

STATES OF JERSEY



JERSEY DEVELOPMENT COMPANY (S.R.1/2011) – RESPONSE OF THE COUNCIL OF MINISTERS

**Presented to the States on 15th March 2011
by the Council of Ministers**

STATES GREFFE

**JERSEY DEVELOPMENT COMPANY (S.R.1/2011) –
RESPONSE OF THE COUNCIL OF MINISTERS**

Ministerial Response: S.R.1/2011

Ministerial Response required by: 11th March 2011

Review title: Jersey Development Company

Scrutiny Panel: Corporate Services

Introduction

Findings

	Findings	Comments
1	Evidence suggested that the Waterfront Enterprise Board had not been involved with the development of P.73/2010, even though it supposedly reforms its role and remit.	Contrary to the suggestion the Waterfront Enterprise Board has been involved in the development of P.73/2010.
2	During the evidence-gathering stage of the review mixed messages prevailed. Evidence heard at a Public Hearing with the Minister for Treasury and Resources suggested that contractual commitments exist with people in post at the Waterfront Enterprise Board. The proposition also stipulated that the current Waterfront Enterprise Board becomes the Board of the new company. However, at a Public Hearing with the Waterfront Enterprise Board it was heard that the States of Jersey Development Company would have a separate Board of Directors and separate Chairman.	<p>There are existing continuing employment contracts with the staff and executive directors of WEB. This has been confirmed on numerous occasions.</p> <p>There appears to be a misunderstanding of the nature of the Board of SOJDC and the transition process. The report which was adopted in the proposition states:</p> <p>It is recommended that The States of Jersey Development Company Limited is established by restructuring the existing company Waterfront Enterprise Board Limited whereby –</p> <ul style="list-style-type: none"> • the name of the existing company is changed to The States of Jersey Development Company Limited; • the current Memorandum and Articles of Association of Waterfront Enterprise Board Limited are replaced with those set out in Appendix 2 of P.73/2010. <p>Composition</p> <p>It is proposed that the Board of The States of Jersey Development Company Limited shall in the future comprise –</p> <ul style="list-style-type: none"> • An independent Chairman • A Managing Director • A Finance Director

		<ul style="list-style-type: none"> • A non-executive director appointed by the Minister for Treasury and Resources • Three non-executive directors with relevant financial, banking, commercial and/or property expertise. <p>Thus the membership of the Board of SoJDC will be changed as set out above. There will only be one Board and there is no mention of any other Boards.</p> <p>A Proposition to approve the membership of the new Board of SoJDC will be debated shortly by the States Assembly.</p>
3	Confusion remains as to how the States of Jersey Development Company will differ from the Waterfront Enterprise Board.	The Report and Proposition sets out the changes both within the report and in the new Memorandum and Articles of Association.
4	The recommendation made by the previous Sub-Panel which suggested that the proposition should be amended to show, <u>without any room for doubt</u> , that the States of Jersey Development Company would not be the same as the current Waterfront Enterprise Board has not been actioned, even though it was accepted by the Chief Minister.	This is a matter of interpretation. The Proposition was drafted to make it as clear as possible that the States of Jersey Development Company would not be the same as the current Waterfront Enterprise Board.
5	The Minister for Treasury and Resources should be responsible for implementing shareholder governance and oversight over the Board of Directors of the Company, as set out in the Deloitte report, in order for the States of Jersey Development Company to be successful.	Agreed – this is as per the Proposition.
6	Since its inception, the Waterfront Enterprise Board has not paid any financial dividend to the States, however, the Treasury and Resources Department will be reviewing its assets.	<p>WEB has provided from its resources the capital public assets shown below.</p> <p>WEB currently has net assets of £41.6 million.</p> <p>Whilst no dividend has been payable, WEB has a pro-forma balance sheet value of £89.6 million.</p>

(1)	Les Jardins de la Mer public park & water maze & La Fregate	£2,203,000
(2)	Havre des Pas bathing pool regeneration	£1,490,000
(3)	Waterfront Car Park public roof gardens	£1,363,000
(4)	Waterfront promenades	£1,406,000
(5)	Steam Clock & gardens	£856,000
(6)	Weighbridge & landscaping avenues	£2,250,000
(7)	Skateboard park	£125,000
(8)	Contribution to Parish of St. Helier street improvements	£50,000
(9)	Boat hoist & quay at La Collette	£1,000,000
(10)	Roads, services & sewers	£4,239,000
(11)	Lorry park wall & upgrade marina lights	£566,000
	Total	£15,548,000
	<p>The Sub-Panel found that the States of Jersey would have to bail out the Board of Directors of the “new” Company if things went wrong. Past developments of WEB have been far from ideal, and an expansion in its role and remit places a huge amount of risk with SoJDC.</p>	<p>The Memorandum of Understanding that will be entered into between SoJDC and the Minister for Treasury and Resources sets out the full risk mitigation measures that SoJDC must comply with.</p> <p>DTZ commented in their report of May 2010 as follows (page 50) “Risk management principles are set out in Proposition P.79/2009 and the accompanying Memorandum of Understanding relating to the creation of SoJDC. We have already commented on these in detail in our Review of Proposals for SoJDC in May 2009 and consider them to be appropriate for the future operation of the company.”</p> <p>And “We have also explored with WEB their current approaches to risk management at a project level and established that a number of these principles are supported by existing good practices and processes within WEB including market demand assessments, the application of sophisticated financial risk modelling tools in assessing project feasibility, and risk management matrices that are used to manage non-financial risks through the project lifecycle.”</p>
8	<p>P.73/2010 states that the Regeneration Steering Group will “<i>formulate detailed development proposals and planning applications</i>”. This should be considered carefully as it could lead to confusion as to the role of the accountable Minister and uncertainty by third parties negotiating with SoJDC.</p>	<p>SoJDC is a development company and will be working to the remit given to it on specific sites by the RSG. This will be defined as part of the transfer of assets in accordance with the process set out in the report.</p> <p>The company will not be negotiating with third parties until a clear remit has been agreed. Thus there will be no uncertainty in negotiations as they will be with the Company.</p>

9	In order for the new States of Jersey Development Company to be successful, it is paramount to recruit the appropriate skills in order to operate risk management processes on a sustained basis throughout a project.	This was considered fully and reported upon in the DTZ report dated May 2010. DTZ commented (on page 41) that “If SoJDC is take on a significant direct development responsibility, this could require a much greater ramping up of resources, although peaks and troughs in workload could be managed effectively by the hiring of contracted staff.”
10	It appears that the Articles of Association for the States of Jersey Development Company extend, not reform, the role and remit of the Waterfront Enterprise Board.	The Chief Minister and Minister for Treasury and Resources agree that the legal framework of the company does not, of itself, guarantee delivery and that the future performance of directors and staff is key.

Recommendations

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
1	The function of the Regeneration Steering Group is to provide a basis for decision-making by the Minister for Treasury and Resources who would then issue guidance or directions to SoJDC in respect of specific schemes. The Articles of Association in P.73/2010 should address this by providing for directions which would be legally binding on the company and its Directors. The Directors’ service contracts should include obligations to comply with such directions.		Reject	<p>The Chief Minister/Minister for Treasury and Resources do not agree that the report by HBJ Gateley Wareing advocates further amendment to the Articles of Association.</p> <p>The Articles of Association approved by the States Assembly in P.73/2010 already include a mechanism for the Minister for Treasury and Resources to give directions to the Directors (Article 22(a)).</p> <p>The Chief Minister/Minister for Treasury and Resources propose to keep the position under general review in the light of ongoing experience, noting that the Articles of Association may be amended from time to time.</p>	

2	A review of resources and procedures within SoJDC should be undertaken by an independent external body, including an external “red book” valuation of WEB property assets.		Reject	<p>The internal resources and procedures of WEB were reviewed and commented on in detail in the independent review of WEB by DTZ dated May 2010.</p> <p>WEB produces audited financial statements on an annual basis that are prepared in accordance with United Kingdom Generally Accepted Accounting Principals (UK GAAP) and the requirements of Jersey Law.</p> <p>Specifically, FRS15 requires tangible fixed assets to be externally valued at least every 5 years and subject to internal reviews in the intervening period by a qualified RICS valuation surveyor.</p> <p>Valuations are undertaken in accordance UK GAAP and with the RICS Valuation Standards – UK Practice Statement 1 (Valuations for Financial Statements). The valuations are prepared in accordance with the current edition (6th) of the Valuation Standards (the Red Book) issued by the IVSC of the Royal Institute of Chartered Surveyors.</p> <p>WEB’s fixed asset values are also subject to detailed review by the Company’s external auditors PwC who independently verify the internal valuations.</p>	
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				<p>The conclusion from PwC audit report is “in our opinion the financial statements give a true and fair view of the financial position of the Company and the Group as of 31 December 2010, and of the financial performance and cash flows of the Group for the year then ended in accordance with United Kingdom Accounting Standards and have been properly prepared in accordance with the requirements of the Companies (Jersey) Law 1991.</p>	
				<p>It would therefore be superfluous to undertake external red book valuations, at significant cost, of WEB property assets as these assets are already stated in WEB’s audited accounts at market value.</p>	

Conclusion

The Chief Minister is grateful for the Panel’s detailed consideration of the proposals and the helpful comments which have served to highlight matters to be addressed. It is hoped that the engagement of a number of Panel members in the appointment process for the new Board demonstrates the value of a strong and constructive partnership between Ministers and Scrutiny.