

1. INTRODUCTION

In April 2004, the Vibert Shadow Scrutiny Panel, concerned at the uncertainty surrounding the future structure of Jersey Harbours under ministerial government, decided to undertake a review of the proposals of the Harbours and Airport Committee to change the institutional framework of Jersey Harbours, the principal options for which have been incorporation into a 100% **States-owned company** or **Trust Port** status.

Five years after a **Strategic Service Review** recommended that Jersey Harbours become a **States-owned company** in order to take advantage of commercial freedoms and efficiency, the future of the organisation remained unresolved. The Harbours and Airport Committee had brought forward two propositions requesting the States to give support in principle to further progress on two different options but, in the face of strong opposition from the workforce and demands from key States Committees for more detailed information, both propositions had been withdrawn. Following a **High Level Options Review** by Deloitte and Touche, which concluded that a **States-owned Company** would meet the objectives of the States better than any other alternative, the Committee appeared to have returned full circle to the original recommendation of the **Strategic Service Review** without having made any material progress towards its implementation.

2. THE SHADOW SCRUTINY PANEL

The Shadow Scrutiny function was established by the States of Jersey as part of the reforms of the Machinery of Government. The principles and guidelines of Shadow Scrutiny in Jersey are set in the report and proposition of the Privileges and Procedures Committee P.186/2003, adopted by the States on 27th January 2004.

Senator E.P. Vibert was appointed as Chairman of one of the Shadow Scrutiny Panels. However, the Panel decided that, for the purposes of each member gaining experience in the shadow process, members would assume different rôles for each review.

For the purpose of the review of the Trust Port proposals for Jersey Harbour, the Panel agreed that it would be constituted as follows -

Deputy G.C. Baudains (Review Chairman)

Senator J.A Le Maistre

Senator E.P. Vibert

Deputy R.C. Duhamel

Deputy F.J. Hill, B.E.M.

Deputy P.J. Rondel

Officer support: Mrs C. Le Quesne and Mr. M. Haden, Scrutiny officers.

It was noted that Deputy P.J. Rondel had been a member of the Harbours and Airport Committee from December 1998 to February 2000 and from September 2000 to December 2002.

3 TERMS OF REFERENCE

The terms of reference agreed by the Panel are listed below, together with a summary of the key findings from the evidence it has received.

3.1. To ascertain why and with whose authority the decision was made that Jersey Harbours should operate as a Jersey Limited Company as opposed to a Trust Port.

A decision regarding the two identified options for an independent commercially focussed body to replace the Harbours and Airport Committee's responsibility for Jersey Harbours has not been made.

A **High Level Options Review** recommended in February 2004 that a **Jersey Limited Company** would best meet the strategic aims and objectives of the States

In March 2004, a Joint Meeting of three key Committees requested further detailed analysis into the costs and benefits of implementing this recommendation.

Once this **Cost/Benefit analysis** has been completed and a **Business Plan** prepared, the Harbours and Airport Committee will be in a position to bring forward firm proposals for change for the consideration of the States.

3.2. To ascertain what explanation was put to the States in connexion with the change of direction from Trust Port to a possible Jersey Limited Company.

The decision to withdraw the Harbours and Airport Committee's proposition in favour of pursuing the **Trust Port** option was taken following a joint meeting of the Policy and Resources, Finance and Economics, Economic Development and Harbours and Airport Committee in October 2002.

It was not considered necessary to make a formal explanation to the States until new firm proposals for change had been developed.

3.3 To review all of the evidence prepared for the Committee relating to Jersey Harbours becoming a Trust Port.

The Panel has received and reviewed all relevant documentation from Jersey Harbours,

including Committee Acts, briefing papers and reports prepared for the Committee, and relevant correspondence.

The Panel is grateful for the co-operation it has received from the Department in this respect. However, it was unable to discuss the progression of the **Trust Port** option and the eventual outcome with the former President and the former Chief Executive of the Committee.

The Panel also interviewed two witnesses with experience of the operation of **Trust Ports** in the United Kingdom.

3.4 To establish the overall cost to the taxpayer of the research undertaken for both the Trust Port and Jersey Limited Company options and to assess the advantages and disadvantages of both options.

Details were provided by Jersey Harbours of the direct and indirect costs, totalling £147,764, for research work and consultants' fees (See Appendix 3). This figure, however, does not include internal staff costs in respect of the time commitment required of the Senior Management Team in developing the strategy.

The Panel discussed the findings of the Deloitte and Touche **High Level Options Review** with the Presidents of the three key Committees with responsibility for implementing a decision on the options.

3.5 To assess the financial implications of Jersey Harbours becoming either a Trust Port or a Jersey Limited Company.

The Panel had intended to review the work on the **Cost/benefit analysis** and **Business Plan**. However, this had not been completed by the end of January 2005 when the Shadow Scrutiny Panel came to the end of its year's term of appointment. Consequently the Panel was unable to consider the financial implications of the two options in detail.

The Panel reserves the right of a succeeding Scrutiny Panel to monitor the outcome of this work.

4 THE PANEL'S CONCLUSIONS

Having considered the evidence received, the Panel has drawn the conclusions summarised below. These conclusions are discussed in Section 10 of the report.

- 4.1 Prolonged uncertainty about the future of Jersey Harbours has hindered the implementation of recommendations, made in 1999, aimed at improving the efficiency of the operation of the port.
- 4.2 The scale and complexity of the tasks to be undertaken in achieving the creation of a commercially focussed independent company for Jersey Harbours was underestimated by the key Committees which shared responsibility for the project, Policy and Resources, Finance and Economics and Harbours and Airport.
- 4.3 The Policy and Resources Committee failed to provide effective leadership in co-ordinating agreed strategic policies and objectives.
- 4.4 The Finance and Economics Committee did not have the resources to provide an effective overview of the incorporation project.
- 4.5 Significant costs have been incurred by Jersey Harbours in pursuing its strategy for a commercial future.
- 4.6 Experience gained by other States Departments, Jersey Telecoms and Jersey Post, in developing strategies for incorporation does not appear to have been exploited in the case of Jersey Harbours.
- 4.7 Prolonged uncertainty about the future of Jersey Harbours may have increased the challenge in reaching agreement with the workforce.
- 4.8 Lack of clarity in defining the boundaries of responsibilities for assets in and around the St. Helier Harbour area has complicated the task of achieving an independent commercial future for Jersey Harbours.
- 4.9 The work currently being undertaken by Jersey Harbours in preparing a detailed **cost/benefit analysis** and **Business Plan** is expected to provide a firm basis for an informed decision to be taken by the States on the commercial future for the port in the very near future.

5. RECOMMENDATIONS

The issues raised in the Panel's conclusions give rise to a number of recommendations which apply in general to major States projects as well as to certain recommendations specific to Jersey Harbours.

5.1 General

- 5.1.1 The primary basis for a project of the scale and complexity of creating a new commercial structure for Jersey Harbours, requiring the co-ordination of a number of States Departments, should be a firm political commitment to agreed strategic aims and objectives, coupled with the will to drive this commitment through into action.
- 5.1.2 Once political commitment has been established, a central government project management team, on the lines of a P.70 Group, should be identified, charged with the development of a clear strategic plan, critical path and defined targets. This team should report on progress of the project on a regular basis to those responsible at a political level.
- 5.1.3 Resource requirements, including the project management team and external consultants, should be identified from the outset with a budget allocated from central funding.
- 5.1.4 Guidelines for the management of major States projects should be developed by the Policy and Resources Committee, drawing on the experience of the incorporation of States Trading Departments.

5.2 Harbours and Airport Committee

5.2.1 The States must take a series of policy decisions on identified key issues in order to provide the Harbours and Airport Committee with a clear strategic framework within which the proposals for changing of Jersey Harbours can be developed. The issues are -

- Public ownership and control of strategic assets
- Financial return to the States (Dividend Policy)
- Property portfolio required by Jersey Harbours
- States responsibility for the Island's outlying ports.

5.2.2 The Harbours and Airport Committee should apply for the total costs of research into options for change for Jersey Harbours, including estimated staff costs, to be reimbursed to Jersey Harbours from central government funding.

5.2.3 A primary consideration in developing an Action Plan for the finalisation of the project should be an effective consultation strategy to involve the whole workforce in the development of a shared vision for the future through a co-ordinated change programme.

5.2.4 The possibility of a formal partnership between Jersey Harbours and the Waterfront Enterprise Board should be explored.

5.2.5 The outcome of the **Cost/benefit analysis** and **Business Plan** should enable a clear recommendation to be made to the States on the future structure of Jersey Harbours, including the proposed transfer of assets to Jersey Harbours, the dividend policy, and responsibility for outlying ports. The Panel also expects to see -

- an implementation plan with a timetable indicating that the issue will be treated with urgency;

- a consultation strategy for stakeholders and the workforce; and

- a statement on the proposed interim position of Jersey Harbours under the new ministerial system of government.

6 BACKGROUND

- 6.1 The **Strategic Service Review** of Jersey Harbours (March 1999), carried out for the States by Fisher Associates, concluded that

'Jersey Harbours could be made much more efficient if it was placed within a more effective institutional framework..... The most progressive option, which also safeguards the national interest, is incorporation into a 100% government owned company'.

- 6.2 In March 1999, a joint meeting of the Policy and Resources and Finance and Economics Committees endorsed the conclusion of the **Strategic Service Review**, noting that -

'the States Committee structure resulted in poor accountability and policies which tied management hands. Viewed objectively, Jersey Harbours could rationalise its operations and institutional reform would be a key step'.^[1]

As a result of this meeting, the Harbours and Airport Committee was authorised to proceed with an implementation plan. The Policy and Resources Committee asked to be kept informed of progress.

- 6.3 Among the first steps taken by the Harbours and Airport Committee in response to the **Strategic Service Review** was a restructuring of the senior management team. This was considered *'essential to expedite the preparations for incorporation'*^[2].

- 6.4 In October 1999, the Committee lodged a Report and Proposition (P.162/99)^[3] requesting the States to give approval, in principle, to the incorporation of Jersey Harbours as a **States-owned limited liability company** and to charge the Committee with preparing detailed proposals.

- 6.5 In November 1999, a Planning Co-ordinator was recruited on a temporary consultancy basis, for an initial period of twelve months, to assist in the progression of the project and to research various strategies. It should, however, be noted that the job description included a number of other tasks, including business planning, strategy development, statistical and legal work. The postholder remains in post five years later.

- 6.6 Strong opposition to the incorporation of Jersey Harbours as a **States-owned limited company** was expressed by staff at Harbours (which reflected similar opposition of staff at Jersey Airport at that time to plans for the incorporation of that entity). As a result, Jersey Harbours began to

investigate an alternative commercial option, the **Trust Port** concept, which had recently been the subject of a modernisation review in the United Kingdom^[4]. The proposition regarding incorporation was withdrawn in October 2000 without being debated in the States.

6.7 In May 2000, a meeting was held at officer level to discuss progress with the incorporation project. However, the Policy and Resources Committee did not receive a report on the new strategy of establishing St Helier Harbour as a **Trust Port** until February 2001, when the Harbours and Airport Committee made a presentation to the Committee. The Minutes of the meeting show that the Committee was comfortable with the concept of Jersey Harbours continuing to develop its idea of a **Trust Port** but also felt that external assessment would be required:

'The Committee agreed that, in order to progress matters it would be desirable for appropriate consultants to be engaged to provide relevant expert advice to it and others at the centre on the overall robustness of what was being proposed.'^[5]

This suggestion was only implemented two and a half years later with the engagement of Deloitte and Touche to carry out a **High Level Options Review**.

6.8 Following that meeting, the Harbours and Airport Committee pursued an implementation programme for the **Trust Port** strategy^[6]. In May 2001, work was begun on an asset valuation of Jersey Harbours, funding options, and a new staff agreement^[7]. In July 2001, a meeting took place of senior officers of Policy and Resources, Treasury, Harbours and Human Resources Departments, to discuss the key issues, following which the Harbours and Airport Committee was advised that it was envisaged that the Policy and Resources Committee would be in a position to prepare a Report and Proposition on the proposed **Trust Port** status for Jersey Harbours, for an anticipated States debate in November 2001.^[8] This timetable was not achieved.

6.9 In March 2002, in a ballot of its membership, the Trade and General Workers Union rejected the proposed move to **Trust Port** status. At this time, the Harbours and Airport Committee noted that uncertainty regarding the Machinery of Government Reforms prevented Jersey Harbours giving firm indications regarding future action. It referred in its Minutes to -

'the apparent inertia to progress Trust Port status as a result of the overriding priority of the Machinery of Government Reforms'^[9].

6.10 In July 2002, the Harbours and Airport Committee proceeded to lodge a proposition, '**Jersey**

Harbours: Progress towards the Trust Port (P.128/2002), informing the States of progress achieved to date in its Strategy for a Sustainable Future and asking members to agree in principle to the establishment of Jersey Harbours as a **Trust Port**. The Committee said that work on the project had reached the point when it was confident that there was a genuinely viable way forward for Jersey Harbours to operate as an independent organisation, recognising that further crucial incremental steps needed to be taken -

Matters are difficult to progress whilst the future financial arrangements remain unclear. The move to commercial accounting cannot be completed without further purposeful agreements being reached with Treasury and the Committee of Management of PECRS [the Public Employees Contributory Retirement Scheme]. Jersey Harbours has a number of quite pressing port development projects that need to commence. Internal restructuring and the development of a single career spine are linked to this project. Likewise, new and robust harbour dues must be put in place.

6.11 The report stressed the importance of obtaining political commitment to an independent commercial future for Jersey Harbours -

This will give clear direction to the staff at Jersey Harbours to stop treading water and accelerate their preparatory work. It must be stated that the last year has been difficult for staff at Jersey Harbours who at times have been unable to determine whether the declared start was really in place or not. This is unsettling.

6.12 This proposition, however, did not receive support from key States Committees, namely Policy and Resources, Finance and Economics and Human Resources^[10]. The Finance and Economics Committee commented -

Given the importance of the Harbours to the Island and as the proposal brought forward by the Harbours and Airport Committee will effectively be transferring that asset out of the direct control of the States, it is vital that the States members are convinced that the proposal is in the best interests of the Island. ... An independent assessment was essential to ensure that the migration to Trust Port status represented the best solution from a States corporate perspective. Such an assessment would be demanding on resources and it would be imperative that resources were not withdrawn from the incorporation of Jersey Telecom and Jersey Post.^[11]

6.13 The Human Resources Committee, noting that a significant majority of the Department's

manual workers had voted in a ballot against the proposal commented that -

Discussion and agreement with the staff over terms and conditions under which employees would transfer to the new body should precede a decision of the States to approve, albeit in principle, the establishment of a Trust Port. [12]

6.14 The Policy and Resources Committee considered that achievement of **Trust Port** status was - *likely to be much more complex than the incorporation of Jersey Telecom and Jersey Post, particularly given the strategic importance of Jersey Harbours to the Island and the less profitable nature of the current business. The Committee considered that less than convincing evidence had been advanced as to why the States should agree to pass its own assets out of its direct control. The Committee emphasised that it was not that Trust Port status might not be the best option for the way ahead, but given that so many issues were still being raised, it would appear that significantly more work was required before moving forward on any or all of these fronts.* [13]

6.15 In October 2002, industrial action was threatened by staff at Jersey Harbours. This, however, was withdrawn when agreement was reached with staff that any plans to form a **Trust Port** for the administration of the Harbour would not affect their current or future employment terms. All staff would remain States employees and retain current pension rights. The agreement was set out in a statement by the President of the Committee, dated 8th October 2002.

6.16 On 18th October 2002, a Joint Meeting of the Policy and Resources, Finance and Economics, Harbours and Airport, Industries and Tourism Committees and the Jersey Transport Authority was convened in order to consider the Harbours and Airport Committee's proposition. The President of the Harbours and Airport Committee impressed on the meeting the importance which his Committee placed on obtaining 'in principle' support from the States before expended further effort towards investigating the matter in greater detail. The meeting concluded, however, that States support for proceeding with the **Trust Port** option could not be given until further clarity was achieved on the two significant issues, namely staffing and funding.

6.17 Serious questions were raised in particular about the agreement reached with the Jersey Harbours staff on their terms and conditions and the impact that this might have throughout the public sector workforce. Contrary to that agreement, it was felt that any independent organisation would need to employ its own staff, who could not be public servants. The meeting ended with an agreement to hold further meetings, one with Presidents and members of relevant Committee to agree a way forward on assets, pensions and funding generally; the

second meeting, at officer level, was to involve the Treasurer of the States, Chief Executive, Policy and Resources, and officers of Jersey Harbours and States Human Resources to discuss the staffing issue^[14].

6.18 Following this joint meeting, Jersey Harbours was keen to address the concerns that had been expressed, with a view to achieving a resolution early in 2003. The Harbours and Airport Committee still hoped that the changes towards a commercial structure could be implemented before it was disbanded under the Machinery of Government reforms. However, time commitments of Treasury staff and the complex nature of the issues involved prevented early expedition of these matters. In November 2002, the President wrote to the President of the Finance and Economics Committee to express disappointment and to press for greater urgency^[15].

6.19 In April 2003, it was agreed that an independent review should be undertaken of the options for future ownership, operation and regulation of Jersey Harbours. This would include consideration of a range of options from privatisation to continued direct States ownership^[16]. Tenders were invited for this project, which was to cost £80,000, to be borne by the Harbours and Airport Committee^[17]. Deloitte and Touche was selected to undertake the review, commencing in October 2003.

6.20 In February 2004, Deloitte and Touche presented their **High Level Options Review** to a joint meeting of the Policy and Resources, Finance and Economics, Economic Development and Harbours and Airport Committees. Eight possible port structures were identified and evaluated against nine key objectives. The evaluation revealed that a **States-owned Limited Company** would best be able to achieve the objectives. The **Trust Port** option was ranked fourth on the basis that

This does not score so well on funding and self-sufficiency and is ranked lower on efficiency and effectiveness owing to the perceived risk that, in the absence of competition, a trust could become self-serving.^[18]

Thus, Jersey Harbours was pointed back in the direction of the original favoured option of incorporation, with seemingly little progress since the **Strategic Service Review** of 1999.

6.21 In March 2004, the **Deloitte and Touche report** was considered by a tripartite meeting of the Policy and Resources, Finance and Economics and Economic Development Committees. The Minutes of the meeting found that report was -

'somewhat weak in its assessment as to the evidence in support of moving towards incorporation, even suggesting that a "quantitative cost/benefit analysis is not possible".'

The President of the Policy and Resources Committee, however, said that a detailed **cost/benefit analysis** would be required to convince States members of the benefits of the strategy. The President of the Harbours and Airport Committee assured the meeting that this would be undertaken. [\[19\]](#)

7 CURRENT POSITION

- 7.1 In January 2005, as the Panel completed its review, the Harbours and Airport Committee was continuing to work on the preparation of the required detailed **Business Plan** and **Cost/benefit analysis**. A review had also been undertaken by the Department of Property Services of the property portfolio to make an assessment of the assets which would be required by a possible future independent company. The Committee was intending to bring forward revised proposals for the consideration of the States in the expectation that a firm basis for a decision by the States would be provided by this work. However, there was not at that point a definite timetable for a States debate.
- 7.2 The Panel was pleased to note that the Committee had engaged Mr. R.C.A. Syvret, Andium Limited, to assist in the development and evaluation of the **Business Plan** and **Cost/Benefit Analysis**. Mr. Syvret had had experience in assisting Jersey Telecom and Jersey Post in their incorporation projects and the Panel believes that his involvement will be of significant benefit to the Harbours and Airport Committee. The Panel had, in fact, approached Mr. Syvret in October 2004 with a view to his acting as an expert adviser to the Panel but discovered that the Harbours and Airport Committee had also made contact with Mr. Syvret to the same end.
- 7.3 The Panel believes that the work now being undertaken by the Harbours and Airport Committee should give a sound basis for the States to finally be asked to make a decision on the future structure of Jersey Harbours. However, several key issues remain to be resolved, notably the resolution of the assets to be transferred to the new company and negotiations with the staff about suitable terms and conditions under a new independent States-owned company, if that is the chosen route for Jersey Harbours.
- 7.4 The Panel had hoped to receive a briefing from the Harbours and Airport Committee on the outcome of its work on the **Business Plan** and **Cost/Benefit Analysis** as this was initially expected to be completed by November 2004. The Panel deferred the preparation of its report at the end of 2004 for this reason. However, this work exceeded the estimated timetable and went beyond the lifetime of the Panel which had been appointed for twelve month period ending in January 2005.
- 7.5 The Panel accordingly decided to draw its review to an end without waiting for the Harbours and Airport Committee to finalise its detailed financial planning. It agreed that, as the principal focus of its review was on investigating the reasons behind the delay in implementing the strategy for change and the various changes of direction taken by the Harbours and Airport Committee, it had reached a point where it was possible to draw certain conclusions about the process. The

Panel, however, reserves the right to return to the subject at a later date should it consider that it would be appropriate to review the outcome of the business planning work.

8 SUBMISSIONS

8.1 The Panel received written submissions from the following -

Harbours and Airport Committee, dated 12th May 2004

Captain Brian Nibbs, retired Chief Executive Officer, Jersey Harbours, dated 10th June 2004

Mr. D. Clifford, retired Managing Director, Port of Tyne, dated 6th June 2004, together with comments on the above submissions and the Deloitte and Touche High Level Options Review

Mr. W. McPhee, TGWU Convenor - Jersey Harbours, dated 24th May 2004

Mr. G. Winchester, Commodore, Royal Channel Islands Yacht Club, dated 28th May 2004

Mr. P.G. Donne Davis, Hon Secretary, St. Helier Boat-Owners Association, dated 2nd June 2004

Mr. G. Forrest, Secretary Jersey Port Users (Commercial) Association

8.2 The Panel held three public hearings. Those who attended the hearings were -

Senator L. Norman, President, Harbours and Airport Committee, accompanied by Captain H. Le Cornu, Harbourmaster/Chief Executive Officer and Mr. P. Baker, Strategic Development Co-ordinator

Mr. R. Norman, Chairman, and Mr. G. Forrest, Secretary, Jersey Port Users (Commercial) Association

Mr. W. McPhee, TGWU Convenor - Jersey Harbours

Mr. R. Hanks, former Secretary of Port Users Association, Great Yarmouth,

Mr. D. Clifford, retired Managing Director, Port of Tyne,

Senator T. Le Sueur, President, Finance and Economics Committee

Senator F. Walker, President, Policy and Resources Committee, accompanied by Mr. J. Harris, Business Manager, Policy and Resources Department

Mr. P. Horsfall, CBE, Chairman, Waterfront Enterprise Board

8.3 The Panel is grateful for the co-operation and prompt response it received from Jersey Harbours in the provision of additional information and background papers on the work undertaken to pursue the implementation of the strategy for an independent commercial future for the Department.

8.4 Two potentially key witnesses refused to the Panel's invitation to attend a public hearing: Mr. D. Maltwood, former President, Harbours and Airport Committee and member of the Finance and

Economics Committee; and Captain B. Nibbs, former Chief Executive Officer.

Both witnesses were in positions of leadership in the work carried out by the Harbours and Airport Committee and Jersey Harbours and the Panel had important questions to ask them about the issues which had proved obstacles to the progress of the project.

Mr. Maltwood flatly refused to make any submission to the Panel unless obliged to do so. The Panel found this attitude most disappointing.

Captain Nibbs retired in May 2004 just as the Panel was commencing its Review, but provided a useful written submission, in which he outlined the key stages in the progressing the strategy for a commercial future since the Strategic Service Review in 1999. However, he insisted on certain conditions on his attendance as a witness at a public hearing which the Panel was unable to accept.

The Panel considers that their refusal to face the Panel's questioning was unhelpful to its review.

9 SUMMARY OF EVIDENCE

The following sections do not attempt a full summary of all the points made by contributors in written and oral evidence. It is intended only to highlight the most significant issues. Copies of the written submissions and full transcripts of the evidence given in public hearings are available on the Scrutiny website at www.statesassembly.gov.je or through arrangement with the Scrutiny Office.

9.1 Harbours and Airport Committee

9.1.1 Rational for change

The Committee's written submission sets out a detailed response to the published terms of reference. It stated that the Committee was committed to seeking a viable replacement of itself as part of the Machinery of Government reforms and identified the long-term advantages of establishing a professional Board for Jersey Harbours. Principally, the Board would be granted financial independence and the ability to make commercial decisions, including employing its own staff. At the same time, the liability of States for the successful day-to-day operation of the harbour would be greatly reduced.

The former Chief Executive Officer, Jersey Harbours, in his written submission, stated that, in his view, both the **Strategic Service Review** in 1999 and the recent Deloitte and Touche **High Level Options Review** in 2004 -

'demonstrate conclusively that Harbours has a viable and sustainable future as either an incorporated body or the now less favoured Trust Port model.

The Committee's submission made it clear that, to date, no specific commitment had been made on the two principal options for a future structure of Jersey Harbours, namely a **Trust Port** or a **Jersey Limited Company**. A decision would be reached once a detailed **cost/benefit analysis** of the recommendations made by the Deloitte and Touche High Level Options Review had been completed.

9.1.2 States control of strategic assets

The Panel was advised that the principal distinction between the two options revolved around the issue of retaining the strategic asset of the Harbour in public ownership and control. The

former Chief Executive Officer, Jersey Harbours, wrote that the lead consultant of the Deloitte's review had explained the matter thus -

Transferring the assets to a Trust would make it difficult, if not impossible, for the States to recover some or all of the assets should they wish to do so. With the Jersey Harbours Limited concept, this difficulty would not arise, in his view, as the memorandum and Articles of Agreement of the Company would ensure the assets would always remain in States ownership.

The President of the Harbours and Airport Committee, in his oral evidence to the Panel, said that the key decision to be taken by the States related to the degree of control the States wished to retain over these assets. Under the **Trust Port** model, all the land and property would have to be transferred to the Trust. This would provide a greater degree of protection from the possibility in the future of a company selling the assets of the Harbour to raise funds. The **Limited Company** option, on the other hand, would give the States, as the shareholder, much more control over the infrastructure of the port. The President said -

By retaining ownership and control, the States will always have a major influence on the direction of the company that it wishes to take. As the shareholders, they will be responsible for endorsing the policies that are promoted by the directors or the trustees. It will be easier for them to do that with a limited company apparently than it would trustees^[20].

9.1.3 Two key issues: Dividend policy and Outlying Ports

Two linked crucial considerations in the evaluation of the options for the Harbours related to the question of a financial return to the States from an independent company and the clarification of the responsibilities the outlying harbours such as Gorey, and Bonne Nuit Bay, which were currently maintained by Jersey Harbours but which might have no material benefit to a commercially focussed company.

The Harbourmaster/Chief Executive Officer made it clear that the **Business Plan** would need to strike a balance between a fair return to the States and retaining competitive pricing. He said -

The business plan needs to make sure that, from a port user perspective, cross subsidy isn't going on. Indeed, even looking for a commercial return, the fear is, from a port user perspective, a fair fear, that pricing would go up out of kilter. I think what we are aiming for in the business plan, it is fair to say is that we are looking both for

sustainability for the port, indeed a self-sustained port, but with competitive pricing so that it is meeting the needs of competitive Jersey effectively, but balanced against the need to provide a return. So there is a balance which we have defined in the business plan to make sure that both a return is made, but not at the expense of the Island's competitive needs. [21]

The President explained that, under **Trust Port** arrangements, there would be no financial return to the States. In fact, there would be a cost in meeting the costs of the outlying ports which would need to be paid from public funds. Under a **States-owned company** a dividend policy would have to be agreed with the Finance and Economics Committee. [22] The costs of the outlying ports and any such responsibilities could be met through a reduced dividend policy. [23]

9.1.4 Consultation on future plans

The President told the Panel that the States, relevant States Committees and the media had been made fully aware of the ongoing position with regard to the withdrawal of the **Trust Port** proposal, the **High Level Options Review** and the favoured recommendations of the Deloitte and Touche Report.

The Harbourmaster/Chief Executive Officer informed the Panel that regular meetings were being held with union representatives, staff groups and key stakeholders to communicate developments in the consideration of the various options and the **business plan**. User groups had been set up reflecting the different collections of users around the port industry. However, there was a difficulty in having realistic consultation on the key issues until a firm **cost/benefit analysis** had been prepared. He said that various exercises were being undertaken to communicate the position with staff. However, he acknowledged that a degree of uncertainty and confusion was inevitable until the high level issues had been resolved. He said -

I believe that, until we can present a business plan that makes sense, gives staff and the organisation a hope for the future, in terms of very positive and defined, which is sustainable and growing and developing and meeting the needs of the Island, then there is going to be a certain amount of confusion and uncertainty, which isn't obviously good for morale, to put it in those terms. That is the thing I am trying to address through my own relationship with staff and my management team's relationship with staff and their involvement in putting that business plan together. But it is a process which takes a little bit of time and, until we have got that in front of us, we can't really give that a much more precise future, which will hopefully change

that situation.^[24]

9.1.5 The cost of the research into various commercial options

The Panel was informed that the cost of the work undertaken by Jersey Harbours in relation to developing its strategy for a sustainable future had been met without recourse to the taxpayer as the costs had been borne from Jersey Harbours income which was raised from harbour dues, marine leisure and a range of associated land assets^[25].

The Panel was subsequently provided with detailed information on the direct and indirect costs, including consultants' fees, amounting to £147,764 (See Appendix 3). This figure, however, did not include an estimation of the internal staffing costs relating to the time devoted by the Senior Management Team to the development of the business strategy. Nor did it take account of the costs of the appointment of a Strategic Development Co-ordinator, who had been engaged, initially on a temporary consultancy basis for a period of six months, in order to assist the Senior Management Team in business planning '*in view of the demands of the of the ongoing implementation of the Strategic Service review and preparations for incorporation*'^[26]. The Harbourmaster/Chief Executive told the Panel that this appointment, which had been retained to date by Jersey Harbours, was part of the overall strategic development work undertaken by the Department and that it was difficult to apportion costly directly to the change proposals.^[27]

9.1.6 Impact of residential development at the Waterfront

The Panel discussed with the President an issue which had arisen recently regarding complaints from residents in the new Waterfront apartments about disturbance from port activities. The Panel was concerned that the operation of the Harbour might be compromised by the introduction of non-operational developments in the Waterfront area.

The Harbourmaster/Chief Executive said that Jersey Harbours had endeavoured to ensure that appropriate protection had been inserted into the leases of the new residential development to cover issues such as noise and disturbance from port activities. He added -

In our operational centre at the moment we are working very hard both in the development, particularly in our close operational area, to look at noise and sort of constricting the operation to as tight an area as possible -- it is very key for us to segregate it as much as possible between passengers and cargo -- and even right now we are looking at reconfiguring the design of a new warehouse which will significantly change the noise levels, so it is a bit of both that is going on.^[28]

9.1.7 Perceptions of Jersey Harbours

The Panel discussed with the President the following stakeholder observations about Jersey Harbours which had been identified in the **Deloitte and Touche Report**^[29].

There is poor geographical definition of the harbour estate'

The President acknowledged that, under a new structure for Jersey Harbours, there would have to be clearly defined boundaries for the harbour estate.^[30] The Strategic Development Co-ordinator added -

We had very effective communication consultation during both the Port Master Plan and the Island Plan development, which led to a very much clearer definition of what one would call the port operational area. But historically that area is a real mishmash of different committees controlling different bits.^[31]

The Port Master Plan has been adopted by the States, but Jersey Harbours is not being allowed to follow it.

The Harbourmaster/Chief Executive Officer explained that it was necessary to protect the land in close proximity to the quayside for appropriate port and marina operations. In some cases, however, land which had been designated under the Port Master Plan for return to the administration of the Harbours and Airport Committee had been taken over by other Committees. There was a risk that the future development of cargo operations might be curtailed unless certain quayside areas were earmarked for Jersey Harbours.^[32]

Employment practices and union relations are considered to be some way behind the United Kingdom

The President replied that the employment practices and union relations of Jersey Harbours were exactly the same as for any other States department. So if there was a failing there, there was a failing throughout.^[33]

Jersey Harbours appears to be over-manned at all levels

The Harbourmaster/Chief Executive Officer told the Panel that Jersey Harbours was continually looking at efficiencies and had made efficiencies of about 3% to 4% in 2004. As a result of some

of the reductions, some of the feedback from port users had been negative and this had required some reconsideration of service reductions^[34].

Harbour dues are uncompetitive and serve as a barrier to entry - they are a consequence of volume and history with no attempt to evaluate or relate the tariffs to the actual cost of the services and they may be open to challenge by EU Law.

The Strategic Development Co-ordinator explained the reference to a potential challenge under EU Law. The protocol of the Treaty of Accession for the United Kingdom stipulated that there must be no Customs tariff between Jersey and the EU. However, there was a perception, as yet unresolved, that current charging per tonne of freight by law set in the States, paid over to the Treasurer of the States might be seen as, in essence, a tax or a Customs tariff.^[35]

The Harbourmaster/Chief Executive Officer explained that the organisation's accounts were in the process of being reorganised into the operating divisions with profit and loss accounts with activity based accounting processes so that the true cost of services could be identified and to ensure that tariffs were properly competitive.^[36] The Panel was subsequently provided with comparative figures for harbour dues (See Appendix 3).

9.2 Finance and Economics Committee

The President told the Panel that he was keen to move forward to a resolution of the incorporation issue -

It is a concern to my Committee that a service review of the harbours some years ago suggested that it was running at less than total efficiency Therefore, my objective would be to make sure something does happen to make sure that that department will run in a more fitting way. It is likely that that will be better achieved by having the sort of approach which something like incorporation would bring to the operation rather than a continuation of the existing structure. So from my point of view, my overriding objective would be to have a resolution of this incorporation issue and then, once that has resolved, go on to implementation of that decision in order that we can drive out what inefficiencies there may well need to be.^[37]

He said that the quantitative **cost/benefit analysis** on which the Jersey Harbours was now working was essential to ensure that the incorporation proposals were sufficiently robust to stand up to full scrutiny when it came to the States debate.

The President explained that the Finance and Economics Committee in 2002 had expressed reservations about the adoption by the Harbours and Airport Committee of **Trust Port** concept as its favoured option. The Committee had not been certain that the concept, which worked well in the competitive environment of the United Kingdom, was appropriate in a Jersey context.^[38]

On the key issue of States control of its strategic assets, the President's view was that **Trust Port** status would give the States less control than it would have as shareholder in a **limited company**.^[39] He believed, in the light of the **Deloitte and Touche Report**, that the **Trust Port** proposal was now '*dead in the water*'; although he accepted that it was still an open question for the Harbours and Airport Committee.^[40] He did not agree that there was any potential danger in a future **Jersey Harbours Limited** selling the assets of the company as ultimate control would remain with the States.^[41]

The President said that, although a great deal of work had already been carried out by the States, and experience gained, in relation to the incorporation of Jersey Telecoms and Jersey Post, these bodies did not necessarily provide a model which could be easily replicated by Jersey Harbours -

Each of these are very different animals and I think you have to have a solution. Even if ultimately incorporation is the right answer to all three situations, they are still three very different situations which may require a different approach to incorporation and certainly a different approach to the legislation which sets the thing into motion and ensures governance.^[42]

The President acknowledged that it appeared that slow progress had been made over the previous six years since the **Strategic Service Review** in 1999, and that this had had an unsettling effect on staff at Jersey Harbours together with a significant financial impact on the operation of the port. However, he stated that he did not believe that it was the responsibility of the Finance and Economics or the Policy and Resources Committees to take an overview of the Harbours and Airport Committee's administration of the **incorporation/trust port** project.^[43] Nor did he believe that the work undertaken in investigating the various options had necessarily been wasted, as the Harbours and Airport Committee ultimately would need to feel confident, before bringing its final proposals for debate to the States, that it had fully researched the best solution.

9.3 Policy and Resources Committee

In oral evidence, the President said that in his view the slow progress in implementing the drive

towards a commercial future for Jersey Harbour was principally because of the current Committee system and the lack, until recently, of a Chief Executive of the States and a more co-ordinated form of government. He told the Panel -

In my view, we need to move to a new system of government to ensure that there is co-ordination, to ensure that there is a clear line of responsibility and to ensure that progress is maintained in a sensible way and in a sensible timescale. But we simply don't have that co-ordination and never have had that co-ordination or coherence in the current system. ^[44]

The President said that the lead in pursuing the commercial initiative was clearly the responsibility of the Harbours and Airport Committee. The Policy and Resources Committee had had no authority to direct the Harbours and Airport Committee but had consistently pressed, since 1999, for further information to be provided to support the various proposals that had come forward. It was for this reason that he had suggested that a detailed **cost/benefit analysis** would be required to convince members that the proposals for change were worth making ^[45]. Despite the clear recommendation of the **Deloitte and Touche report** in favour of a **States-owned company**, no firm commitment had yet been made by his Committee to incorporation as the preferred option for Jersey Harbours ^[46].

The President told the Panel that the experience of incorporation projects for both Jersey Post and Jersey Telecom had demonstrated that it was essential to undertake a tremendous amount of preparatory work, particularly with the workforce, who would have to embrace the need for change. He acknowledged that -

The original incorporation initiative basically floundered because it wasn't sold successfully to the staff of Harbours. ^[47]

He suggested that the agreement made with the workforce in October 2002 regarding preservation of their status as States employees was 'a classical example of uncoordinated government' ^[48], as no previous consultation had taken place with Policy and Resources or the Human Resources Committee. He identified a series of major issues for Jersey Harbours yet to be resolved, namely: protecting the shareholders' investment; ensuring the correct financial disciplines and structures were in place; clarifying the necessary property assets; consulting with the workforce and negotiating appropriate future status for employees; and determining the future responsibility for the outlying ports.

The President said that, despite concerns about the time being taken to determine an

appropriate way forward, it was clear that, with a major public asset involved, it would be imprudent to proceed without the requisite financial information which would be provided by the **cost/benefit analysis** and **Business Plan**. In his view, considering the value of the assets involved and the part played by the ports of Jersey in the essential fabric of the island, the money that had been spent so far on researching the various options was not out of proportion -

Now, we can all say -- and you have not heard me support the process that has been going on for the last five or six years -- we can all say that there is a lot of money been spent and some of it may well be regarded as wasteful, but I think in terms of ensuring that millions of pounds worth of public asset is secured for the future and in seeking to ensure that we have an efficient and effective port which doesn't in itself contribute to the cost of living in Jersey, it seems to me that some of the money at least has been well spent. I am not saying that all of it has, but some of it has been well spent and I would defend very vigorously decisions taken to seek to get all the information that is required before the overall future of the port is decided.^[49]

9.4 Port Users Association (Commercial)

The witnesses told the Panel that the principal concerns of the Association for the future of Jersey Harbours were to do with efficiency and the control of costs not with the choice between **Trust Port** and a **Limited Company** -

Our main concern for the future is not really whether Jersey Harbours becomes a trust port or a limited company. To us that doesn't really matter. It is important that cost is controlled. Efficiency is very important. I suppose our main worry as port users is that cost isn't automatically passed on to the port user, which of course in turn gets passed on to the customer, the passenger, particularly those costs that may be related to Island-wide issues. That is one of the fundamental points that we would like to make from a costs point of view. It is important that whatever happens in the future is efficient and that Jersey Harbours is very commercially aware and makes the most of any opportunity to gain revenue from any commercial possibilities.^[50]

The Association had a number of reservations about the proposals which required clarification, namely the dividend policy and financial return to the States Treasury^[51]; the issue of responsibility for the Island's outlying ports^[52]; the requirement for harbour dues to remain competitive in the light of the current decrease in freight and passenger traffic and the potential

impact on tourism of any increases in harbour dues^[53]; and the need to retain sufficient land in the property portfolio for future development needs of the Harbour^[54].

The witnesses recognised that developing meaningful consultation with stakeholders on these matters had been difficult because of the prolonged uncertainty about the direction which Jersey Harbours was going to take^[55]. In their view, officers of Jersey Harbours could have benefited from the business experience of stakeholders who were directly involved in the port. However, the Association had had very little input in the past into developments such as the 20 year Port Master Plan^[56]

The Association was hoping for a situation in which Jersey Harbours could work closely with shipping companies, in a similar fashion to Jersey Tourism, developing special promotions and other revenue generating deals.

There was also a strong view from the Port Users that a degree of political input should remain on the Board of any new commercial company at Jersey Harbours to preserve a balance for the best interests of the whole Island between the profit imperative and social conscience^[57].

9.5 **TGWU Convenor - Jersey Harbours**

The Convenor stated in his oral evidence that, as far as Manual Workers were concerned, the status quo at Jersey Harbours remained the preferred option. There was no wish for Jersey Harbours to move towards **incorporation** or **Trust Port** status.

Mr. McPhee told the Panel, however, that the primary concern of his members was the preservation of their current terms and conditions of employment as States employees and that this had been guaranteed by the letter of comfort, dated 8th October 2002, from the then President of the Harbours and Airport Committee. It was important to retain membership of the Manual Workers Joint Council and the Public Employees Contributory Retirement Scheme.

In his view, the current proposals for **incorporation** would not give the workforce the level of protection they required, although he acknowledged that this matter had not yet been put to his members for a vote.

9.6 **Mr. R. Hanks, former Secretary of Port Users Association, Great Yarmouth,**

Mr. Hanks informed the Panel that he was currently Manager of small shipping company using Jersey Harbours. In his view, the operation of the Harbour badly needed modernising, although

he did not find the costs for his company very different from those in the United Kingdom^[58].

Mr. Hanks told the Panel of his experience of the benefits **Trust Port** status had brought to the Port of Great Yarmouth and to the local economy which relied on the continuing profitability of the port. He referred to the recently revised standards for **Trust Ports**, as set out in the Department of Trade and Industry document, '*Modernising Trust Ports*', which, he said, had stripped away previous anomalies in the operation of Trust Ports in the United Kingdom.

Mr. Hanks told the Panel that the key features of **Trust Port** status were -

all profits were retained for the benefit of the Port and its facilities rather than returned in the form of a dividend to shareholders^[59]; and the Board of Directors of the Trust were appointed on the basis of being '*fit for the purpose*', that is having a required expertise; rather than on the basis of their being major shareholders in the Company.^[60]

Mr. Hanks was a strong advocate for the **Trust Port** option. However, in his view, the States was entitled to set its own ground rules relating to the level of political control over the company, the dividends policy or the appointment of the board of directors irrespective of whichever option it decided to pursue^[61].

9.7 David Clifford, retired Managing Director, Port of Tyne,

In October 2002, Mr. Clifford was commissioned by the Harbours and Airport Committee to make a presentation to States members on the experience of operating the Port of Tyne as a **Trust Port**. In his written submission to the Panel, dated 6th June 2004, he reiterated the perceived benefits of **Trust Port** status for Jersey Harbours.

Mr. Clifford also provided the Panel with written comments on

the written submissions made on behalf of the Harbours and Airport Committee by the Strategic Development Co-ordinator and the former Chief Executive Officer; and the **Deloitte and Touche High Level Options Review**.

On the principal issue of the comparison between **Trust Port** and a **Jersey Limited Company**, Mr. Clifford maintained that the management and constitution of a Trust Port or Jersey Limited Company would in effect be the same. The key difference was that the **Trust Port** option, in his

view, would provide the company with a greater degree of separation from the States, leaving the States as the 'underwriter of last resort' in the case of problems. He told the Panel -

The States of Jersey must decide how far separation is to be and how much control is to be ceded to a separate body. In my experience, the further separation the better.^[62]

In oral evidence, Mr. Clifford explained the merits of a **Trust Port** -

A trust port or something similar is a port which is run by an independent body. As far as I am concerned now, it is run as a plc -- the port I ran was run as a plc -- and we had a great deal of input into the post-modernisation process. The important thing is that you have an independent board which is totally independent from anyone, although the government is the back stop, for want of a better thing, or the person of last resort. We accounted as a plc. We paid tax as a plc. But any surpluses -- and we ran it as a plc and highly efficiently -- were used, ploughed back, into the river and into the port for the benefit of the stakeholders. The stakeholders would be port users, the region, i.e., the regional industry and economy who were your customers, your staff and the local authorities. In this case it would be the States of Jersey. On that basis, you have got a port which was set up to cope with and generate economic activity -- not regenerate but generate economic activity.^[63]

Mr. Clifford outlined how the Port of Tyne, on the basis of its **Trust Port** status, had been able to develop from a simple ship unloading operation to a thriving multi-layered business. It had been able to reinvest income in the assets of the harbour to finance a number of new and innovative profit streams for the overall benefit of the local economy^[64].

Mr. Clifford commented that the longer the issue of the commercial future of the Harbour remained unsettled, the harder it would be to achieve the support of the workforce. Faced with instability and insecurity, resistance from the staff was likely to grow. In his view, the guarantee given to staff that they would remain employees of the States of Jersey under **Trust Port** arrangements placed a significant restraint on the management of the future company^[65].

9.7 Mr. P. Horsfall, CBE, Chairman of Waterfront Enterprise Board

In oral evidence, Mr. Horsfall told the Panel that there was a good working relationship between Jersey Harbours and the Waterfront Enterprise Board (WEB), with clear lines of demarcation as

to which land around the Harbour came under which authority and under the shared aim of making best use of the land jointly to the benefit of the public of Jersey^[66]. The current arrangements enabled both parties to work to their own strengths, with WEB able to assist Harbours through its expertise in developing land use. Asked whether he thought whether there would be an advantage in merging the two bodies, Mr. Horsfall said -

The ultimate objective of both parties is different. I suppose the ultimate objective of the Harbour Authority is to be an efficient way of getting people and goods in and out of the Island; whereas the ultimate objective of WEB, following instructions given to us by the States, is to develop and create something with no public money going in but private investment^[67].

Mr. Horsfall said that, in his view, a commercially restructured Jersey Harbours, under appropriate arrangements, had the potential to unlock some very valuable benefits for the Port area and for the Island generally. This could lead to further co-operation with WEB -

If you have got two partners who can manage their own destiny, it might actually be easier to reach a working relationship with co-operation on projects than if you have got one partner that is independent and one partner that has the strictures of the States^[68].

Mr. Horsfall said that he could see some merit in exploring the principle of a single, joint development body, amalgamating WEB and Jersey Harbours. However, in his view, the current arrangement between the two parties was working well and he would be loathe to disturb it at the present time. In particular, he said that developments West of Albert were at an advanced stage and it was absolutely imperative for the confidence which WEB currently enjoyed from investors to be maintained^[69].

On the other hand, he agreed that the position as regards La Collette was not so clear. He voiced his personal concern that it appeared that ad hoc decisions were being made with regard to the future of the site. As an example, he suggested that the proposal for an aggregate port at La Collette might be regarded by Jersey Harbours as a potential source of significant income. However, from a broader view of public interest, taking account of the infrastructure required for an aggregate port and public nuisance factors the proposal was much less attractive. On the whole, he felt that WEB was well placed to take on responsibility for this area to seek the best interests of the Island as a whole. Thus he suggested -

It is probably better, so long as they are working together, to actually have the two

sets of expertise slightly different because you have then got the independence to stand up to the other party if you think they are wrong^[70].

The Panel questioned Mr. Horsfall on the possibility of commercial development in the Harbour area being limited due to complaints from residents in WEB developments under the Statutory Nuisances (Jersey) Law 1999. Mr. Horsfall assured the Panel that appropriate measures were in place to reduce potential noise nuisance and that he would raise the matter with the Chief Executive to seek corroboration^[71].

The Panel asked Mr. Horsfall for his view on the role of the Policy and Resources Committee in driving forward the incorporation on behalf of Jersey Harbours. He explained that while the project was at an investigatory stage the Committee was content to let the Harbours and Airport Committee carry out their research and report back to them. He recognised that the Policy and Resources Committee did not itself have the resources to undertake the investigation themselves and that external consultants would have been necessary. He envisaged that his Committee would have become more involved only when firm proposals had come forward.^[72]

10 THE PANEL'S FINDINGS

Having considered the evidence received in the course of its review, the Scrutiny Panel has agreed to make the following comments -

10.1 **Prolonged uncertainty about the future of Jersey Harbours has hindered the implementation of recommendations, made in 1999, aimed at improving the efficiency of the operation of the port.**

In 2002, the Harbours and Airport Committee, in its proposition to the States on progress to **Trust Port** status (P.128/2002) warned that failure to create a strong and commercially focussed independent organisation for Jersey Harbours -

raises the real prospect of the administration of the sea ports and territorial waters being quite unable to cope with the expectations of a future vibrant Jersey economy.

The Panel is concerned that despite the stated support of key States Committees for the overall vision for Jersey Harbours and considerable commitment in time and expenditure on the part of the Harbours and Airport Committee and its officers, the principal recommendations of the **Strategic Service Review** in 1999 remain unresolved.

The six years period between that Review and the establishment of ministerial government for the States at the end of 2005 should have allowed sufficient opportunity for the transformation of the organisation to be implemented. However, as is argued below, the project has been delayed through lack of political will to come to grips with the policy issues which were raised by the proposal to incorporate one of the Island's key strategic assets. In addition there was a failure to provide adequate resources to deal with the complex staffing and funding issues involved in incorporation.

As a result, as the States moves into a new ministerial system of government at the end of 2005, it will be necessary for Jersey Harbours to be placed for an interim period under a new Economic Development Department until such time as a clear decision has been made as to the way forward for Jersey Harbours.

The Panel believes that uncertainty about the future structure of the Harbour operation has been bad for the confidence of both the workforce and port users. Jersey Harbours and its stakeholders have been failed by central government which has allowed the issue to drift without sufficient strategic direction.

Recommendation

The primary basis for any project of the scale and complexity of creating a new commercial structure for Jersey Harbours, requiring the co-ordination of a number of States Departments, should be a firm political commitment to agreed strategic aims and objectives, coupled with the will to drive this commitment through into action.

10.2 The scale and complexity of the tasks to be undertaken in achieving the creation of a commercially focussed independent company for Jersey Harbours was underestimated by the key Committees which shared responsibility for the project, Policy and Resources, Finance and Economics and Harbours and Airport.

The Panel believes that at Jersey Harbours was expected to take on the task of developing a bold, new commercial strategy arising from the **Strategic Service Review** in 1999, without adequate provision of co-ordinated guidance and expert support which should have come from the centre of government. The management team, whose expertise is grounded in operational experience, was given the task of investigating the advantages and disadvantages of a recommendation which has significant implications for a key strategic asset for the Island. Its task was complicated by failure of key Committees to set clear policy guidance on a number of key issues, including -

- Public ownership and control of strategic assets
- Financial return to the States (Dividend Policy)
- Property portfolio required by Jersey Harbours
- States responsibility for the Island's outlying ports.

Recommendation

The States must take a series of policy decisions on identified key issues in order to provide the Harbours and Airport Committee with a clear strategic framework within which the proposals for changing of Jersey Harbours can be developed.

10.3 The Policy and Resources Committee failed to provide effective leadership in co-ordinating agreed strategic policies and objectives.

The President of the Policy and Resources Committee told the Panel that his Committee currently had no authority to direct other Committees. The Panel, however, noted that the States clearly envisaged that the Policy and Resources Committee should have a central responsibility for co-ordinating strategic policies. This was recommended by the KPMG (Peats) review of the Machinery of Government in 1987 and confirmed in the report accompanying P.107/96, where it is stated -

The Committee will continue to monitor and review in a rigorous manner the actions to be taken to achieve the strategic policy objectives set, including the prioritisation of resource allocation, and will also continue to see among its key responsibilities the effective co-ordination of environmental, economic and social strategic policies.'

In the Panel's view, the Policy and Resources Committee, in the case of the incorporation project for Jersey Harbours, should have provided more effective guidance of the development of the strategy from the Harbours and Airport Committee throughout the process. However, it was unable to give due attention to this project as the limited resources available to it were focussed, in the period after 2000, on the Machinery of Government reforms and the incorporation projects already in train for Jersey Telecoms and Jersey Post.

The previous President of the Policy and Resources Committee said, in oral evidence, that his Department at that time did not have the necessary resources to take on responsibility for the detailed work required to formulate an acceptable strategy for Jersey Harbours. Consequently, the Committee was content for the Harbours and Airport Committee to do preliminary investigations into options for change. In the Panel's view, the monitoring of this research was inadequate.

In the first place, there was no overall project management team to co-ordinate the work being carried out by Jersey Harbours with central government strategic policies. Such a team should have been given the task of developing clear project objectives, targets and timescales, which could be reported back to the relevant Committees on a regular basis.

Secondly, when the original strategy for the incorporation of Jersey Harbours into a **States-owned company** encountered strong opposition from the workforce, the Harbours and Airport Committee was encouraged to pursue alternative lines of research into the **Trust Port** option,

again without a clear project plan.

Subsequently, advice was by the Chief Executive of Policy and Resources that the **Trust Port** proposals were ready to be brought to the States by the end of 2001 on the basis of a request for an in principle commitment. However, there is no evidence in Committee Minutes during that year that the Policy and Resources Committee was ever briefed on the proposals for **Trust Port** nor on the policy decisions required to allow the project to proceed any further.

The Harbours and Airport Committee, frustrated by the lack of progress, went ahead with lodging a proposition in the States in July 2002, only to find that their proposals were brought into serious question by the Policy and Resources Committee as there were still too many issues which needed to be clarified.

On the positive side, the lodging of the proposition clearly provoked a response from the Policy and Resources and Finance and Economics Committees. Finally, a decision was taken by a meeting of all relevant Committees to commission external consultants to undertake a **High Level Options Review** to seek to put the incorporation project into the overall context of States strategic objectives.

However, this action also suggested to anyone outside those Committees that, despite three years of investigatory work undertaken by Jersey Harbours there was confusion about the declared strategy and a lack of clear political direction. This was only reinforced when the **Deloitte and Touche Review** concluded that the best option for Jersey was that originally recommended by the **Strategy Service Review** in 1999. Yet further detailed work was still required to prove the case.

Following the negative reactions to the proposition on **Trust Port** status, no formal statement was made to the States to explain the change of direction that was being followed. In the Panel's view, more open information about the status of the proposals would have avoided unnecessary uncertainty among States members, the workforce and the general public.

Recommendation

Once political commitment has been established, a central government project management team, on the lines of a P.70 Group, should be identified, charged with the development of a clear strategic plan, critical

path and defined targets. This team should report on progress of the project on a regular basis to those responsible at a political level. Part of the work of this group should be to develop a public communication strategy.

10.4 The Finance and Economics Committee did not have the resources to provide an effective overview of the project.

When the Harbours and Airport Committee lodged its proposition on the **Trust Port** option in 2002, the Finance and Economics Committee identified a range of crucial financial matters which required clarification before the proposals could be allowed to proceed. It also recalled that

'it had previously been agreed that it could not afford the resources to undertake an independent review of the future of Jersey Harbours until such time as Jersey Telecom and Jersey Post had been incorporated'.^[73]

The Panel is concerned that, despite this clear statement of its position, the Finance and Economics Committee had been unable to divert the Harbours and Airport Committee from spending a great deal of time and money in pursuing research into commercial options which had little realistic chance of achieving support without resolution of complex financial issues. The Panel believes that it was not sensible to allow the project to proceed without a clear commitment to the provision of central funding to enable a proper assessment of complex issues involved.

The President of the current Finance and Economics Committee told the Panel that his Committee did not have responsibility for providing an overview of the detailed work being undertaken by Jersey Harbours relating to the financial of the Harbours and Airport's strategy for a commercial future.

In the Panel's view, this further demonstrates a lack of co-ordination from central government in the incorporation project and the fact that the scale and complexity of the issues were not fully appreciated from the commencement of the project.

Recommendation

Resource requirements, including the project management team and external consultants, should be identified from the outset with a budget allocated from central funding.

10.5 Significant costs have been incurred by Jersey Harbours in pursuing its strategy for a commercial future.

The costs to Jersey Harbours have been significant amounting to £147,764 as identified in the schedule provided to the Panel (See Appendix 3). Principal items include the cost of the Deloitte and Touche Review (£80,000), the governance report in relation to the cost/benefit analysis (£11,800) and validation of the model (£6,500).

The Panel believes that, in addition to the above, internal staffing costs of undertaking the research into the various commercial options, should be taken into account. The Department told the Panel that specific costs relating to such research could not be separated out from other commitments of the Senior Management Team to lead the business forward. However, the Panel believes that these costs should not be ignored in calculating the total cost to Jersey Harbours of studying the **Trust Port** and incorporation concepts. In the Panel's view, the Department's strategic research was beyond the normal remit of the management team, proved by the necessity of engaging the additional post of Strategic Development Co-ordinator on the basis that further resource was required to assist the senior management team in co-ordinating business planning. The Panel accepts that the new postholder was not solely engaged for the purpose of research into options for a commercial future. Nevertheless, this task clearly formed a significant part of the job description.

The Panel was told that the costs of research work was borne from the income Jersey Harbours gains from harbour dues, marine leisure and its range of associated land dues, not from the tax payer. The Panel questions why port users should be expected to pay for the development of a strategy which properly belongs to central government. It believes that this is an unfair tax on port users, as research into strategic options was properly the responsibility of central government.

Recommendation

The Harbours and Airport Committee should apply for the total costs of research into options for change for Jersey Harbours, including estimated staff costs, to be reimbursed to Jersey Harbours from central government funding.

10.6 Experience gained by other States Departments, Jersey Telecoms and Jersey Post, in developing strategies for incorporation does not appear to have been exploited in the case of Jersey Harbours.

The President of the Finance and Economics Committee told the Panel that each of these projects had unique features and that previous work in relation to the incorporation of States Departments did not necessary provide a model for Jersey Harbours.

The Panel recognises that the incorporation projects for Jersey Telecom and Jersey Post were complicated and lengthy processes but is of the view that it should be possible to draw overall policy lessons from the experience. It appears that this was finally recognised by the Harbours and Airport Committee in their appointment of Andium Limited to advise on the **Cost/benefit analysis** and **Business Plan**.

In addition, elements of the project management approach adopted in respect of the two earlier processes should have been transferable to the situation of Jersey Harbours. For example, Jersey Telecom and Jersey Post both faced challenges in attempting to win over the confidence of its workforce. Jersey Harbours should seek to benefit from their experience of implementing a change programme.

The Panel recommends that guidelines, drawing on the common lessons learnt from each of these incorporation projects, should be drawn up by the Policy and Resources Committee in order to avoid a recurrence of the problems encountered by the Harbours and Airport Committee.

Recommendation

Guidelines for the management of major States projects should be developed by the Policy and Resources Committee, drawing on the

experience of the incorporation of States Trading Departments.

10.7 Prolonged uncertainty about the future of Jersey Harbours may have increased the challenge in reaching agreement with the workforce.

The labour force at Jersey Harbours has been resistant to the Senior Management Team's vision of commercial independence on the basis of a perceived threat to job security.

In the past, lack of confidence in the proposed future of Jersey Harbours has resulted in the threat of industrial action by the workforce. This was averted only by an agreement that staff would retain their current terms and conditions of employment under a new commercial structure.

In making this agreement, however, the Harbours and Airport Committee failed to consult the States Human Resources Department. It created a commitment which is a potential stumbling block for a future Jersey Harbours Board, who may find that current conditions of service are a limitation on the commercial freedoms incorporation is designed to bring about.

The Panel believes that the effects of this letter must be addressed as a priority as part of an Action Plan in the implementing a strategy for change if revised proposals are not to meet the same stiff resistance as in the past.

The Panel was assured in evidence from the Harbourmaster/Chief Executive that the workforce has already been consulted, as far as possible, on recent developments as the **Business Plan** has progressed. Nevertheless, it is clear that the implementation of new proposals for Jersey Harbours will be a challenge which the management team and the workforce will have to face together. Skilled consultation and sensitive negotiations will be required to ensure that the workforce have confidence that their best interests are recognised in the proposals.

Recommendation

A primary consideration in developing an Action Plan for the finalisation of project should be an effective consultation strategy to involve the whole workforce in the development of a shared vision for the future of Jersey Harbours through a co-ordinated change programme.

10.8 Lack of clarity in defining the boundaries of responsibilities for assets in and around the St. Helier Harbour area has complicated the task of achieving an independent commercial future for Jersey Harbours.

Concern was expressed by local stakeholders that the ability of a future independent Jersey Harbours to make full use of commercial opportunities and to even expand its operations when necessary would be curtailed by a number of competing interests in the harbour area.

In addition, there are a number of key issues which remain to be resolved about responsibility for assets within the Harbour area, including administrative responsibility for the development of the La Collette area and the Fuel Farm lease.

The Panel also heard from witnesses who had experience of the opportunities for economic generation which had been made possible through the ability of independent **Trust Ports** in the United Kingdom to exploit the commercial potential of their assets in innovative ways. This had been possible because of the ability of the **Trust Ports** in question to act as a single agency responsible for the development of the whole harbour area to the benefit, not just of port users, but also the local community.

In Jersey, there are clearly two different organisations, Jersey Harbours and the Waterfront Enterprise Board, responsible for the waterfront area. Each has its own objectives and perspective. In the Panel's view, it is important that the respective strengths of both organisations are recognised without unnecessary competition.

It appears that good working relationships have been developed recently between Jersey Harbours and WEB and that the commercial expertise of WEB has been able, through new contractual arrangements, to assist the management team at Jersey Harbours^[74]. The Panel believes that these developments are to be supported.

Recommendation

The possibility of developing a formal partnership between Jersey Harbours and the Waterfront Enterprise Board should be explored.

10.9 The work currently being undertaken by Jersey Harbours in preparing a detailed cost/benefit analysis and Business Plan should provide a firm basis for an informed decision to be taken by the States on the commercial future for the port in the very near future.

Finally, detailed work is being done on the financial implications of change. It is expected that this will provide a firm basis from which Jersey Harbours can secure the support from the key Committees for its strategy for a sustainable future. Only then can the Harbours and Airport Committee move forward with confidence to request a clear direction from the States.

The Panel has been unable to consider details of this work, due to the fact that this work is still being finalised as the Panel comes to the end of its year of appointment. Quite rightly the **cost/benefit analysis** and **business plan** must first be considered by the key Committees responsible for co-ordinating the proposals for the future of Jersey Harbours, that is, Policy and Resources, Finance and Economics, Economic Development and Harbours and Airport. The Panel hopes that these Committees will deal with these proposals with some urgency in order that a proposition can be brought for debate and decision by the States as soon as possible.

The outcome of the Cost/benefit analysis and Business Plan should enable a clear recommendation to be made to the States on the future structure of Jersey Harbours, including the proposed transfer of assets to Jersey Harbours, the dividend policy, and responsibility for outlying ports. The Panel also expects to see -

- an implementation plan with a timetable indicating that the issue will be treated with urgency;**
- a consultation strategy for stakeholders and the workforce; and**
- a statement on the proposed interim position of Jersey Harbours under the new ministerial system of government.**

- 10.10 The Panel reserves the right of a successor Scrutiny Panel to comment on the outcome of the **cost/benefit analysis** and **business plan** and to monitor the progress of the proposals as they are brought to the States for a decision on the future of Jersey Harbours.
- 10.11 The Panel presents the recommendations arising from its review for consideration and comment by the Policy and Resources, Finance and Economics and Harbours and Airport Committees.

It requests a response within a period of three months of presentation of this report to the States in accordance with the guidelines for Shadow Scrutiny, as set out in the Appendix to P.186/2003.

11. APPENDICES

Copies of the following documents are available on the Scrutiny Website at www.statesassembly.gov.je or by request from the Scrutiny Office.

1. Written Submissions

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Harbours and Airport Committee, dated 12th May 2004

Captain Brian Nibbs, retired Chief Executive Officer, Jersey Harbours, dated 10th June 2004

Mr. D. Clifford, retired Managing Director, Port of Tyne, dated 6th June 2004,

Mr. W. McPhee, TGWU Convenor - Jersey Harbours, dated 24th May 2004

Mr. G. Winchester, Commodore, Royal Channel Islands Yacht Club, dated 28th May 2004

Mr. P.G. Donne Davis, Hon Secretary, St. Helier Boat-Owners Association, dated 2nd June 2004

Mr. G. Forrest, Secretary Jersey Port Users (Commercial) Association

2. Transcripts of Public Hearings

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Senator L. Norman, President, Harbours and Airport Committee, accompanied by Captain H. Le Cornu, Harbourmaster/Chief Executive Officer and Mr. P. Baker, Strategic Development Co-ordinator

Mr. R. Norman, Chairman, and Mr. G. Forrest, Secretary, Jersey Port Users (Commercial) Association

Mr. W. McPhee, TGWU Convenor - Jersey Harbours

Mr. R. Hanks, former Secretary of Port Users Association, Great Yarmouth,

Mr. D. Clifford, retired Managing Director, Port of Tyne,

Senator T. Le Sueur, President, Finance and Economics Committee

Senator F. Walker, President, Policy and Resources Committee, accompanied by Mr. J. Harris, Business Manager, Policy and Resources Department

Mr. P. Horsfall, CBE, Chairman, Waterfront Enterprise Board

3. Additional documents

Costs of Strategy for a sustainable future

Comparative figures for harbour dues

Benchmarking results: Jersey Harbours

[1] Act No. 27, dated 23rd March 1999, of the Policy and Resources Committee

[2] Act No 3, dated 12th February 1999, of the Harbours and Airport Committee

[3] Deputy Rondel, who at that time was a member of the Harbours and Airport Committee, recorded his dissent

to the decision to lodge this proposition on the grounds that he believed that the Committee should delay consideration of this matter for a further twelve months - Act No.4, dated 8th October 1999, of the Harbours and Airport Committee.

[4] Modernising Trust Ports, Department of the Environment, Transport and the Regions, January 2000

[5] Act No. B1, dated 8th February 2001, of the Policy and Resources Committee

[6] Act No. B3, dated 7th March 2001, of the Harbours and Airport Committee

[7] Acts Nos. B1, B2 and B3, dated 20th June 2001, of the Harbours and Airport Committee

[8] Act No. B1, dated 22nd August 2001, of the Harbours and Airport Committee

[9] Act No. B4, dated 20th March 2002, of the Harbours and Airport Committee

[10] The Proposition was subsequently withdrawn in September 2003

[11] Act No. B11, dated 18th September 2002 of the Finance and Economics Committee

[12] Act No. B5, dated 19th September 2002, of Human Resources Committee,

[13] Act No B8, dated 30th September 2002, of the Policy and Resources Committee

[14] Minute No.B1, dated 18th October 2002, Notes of Joint Meeting

[15] Act No. B2, dated 22nd November 2002, of the Harbours and Airport Committee

[16] Act No. B8, dated 9th April 2003, of the Finance and Economics Committee

[17] Act No. B 8, dated 26th June 2003, of the Harbours and Airport Committee

[18] Section 9.10, Jersey Harbours: High Level Options Review, February 2004

[19] Minute No. A4, dated 25th March 2004, of Notes of Tripartite Meeting

[20] Transcript of public hearing of 23rd September 2004, page 17

[21] *ibid*, page 13

[22] *ibid*, page 15

[23] *ibid*, page 13

[24] *ibid*, page 35

[25] Jersey Harbours submission, dated 12th May 2004

[26] Act No 8, dated 12th November 1999 of the Harbours and Airport Committee

[27] Transcript of public hearing of 23rd September 2004, page 34

[28] *ibid*, page 30

[29] Section 5.1 High Level Options review, Deloitte and Touche, February 2004

[30] Transcript of public hearing of 23rd September 2004, page 25

[31] *ibid*, page 25

[32] *ibid*, page 27

[33] *ibid*, page 28

[34] *ibid*, page 39

[35] *ibid*, page 38

[36] *ibid*, page 40

[37] *ibid*, page 40

[38] Transcript of public hearing of 6th October 2004, pages 4 & 8

[39] *ibid*, page 33

[40] *ibid*, page 30

- [41] *ibid*, page 33
- [42] *ibid*, page 13
- [43] *ibid*, page 20
- [44] Transcript of 6th October 2004, page 6
- [45] *ibid* page 16
- [46] *Ibid* page 22
- [47] *Ibid* page 6
- [48] *ibid* page 7
- [49] *Ibid* page 30
- [50] *Ibid* page 3
- [51] *Ibid* page 5
- [52] *Ibid* page 8
- [53] *Ibid* pages 9 and 24
- [54] *Ibid* pages 26 - 28
- [55] *Ibid* page 15
- [56] *Ibid* page 19
- [57] *Ibid* pages 13-14
- [58] Transcript of 6th October 2004, page 12
- [59] *Ibid* page 20
- [60] *Ibid* page 8
- [61] *Ibid* page 15
- [62] Written Submission 3(v)
- [63] Transcript of 6th October 2004, page 2
- [64] *Ibid* pages 9-10
- [65] *Ibid* page 18
- [66] Transcript of 22nd November 2004, page 2
- [67] *Ibid* page 12
- [68] *Ibid* page 11
- [69] *Ibid* page 20
- [70] *Ibid* page 16
- [71] *Ibid* page 8
- [72] *Ibid* page 29
- [73] Act No B11, dated 18th September 2002, of the Finance and Economics Committee
- [74] Reference: '*Old Port*' Partnership agreed with WEB, Jersey Harbour News, Summer 2004; and *Reorganisation of freight operations will bring major environmental benefits*, *ibid*, Autumn 2004