

STATES OF JERSEY



STATES OF JERSEY DEVELOPMENT COMPANY: INTERIM REPORT (S.R.10/2010) – RESPONSE OF THE CHIEF MINISTER

Presented to the States on 12th October 2010
by the Chief Minister

STATES GREFFE

**STATES OF JERSEY DEVELOPMENT COMPANY:
INTERIM REPORT (S.R.10/2010) –
RESPONSE OF THE CHIEF MINISTER**

Executive Summary

This review is one of four that have been undertaken by scrutiny on this subject since late 2007. To this point, I believe the involvement of the Corporate Services Scrutiny Panel has been of benefit to the development of the Proposition and I have accepted all its recommendations. The current Proposition addresses all the recommendations from the Sub-Panel, including the outcome from the DTZ review.

I do not believe that the Sub-Panel's interim report contains anything substantive which should serve to delay the Proposition further, nor do I accept that the Sub-Panel has been denied relevant information on which to complete its review. As this report identifies, I have sought to provide the Sub-Panel with information even when I did not completely agree that the information was necessary.

I do not understand why the Sub-Panel has focused its attention on the personal employment contracts of the executive of the Waterfront Enterprise Board (WEB) and can only assume that it has misunderstood the broad range of legal and contractual arrangements that would need to be dealt with if WEB was to be closed down. Despite this, both I and the WEB Board have provided the Sub-Panel with an opportunity to ask any question it has about the nature of the employment contracts.

I firmly believe that enough work has now been done to create a firm basis for the States of Jersey Development Company (SoJDC) and enable us to move forward. The fact that the Sub-Panel is still raising what appear to be new issues, suggests that this process could go on indefinitely, which I find unacceptable.

P.73/2010 represents fundamental reform which is vital to deliver regeneration in Jersey. WEB is a company which holds c.£88 million of assets. The longer we prevaricate, the more potential damage we do to those assets. We need WEB to be fundamentally reformed and as SoJDC to deliver the best developments and value as required by the States.

I am pleased to note that the conclusion of the Sub-Panel that it is in no doubt that the development of a new SoJDC is the right way to proceed, established on a solid foundation.

I do not believe further delay is acceptable and will seek to debate the proposition as soon as possible.

1. Introduction

As the Sub-Panel's interim report points out, this review is one of a number that have been undertaken by scrutiny on this subject since late 2007. To this point, I believe the involvement of the Corporate Services Scrutiny Panel has been of huge benefit to the development of the Proposition and I willingly acknowledge the help they and their advisor have been to me. Throughout the process I have not only tried to respond swiftly to all their comments and recommendations, I have also accepted all recommendations the Panel has made.

Whilst I was surprised the Panel decided to do a full review of P.73/2010, I have continued to work co-operatively with it in order to ensure the best possible outcome. This included deferring the debate from last summer in order to ensure the Sub-Panel could complete its work.

In considering the Sub-Panel's interim report, however, I find myself disappointed in its lack of substance. The Sub Panel contends that it has not been provided with information on which to complete its report, which I do not believe to be the case. Both myself and the WEB Board have fully co-operated with the review, including the provision of all relevant information.

I set out my response to the main issues from the report below.

2. Attendance at a public hearing by the Deputy Chief Executive and Chief Officer of Resources

The Deputy Chief Executive and Chief Officer of Resources attended the hearing as he is the Chief Officer responsible for Jersey Property Holdings. It would appear to be standard practice to ask a senior officer to attend such hearings, and I am surprised that the Sub-Panel did not invite him in the first place.

As can be seen from the transcript, the hearing covered other issues relating to Jersey Property Holdings and the Proposition, not just the DTZ review. **I therefore reject the assertion that the fact that The Chief Officer of Resources was unable to answer questions on one issue made his attendance at the hearing a waste of time.**

3. The development of the DTZ report

I do not understand why the Sub-Panel contends that it expected a copy of the draft DTZ report at the fact-checking stage. It was never the intention to provide the Sub-Panel with anything other than the findings of the DTZ report and the paragraph highlighted by the Sub-Panel makes this clear. This is further reinforced by another paragraph in the Terms of Reference which sets out –

4.6 *As a result of the States debate on 3rd November 2009, a review will need to be completed, discussed and facts checked with the Board of WEB and findings shared with the Corporate Services Scrutiny Panel [my emphasis] and published to States Members before the debate on SoJDC proposals can be resumed.*

I simply do not see how the Sub-Panel could be under the impression that it would be asked to review a working draft of a review of WEB, or what it would be in a position to review. The commitment was to provide the Sub-Panel with the findings as soon as possible.

I have already made it clear that the word ‘dispute’ was used carelessly in a private meeting between myself and the Chairman and that the WEB Board responded to the early working draft with comments on factual inaccuracy and the commercially confidential nature of some financial information which could not be included within a published report.

I had considerable reservations about providing an incomplete and unchecked working draft to the Sub-Panel. However, despite having no commitment to do this, I agreed to provide this document in order to support the review. The draft report was provided within days of the original request.

It is entirely normal for consultants’ reports to be the subject of comments and fact-checking. DTZ issued the following statement confirming this –

“DTZ’s report into the performance of WEB is an independent report conducted on behalf of the States of Jersey. A draft report was routinely submitted to WEB for review so that matters of fact could be checked and additional evidence provided. This is standard practice for this type of assessment to ensure accuracy and in no way undermined the independence or integrity of the report.”

The key issue being that the consultant – in this case DTZ – has to produce a final deliverable that represents its own independent and considered views on the issues in question.

I reject the assertion that the Sub-Panel should have received a copy of the draft DTZ report and question why the Sub-Panel should receive anything other than the findings of an independent review.

I also reject the assertion that the timing of the provision of this information has delayed the Sub-Panel’s work and any implication that the process of developing the DTZ report was anything other than standard practice.

4. The Recommendation

The Sub-Panel’s original report (S.R.9/2009) suggested as a key finding that the Proposition did ‘*not accurately convey the intentions*’ that SoJDC would be different than WEB. As a result of this, the Sub-Panel rightly asked the Council to clarify the role of the company, principally to address concerns that it could become WEB by another name. This has been addressed in P.73/2010 which makes it clear that the Proposition will fundamentally reform the role and remit of WEB. SoJDC will –

- Have a new Board, with an experienced Chair, 3 non executives (all appointed by the States Assembly) and a Ministerial Appointee.

- Have strengthened governance and accountability arrangements – the Minister for Treasury and Resources will be politically accountable, enter into a comprehensive MoU with the company and will be responsible for approving remuneration of directors.
- Have a more limited operational remit – will be focussed on Island-wide delivery and will operate within agreed masterplans and development briefs within defined geographical areas.
- Be guided by the Regeneration Steering Group in terms of the activities it undertakes.

It is therefore unfortunate that the Sub-Panel still do not appear to understand that P.73/2010 will not simply create ‘WEB by another name’ and will lead to fundamental reform of the role of the company

I decided to lodge a new Report and Proposition because I felt it was important to bring together the response to the recommendations from the Sub-Panel and the outcome from the DTZ review into one place. The central features of P.79/2009 remain unchanged.

Both the original and current SoJDC Propositions have been absolutely clear that the intention was to build on the existing corporate structure of WEB. It has never been the intention to ‘disband WEB with SoJDC taking its place’ so it is curious that the Sub-Panel now believes this to be an issue.

The Sub-Panel appears to believe that employment contracts are the reason why we cannot close down WEB and start with a new company. The Sub-Panel has misunderstood the implications of such an action. The WEB Board has made it perfectly clear that employment contracts were not the significant issue in closing the company. WEB has been in operation for 15 years and has many commercial contracts in place and many parties involved in contractual business agreements. Forming a new company would involve considerable reassignment or renegotiation of contracts as well as a significant restructure of corporate and financial arrangements. This would also involve complex legal advice which, along with associated costs such as stamp duty, would be at considerable expense.

At no point in its report S.R.9/2009 did the Sub-Panel suggest that a new company should be formed. Whilst I firmly believe that the personal contractual information of the executive is not relevant to any of its previous recommendations, members will note the steps taken by both myself and the WEB Board to provide information about the employment contract arrangements.

In particular, matters relating to the contracts of employment were discussed at a meeting between the WEB Board and Sub-Panel members on the 1st October, 2010. At this meeting, the WEB Board sought to respond to all questions asked of it and also offered to provide any further information arising out the Sub-Panel’s meeting later in the day. The Board provided the Sub-Panel with an extract of an employment contract, which applies to all staff, specifically dealing with reorganisation. This is similar to the proposed TUPE legislation currently being reviewed by the Social Security Department.

It appears to me that the WEB Board has taken a very helpful stance and has provided the opportunity for the Sub-Panel to ask whatever it wishes in relation to the contract information it seeks. The minute of this meeting is attached at the *Appendix*.

The Sub-Panel's report states '*A number of questions remain surrounding the contractual relations with WEB, which could have been answered if the contracts had been provided*'. It then sets out, for the first time, the questions to which it is seeking answers. Two points emerge from this –

- The Sub-Panel has had ample opportunity to ask these questions. If they had been asked earlier, they would have been answered.
- It does not appear necessary to have actual sight of personal contracts to answer these questions.

Turning to the questions, I set out answers below –

1. We heard in a public hearing with the Minister for Treasury and Resources that the stage has passed when it would have been possible to start up a new company. What has happened that makes a severance with WEB now not possible when it was 3 or 4 years ago?

The challenges in starting up a new company are broadly the same than they were 3-4 years ago. The key differences are that WEB now has more commercial contract commitments in place that would need to be dealt with and, as identified in the Sub-Panel's report, all original executive contracts have made provision for the circumstances where the company changes. This is simply because the change in the nature of WEB was anticipated when appointments were made.

2. What are the contractual commitments that will need to be dealt with to shut down WEB and start SoJDC afresh?

WEB has a number of existing development agreements together with a number of leases. WEB is also party to a number of third party funding arrangements relating to these developments. Were WEB to be liquidated, legal contracts and debts would need to be assigned or novated. This would be a complex and costly process which would have no certainty of outcome. Were such agreements to be secured there would be considerable legal costs associated with these new contracts and passing those contracts before the Royal Court. There would also be significant stamp duty costs associated with the company's various land holdings.

3. What are the risks in having to deal with the existing contractual relations?

The risk is that all parties may not agree to changes and gaining such agreement is likely to require significant financial contribution from WEB.

4. Why would it be administratively expensive?

These are identified in, 2, above and include legal fees, stamp duty and other costs to associated with negotiating agreement to change or novate contracts.

I reject the assertion that the Sub-Panel's recommendation relating to the differences between WEB and SoJDC has not been addressed and that the proposition will simply result in renaming WEB.

I also reject the assertion that access to individual personal employment contract information is necessary to complete its review.

5. **Conclusion**

Having what I believe to have been a productive and beneficial relationship with the Corporate Services Scrutiny Panel over this issue, it is disappointing to receive such a report. I do not believe the Sub-Panel's interim report identifies anything substantive to further delay the proposition.

I agree with the Panel in that I have no doubt that SoJDC is the right way to proceed and that it should move forward on a firm basis. I believe, however that enough work has been done to create this firm basis and enable us to move forward.

I do not accept that the Panel has not been provided with the information on which to complete its review. As I have demonstrated above, I and the WEB Board have sought to provide the Panel with information even though at times we did not necessarily agree that the information was necessary.

As the Panel points out, this is an issue which has been now under development for over 3 years and the subject of at four scrutiny reviews. The current proposition retains the same features of its predecessor with the addition of information suggested by the Scrutiny Panel. One must question why at this stage the Scrutiny Panel can still be raising what appear to be new issues and how much longer this process could go on.

The improved model identified within P.73/2010 is vital to deliver regeneration in Jersey. WEB is a company which holds c.£88 million of assets. The longer we prevaricate, the more potential damage we do to those assets. We need WEB to be fundamentally reformed and as SoJDC to deliver the best developments and value as required by the States.

I do not believe further delay is acceptable and will seek to debate the proposition as soon as possible.

WATERFRONT ENTERPRISE BOARD LIMITED

**Minutes of a Meeting with the Scrutiny Sub-Panel
held on 1st October 2010 at the WEB Offices**

- 1.0 Present:** **Jurat J. Tibbo: Chairman**
 Constable D. Murphy
 Constable J. Refault
 Deputy E. Noel
 Mr. P. Crespel
 Mr. S. Izatt: Managing Director
- 1.1 In attendance:** **Mr. L. Henry: Finance & Development Director**
 Mrs. N. Ashworth: Minutes
 Deputy D. De Sousa – Deputy Chairman Scrutiny Sub-Panel
 Senator S. Ferguson – Scrutiny Sub-Panel Member
 Ms. Kellie Boydens – Scrutiny Officer
- 2.0 Meeting with the Scrutiny Sub-Panel**
- 2.1 Jurat Tibbo opened the meeting and welcomed the Scrutiny representatives. Deputy De Sousa gave Deputy Egré’s apologies as he was unwell.
- 2.2 Jurat Tibbo stated that he was not clear what information Scrutiny were seeking and questioned its relevance to their investigation.
- 2.3 Deputy De Sousa pointed out that whilst scrutiny supported the establishment of the States of Jersey Development Company (“SoJDC”) there were some concerns regarding WEB’s move into SoJDC as it was felt there needed to be clear separation between WEB and the new company. Senator Ferguson agreed and pointed out that it was the concept of the SoJDC to operate differently to WEB.
- 2.4 Jurat Tibbo asked why the contracts of employment were apparently important in this context and pointed out that these were confidential documents between the employer and the employee.
- 2.5 Senator Ferguson explained that Scrutiny had been told by the Chief Minister’s Department that the reason for not closing WEB and opening a new company was due to employment contractual obligations. Jurat Tibbo replied that the reason was due to contractual business obligations not staff obligations. Jurat Tibbo highlighted that WEB had been in operation for 15 years and there were many contracts in place and many parties involved in these contractual business agreements. Jurat Tibbo explained that were WEB to be liquidated firstly all parties to these legal agreements would need to agree to any changes and there was no obligation for them to do so, and secondly there would be very significant legal costs associated with the process of changing all of these agreements.

- 2.6 A discussion ensued and Deputy De Sousa stated that the Chief Minister had referred to staff contractual issues and pointed out that Scrutiny members were happy to sign confidentiality agreements in this regard.
- 2.7 Mr. Crespel pointed out that the Managing Director (“MD”) had been appointed to run the new company. A discussion ensued and the Scrutiny Sub-Panel members were furnished with a copy of the advertisement for the position of MD, the MD job description, a letter from the Chief Executive at the Chief Minister’s Department dated July 2006 together with a timeline schedule (all as attached).
- 2.8 In reply, Deputy Ferguson stated that the information given to Scrutiny by the Chief Minister had been incorrect and that it was not the perception of the public or of some States Members.
- 2.9 Deputy De Sousa stressed that Scrutiny needed to see the evidence in order to put their report to the States.
- 2.10 At this point Constable Murphy stated that it appeared that the Scrutiny Sub-Panel were undertaking a witch-hunt and Constable Refault agreed. Constable Refault went on to point out that it was clear that the missing member of the Sub-Panel was motivated towards one particular staff member, despite the fact that he was not present at the meeting.
- 2.11 Referring to the staff contracts, Deputy Noel pointed out that the only person that could release information about his contract was the MD himself who had been very co-operative in this regard.
- 2.12 Senator Ferguson questioned the settlement terms and penalty clauses contained within the MD’s contract. At this point Jurat Tibbo handed over an excerpt from the staff contracts headed ‘re-organisation’. In answering a subsequent question from Deputy de Sousa it was also confirmed that all the staff had the same re-organisation clause within their contracts.
- 2.13 Deputy Noel highlighted that there was nothing unusual with regard to the re-organisation clause and indeed the Social Security Minister would be recommending to the States next year the introduction of TUPE (The Transfer of Undertakings (Protection of Employment) Regulations) in Jersey.
- 2.14 Jurat Tibbo stated that the best way forward was for the SoJDC to be approved by the States following which a new Board would be appointed and it would be for the new Board to analyse the requirements of the Company and abilities of all members of staff and make whatever changes it saw appropriate under the terms of the contracts.
- 2.15 Jurat Tibbo emphasised that the current Board of WEB were not recommending getting rid of any member of the staff as the Board fully supported the senior Executive and had every confidence in the whole team at WEB. The Board concurred with this statement.

At this point Jurat Tibbo left the meeting.

- 2.16 A discussion ensued about the proposed development of the Esplanade Quarter and the sinking of the road. Mr. Henry pointed out that it was now proposed for the Esplanade Quarter to be developed in stand alone phases with the sinking of the road taking place at a later date.
- 2.17 Mr. Crespel highlighted that WEB had a duty of care as a Company and to the Island and also to act in good faith with its development partners who had invested hundreds of millions of pounds in the waterfront. Mr. Crespel pointed out that to delay the completion of the overall scheme unnecessarily, as ongoing building sites were unattractive to investors and users, could lead to serious financial consequences. It was imperative to conclude the proposed development on the West of Albert reclamation site.
- 2.18 Constable Murphy pointed out that there were no other building sites in the country where there was a queue of developers and tenants waiting. This had all been set up and encouraged by the MD and Constable Murphy pointed out that it was also important in terms of the Finance industry and the employment situation in the Island.
- 2.19 The MD explained there were three large financial institutions that had expressed a desire to move into the Esplanade Quarter but it was critical to have certainty that the development was going ahead. The MD also highlighted the competition between Jersey and Guernsey and pointed out how successful Guernsey had been in attracting new financial institutions. The MD stressed how catastrophic it would be for Jersey to lose out in this respect and Deputy Noel stated that the market needed certainty and that it was imperative to have the debate on SoJDC.
- 2.20 Mr. Crespel echoed these comments and emphasised that the delays in debating SoJDC and the ensuing uncertainty was causing significant adverse effects and the delay was not in the best interest of the Public of the Island.
- 2.21 Constable Refault asked the Scrutiny Sub-Panel if there was any further information that they requested.
- 2.22 Deputy De Sousa stated that the Scrutiny Sub-Panel had a meeting that afternoon to discuss the findings of their meeting with WEB. Should further information be required then the Board would be notified.
- 2.23 In summing up Senator Ferguson stated that if there was a ‘clear out’ of WEB the next 18 months would be spent in the Royal Court.
- 2.24 At the end of the meeting the MD invited the Scrutiny Sub-Panel to look at the proposed plans for the Esplanade Quarter, Zephyrus and Westwater. The MD, Mr. Crespel and Mr. Henry presented and discussed the proposals with the Sub-Panel.