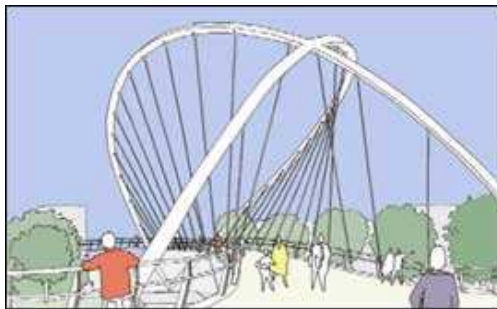




Corporate Services Scrutiny Panel

Review of the Proposed Waterfront
Development: Esplanade Square, Les
Jardins de la Mer and La Route de La
Liberation



Presented to the States on 21st January 2008

S.R.2/2008

Proposed Waterfront Development: Esplanade Square, Les Jardins de la Mer and La Route de La Liberation

Report of review conducted by Corporate Services Scrutiny Sub Panel, chaired by Deputy C.E. Egré.

Background

1. The Corporate Services Panel was invited in June 2007 to scrutinise the revised arrangements for the development of the Waterfront between the Waterfront Enterprise Board and Harcourt.
2. The Panel was informed that the Planning Minister had developed a new set of proposals for the area comprising Esplanade Square, Les Jardins de la Mer and La Route de La Liberation which entailed sinking the Route de la Liberation, linking the Waterfront more effectively to the town and introducing a new design framework for a new business centre with some housing (the 'Hopkins Plan'). The cost to the taxpayer of sinking the road would be considerable if undertaken by the States. However, if the developer of the adjoining land were to undertake the project the cost could be significantly reduced as it could be offset by additional development return.
3. At that time, the Waterfront Enterprise Board, which was responsible to the States for the development of the sites, was in the process of negotiating heads of terms with the preferred developer, Harcourt. Consideration was also being given to a possible alternative option of opening the development to a new tender process.
4. The Corporate Services Panel, having acknowledged that the revised proposals for the area, which formed the heart of a new business centre for the island and a prominent gateway to St. Helier, were a significant matter of public interest, agreed to undertake a review of the proposals with a specifically narrow purpose of examining the commercial of the proposed arrangement between WEB and Harcourt. The Panel was aware that there were highly significant social, economic and environmental issues relating to planning, traffic and waste disposal. However, these issues were clearly outside its remit and it was agreed that it would be appropriate for these matters to be examined by other Panels.

Methodology

5. A Sub Panel was established under the chairmanship of Deputy C. H. Egré to undertake the review. The other members of the Sub Panel were Senator L. Norman and Constable D. Murphy. Officer support was provided by Mr. M. Haden and Miss S. Power.
6. The Sub Panel appointed Mr. R.E. Wragg, FRICS, to investigate the history behind the current negotiations and to undertake a preliminary assessment of the proposed

heads of terms including the package of monetary payments and development gains. Mr. Wragg, a resident of the Bailiwick of Guernsey, had previously provided valuable assistance in the review of the proposed sale of the former Jersey College for Girls site.

7. The Sub Panel received a briefing note from WEB, dated 22nd June 2007, giving full financial and commercial details in confidence of the proposed land transaction deal that had been negotiated with Harcourt. The Sub Panel is not at liberty to publish this information in this report.
8. The Sub Panel was also given access in confidence to the following papers relating to the transaction and the proposal to sink the road:
 - Copies of original agreements between WEB and Harcourt relating to Les Jardins de La Mer and Esplanade Square
 - Economic Adviser's report to Council of Ministers on the economic impact of the proposals for the development of the Waterfront, Feb 2006
 - Supplementary Planning Guidance for the Jersey Waterfront, April 2006
 - West of Albert Infrastructure Review: La Route de la Liberation: Consultant's Brief, Hopkins Architects, October 2006
 - West of Albert Infrastructure Review: Civil/Structural Engineering Report, Scott Wilson, December 2006
 - PWC: updated socio-economic impact assessment, January 2007
 - Franklin and Andrews independent review of reports prepared by Scott Wilson, Cushman Wakefield and WEB, January 2007
 - Site specification details supplied to Harcourt
 - Ministerial decision by the Chief Minister, dated 3rd March 2007, authorising negotiations with Harcourt, together with supporting reports
 - Copy of legal advice to WEB in respect of negotiations with Harcourt and communications with other developers
 - Cushman and Wakefield: updated Report and Valuation for Waterfront Development site, as at 30th April 2007
 - Copy of presentation to the Council of Ministers on 28th June 2007
9. On 4th July 2007, the Sub Panel's adviser attended meetings with the Managing Director and officers of the Waterfront Enterprise Board and with the Chief Executive of the States, accompanied by Scrutiny Officers, to discuss the proposed development and questions on the structure and terms of the proposed arrangements between WEB and Harcourt.
10. Mr. Wragg subsequently advised the Sub Panel that he was satisfied that the process which had been followed in the negotiations leading to the revised proposals for a land transaction deal between WEB and Harcourt Developments Limited had been carried out professionally and with due regard to obtaining value for money for the public. He confirmed that the process was fully in accord with the

recommendations he had made in his report on the sale of the former JCG site². He provided a written report to the Sub Panel which is included in the Appendix to this report.

Conclusion

11. Having considered this advice and the paperwork received, the Sub Panel concluded that it was satisfied that the process of negotiations with the developer complied with good commercial practice. It was agreed that a further, full investigation by the Sub Panel into the commercial arrangements was unnecessary and the Sub Panel advised the Corporate Services Panel, the Chief Minister and WEB accordingly.
12. In doing so, we wish it to be clearly understood that issues relating to the broader implications of the transaction on the Island's economy, population and environment were beyond the scope of our enquiry. These matters are properly the subject of public consultation leading to a major States debate in 2008.
13. We are grateful to Mr. Wragg for the benefit of his development experience to the scrutiny of this transaction and for his assistance in bringing the review to a swift conclusion.
14. We also wish to record our appreciation for the co-operation received in the course of the review from officers at the Chief Minister's department and at the Waterfront Enterprise Board. We believe that this investigation, during which we have been given good access to confidential information, has been a worthwhile opportunity to scrutinise a high profile transaction in some detail. We trust that this exercise will be a useful contribution when this important matter is debated in the States.
15. The Corporate Services Panel agreed at its meeting on 9th January 2008 to present this report to the States. Deputy P.D.J. Ryan declared an interest in this matter and withdrew from consideration of the report.

Record of Sub Panel meetings

Note: The following meetings of the Sub Panel were held in private session under Exemption 3.2.1(xi) of the Code of Practice on Access to Official Information

28th June 2007

4th July 2007

² Report on the review of the proposed sale of the former Jersey College for Girls site, SR10/2007, May 2007

Appendix: Adviser's Report to the Scrutiny Panel for the Jersey Waterfront Development.

Scope of Instruction

The Panel have requested that I, Robert E H Wragg FRICS, should consider the viability of the present arrangement for the development of the Waterfront between the Waterfront Development Board and Harcourt based upon the Hopkins proposals as set out in their Masterplan document.

The purpose of my report is to consider the commerciality of the proposed heads of terms agreed between WEB and Harcourt. It is not part of my remit to consider the costs of the Hopkins Proposals or the valuations which have already been considered by Cushman and Wakefield in their Report and Valuation dated 1 December 2006.

In considering the arrangements, I have had meetings with WEB and the Chief Executive Officer of the States of Jersey and have had regard to the Heads of Terms which are summarised in the Briefing note dated 22 June 2007 to the Scrutiny Panel.

The Agreement

It is understood that the basis of the transaction will be the grant of a ground lease for a term of 150 years as set out in the agreed Heads of Terms.

The current arrangements go back to an exclusivity agreement between WEB and Les Jardins Leisure Limited and Les Jardins Residential Limited which was granted in 2004 and subsequently extended in 2005 following the publication of the Hopkins Proposals to expire on 17 August 2007. That date has passed and there is technically no legal relationship between the parties. The proposed Heads of Terms set out the Developer as Esplanade Financial Centre Limited which I am informed is a wholly owned subsidiary of Harcourt. It would be perfectly normal for a developer to establish a Special Purpose Vehicle for this size of development and provided the proposed Bank or Insurance guarantees as envisaged are in place and appropriate forfeiture provisions are written into the Head Lease then I can see no reason to seek to change this arrangement although it would be expected that the Head Lessor should endeavour to obtain a parent company guarantee in addition.

I have considered the Heads of Terms and the method of procurement of the Developer and would make the following observations:

1. The method of procurement was by open tender from which Harcourt Developments Limited were chosen as the preferred Developer. Subsequently the Hopkins Proposals were formulated. Whilst it could be argued that a further round of open tendering could have been carried out at that stage for a number of reasons it was decided to stay with the preferred developer. At that stage Harcourt had invested heavily in the scheme and the complexity of the Hopkins Plan would have made an open tender a long and costly process. It was ultimately decided to continue to develop the Plan with Harcourt and the exclusivity agreement was extended to enable the parties to reach a stage which would enable heads of terms to be agreed. That stage was ultimately reached in May of this year at which time WEB appointed Cushman & Wakefield to provide Valuation advice. On the basis of that advice the broad Heads of Terms were produced.

There are many ways in which a scheme of this size and complexity can be brought forward and the method adopted by WEB in this instance is an acceptable one. From my discussions with WEB and Bill Ogleby I am satisfied that the process has been carried out efficiently and professionally. It is understandable that at this stage other parties would show an interest. That is the nature of the market place. It would be unusual at this point to break off with the preferred developer unless it had not been possible to reach an agreement acceptable to both parties.

2. The proposed method of disposal of the land is by way of a 150 year Ground Lease. This provides for an ongoing involvement by WEB in the scheme and I have assumed that it will be accompanied by a Development Agreement. Whilst I have not seen any draft documentation relating to either, on the assumption that the usual protections are built into each document, then this would be a satisfactory way forward.

3. The financial package involves both monetary payments and public works of which the most significant is the sinking of the Route du la Liberation. The first of the monetary payments is due in December 2011. Prior to that and no later than December 2010 the road works and other public works have to be completed. This will be a significant financial input into the deal by the developer and is considered to be the first of the stage payments. Subject to my comments above and also subject to the Bank guarantees this would seem to be an acceptable financial structure. I would have expected that the cost of the public works be capped in relation to the financial arrangements in so far as if their cost falls below the capped figure the monetary payments rise but if they exceed the figure that is the developer's risk. In order to incentivise the developer on cost I would expect such an arrangement to work on a sharing basis.

Conclusion

From my brief examination of the process as described herein I am satisfied that the arrangements with the preferred developer have been carried out professionally and with regard to obtaining value for money within the confines of the Hopkins Proposals. There are, of course, wide ranging demands placed on this scheme, both social and economic, and the proposals have to satisfy many criteria. Given its complexity and subject to the necessary safeguards being built in, I can see no reason why the scheme should not proceed in this manner.