40  
Officer time and associated resources 0.30

**Total estimated costs                      £7.00 million**

In this answer, the term 'External costs' covers all of the litigation work carried out by external legal advisers in attending meetings with the clients and others, examining documents, carrying out research, drafting and preparing documents, making preparations for trial, attending court, etc.

The figure of £12.0-£14.0 million is simply based on advice received that should the States ultimately lose the court case, they would most likely have to bear the costs incurred by Les Pas Holdings Limited which are likely to be of a similar amount to those incurred by the States, less the Court and Officer costs.

(b) No parts of this case have been successfully defended yet, so the question does not arise.

**Question 4**

(a) Would the President advise members why the legal advice given to the Crown and the States of Jersey, on 29th August 1990, by Mr. Raymond Kidwell Q.C. and Mr. George Gadney, commissioned by H.M. Solicitor General of the time, Mr. Terry Sowden, was never made public?

(b) Would the President confirm that, in general terms, this advice was that –

(i) the claims of Mr. Falle must surely fail;

(ii) the Crown and the States for their respective interests may safely –

(A) continue their current reclamation work and use of the reclaimed land;

(B) continue their plans to build a marina at Havre des Pas and make such executive and legislative arrangements between the Crown and the States as will result in an unequivocal agreement and declaration of all the necessary rights; and,

(C) contest the claims of Mr. Falle with H.M. Attorney General representing the Crown and H.M. Solicitor General representing the States and the people of Jersey with no conflict of interest.

(c) Would the President also confirm that the advice –

(i) stated that the Crown conveyed three sites to the States within the Fief de la Fosse in 1982, 1983 and 1989 and it was clear that all parties believe they had the necessary rights – the Seigneur de la Fosse did nothing;

(ii) pointed out that in 1996 the States passed the Seignorial Rights (Abolition) Jersey Law which abolished or transferred to the Crown stated rights of the Seigneurs, so the Seigneur de la Fosse lost all rights he had enjoyed by custom.

**Answer**

All the relevant legal advice will be fully disclosed at a later stage and I am not prepared to answer questions on the matter now as, to do so, may prejudice the States' and the Crown's case."