

## STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

### 7. The Minister for Economic Development - statement regarding the Sea Transport Policy

#### The Bailiff:

The Minister for Economic Development is to make a statement.

#### 7.1 Senator A.J.H. Maclean (The Minister for Economic Development):

On 4th February this year, I made a statement concerning the possibility of a new long-term permit to operate ferry services for Condor Ferries. I promised then to keep Members up to date on progress. Today I am signing a Ministerial Decision amending the Sea Transport Policy. Members will be aware that a permit system for the provision of ferry services is necessary to ensure that certain services are sustainable. Up to now permits have been required for combined passenger and car ferry services. However, it is now necessary to amend the policy to ensure that Jersey continues to have long-term, sustainable, modern and affordable ferry services. As a consequence, I am writing to the Harbour Master instructing him to instigate the due legal process to allow Condor Ferries to make an application for new permits to include roll-on/roll-off freight services. Consistent with the amended policy the initial permit would last for 7 years followed by a second 3-year winding-down permit if required. As on previous occasions, due process means that the application will be published and all interested parties asked to comment on the application before a final decision is made. As part of this I shall in particular direct that any proposed agreement between the Harbour Master and the company is published as far as reasonably possible.

[16:30]

Clearly there will be elements that are commercial in confidence but overall it is important that what is being proposed is clearly understood. The new permit, when issued, will replace the current interim 5-year permit covering car and passenger services, which terminates on 31st December 2018. I have determined that a longer term period is necessary to attract the investment in new vessels for our key car and passenger links. I am in no doubt that granting a new permit covering car, passenger and freight services will provide the Island with long-term certainty about such essential matters as freight supplies and all-weather passenger services. The amendment to policy and the instructions to begin the due process to award new ramp permits follows very extensive and detailed discussions with both Condor Ferries and the Jersey authorities. Much work has been done as to how we can effectively measure and monitor performance and prices on car, passenger and R.O.-R.O. (roll-on/roll-off) freight services. I can assure Members that when signed, Condor Ferries will be required to adhere to clear performance standards. In the light of the possible purchase of the new Austal 102 fast passenger and car ferry, the configuration of the number and types of ships has again been considered. I can confirm that we will continue to require an effective combination of high speed services and the all-weather freight and combined passenger and freight vessels. At the same time, we reviewed the car, passenger and freight business model to establish the extent to which it could sustain competition. In doing this work, I have engaged C.I.C.R.A. (Channel Islands Competition and Regulatory Authority), external business and economics experts and, of course, the States Economic Adviser. The C.I.C.R.A. advice clearly indicated that against the Island's strategic objectives - namely stability in our sea links - a negotiated position with the current operator is preferable than an open tender exercise. As a result of this work, I have determined that it is necessary for the new policy to include roll-on, roll-off freight as well as combined passenger and car services. An additional effect of the new

policy is that high speed foot passenger-only services could not be operated in isolation on the northern route but competition on the foot passenger-only market on the southern route remains possible. L.O.-L.O. (lift-on/lift-off) freight and inter-island sailings remain outside of the policy. There will therefore be no change in practical terms in that a single R.O-R.O. operator will continue with a permit to provide on a non-exclusive basis all northern freight and combined high speed passenger and car services that meet current and future expected demand. In return for such a requirement, we should give the operator a 10-year tenure agreement. While the permits together will have a total 10-year duration there will be an effective break clause after 7 years. At the end of the first 7-year period, there is a planned exit period for the last 3 years of that period. This will give the States the flexibility to either negotiate a new deal with the existing operator or to secure services through a competitive tender. In exchange for the length of commitment from the operator, and the requirement that it will meet current and future expected demand, Jersey will receive: a new £50 million state-of-the-art vessel replacing 2 ageing catamarans. This vessel has the capability to handle heavy weather conditions comfortably for passengers and therefore it will also deliver improved reliability; strict performance targets requiring remediation plans should performance deviate and potentially termination or if they are not adhered to; guaranteed full service of sailings with minimum schedule across all market sectors that the current operator already covers; a profit monitoring and capping mechanism to ensure service efficiency for Jersey. Should profits rise above an independently monitored upper limit, the operator will be compelled to reduce prices and/or return the excess profits back into the sectors that generated it. I should stress to Members that the new ramp permits, when issued, will be non-exclusive. A competitor that may wish to operate will have to provide a similar service to the incumbent provider. As a consequence, any *bona fide* ship operator can apply at any time to run a similar service, car, passenger and freight and the Harbour Master would be required to give them consideration. We have reached this point after long and detailed discussions with stakeholders and interested parties. I would like to take this opportunity to add my profound thanks to all who have been involved. I look forward to the completion of due process and a successful conclusion that will deliver to Jersey long-term sustainable, modern and affordable ferry services.

### **The Bailiff:**

Now 15 minutes of questions. Deputy Southern.

#### **7.1.1 Deputy G.P. Southern:**

The Minister talks about a profit monitoring and capping mechanism to ensure service efficiencies for Jersey. Is it not the case that he will have to examine in some detail the structure of the company and its subsidiaries, which is ultimately owned by Macquarie Bank whose business model is to give high interest loans to its subsidiaries running the service and therefore reduce profits artificially so it looks good on the surface but the people who pay are the customers. Is it not the case that he will have to do more than simply profit monitor?

#### **Senator A.J.H. Maclean:**

As I have said to Members in my opening statement, there have been lengthy and detailed considerations to this particular arrangement and obviously arriving at a position where we can carefully and appropriately monitor the performance of the business has involved an equation - a R.O.A.C.E. (Return on Average Capital Employed) calculation as it is known - which is a return on average capital employed. By looking at that and putting in place specific tramlines as part of the operating agreement which sits under the ramp permit, that allows a basic line between 7 and 13 per cent of profit that the company will be allowed,

which is looked at based on international benchmarking of similar ferry operators and deemed to be a fair and reasonable figure to ensure competitive and fair pricing and also reinvestment in the model. So it is not something that has been done just on the back of a fag packet, if I can put it that way; it is a detailed calculation which we believe will meet the aims of the agreement.

**Deputy G.P. Southern:**

But does the Minister not accept that the business model of Macquarie in this particular area is such that it artificially reduces profits and therefore profit monitoring alone will not be sufficient to assess the efficiency of what is being delivered?

**Senator A.J.H. Maclean:**

We have had independent advice, not just from the Economics Unit. We have also had Oxera looking at this. We have had the Competition Authority looking at this. The advice that we have had - and it is deployed elsewhere in international ferry markets - is that this particular proposed mechanism, regardless of the ownership, which the Deputy seems to be suggesting is a problem here... but Macquarie invest quite significantly in a range of infrastructure investment globally and regardless of that this is the advice that we are having. This is the model that is deployed elsewhere and it is most appropriate. Never before in Jersey have we had a model of this nature put in place. It has been a very broad and weak way of monitoring pricing in the past.

**7.1.2 Deputy G.P. Southern:**

Will the Minister agree to release those reports and advice to Members of the States?

**Senator A.J.H. Maclean:**

The areas that will not be and are not commercially in confidence, yes, will be published as part of the ramp permit arrangements. I think that will give more than enough comfort and detail to the Deputy and Members.

**7.1.3 Senator L.J. Farnham:**

I welcome the Minister's first statement and I believe that it is potentially very good news for the tourism industry and the wider economy as certainly tourism, I think, are looking for some certainty into the future of the very important sea links to the Island. I see that the new vessel replaces 2 vessels and I just wanted the Minister to reassure the Assembly that there will be ample capacity, not just to ensure that the tourism market is ably catered for, but also to prevent over demand for a vessel at times of the year which could lead to competition issues.

**Senator A.J.H. Maclean:**

Yes, I am delighted to do so. The 102 Austal is a substantially larger vessel. It has got 20 per cent more capacity; that is 46 per cent in winter and 15 per cent in summer. More importantly it has got... or equally importantly, I suppose, it has got 50 per cent more car capacity in the peak periods. So I think this is going to add an extra dimension and certainly from the point of view of tourism, this, in my view, is extremely good news.

**7.1.4 Deputy G.C.L. Baudains:**

I notice with dismay that the Minister is continuing to require the use of high speed services by Condor. Given the likely service reliability issues arising from replacing the current 2 ferries with one so if it breaks down we have got nothing, and the fact it cannot use Weymouth, why is the opportunity not being taken during this period of flux to dispense with

the fast ferry requirement and instead, as I have asked the Minister many times, upgrade the conventional ferries so they can get to the United Kingdom from Jersey in 4 hours. Let us face it; the fast ferries use 1,000 gallons of diesel an hour. The conventional ferries would be more economical.

**Senator A.J.H. Maclean:**

On the last point, the new Austal 102 is an extremely economically viable vessel. It is very modern. In fact, it has only got delivery miles on the clock, if I can put it like that, so I think the Deputy will find that ... and certainly as far as Condor are concerned they want a vessel that is going to have low burn costs, which is not the case for the current catamarans. The Deputy has raised this particular point before. I think in due course there are options for traditional faster vessels but at the current time there are none available on the marketplace certainly that fit the dynamics of the Channel Islands market but more importantly the advice we have had is that a negotiated agreement with the current operator is the best way forward. There were discussions about the configuration and type of fleet and indeed, I suspect, as we go through this period, 7 years, and a potential 3 after that, that the future configuration when other vessels are replaced, could well include the type of vessels that the Deputy is referring to but the timing is not right at the moment.

**7.1.5 Deputy S. Power:**

In the third paragraph of the first page, he refers to: "Writing to the Harbour Master instructing him to instigate due legal process." Could he give an indication of the timescale on this now, and on the second-last paragraph, penultimate paragraph on the same page, could he give an indication of what modifications will have to be given, if any, or have to be taken, if any, on the 2 ramps at the Elizabeth Terminal?

**Senator A.J.H. Maclean:**

As far as the timetable is concerned - the ramp permit, assuming it is issued and there are no particular unforeseen delays - it is expected would be around about the middle of August, so that is the period. We would advertise for a month and clearly there would need to be necessary time for the Harbour Master to consider any applications or issues that are raised as part of that process. So the middle of August is what the target date happens to be. I am not aware that there are any modifications required as far as the ramps are concerned at the harbour.

**7.1.6 The Connétable of St. John:**

Given the reasonable service given by Condor, will the Ports of Jersey also be assisting the operators by facilitating them with the catering services that people have to use within the building? Because for some months the restaurant, *et cetera*, and bars were closed. Will the Minister make sure that these are 100 per cent operational by the time the new vessels come into play?

**Senator A.J.H. Maclean:**

I am not quite sure how relevant that is but it is nevertheless an important point. I can say to the Connétable and to Members that, yes, there has been a changeover in terms of catering facilities at Elizabeth Harbour. I think that the outcome ultimately, although it has taken longer than would have been anticipated, the temporary facility is good but nowhere near what we would expect but in due course, I think Members will be pleased that Islanders will get far improved service down there. We are hopeful that that will be open for the peak summer period. I cannot give a guarantee to him but I am happy to update Members in due course as negotiations are completing on that particular issue.

### **7.1.7 The Connétable of St. John:**

That comment appears to be a similar comment to what he made some months ago. Can he give some certainty because if Condor are wanting to invest money they do not need their passengers to be having to go to a type of cafeteria instead of having the full facilities? Surely your department or the Economic Development Department can get their act together and get a new tenant, *et cetera*, in that building so the passengers can have the full experience, not have an experience which is only a ... well, as we have at the moment, which is far from acceptable to the travelling public.

[16:45]

### **Senator A.J.H. Maclean:**

It is completely unlinked, in fact, to the statement and I would simply say to the Connétable that the worse the facilities are at Elizabeth Terminal, the more beneficial, probably, to Condor because members of the travelling public will spend more money on their vessels; the services on the new Austal 102 are far superior. Nevertheless, the Connétable does ask a good question about facilities at Elizabeth Terminal. It is disappointing that the previous tenant of those facilities no longer is in business. That is something that the Ports of Jersey have had to deal with. They have had difficulty getting access to the premises. There have been all sorts of issues that have had to be overcome. It is a commercial negotiation that has been undertaken. Temporary facilities have been put in place. They and we want to get the best possible outcome for Islanders in terms that they are catering down there and I am convinced from what I have been told that what will go into the Elizabeth Terminal will be something the Island can be proud of and deliver the services expected. It will be done as quickly as it possibly can be.

### **7.1.8 Deputy J.G. Reed of St. Ouen:**

Given that the Minister has said it is now necessary to amend the policy to ensure Jersey continues to have a long-term, sustainable, modern and affordable ferry service and that there are still 3½ years to run of the existing contract with Condor, could he please explain why he has chosen not to go out and seek an open tender process for this new service and why he believes that the proposal by Condor at best meets the needs of this Island?

### **Senator A.J.H. Maclean:**

There is a period of time until this current agreement expires. That is because the current 5-year period that has been put in place was put in as a temporary agreement because the previous one came to an end. It was at a period that we were looking at a longer term arrangement to be put in place for ferry services. Quite frankly, to get, whether it be Condor Ferries or any other operator, to invest in the services it is a significant investment. It has been estimated at over £240 million for a new operator coming in, in terms of infrastructure, vessels and suchlike. To invest that type of money there needs to be a suitable period of time. Hence the longer term, the 7 plus 3, the 10-year agreement, so that an effective return on investment can be delivered. Condor Ferries themselves are investing £50 million in this vessel, assuming the arrangement goes ahead and the ramp permit is issued as expected. Separately, as part of negotiations that have been ongoing for nearly a year now, including an independent economic adviser, Oxera, and the Competition Authority, all the advice we have had is that negotiation in the current climate with the current dynamics of ferry markets globally is to strike a deal with Condor. That is what we have sought to do and that is why it has taken so long, because we have extracted from these negotiations what I believe to be the best possible deal for Jersey with regard to a long-term arrangement for ferry services to the Island.

### **7.1.9 The Deputy of St. Ouen:**

I have a supplementary question. Could the Minister confirm whether or not this new change in policy will strengthen the position of Condor as the sole provider and this Island will ensure that we as an Island get the maximum benefit out of the deal?

**Senator A.J.H. Maclean:**

It will strengthen to a degree because they have a contract they might possibly have not had, and if that was the case clearly that would not have been good as far as they were concerned. But any commercial arrangement is only a good commercial arrangement if both parties get something out of it of value. What has happened through the negotiation is not only do we have this mechanism in place in terms of capping the profitability of Condor during the 10-year term of the agreement to make sure, if there are over profits made, to avoid these super profits. That excess profit will be put back as part of the agreement into the service. That is for the benefit of the Island. We have also included, incidentally, 'windfall gain' so if Condor, creating some additional value in this particular agreement, were to sell the business within a 2-year period, then 5 per cent of the equity of the sale would go back to the Islands. There has been an awful lot of negotiation in terms of reaching the best deal for the Islands.

### **7.1.10 Deputy R.G. le Hérissier:**

Notwithstanding the excellent work done by the department and Condor, can the Minister confirm that there will be appropriately increased facilities at the terminals and immigration in order to process the much larger number of passengers and vehicles coming through?

**Senator A.J.H. Maclean:**

Yes. There is no lack of capacity or capability at the harbour, at the Elizabeth Terminal in particular, to deal with what we hope will be increased numbers coming through and that should not provide any inconvenience or lack of service facility for the travelling public.

### **7.1.11 Deputy M. Tadier:**

Can the Minister confirm what the relationship is between Macquarie Bank and Condor?

**Senator A.J.H. Maclean:**

They bought the business. They own the business of Condor Ferries.

### **7.1.12 Deputy M. Tadier:**

On that basis is the Minister concerned or can he explain whether there will be an arrangement in place, as Macquarie has done for other subsidiaries, whereby they will lend money to the company, in this case Condor, at high interest rates. Condor may not be making profits on paper but Macquarie will, and we might be in a situation where high fares are justified and the Island does not benefit. But Macquarie is making profits and then Condor will come back to the Island and say: "We do not have any money. We either therefore need some assistance from the Sates of Jersey for boats in the future or we simply need to ramp-up prices", and that will be fine because they will not be seen to be a profitable company. Is that a risk and could the Minister say something to allay those fears?

**Senator A.J.H. Maclean:**

No, I do not believe it is a risk. We have, as part of the arrangements, complete look through provisions. We can look at the arrangements and the accounting as far as Condor are concerned and it would be a completely open and transparent process that will allow us to be able to do that and allay hopefully the fears.