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Corporate Services Scrutiny Panel

Jersey Development Company

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1. EXECUTIVE SUMMARY

- 1.1 The Corporate Services (Jersey Development Company) Sub-Panel has reviewed P.79/2009 of the Council of Ministers. The proposition, if adopted, would establish the Jersey Development Company and place it within a structured regeneration process involving various parties connected to the independent elements of planning and development.
- 1.2 We were advised that the proposition would establish clarity, once and for all, as to which parties within the regeneration process took responsibility for the various tasks involved. Thus, the proposition rightly reflected the independence of the Minister for Planning and Environment in discharging his planning and master-planning responsibilities. However, the rôle of other parts of the regeneration process were not as clearly defined in the proposition, in particular the relationship involving the Minister for Treasury and Resources; the new Company; and a newly-constituted body, the Regeneration Steering Group. Greater clarity developed through the course of our Hearings, particularly that the ultimate responsibility for the effective operation of the Company lay with the Minister for Treasury and Resources. It is important that this is clear from the proposition itself.
- 1.3 During our review, we were also advised that the Jersey Development Company would not simply be the Waterfront Enterprise Board by another name. This is clearly the case given the wider geographical remit. But the proposed changes to responsibilities are not clearly defined. We understood this would be principally to deliver more effective regeneration across the Island as a whole. However, an important element of this would also be to address the general perception regarding the results of regeneration on the Waterfront. All witnesses were aware of the unhealthy perception that had developed.
- 1.4 However, the proposition itself did not clearly define whether the Company would effectively be a new body. It should therefore be amended to reflect this fact. In addition, we have found that a review of the Waterfront Enterprise Board's activities, and the assets it holds, would be a vital element in the process, both to ensure there is a comprehensive review of assets and activities prior to this transition and to address the perception that has developed. Without that review, we anticipate it would be difficult to demonstrate clearly that the new Company would have a different operational rôle to the Waterfront Enterprise Board. The new Company should therefore not begin operation until such a review has been undertaken.

- 1.5 Effective implementation is the critical outcome. However, without greater clarity 'on paper', there could be difficulties in reality. Ultimately, the success of the Company would depend upon the relationship between the various parties involved in the regeneration process, particularly that between the new Company and Jersey Property Holdings. Consequently, the interface between the various bodies must be clearly defined and managed in order that it can be clearly understood by all and that there are no systemic constraints on effective regeneration.

2. KEY FINDINGS AND RECOMMENDATIONS

KEY FINDINGS

- 2.1 The proposition rightly reflects the fact that the Minister for Planning and Environment should be independent in the discharge of planning and master-planning responsibilities. (5.11)
- 2.2 The proposition did not clearly show the relationship between the Jersey Development Company; the Regeneration Steering Group; and the Minister for Treasury and Resources. (5.23)
- 2.3 The proposition did not accurately convey the intentions of the Council of Ministers that the Jersey Development Company would be different from the Waterfront Enterprise Board. (5.40)
- 2.4 The challenge in defining the rôle of the Jersey Development Company goes beyond the wording of the proposition. (5.47)
- 2.5 Arrangements for transfers from Jersey Property Holdings to the Jersey Development Company should be clearly established at the time of transfer, taking into account that terms can be subject to change and including the strategy for returning value to the States upon completion of the project. (6.9)
- 2.6 A review of the activities currently undertaken by the Waterfront Enterprise Board, and the assets it holds, would confirm what activities the Jersey Development Company would undertake and thereby lead to a clearer understanding of the rôle of the new Company. (6.15)
- 2.7 The proposition relied upon the Memorandum of Understanding between the Company and the Minister for Treasury and Resources to manage and mitigate risk. However, further attention is required to ensure that risk management is active and transparent. (6.28)
- 2.8 Arrangements for the Jersey Development Company's capacity to purchase privately-owned assets should be carefully managed. (6.37)
- 2.9 The proposition provided insufficient detail on the resource and manpower implications for States Departments. (7.9)

RECOMMENDATIONS

- 2.10 Prior to the debate on P.79/2009, the Chief Minister should clarify to which body the Jersey Development Company would ultimately be accountable. (5.24)

- 2.11 Prior to the debate, the Chief Minister should ensure that the proposition is amended to show, without any room for doubt, that the Jersey Development Company would not be the same as the current Waterfront Enterprise Board. (5.41)
- 2.12 Before the Jersey Development Company begins operation, the Minister for Treasury and Resources should set out clear protocols for the transfer of assets between Jersey Property Holdings and the Company. (6.10)
- 2.13 Before the Jersey Development Company begins operation, the Chief Minister should implement a review of the activities undertaken by the Waterfront Enterprise Board, and the assets it holds; present the results of the review to the States Assembly; and implement any actions arising. (6.16)
- 2.14 Before the Jersey Development Company begins operation, the Minister for Treasury and Resources should develop a detailed risk management regime that includes individual project Risk Management Plans. (6.29)
- 2.15 The Minister for Treasury and Resources should review the capacity of the Jersey Development Company to purchase privately-owned assets and put in place protocols to ensure that the most effective vehicle is used to effect such purchases. (6.38)
- 2.16 Prior to the debate on P.79/2009, the Chief Minister should clarify how resource and manpower implications for States Departments would be addressed. (7.10)

3. INTRODUCTION

- 3.1 On 2nd June 2009, the Council of Ministers lodged *Property and Infrastructure Regeneration: the States of Jersey Development Company Limited* (P.79/2009). The proposition had significant implications for the States' approach to regeneration and development and there was no question that this proposition merited review.
- 3.2 The proposed Jersey Development Company would absorb the current Waterfront Enterprise Board. As we shall cover in our report, there is a question as to whether the Company would be a direct replacement or whether its rôles and responsibilities would be different. However, no-one can be unaware of the history of the development undertaken to date on the Waterfront and all witnesses to whom we spoke accepted the perception that the results had been far from ideal. There was a need to explore whether the lessons from previous experience had been learnt.
- 3.3 The evidence-based process of Scrutiny can have difficulty in dealing with perceptions but, in this case, they must be acknowledged. No doubt because of the ill-feeling that has been generated by what has happened previously, the Chief Minister advised us that P.79/2009 represented a last chance to 'get this right'.
- 3.4 Whilst it might represent a 'last chance', however, P.79/2009 was by no means the first attempt of the Council of Ministers to alter the manner in which the States approaches property and infrastructure regeneration. In 2007, the Council lodged a proposition to establish a Jersey Enterprise Board that would have subsumed the Waterfront Enterprise Board; in essence, it would have taken on the various rôles and responsibilities of the Waterfront Enterprise Board but would have exercised them over a larger geographical area. This proposition was subjected to review by a Sub-Panel of the previous Corporate Services Scrutiny Panel and subsequently withdrawn following that Sub-Panel's recommendations that the proposals lacked clarity and required further work. Scrutiny's previous involvement contributed to the current Panel's determination that this proposition should be reviewed.
- 3.5 P.79/2009 was initially due to be debated in July 2009 and we are grateful that the Chief Minister agreed to defer the debate until later in the year. This meant by necessity undertaking the bulk of our review during the summer recess of the States Assembly. This often causes difficulties and we would therefore like to acknowledge the work of all those who assisted us with our review during that time.

4. BACKGROUND INFORMATION

- 4.1 The main focus of our review was the proposed Jersey Development Company and, indeed, it was the 'headline act', as it were, of the proposition. However, the proposition, if adopted, would have implications for various other bodies: the Minister for Planning and Environment and his Department; the Minister for Treasury and Resources and his Department (including Jersey Property Holdings); a newly constituted body called the Regeneration Steering Group; and, ultimately, the Waterfront Enterprise Board itself.

Planning and Environment

- 4.2 The Minister for Planning and Environment, together with his Department, is responsible for the Island's built and natural environment. The principal legislation guiding the Minister's work is the *Planning and Building (Jersey) Law 2002*. The Department is divided into two sections: the Planning and Building Division; and the Environment Division. Of most relevance to the proposition under review would be the Planning and Building Division, which has two main rôles:

- *"To ensure land is developed in a way that enriches the quality of the natural and built environment; and*
- *To enable Jersey to function effectively both economically and socially by making sure buildings are designed and constructed to safe and environmentally sound standards."*¹

- 4.3 This responsibility is demonstrated most publicly in the Island Plan which is a fundamental part of identifying and setting out the regeneration process. In addition, the Minister and his Department oversee the planning applications process, granting approval to developments and monitoring those developments to ensure compliance with any conditions set.

Jersey Property Holdings

- 4.4 Jersey Property Holdings was formed in 2006 and charged with the responsibility of managing States property. It administers all States property assets with the exception of Social Housing whilst in relation to the States Trading Organisations, Jersey Property Holdings effectively grants long-term leases. Jersey Harbours and Jersey Airport therefore benefit from the income of such properties but are liable for the maintenance thereof.² Jersey Property Holdings consists of three sections:

- Design and Maintenance;

¹ Information taken from www.gov.je

² Director of Property Holdings, Transcript of Public Hearing, page 5

- Property Management; and
- Finance and Strategy.

Jersey Property Holdings is responsible for ensuring that best value is achieved and maintained for publicly-owned assets.³

- 4.5 The Minister for Treasury and Resources is politically accountable for the work of Jersey Property Holdings. In August 2009, after our work had commenced, it was announced that the Department of Treasury and Resources would be subjected to restructuring, as part of which Jersey Property Holdings would form part of a Resources section under a specified Chief Officer.
- 4.6 Jersey Property Holdings identifies States-owned properties which are surplus to requirement and may be available for disposal, redevelopment or transfer for some community use. These properties would include but would not be confined to those which may become available for regeneration (under the proposition) through the Jersey Development Company. These disposals and transfers are presented to the States for approval through the Annual Business Plan.

Regeneration Steering Group

- 4.7 This would be a newly-constituted body if P.79/2009 were to be adopted. It would comprise the Chief Minister; the Minister for Treasury and Resources; the Minister for Economic Development; the Minister for Transport and Technical Services; the Connétable of St Helier; and a 'co-opted' Connétable for a Parish in which a major regeneration scheme would take place. According to P.79/2009, the primary purpose of the Group would be to provide a political steer to the Jersey Development Company. Section 6 of the proposition provided further detail on the responsibilities of the Regeneration Steering Group.
- 4.8 The Regeneration Steering Group would be provided with executive support by the Chief Minister's Department although there is no box to that effect in the explanatory diagram contained in P.79/2009.

Waterfront Enterprise Board

- 4.9 Under the proposition, the Waterfront Enterprise Board would be 'replaced' by the Jersey Development Company. The Board itself was established by the States in 1993 and was made a separate legal entity in 1995. When establishing the Board, the States agreed it should:

³ Ibid, page 4

- (i) be confirmed as a development agency for the States for an initial ten-year period (this was subsequently extended in 2005); and
- (ii) be given full responsibility for the co-ordination and promotion of development in the St Helier Waterfront Area.⁴

4.10 The Waterfront Enterprise Board is led by a board of Executive and Non-Executive Directors that comprises the Managing Director; three States Directors (i.e. Members of the States); and three non-States Directors.

Master-planning

4.11 The proposition refers to a regeneration process that involves both 'master-planning' and 'development' and definitions of both are significant to the context of our review. We asked the Minister for Planning and Environment to define 'master-planning' and were advised to the following effect:

*"Master-planning, in my view, is creating the vision for an area. It enables you and I, as lay people, to look at the area and understand what the Planning Department is proposing. It does not necessarily show the completed buildings but it does set out a vision. I think it is important that proper master-planning sets out an architectural vision because if you do not have an architectural vision, it very hard for you and I to understand what is being proposed."*⁵

4.12 Whilst noting the Minister's definition, it is worth observing that master-planning elsewhere extends beyond the issues of architecture which, indeed, may be almost entirely absent at this stage and instead focuses predominantly on land-use.

Development

4.13 The development process can be divided into six main phases:

- Strategic – developing a master-plan for the redevelopment/regeneration of the site
- Promotion - promoting the site through the planning process to secure relevant development permissions at least at outline stage
- Commissioning – procuring either a development partner or a disposal of the site to a developer able to finance and implement the development
- Financing – providing risk finance to procure the implementation of the development

⁴ *St Helier Waterfront Development* (P.156/1995), page 5

⁵ Minister for Planning and Environment, Transcript of Public Hearing, page 18

Implementation – procuring and managing the construction of the development

Exploitation – marketing and securing occupiers for the completed development and the overall investment interest where appropriate

This structure was first laid out by the previous Sub-Panel that reviewed the proposals for a Jersey Enterprise Board.

The Proposition

- 4.14 The proposition would create a new and complex structure, not dissimilar to the proposed Jersey Enterprise Board of 2008, introducing both new political bodies (i.e. the Regeneration Steering Group) and a wide-ranging development body (the Jersey Development Company) into the existing process. In a multi-layered, multi-disciplinary process such as regeneration, there is every prospect for confusion between such bodies and their rôles, making the need for clarity of relationship particularly important. P.79/2009 seeks to achieve this by including a diagram that showed how the processes and structures it proposed would operate. Whilst the diagram could not completely convey the implications of the proposition, it did form a substantial basis for our discussions with witnesses and consequent deliberations. Given that it took such prominence in our review, and to provide some context for the subsequent sections of our report, we have reproduced it here for ease of reference.
- 4.15 Our understanding from the proposition and the advice received during our review is that a top-down decision-making process would be established (although discussions between the various parties could occur 'from the bottom up', as it were). In developing the Island Plan, the Minister for Planning and Environment would identify and categorise areas as 'Regeneration Zones'. These would subsequently be approved by the States Assembly when it debated the Island Plan. The Minister (with his Department) would subsequently produce master-plans for these zones, following the normal procedure for such matters. Subsequently a 'Development Brief' would be produced by the Minister for the Zone that would set out in more detail the overall requirements for development and regeneration.
- 4.16 The Regeneration Steering Group would, in essence, then take responsibility for the Zone and produce more detailed specifications for the area. This specification, the 'Development Plan', would provide the Jersey Development Company with what it would be expected to deliver.
- 4.17 Meanwhile, the States would have approved (through the Annual Business Plan) a series of publicly-owned properties which were surplus and available for disposal, or transfer, at the recommendation of Jersey Property Holdings. If appropriate, and sited within a designated Regeneration Zone, properties could then be transferred to the Jersey

Development Company to be used in accordance with the Development Plan and instructions that the Company had been given. As a company, it would also have the capacity to purchase privately-owned assets and use these as well to deliver the plans with which it had been provided.

5. TRANSPARENCY AND ACCOUNTABILITY

5.1 In our second Term of Reference, we set out specifically to consider the arrangements for governance and accountability that would apply to the Jersey Development Company. We also sought to consider how the various parties shown in the diagram would interact.

5.2 When one deals with a structure and processes that involve a number of parties, there is the potential for confusion as to which party takes responsibility for which part of the process. P.79/2009 listed a number of benefits that would arise from its adoption, of which one would be:

“A clear division of responsibilities for the control of policy determination, strategic planning, project definition and development implementation.”⁶

5.3 This benefit was repeatedly stressed during our Public Hearings by both the Chief Minister and the Minister for Treasury and Resources, the Chief Minister advising us:

“I think that is what we are trying to do in these propositions; make sure that there is absolute clarity and that each body does understand what its rôle is and what the other person’s rôle is.”⁷

The need for clarity and the lack thereof was one of the criticisms by the previous Sub-Panel of the 2007 proposition relating to the Jersey Enterprise Board. Hence we were particularly anxious to explore these assertions in some detail, both in the theory and, as explored later in our report, in the anticipated practice.

5.4 According to the evidence we received, this clarification would be especially beneficial in relation to the Jersey Development Company. In connection to this, a second message strongly conveyed by both Ministers was that the Company would not merely be the same as the Waterfront Enterprise Board. From these messages, we sought to address two questions that we believed were fundamental to understanding the implications of the proposition:

1. Who would be in charge?
2. How would the Jersey Development Company differ from the Waterfront Enterprise Board?

Who would be in charge?

5.5 The issues covered in the proposition were complex and, at first glance, we did not find the diagram it presented necessarily easy to follow. The Assistant Minister for Planning

⁶ *Property and Infrastructure Regeneration: the States of Jersey Development Company Limited (P.79/2009)*, page 18

⁷ Chief Minister, Transcript of Public Hearing, page 12

and Environment stated that the diagram was ambiguous.⁸ The Chamber of Commerce intimated that it had also found the diagram difficult to understand and, indeed, that it failed show all elements involved in the process: the Chamber highlighted that no stakeholder group (of which the Chamber would wish to be a part) was shown on the diagram (although reference was made to consultation with stakeholders in the report accompanying P.79/2009).⁹ The Minister for Treasury and Resources subsequently advised us, however, that there would indeed be a 'consultative group', which would include the Chamber of Commerce.¹⁰ Any confusion or ambiguity arising from the diagram may simply be a fault of the diagram itself; of more concern, however, it may demonstrate a tendency towards lack of clarity.

- 5.6 Notwithstanding the evidence, therefore, that the proposition aimed to clarify, there was a doubt as to whether that had been achieved. Through our Hearings, we sought to understand more fully the intentions of P.79/2009 and to answer the fundamental question of who, ultimately, would be in charge.
- 5.7 If the proposition were to achieve its aim of establishing a clear division of responsibilities, it should be feasible to follow the line of accountability (or, indeed, accountabilities) and discover which party appears at the top. The relevance of this issue was highlighted during our Hearings by discussions on one particular development on the Waterfront, where there was a common view that the final result was far from ideal. However, it was not clear from the comments received that any one person or body was ultimately responsible for that situation.
- 5.8 The message about division of responsibilities was most keenly expressed in relation to the Minister for Planning and Environment and his Department. Planning and Environment would be involved in the regeneration process in a number of ways. Firstly, it would develop the Island Plan through which Regeneration Zones would be adopted; it would produce master-plans and Development Briefs for those Regeneration Zones; and, lastly, it would administer the planning applications process.
- 5.9 It was consistently stated that the Minister for Planning and Environment should retain independence in assuming these responsibilities. The Minister himself advised us:

"It was my view, and I made this quite strongly at a number of stages, that the rôle of the Planning Department and the Planning Minister should be primarily master-planning and development briefs, and that it should be the Planning Department that effectively sets out the vision. The Planning Department can draw on any other

⁸ Assistant Minister for Planning and Environment, Transcript of Public Hearing, page 7

⁹ President of Chamber of Commerce, Transcript of Public Hearing, page 2

¹⁰ Minister for Treasury and Resources, Transcript of Public Hearing, page 26

Department, any other body, in the creation of that vision but it certainly should be the Planning Department that creates the master-planning vision.”¹¹

- 5.10 This intention was reflected in the provisions of P.79/2009 and represented a change to that which had been proposed in 2008 as part of the Jersey Enterprise Board proposition. Under that earlier proposition, the Minister for Planning and Environment would have formed part of what was then described as the Regeneration Task Force (the precursor to P.79/2009’s Regeneration Steering Group). The previous Sub-Panel highlighted the overlap between the Regeneration Task Force and Planning and Environment and recommended that this position be reconsidered. Whilst there might remain questions as to how the Regeneration Steering Group would in fact differ to what had been proposed for the Regeneration Task Force, it is certain that under the current proposition, the Minister for Planning and Environment would remain separate. He would, however, be in a position to consult the Regeneration Steering Group prior to making a decision on master-planning whilst he would also deal with the resultant planning applications.

Key Finding

5.11 The proposition rightly reflects the fact that the Minister for Planning and Environment should be independent in the discharge of planning and master-planning responsibilities.

- 5.12 The ‘regeneration process’, to which P.79/2009 related, includes two separate processes: the planning process; and, for want of a better description, the development process. In terms of the former, the Minister for Planning and Environment would take prominence, as shown above, although he would monitor developments to ensure compliance with the planning process.
- 5.13 What of the ‘development process’ which would be covered by that half of the diagram contained in P.79/2009 covering the Jersey Development Company itself; the Regeneration Group; and Jersey Property Holdings? Which body would ultimately be responsible for that part of the process?
- 5.14 The previous Sub-Panel highlighted that, within the proposals for the Jersey Enterprise Board, the rôle of the Regeneration Task Force required definition. P.79/2009 described the rôles and responsibilities of the newly-formed Regeneration Steering Group and stated that its prime purpose would be:

“To provide a political steer and/or guidance in order to inform policy guidelines for all major Public property and infrastructure regeneration projects in Jersey and to guide the activities of The States of Jersey Development Company Limited.”¹²

¹¹ Minister for Planning and Environment, Transcript of Public Hearing, page 3

- 5.15 This was confirmed at our Public Hearings. For example, the Managing Director of the Waterfront Enterprise Board advised us:

“I would stress that at the end of the day it is the Regeneration Steering Group that will set what it is done.”

He subsequently advised that the Regeneration Steering Group would interpret the States’ requirements and monitor the Company’s delivery of those requirements.¹³ This advice reflected that provided by both the Chief Minister and the Minister for Treasury and Resources. The Chief Minister stated that the Regeneration Steering Group would act as an interface between the Company and the Minister for Planning and Environment and would direct the Company.¹⁴

- 5.16 However, the proposition also established that the Company would be directed by the Minister for Treasury and Resources. As such, a Memorandum of Understanding would be signed by the Minister and Company to manage the process by which assets would be transferred from Jersey Property Holdings (for which the Minister holds political responsibility) to the Company. The proposition also stated that the Minister:

“would be politically accountable for SoJDC under the proposed arrangements.”¹⁵

- 5.17 As such the Jersey Development Company would be similar to other companies (e.g. Jersey Telecom or Jersey Water) in that the political interface would be the Minister for Treasury and Resources (notwithstanding the differences in structure and constitution between the various companies). The Waterfront Enterprise Board had been exceptional in reporting to the Chief Minister.¹⁶

- 5.18 This position would be reflected in the Articles of Association for the Company where, under Article 22, the Minister for Treasury and Resources would be afforded the capacity to direct the Company. It would also reflect recommendations made by the Comptroller and Auditor General when he reviewed arrangements in relation to the Waterfront Enterprise Board, finding that:

“The sponsoring Minister should be accountable to the States for the oversight of WEB’s activities.”¹⁷

- 5.19 When speaking of the clarification that P.79/2009 would provide, the Minister for Treasury and Resources alluded to the fact that the Waterfront Enterprise Board potentially had two

¹² P.79/2009, page 7

¹³ Managing Director of Waterfront Enterprise Board, Transcript of Public Hearing, page 10

¹⁴ Chief Minister, Transcript of Public Hearing, page 2

¹⁵ P.79/2009, page 16

¹⁶ Minister for Treasury and Resources, Transcript of Public Hearing, page 4

¹⁷ *Waterfront Enterprise Board Limited: Review of Corporate Governance – Final Report of the Comptroller and Auditor General (R.122/2008)*, page 4

masters.¹⁸ There is a question of whether the Jersey Development Company would also be beholden to two masters: the Regeneration Steering Group and the Minister for Treasury and Resources. Both the proposition and the witnesses at our Hearings indicated the Company would report to both. There is an issue of which party would take ultimate accountability.

- 5.20 The Minister for Treasury and Resources would in fact sit on the Regeneration Steering Group and we endeavoured to understand that relationship. The Minister stated there would be no conflict of interest¹⁹ although we were also advised that he would have two rôles on the Group:

*“He is going to be sitting there at a strategic level as the Island’s Finance Minister, having some interesting political discussions about the trade-off between social benefits and taxpayer cost. [...] Below that, he is going to be looking ... once that debate has been had and decided he will be trying to maximise the individual deal on a single development.”*²⁰

- 5.21 The Minister was clear that he alone would be accountable for signing off individual transactions from Jersey Property Holdings to the Jersey Development Company and would not be bound by the Regeneration Steering Group.²¹ However, he also spoke of the need for a ‘political committee’ that would oversee the new Company and which would be in the ‘driving seat’. In his view, the Minister for Treasury and Resources would have no more of a veto on the work of the Group than any other Minister who sat on it; the Group would need to work by consensus.

- 5.22 We would not dispute that a consensual approach would be preferable for the Regeneration Steering Group. Furthermore, we would not suggest that having such a body that has access to the expertise of the relevant Departments, and which could provide appropriate guidance, would not be useful. However, it must be clear to whom the Jersey Development Company would ultimately report. The Chamber of Commerce advised us of its view that there was greater degree of transparency and accountability in P.79/2009 (compared to the current situation)²² and from a planning perspective, it is clear that the Minister for Planning and Environment takes primacy. In terms of the Jersey Development Company’s operation, however, questions remain about the relationship between the Minister for Treasury and Resources and the Regeneration Steering Group and which would be politically accountable to the States. On the face of it, it would appear

¹⁸ Minister for Treasury and Resources, Transcript of Public Hearing, page 7

¹⁹ Ibid, page 10

²⁰ Treasurer of the States, Transcript of Public Hearing, page 9

²¹ Minister for Treasury and Resources, Transcript of Public Hearing, page 8

²² President of Chamber of Commerce, Transcript of Public Hearing, page 9

to be the Minister given the capacity afforded him by the Articles of Association. However, the intentions of the proposition in this regard must be made clear.

Key Finding

5.23 The proposition did not clearly show the relationship between the Jersey Development Company; the Regeneration Steering Group; and the Minister for Treasury and Resources.

Recommendation

5.24 Prior to the debate on P.79/2009, the Chief Minister should clarify to which body the Jersey Development Company would ultimately be accountable.

How would the Jersey Development Company differ from the Waterfront Enterprise Board?

5.25 Statements about the clarity that P.79/2009 would bring to the regeneration process came in conjunction with the message that this was a lesson learnt from previous experience with the Waterfront Enterprise Board. There is a general perception that results of the work undertaken to date on developing the Waterfront have been far from ideal. We did not receive many public submissions for our review but some people who did write expressed suspicion at the proposals for a Jersey Development Company. The perception was acknowledged by all the witnesses to whom we spoke including the Managing Director of the Waterfront Enterprise Board.

5.26 Different explanations were provided for the provenance of this perception. For instance, notwithstanding the Chamber's general support for the establishment of a Jersey Development Company, the President of the Chamber of Commerce stated:

"I am not sure whether it [the Waterfront Enterprise Board] has produced sufficient revenue for the States, I am not sure that it has produced much at all."²³

Another example came from the Minister for Treasury and Resources who stated that the Board's difficulties had stemmed from the States decision to build the underpass and this had tainted the subsequent work of the Board.²⁴ Both he and the Minister for Planning and Environment expressed the view, however, that the Board's more recent work had been beneficial.²⁵

5.27 Still further explanation came from the Director of Planning:

²³ President of Chamber of Commerce, Transcript of Public Hearing, page 8

²⁴ Minister for Treasury and Resources, Transcript of Public Hearing, page 22

²⁵ Minister for Planning and Environment, Transcript of Public Hearing, page 14

“WEB got off on the wrong foot. Quite clearly it was intended to be a body set up to implement States proposals and, indeed, there were some ... you may recall the Andrews Downie development plan for the Waterfront, which was, for the most part, adopted by the States in the beginning of 1992, I think. WEB were subsequently appointed to implement it and came in and said: “We do not like that; we are going to produce our own plan for the area.” Now, whether that was the people on the board, if it was the M.D. at the time, I do not know, but we immediately came into a confrontational situation where we were saying: “Hang on, that is the approved plan” and they were saying: “We fancy doing our own thing.”²⁶

5.28 Unless acknowledged and addressed, it would be possible for perception as currently held to derail the Council's proposition. We asked what lessons had been learnt from experience with the Waterfront Enterprise Board and whether it was correct to say that the Company would not merely be the Waterfront Enterprise Board by another name.

5.29 Our previous section showed that the intention was that the Jersey Development Company would not be 'in charge' of the processes involved. For instance, the Managing Director of the Waterfront Enterprise Board (who, under the proposals of P.79/2009 would become Managing Director of the Jersey Development Company) advised that the Company would have a wider remit than the Waterfront Enterprise Board, but would operate under stricter controls: the Company would be directed by the Regeneration Steering Group. Furthermore, it was clear that the Minister for Treasury and Resources would have the final say on the transfer process from Jersey Property Holdings to the Company.²⁷ These latter statements were reflected in comments made to us by the Minister for Treasury and Resources when he advised that the Company would take far greater direction than the Waterfront Enterprise Board had.²⁸

5.30 The Managing Director of the Waterfront Enterprise Board also stated, however:

“I think we will be doing very similar activities as have been happening within W.E.B.”²⁹

It was subsequently clarified during our review that this referred to the fact that the new Company would undertake similar development activities to the Waterfront Enterprise Board.

5.31 There was a clear message that the new Company would merely be 'implementational' with a responsibility to deliver policies and plans which had been set by others. Similarly, there was a clear message from all the relevant witnesses that the new Company would

²⁶ Director of Planning, Transcript of Public Hearing, page 15

²⁷ Managing Director of Waterfront Enterprise Board, Transcript of Public Hearing, page 4

²⁸ Minister for Treasury and Resources, Transcript of Public Hearing, page 5

²⁹ Managing Director of Waterfront Enterprise Board, Transcript of Public Hearing, page 4

not be a development agency. Statements to that effect were made by the Chief Minister; Minister for Treasury and Resources; the Director of Jersey Property Holdings; and the Managing Director of the Waterfront Enterprise Board. This represented a change from the proposals for a Jersey Enterprise Board which, under the wording of that proposition, would indeed have been a development agency.³⁰ This does raise a question of where the development agency function would lie in the new structure.

5.32 In particular, it was stressed that the Company would have no responsibility for master-planning, a key lesson that had been learnt from the experience of the Waterfront Enterprise Board.

5.33 The intention that the Company would not be the Waterfront Enterprise Board by another name was clearly understood from our Public Hearings, particularly from the following statement by the Chief Minister:

“I think I have tried to make it quite clear that it is far more than just a change of name. If it was just a change of name I am wasting my time.”³¹

The questions that arise are whether the proposition itself accurately conveys that message and, if the proposition were to be adopted, whether that message would translate itself into reality.

5.34 According to the proposition, the Board of the Waterfront Enterprise Board would become that of the Jersey Development Company (although the Chief Minister indicated that the non-Executive Members would be replaced³²). In addition, the Articles of Association for the Company would be taken from those of the Waterfront Enterprise Board and amended. The following details how those objectives would change as the Board became the Company:

Objectives of the Waterfront Enterprise Board:

“(a) To promote, co-ordinate and implement a comprehensive strategy for the development of the St. Helier Waterfront area as shown on Map No: 3-92 approved by the States on 10th November, 1992 (the “Waterfront”).

(b) To exercise administrative control over the use of the land and the adjacent shore and water areas in the Waterfront and to liaise and consult with all relevant committees of the States of Jersey and other governmental and regulatory

³⁰ Jersey Enterprise Board - Proposed Establishment (P.194/2007)

³¹ Chief Minister, Transcript of Public Hearing, page 21

³² Ibid, page 24

authorities in relation to investment in infrastructure projects in and development of the Waterfront.”³³

Objectives of the proposed Jersey Development Company:

- “(a) To promote, co-ordinate and implement a comprehensive strategy for the development of the whole of the St. Helier Waterfront area and including the greater harbour area and La Collette in accordance with approved Masterplan(s), Development Brief(s) and other relevant guidance prepared by the Minister for Planning and Environment and, where expedient, to undertake development directly.*
- (b) To exercise administrative control over the use of the land and the adjacent shore and water areas in the St. Helier Waterfront area and to liaise and consult with all relevant Ministers of the States and other governmental and regulatory authorities in relation to investment in infrastructure projects in and development of the St. Helier Waterfront area.*
- (c) To prepare detailed development proposals for specific projects of major regeneration of property and infrastructure within Regeneration Zones (for consideration by the Regeneration Steering Group).*
- (d) To undertake the regeneration of redundant States’ assets within Regeneration Zones in accordance with approved Masterplans and Development Briefs (including the purchase of third party properties where appropriate) and to act as the preferred developer for projects of Property Holdings (procuring and managing project implementation as agreed and directed by the Regeneration Steering Group).”³⁴*

5.35 If the intention were for the two companies to be discrete (and to be seen as such), the question could be asked as to why the Council of Ministers did not propose establishing an entirely new company. The Chief Minister addressed this matter:

“We did toy with the idea of starting from scratch with a new structure. Effectively, by adopting a new set of Memorandum and Articles of Association, you are doing the next best thing to creating a new structure. But, of course, there are existing arrangements – legal arrangements – in place carried out between WEB and third parties and you would have to unravel all of those and put them back into a new vehicle if you did it that way.”³⁵

It is not apparent that it would always be necessary to undo contracts in the manner suggested by the Chief Minister; such contracts could instead be novated.

³³ Memorandum of Association of Waterfront Enterprise Board Limited, page 9

³⁴ P.79/2009, page 35

³⁵ Chief Minister, Transcript of Public Hearing, page 4

- 5.36 It became apparent at our Hearing with the Chief Minister, however, that the proposition might not completely convey the intention that the Jersey Development Company would not be the same as the Waterfront Enterprise Board. At the Hearing, we focused on the following extract from the proposition:

“In addition to its continuing activities, the restructured company would have the following new roles...”³⁶

This statement did not fit well with the message that the new Company would be completely different, a fact acknowledged by the Chief Minister at the Hearing.

- 5.37 It was evident that this problem permeated the report accompanying P.79/2009 and, indeed, the wording of the proposition itself, to which the following examples would attest:

“To agree that the role and remit of the Company should be extended...”[our emphasis]

“The restructured company will continue the activities of Waterfront Enterprise Board Limited in developing the St Helier Waterfront.”

Statements such as these gave the impression that the new Company would be an extension of the current Waterfront Enterprise Board; in other words, it would be a case of ‘more of the same’. This ran counter to the message that it would be different. Following our Public Hearings, we advised the Chief Minister of this situation and understood that attempts were consequently made to address it.

- 5.38 This confusion may have arisen due to a merging of the geographical remit of the new Company and the operational rôle it would play. In terms of the former, the remit of the Waterfront Enterprise Board would indeed be extended as it transferred into the new Company. The Board was provided with jurisdiction over the West of Albert site of the Waterfront; the new Company would have a geographical remit of, potentially, the whole Island – dependent on the site of the Regeneration Zones proposed by the Minister for Planning and Environment and adopted by the States.

- 5.39 The operational rôle of the Company would be more limited, however, than that which was played by the Waterfront Enterprise Board. This was the clear message provided to us by the Chief Minister and confirmed by this exchange with the Minister for Treasury and Resources:

“Senator P.F.C. Ozouf:

The only word “extension” that is relevant is in the physical ability for the States of Jersey to, say, develop that bit of north of the town.

³⁶ P.79/2009, page 9

Deputy T.A. Vallois:

That is the only extension?

Senator P.F.C. Ozouf:

*Yes. Everything else is limiting it, I think.*³⁷

Key Finding

5.40 The proposition did not accurately convey the intentions of the Council of Ministers that the Jersey Development Company would be different from the Waterfront Enterprise Board.

Recommendation

5.41 Prior to the debate, the Chief Minister should ensure that the proposition is amended to show, without any room for doubt, that the Jersey Development Company would not be the same as the current Waterfront Enterprise Board.

Will reality reflect the theory?

- 5.42 For the structure proposed in P.79/2009, for the 'reality' to work (and to be seen to work), there would need to be a proper understanding by all parties of the processes of which they form part. This was alluded to by the Chief Minister, who advised that wayward decisions could still happen under the new structure – however, greater clarity regarding rôles and responsibilities would lessen that likelihood.³⁸ Both the Chief Minister and the Minister for Planning and Environment stated that the proposition would only become a successful reality if all parties involved worked towards the common aim.
- 5.43 We would not disagree with that assessment but would highlight the difficulties there might be in achieving this. We have already shown the contradictory messages about the lines of accountability. There was also some confusion about the relationships between the various parties. At our Hearing with the Chief Minister, we were advised that each box on the diagram would be 'watertight'³⁹: through the clarification of rôles and responsibilities that P.79/2009 would bring, each party in the regeneration process would be sufficiently discrete from the others.
- 5.44 However, the Minister for Planning and Environment stated that the boxes would by necessity be 'fuzzy' (i.e. not watertight), adding:

³⁷ Minister for Treasury and Resources, Transcript of Public Hearing, page 7

³⁸ Chief Minister, Transcript of Public Hearing, page 21

³⁹ Chief Executive, Transcript of Public Hearing, page 13

“A lot of players in this are in different boxes, and sometimes they are in two or three boxes.”⁴⁰

- 5.45 This appeared to be contradictory and highlighted how confusion could be caused. However, a distinction was required between discussion and decision. On closer examination of the advice we received, it became apparent that the boxes would be ‘fuzzy’ in terms of discussion: there would be negotiations, or consultation between the various parties. In terms of decision-making, however, the boxes would become ‘watertight’: once a decision was required, either on a planning issue or in relation to a transfer of assets, the responsibility would clearly rest with one particular party.
- 5.46 These statements might well reflect the complexity of the situation. They also highlight the care that would need to be taken to ensure that reality reflects the intentions contained in P.79/2009. Not only would each party involved need to understand its rôle and where the line between ‘discussion’ and ‘decision’ lay; but also it would need to be possible to discern this from the outside of the process. Without that, the perceptions that have arisen might continue. As matters have been explained to date, it is not clear that the balance between acknowledgement of the situation’s complexity, and the need for clarity, has been met. The challenge here is whether this could be remedied in the drafting of the proposition or whether there are more fundamental challenges to address.

Key Finding

- 5.47 The challenge in defining the rôle of the Jersey Development Company goes beyond the wording of the proposition.**

⁴⁰ Minister for Planning and Environment, Transcript of Public Hearing, page 6

6. THE OPERATION OF THE JERSEY DEVELOPMENT COMPANY

6.1 In the previous chapter, we explored questions of how the accountability structure proposed in P.79/2009 would operate and whether the perception issues regarding the development process to date had been addressed. During our review, however, we also explored in more detail the manner in which the Jersey Development Company would operate, with particular reference to the following:

- The process by which assets would be transferred to the Company from Jersey Property Holdings (and back again);
- The approach that would be taken to managing the risks associated with the development process; and
- The manner in which returns would be made to the States from the Company.

Transfers of Assets

6.2 P.79/2009 indicated that publicly-owned properties to be transferred from Jersey Property Holdings could be divided into two categories:

1. *“States’ properties within [a] particular Regeneration Zone where the property, or the value thereof, is not required by the States;”* and
2. *“The property is needed to be developed to deliver the socio-economic needs of the Island.”*⁴¹

We anticipate that properties falling within the first category would initially have been included within the relevant Annual Business Plan as part of the process by which the States approve properties for disposal. We were advised, however, that ‘stand-alone’ properties identified for development (but not required for regeneration) would not be transferred from Jersey Property Holdings (in other words, those stand-alone properties which fell without a Regeneration Zone).⁴² There is the potential for confusion in understanding this process and being able to identify which properties would be liable to transfer to the Company. We anticipate that production of the Strategic Property Plan and Office Strategy Plan would assist in this regard as it would provide clarity about the work of Jersey Property Holdings. At the time of this report’s presentation, the Property Plan and Office Strategy had not been issued. These would form the framework within which the arrangements for the Jersey Development Company and other bodies would operate. It is essential that these documents are presented to the States Assembly prior to the implementation of the proposition.

⁴¹ P.79/2009, page 14

⁴² Director of Property Holdings, Transcript of Public Hearing, page 3

- 6.3 The proposition provided the following indication of how the transfer from Jersey Property Holdings to the Jersey Development Company would be managed:

“Assets will be transferred at open market value subject to recognising the cost of providing significant upfront infrastructure costs and public realm. In this case the Minister for Treasury and Resources may agree to the transfer of assets from JPH [Jersey Property Holdings] to the States of Jersey Development Company at less than open market value or on a deferred payment basis.”⁴³

- 6.4 The Director of Property Holdings provided further clarification of what would be required from his Department’s perspective:

“When property is transferred to the Jersey Development Company, it is of extreme importance that there is an appropriate balance between funding the re-provision of States operational assets and generating new public ground through regeneration.”

The Director subsequently advised that the Minister for Treasury and Resources would be in the most appropriate position to ensure that all aspects of property value were considered.⁴⁴ The representatives of the Waterfront Enterprise Board confirmed that the Minister for Treasury and Resources would have to agree to each transfer before any commitment was made.

- 6.5 The Managing Director of the Waterfront Enterprise Board also confirmed that transfers would take place at market value explaining that:

“There are issues that we will be looking at obviously, that market value will be impacted by the costs of providing infrastructure and the costs of providing public realm.”⁴⁵

- 6.6 The Director of Property Holdings explained how ‘true market value’ would be determined:

“As we do with all our disposals we take external advice from trained professional valuers and we would look not only at the current use value but also the marriage value which might be delivered, the use of that property combination with other sites and expect to receive that full open market value at the time of transfer unless the Minister for Treasury and Resources decides to transfer it at any less value. The proposition allows for him to do that if he considers that a large amount of infrastructure only is required but that will be completely transparent.”⁴⁶

⁴³ P.79/2009, page 13

⁴⁴ Director of Property Holdings, Transcript of Public Hearing, page 2

⁴⁵ Managing Director of Waterfront Enterprise Board, Transcript of Public Hearing, page 10

⁴⁶ Director of Property Holdings, Transcript of Public Hearing, page 4

6.7 This illustrates the potential conflict between Jersey Property Holdings and the Jersey Development Company over value at the point of transfer. There would be a risk that much time and cost, in both internal and external resources, could be expended on negotiations between two organisations, both owned by the States, over an ultimately academic exercise. This risk would be severely exacerbated if both bodies were set performance targets to optimise the return on their activities. Assurances would be required that systemic constraints on effective transfer such as these would not be introduced. Ultimately, the Minister for Treasury and Resources would have responsibility for ‘managing’ any point of conflict in the negotiations between the two bodies. Whilst this might appear to be stating the self-evident, it highlights that, in reality, the success of the regeneration process outlined in P.79/2009 would depend on the relationships between the various bodies involved.

6.8 We were consistently advised that, at the time of transfer in to the Jersey Development Company, consideration would have to be given to the end of the process and the transfer out of the Company back to Jersey Property Holdings. The Managing Director of the Waterfront Enterprise Board advised that this would also take place at market value⁴⁷. The advice from Jersey Property Holdings was that it would be necessary to ensure:

“that when property is handed back that it also comes with some kind of sinking fund to cover the ongoing future maintenance whole life costing.”⁴⁸

Key Finding

6.9 Arrangements for transfers from Jersey Property Holdings to the Jersey Development Company should be clearly established at the time of transfer, taking into account that terms can be subject to change and including the strategy for returning value to the States upon completion of the project.

6.10 Before the Jersey Development Company begins operation, the Minister for Treasury and Resources should set out clear protocols for the transfer of assets between Jersey Property Holdings and the Company.

6.11 It was not foreseen that the Company would hold property once projects had been completed. This advice was received from the Director of Jersey Property Holdings and confirmed by the Minister for Treasury and Resources. The Minister stated it would remain feasible for the Company to retain assets but that this was not likely to occur.⁴⁹ The representatives of the Waterfront Enterprise Board, however, indicated that it would be necessary for the Company to retain some assets:

⁴⁷ Managing Director of the Waterfront Enterprise Board, Transcript of Public Hearing, page 11

⁴⁸ Director of Property Holdings, Transcript of Public Hearing, page 8

⁴⁹ Minister for Treasury and Resources, Transcript of Public Hearing, page 6

“The best thing to do is to keep the resources adequate within the company to fund the next stages of development that are envisaged over a period of time. Because otherwise it would be transferring money out and then potentially there may be money needed to go back to support the equity to purchase things.”⁵⁰

- 6.12 Given the advice that the new Company would not hold on to assets, but the Waterfront Enterprise Board currently does, it could be beneficial for a review to be undertaken of the assets currently held by the Board. Such a review would clearly establish what should happen to such assets and, if undertaken before the new Company began operating, would ensure that the intentions in relation to the Company were met. The Minister for Treasury and Resources informed us that a review of the Waterfront Enterprise Board’s assets would indeed be undertaken.⁵¹
- 6.13 The previous Corporate Services Sub-Panel also recommended that a review of the Waterfront Enterprise Board should be undertaken. When reviewing the Jersey Enterprise Board proposals, that Sub-Panel stated the effectiveness to date of the Board in achieving its objectives should be examined. It was not clear from P.79/2009 whether such a review was in fact undertaken; the response to that recommendation contained in the proposition did not indicate as much.
- 6.14 However, a review of the activities currently undertaken by the Waterfront Enterprise Board would be beneficial. This should focus in particular on work in progress and the extent to which it is appropriate for that work, and indeed any assets currently held by the Board, to be transferred to Jersey Development Company. This would establish a clear programme for the Company at the outset; help to ensure that there was clarity about the rôle of the proposed Jersey Development Company; and establish how it would be different to the Board. Indeed, such a review could help to address the perceptions relating to the Board and dampen suspicions that might exist in relation to the current proposals.

Key Finding

- 6.15 A review of the activities currently undertaken by the Waterfront Enterprise Board, and the assets it holds, would confirm what activities the Jersey Development Company would undertake and thereby lead to a clearer understanding of the rôle of the new Company.**

⁵⁰ Managing Director of Waterfront Enterprise Board, Transcript of Public Hearing, page 12

⁵¹ Minister for Treasury and Resources, Transcript of Public Hearing, page 30

Recommendation

6.16 Before the Jersey Development Company begins operation, the Chief Minister should implement a review of the activities undertaken by the Waterfront Enterprise Board, and the assets it holds; present the results of the review to the States Assembly; and implement any actions arising.

Risk Management

- 6.17 P.79/2009 described how the risks associated with the Jersey Development Company's work would be managed and mitigated. It stated that the Memorandum of Understanding between the Company and Minister for Treasury and Resources would be significant in this regard. The Memorandum would establish the risk parameters within which the Company would operate. These included, for instance, that no transfers from Jersey Property Holdings would take place until a master-plan for the Regeneration Zone in question had been adopted; that infrastructure works would not be procured until planning permissions had been received and financial appraisals undertaken; and that the Company would not commit construction costs to direct development until legally binding pre-lets or pre-sales had been arranged.⁵² Questions could be asked of whether these pre-lets or pre-sales would be readily available in the current market and whether there would be cases where the States would have to take a lead in pump-priming development.
- 6.18 The Council of Ministers included within its proposition a report commissioned from DTZ on its proposals. DTZ's report suggested that the Council of Ministers was proposing that the States could ultimately accept greater risk than would normally be the case elsewhere. The Chief Executive advised that this came from the capacity of the Jersey Development Company to undertake development in its own right.⁵³
- 6.19 We questioned the Minister for Treasury and Resources on the matter and were advised:
- "In Jersey where regeneration projects we are seeking to progress are vital to the future of the environment, we simply cannot afford not to allow a significant project to remain part finished and we are going to have to ensure that the appropriate risks [...] Of course the individual matter of risk is going to be taken on a case by case project and our appetite for risk on an individual project will be different. The default position is the States is risk averse."⁵⁴*
- 6.20 The Treasurer subsequently added:

⁵² P.79/2009, page 26

⁵³ Chief Executive, Transcript of Public Hearing, page 28

⁵⁴ Minister for Treasury and Resources, Transcript of Public Hearing, page 16

“You just cannot afford to take that risk of getting something half-done and the developer walking away and you having to step in and pick up the reins somehow. So I think this reduces those sort of risks, that is why we are doing this in a place like Jersey.”⁵⁵

6.21 Our discussions on the approach to risk management invariably involved consideration of the market position in Jersey, not only in terms of what impact the economic climate had had in the Island, but also what approach to risk should be taken as a result. No-one can be unaware of the current economic climate. Consideration of the implications of this was necessary in order to ascertain whether the proposed approach to risk management would in fact be feasible.

6.22 The Managing Director of the Waterfront Enterprise Board advised that Jersey did not generally deal with market failure. He also gave the following assessment of the current situation in the Island:

“We have much more control in Jersey than in the UK, because the States of Jersey owns a very significant proportion of the developable land, first. Second, there is a limited number of developers and we have control very much within the Island as to who can come in and how that market operates. So, in terms of how the market operates, it is a much more closed market.”⁵⁶

6.23 The Managing Director advised that there had been a ‘tightness of funding’. However, the Board’s largest residential scheme had not been particularly affected and, in relation to commercial, there were a number of institutions that had not unduly suffered.⁵⁷ Arguably, a narrow market could leave the Island more vulnerable to a weak development market. There are questions here of whether it would form part of the Jersey Development Company’s rôle to widen this market and, if so, whether it should in fact form part of that rôle as that would normally be one played by a development agency. As previously seen, we were consistently advised that the new Company would not be such an agency although it is uncertain where in the overall process this function would sit.

6.24 The President of the Chamber of Commerce advised of anecdotal evidence that rents in some cases were falling and stated his view that the recession had one further year, at least, to run⁵⁸ whilst the Director of Jersey Property Holdings confirmed that some tenants were having difficulty in meeting their rental obligations.⁵⁹ The Minister for Treasury and

⁵⁵ Treasurer of the States, Transcript of Public Hearing, page 17

⁵⁶ Managing Director of Waterfront Enterprise Board, Transcript of Public Hearing, page 24

⁵⁷ Ibid, page 17

⁵⁸ President of Chamber of Commerce, Transcript of Public Hearing, page 7

⁵⁹ Director of Jersey Property Holdings, Transcript of Public Hearing, page 11

Resources stated he was confident for the future, though the situation had not changed from the beginning of the year. He added:

“If you are confident about Jersey’s economic future, which I am and I hope you are and we are part of that in terms of we are not responsible for building business but we are certainly responsible for setting the legislative and political framework, then you need this company in order to deliver that objective.”⁶⁰

6.25 We questioned how the risks associated with these economic circumstances (and the consequent possibility that developers engaged by the Jersey Development Company might fail) would be addressed. We were advised that guarantees should be negotiated upfront and would be put in place at the beginning of the development agreement. For instance, in the event that the developer was unlikely to meet the relevant planning requirements:

“There are now design codes attached to those developments to ensure certain specifications, quality et cetera is achieved.”⁶¹

6.26 We also raised the possibility of ‘underage’ as a situation that might arise due to the current economic climate. In response, the Minister for Treasury and Resources advised:

“As far as underages are concerned the point there is that the contingent liability that the States has should be known about and should be, in the event that it is necessary, budgeted for as opposed to a contingent liability popping up two or three years later when you find yourself with a half developed site and having to find £50 million.”⁶²

6.27 An approach to risk management was therefore laid out in the proposition and at our Public Hearings. We would highlight that the approach taken should lead to the development of risk plans that are ‘live’ documents. In other words, the risk plan in relation to a particular project should be kept constantly under review as all the risks associated with the project might not be apparent at its inception and those that are identified are likely to change during the course of the project. The maintenance of a ‘live’ risk plan would help to ensure that the risks were most appropriately identified and managed. In addition, the identification and ‘live’ management of risks should involve all the relevant stakeholders; it should not merely centre on the Jersey Development Company but there should be input from key parties such as Jersey Property Holdings.

⁶⁰ Minister for Treasury and Resources, Transcript of Public Hearing, page 21

⁶¹ Finance Director of Waterfront Enterprise Board, Transcript of Public Hearing, page 17

⁶² Minister for Treasury and Resources, Transcript of Public Hearing, page 18

Key Finding

6.28 The proposition relied upon the Memorandum of Understanding between the Company and the Minister for Treasury and Resources to manage and mitigate risk. However, further attention is required to ensure that risk management is active and transparent.

Recommendation

6.29 Before the Jersey Development Company begins operation, the Minister for Treasury and Resources should develop a detailed risk management regime that includes individual project Risk Management Plans.

Returns to the States

6.30 Both the Chief Minister and Minister for Treasury and Resources advised us that there would be three ways in which the States would receive returns from the Jersey Development Company:

- Structuring the transfer into the Company (from Jersey Property Holdings) in order that there would be an upfront payment or payment on completion;
- A return from a dividend payable by Jersey Development Company;
- The Regeneration Steering Group could direct the Company to undertake a development from the assets which had been generated from a previous development.⁶³

6.31 There are questions of whether these would represent a 'genuine' return, given that the Jersey Development Company would be funded by the States. The only 'genuine' receipt for the States could be construed as one in which it would be funded by a third-party developer or occupier. The issue of return links back to the question of transfers between Jersey Property Holdings and the Jersey Development Company and the issue of whether the Company would keep hold of assets once a project had been completed. The Minister for Treasury and Resources advised us this was not envisaged, although it could not be ruled out.⁶⁴ As we have seen, the representatives of the Waterfront Enterprise Board, however, stated that it would be necessary.

6.32 The Chief Minister highlighted that the question of return was not merely a commercial consideration, however:

"This vehicle has to work to deliver what the States approve in an Island Plan. The States may well in its wisdom decide it does not want a commercial return; it simply

⁶³ Chief Executive, Transcript of Public Hearing, page 26

⁶⁴ Minister for Treasury and Resources, Transcript of Public Hearing

*wants something of beauty. It may well set constraints within which SoJDC has to operate; I think the danger is in trying to make SoJDC simply a commercial vehicle out to maximise return it not necessarily compatible with the objectives of the States in good Island planning.*⁶⁵

- 6.33 Representatives from the Chamber of Commerce commented to a similar effect that, to date, too much consideration had been given to the financial side of returns:

*"I think that with [the Waterfront Enterprise Board] having a control of master-planning and being led more financial than social is probably one of the problems that we have had and I think the proposition of splitting the master-planning away from the development companies probably is a good one, because the Planning Department will look at it hopefully in terms of more social, cultural and environmental provision than in just a financial provision."*⁶⁶

- 6.34 We were advised at our Hearing with the Minister for Treasury and Resources that the need to strike this balance would be similar to the challenges already facing the Council of Ministers:

*"I think the inference behind what was said about the Regeneration Steering Group are there are some pretty hard trade-offs between things like social benefits and the finance at times. We do that all the time. The Council of Ministers, on almost everything, are meeting and doing these trade-offs between social benefits and tax implications and cost. Yes, it will have to be done on this and, yes, we will have to acknowledge the proper input is required in order to inform those decisions."*⁶⁷

- 6.35 This balance was apparent in P.79/2009 itself, and in the testimony of the Waterfront Enterprise Board, where reference was made to the fact that the intention behind the establishment of the Jersey Development Company was for 'socio-economic' benefits to be returned to the Island.

- 6.36 Another potential difficulty facing the new Company in delivering returns to the States could potentially arise from its capacity to purchase privately-owned assets as part of its work. This was confirmed by the proposition itself.⁶⁸ However, care would need to be taken to ensure that the Company did not find itself in a position where it would be ransomed by vendors of private property and, indeed, it may be naïve to think that this eventuality could not arise. This eventuality raises the issue of compulsory purchase

⁶⁵ Chief Minister, Transcript of Public Hearing, page 26

⁶⁶ Chairperson of Building and Development Committee, Chamber of Commerce, Transcript of Public Hearing, page 11

⁶⁷ Treasurer of the States, Transcript of Public Hearing, page 26

⁶⁸ P.79/2009, page 13

orders which, theoretically, we understand the States could make on the Company's behalf. However, the issue of compulsory purchases itself would be problematic.

Key Finding

6.37 Arrangements for the Jersey Development Company's capacity to purchase privately-owned assets should be carefully managed.

Recommendation

6.38 The Minister for Treasury and Resources should review the capacity of the Jersey Development Company to purchase privately-owned assets and put in place protocols to ensure that the most effective vehicle is used to effect such purchases.

The Importance of the Board

6.39 The Chief Minister informed us that the board of the new Company would not be the same as that of the Waterfront Enterprise Board and that there would be different Non-Executive Directors. He spoke of the need for the new Company's board to have sufficient expertise in order that it could cope with the associated commercial demands.⁶⁹

6.40 These comments reflected ideas expressed in the past that the board of the Waterfront Enterprise Board (and by implication, the Jersey Development Company) required directors with the relevant expertise and experience. The importance of the Board itself and the need for relevant expertise was reflected in comments made by other witnesses. It was also apparent from the Comptroller and Auditor General's review of the Waterfront Enterprise Board, undertaken in 2008. The Minister for Treasury and Resources confirmed that the States Appointment Commission would be involved in finding the Non-Executive Directors of the new Company.⁷⁰

6.41 However, the Chief Minister also explained that the constitution of the board would act as a 'counter-balance' to the Executive Directors. We understood the Chief Minister's explanation as an effort to reassure that the presence of independent financial and commercial experience on the board would ensure the proper management of the Company.

6.42 There is a question of whether this would be a realistic expectation of the rôle played by Non-Executive Directors. In addition, we would stress, however, that on paper the situation would be no different to that which existed under the Waterfront Enterprise Board. The Board also had a board which comprised a majority of Non-Executive

⁶⁹ Chief Minister, Transcript of Public Hearing, page 24

⁷⁰ Minister for Treasury and Resources, Transcript of Public Hearing, page 31

Directors and yet this did not stop the Waterfront Enterprise Board from facing the problems which we have described earlier in our report.

7. RESOURCES

- 7.1 Each proposition to the States Assembly must provide an indication of its financial and manpower implications. In the relevant section of the report accompanying P.79/2009, it was stated that the Jersey Development Company would be financially self-supporting and:

“There will not therefore be any financial and manpower implications for the States arising directly from these proposals.”⁷¹

This was reiterated by the Chief Minister at our Public Hearings.⁷²

- 7.2 The Treasurer of the States explained that the Jersey Development Company, in subsuming the Waterfront Enterprise Board, would have access to its share capital and the money available. As such, individual developments under the auspices of the new Company would be looked at on a case-by-case basis.⁷³
- 7.3 P.79/2009 stated that additional staff would potentially be required within the Company within due course; however, the costs of these staff would be borne by the Company and not the States. However, the report did not explicitly cover potential resources implications for those States Departments involved in the regeneration process, primarily in this case the Departments of Planning and Environment; and Treasury and Resources.
- 7.4 Nevertheless, it became apparent at our Hearings that there would indeed be resource implications for these Departments, were P.79/2009 to be adopted. The Minister for Planning and Environment, for instance, advised us that master-planning required appropriate resources (this would be necessary, whatever structure were implemented). He stated:

“The Council of Ministers will have to ensure that, assuming all this goes ahead as planned, there is funding available for master-planning. It may be that it has to be taken from a variety of different departments to do it, as we have been doing up to now, but it needs to be funded properly. There is no point in saying you are going to have master-planning function and saying we are not going to master-plan because we have not got any money.”⁷⁴

It was subsequently highlighted that master-planning would equate to a small cost in comparison with that of the actual development and, as such, it was assumed that the costs for master-planning would be found.

⁷¹ P.79/2009, page 23

⁷² Chief Minister, Transcript of Public Hearing, page 6

⁷³ Treasurer of the States, Transcript of Public Hearing, page 12

⁷⁴ Minister for Planning and Environment, Transcript of Public Hearing, page 11

- 7.5 The question of resources was also raised by the Director of Property Holdings. The Director was asked how the workload of Property Holdings would change, were P.79/2009 adopted:

“I think there will be an increase in workload. I do not think we appreciated the amount of work which is being done under Standing Order 168⁷⁵ in review of the transactions for other departments and certainly no resource was transferred to be able to do that. That has, over the last year, placed significant strain upon the department.”

The Director subsequently confirmed that some resources would need to be added to deal with the extra workload arising from P.79/2009, also indicating that the work on identifying the provenance of those resources had yet to be undertaken.⁷⁶

- 7.6 A third potential resource implication could also be seen in the following evidence received from the Minister for Treasury and Resources:

“The Chief Minister acts as Chairman of the Steering Group and it is the Chief Minister’s Department that needs to provide the executive function for the operation of the Regeneration Steering Group.”⁷⁷

The Director of Property Holdings stated it would be vital for the Group to receive appropriate executive support.⁷⁸ It was uncertain, however, exactly how much work would be required of the Chief Minister’s Department and, indeed, there was no box in P.79/2009’s explanatory diagram to show this executive support. Finally, it was also apparent that each Minister who sat on the Regeneration Steering Group would have access to the resources of his or her Department. This could also be considered as a potential resource implication.

- 7.7 We discussed the issue of resources with the Minister for Treasury and Resources. We were advised again that the proposition would effectively be self-financing and that increased costs would be borne by the Jersey Development Company. The Minister subsequently stated:

⁷⁵ Standing Order 168 relates to land transactions and indicates that the Minister for Treasury and Resources must, at least 15 working days before any binding arrangement is made for a transaction involving publicly-owned land which does not require the prior agreement of the States, present to the States a document setting out the recommendation which has been accepted.

⁷⁶ Director of Property Holdings, Transcript of Public Hearing, page 6

⁷⁷ Minister for Treasury and Resources, Transcript of Public Hearing, page 24

⁷⁸ Director of Property Holdings, Transcript of Public Hearing, page 6

“If one takes the development of the Waterfront Master-plan, then Planning do incur costs in that master-plan but they will also recover them in the planning fees that will then accrue to them when applications are individually made.”⁷⁹

- 7.8 The message was therefore that costs incurred would be paid, directly or indirectly, by the Jersey Development Company – even if those costs were incurred by a body other than the Company itself (for instance, the Department of Planning and Environment). The question could be asked whether it would be more appropriate for funding to be provided directly to Departments for the activities they would undertake, rather than channelling that funding through the new Company. However, nothing was apparent from the relevant section of the report accompanying P.79/2009 where reference is made solely to any costs that would be incurred by the Company (i.e. the need to employ further staff). There was no specific explanation as to what costs could be incurred by the various Departments implicated and how those costs would be addressed. Such information should be provided to the States Assembly.

Key Finding

- 7.9 The proposition provided insufficient detail on the resource and manpower implications for States Departments.**

Recommendation

- 7.10 Prior to the debate on P.79/2009, the Chief Minister should clarify how resource and manpower implications for States Departments would be addressed.**

⁷⁹ Minister for Treasury and Resources, Transcript of Public Hearing, page 13

8. CONCLUSION

- 8.1 The Chief Minister stated that P.79/2009 represented a last chance 'to get this right' and, to the extent that there have been problems in the past, we would not disagree with this assessment. Resolution of the outstanding issues is, therefore, even more important.
- 8.2 It is evident that a lot of work was undertaken in developing P.79/2009. Compared to the earlier proposition relating to the Jersey Enterprise Board, more detail was provided; and the Council of Ministers had seemingly endeavoured to address the recommendations made by the previous Sub-Panel, for instance by commissioning a report from DTZ.
- 8.3 This work resulted in some good, for instance in the greater clarity afforded to the rôle and independence of the Minister for Planning and Environment and his Department. The fact remains, however, that this is a complex issue and great efforts would be required to ensure that the overall clarity which the Council of Ministers intended was actually achieved.
- 8.4 As matters currently stand, that clarity has not yet been reached. The messages we received were that the Jersey Development Company would not simply be the Waterfront Enterprise Board by another name; and that the new Company would operate within a clearly defined accountability structure. However, that message was not clearly reflected on paper in the proposition and, consequently, there were doubts as to whether it would also be reflected in reality.
- 8.5 Clear relationships between the various bodies involved in the regeneration process would be vital to its success. Whilst the rôle of Planning and Environment was clarified, there remains the potential for confusion about the relationships between other parts of that process. We took from the proposition and our review that the relationship between Jersey Property Holdings and the Jersey Development Company would be highly significant. Consequently, the rôle of the Minister for Treasury and Resources, given his responsibilities, should be clearly understood.
- 8.6 More work is therefore required before the Jersey Development Company could begin operation. We have recommended actions to be taken. For instance, the Council of Ministers must ensure that its proposition clearly conveys what its intentions actually are. Beyond that, a review of the Waterfront Enterprise Board's activities, and the assets it holds, would clarify the current situation and could thereby explicitly show how the new Company would differ. Without such work, the current perception surrounding the States' past approach to regeneration would not be addressed and we anticipate that the proposition would therefore not be successful.

9. APPENDIX 1 – PANEL MEMBERSHIP AND TERMS OF REFERENCE

9.1 For the purposes of this review, the Corporate Services Scrutiny Panel established the following Sub-Panel:

DEPUTY C.H. EGRE, CHAIRMAN

DEPUTY D.J. DE SOUSA, VICE-CHAIRMAN

SENATOR S.C. FERGUSON

CONNETABLE S.A. YATES

DEPUTY T.A. VALLOIS

9.2 The Jersey Development Company Sub-Panel appointed Bruton Knowles as its expert advisor, a property consultancy that provides property related services including building consultancy, compulsory purchase and compensation, estate strategy, agency and development consultancy, professional skills such as valuation, lease renewals, rent reviews and rating as well as commercial property management and residential block management. Mr. Richard Law acted as principal advisor to the Sub-Panel, a rôle he had also filled with the previous Sub-Panel.

9.3 The Corporate Services Scrutiny Panel itself comprised the following members:

SENATOR S.C. FERGUSON, CHAIRMAN

DEPUTY C.H. EGRE, VICE-CHAIRMAN

CONNETABLE D.J. MURPHY

DEPUTY T.A. VALLOIS

9.4 The following Terms of Reference were established for the review:

1. To consider the proposal to establish the States of Jersey Development Company Limited.
2. To consider whether the structure and processes proposed in P.79/2009 in relation to property and infrastructure regeneration would be appropriate, with particular regard to the following:
 - a. Governance and accountability; and
 - b. The division of responsibilities between strategic planning, policy, project management and delivery;
3. To assess whether the recommendations made in SR9/2008 have been followed and implemented by the Council of Ministers.

4. To examine any further issues relating to the topic that may arise in the course of the Scrutiny Review and which the Panel considers relevant.

10. APPENDIX 2 – EVIDENCE CONSIDERED

10.1 The following documents are available to read on the Scrutiny website (www.scrutiny.gov.je) unless received under a confidential agreement. In addition to material gathered during its review, the Sub-Panel was able to call upon documents and information received by the former Corporate Services (Jersey Enterprise Board) Sub-Panel, also chaired by Deputy C.H. Egré.

Documents

1. *Jersey Enterprise Board Limited: Proposed Establishment (P.194/2007)*, lodged *au Greffe* by the Council of Ministers on 19th December 2007
2. *Review into the Proposed Establishment of the Jersey Enterprise Board (SR9/2008)*, presented to the States by the Corporate Services Scrutiny Panel on 12th June 2008
3. *Property and Infrastructure Regeneration: Establishment of the States of Jersey Development Company*, Report of the Council of Ministers dated 30th April 2009 [Received in Confidence]
4. *Property and Infrastructure Regeneration: The States of Jersey Development Company Limited (P.79/2009)*, lodged *au Greffe* by the Council of Ministers on 2nd June 2009
5. *Property and Infrastructure Regeneration: The States of Jersey Development Company Limited (P.79/2009) – Amendment*, lodged *au Greffe* by the Connétable of St Helier on 8th June 2009
6. Extract from the Draft Island Plan White Paper relating to Regeneration Zones [Received in Confidence]
7. *Waterfront Enterprise Board (P.12/2009) (SR1/2009)*, presented to the States by the Corporate Services Scrutiny Panel on 18th March 2009
8. *Waterfront Enterprise Board Limited: Review of Corporate Governance – Final Report of the Comptroller and Auditor General (R.122/2008)*, presented to the States on 24th November 2008
9. Waterfront Enterprise Board Limited – Annual Report and Accounts for the year ended 31 December 2007
10. Waterfront Enterprise Board Limited – Annual Report and Accounts for the year ended 31 December 2008
11. *Business Overview 2009*, Jersey Harbours
12. Memorandum of Association of Waterfront Enterprise Board Limited

13. *St Helier Waterfront Development* (P.156/1995), lodged *au Greffe* by the Policy and Resources Committee on 7th November 1995
14. *Island Plan Review White Paper*, Report of the Council of Ministers dated 23rd July 2009 [Received in confidence]
15. Minutes of the Council of Ministers:
Act A7 – 27th November 2008
Act B3 – 15th January 2009
Act A5 – 23rd April 2009
Act B1 – 7th May 2009

Written Submissions

- | | | |
|----|--|---------------------|
| 1. | Mr. K. Keen | 16th August 2009 |
| 2. | Ms. J. Falle | 21st August 2009 |
| 3. | Mr. T. Hodgskin | 22nd August 2009 |
| 4. | Buckley & Company Limited, Chartered Surveyors | 3rd September 2009 |
| 5. | J.S. Carney & Company Limited | 18th September 2009 |

Public Hearings

20th August 2009

1. Mr. R. Shead, President - Chamber of Commerce
Mr. A. Morris, Chairperson – Building and Development Committee
2. Senator T.A. Le Sueur, Chief Minister
Mr. W.D. Ogley, Chief Executive – States of Jersey
3. Senator F.E. Cohen, Minister for Planning and Environment
Deputy R.C. Duhamel, Assistant Minister for Planning and Environment
Mr. P. Thorne, Director of Planning
4. Mr. D. Flowers, Director of Jersey Property Holdings

25th August 2009

5. Mr. S. Izatt, Managing Director – Waterfront Enterprise Board
Mr. L. Henry, Finance Director – Waterfront Enterprise Board
Mr. P. Crespel, Non-Executive Director – Waterfront Enterprise Board

Connétable J.M. Réfault, States Director – Waterfront Enterprise Board

6. Senator P.F.C. Ozouf, Minister for Treasury and Resources

Mr. I. Black, Treasurer of the States

Mr. D. Flowers, Director of Jersey Property Holdings

Advisor's Meetings

The Sub-Panel agreed that its expert advisor, Mr. R. Law, should hold a series of meetings to enhance his understanding of the regeneration process in Jersey and the issues surrounding it.

The following meetings were therefore arranged:

24th July 2009

1. Mr. A. Scate, Chief Executive Officer – Department of Planning and Environment

2. Mr. S. Izatt, Managing Director – Waterfront Enterprise Board

3. Mr. W.D. Ogley, Chief Executive – States of Jersey

4. Mr. D. Flowers, Director of Jersey Property Holdings

17th August 2009

5. Captain H. Le Cornu, Chief Executive and Harbour Master – Jersey Harbours

Mr. A. Boustouler, Director – Finance and Information – Jersey Harbours

Mr. G. Phillips, Director – Marina Projects

6. Mr. P. Crespel, Non-Executive Director – Waterfront Enterprise Board

7. Mr. C. Swinson OBE, Comptroller and Auditor General