

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Corporate Services Scrutiny Panel



States of Jersey Development Company

Presented to the States on 28th January 2011

S.R.1/2011

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1. CHAIRMAN'S FOREWORD

- 1.1 The Corporate Services Scrutiny Panel formed a Sub-Panel and reviewed P.73/2010, a proposition of the Council of Ministers. The proposition establishes the Jersey Development Company and places it within a structured regeneration process.
- 1.2 At the start of the review, we were concerned that the Waterfront Enterprise Board (WEB) would ultimately become the States of Jersey Development Company (SoJDC), as the proposition merely stipulated a name change.
- 1.3 There was insufficient evidence to suggest the contrary and it was advised that a clear severance between WEB and SoJDC would not be possible, even though the previous Sub-Panel had made a recommendation that SoJDC should not be the same as WEB.
- 1.4 The Sub-Panel Chairman met the Chief Minister at the very start of the review because it was noticed that there had been a delay in the re-issue of P.79/2009. During the meeting, the Chief Minister apologised for the delay and explained that this was due to a dispute between WEB and DTZ, the independent company which carried out two reviews relating to WEB and SoJDC.
- 1.5 In order to make a comparison between the draft DTZ report and the final report, we requested a copy of the draft. After numerous letters, we eventually received the draft under a confidentiality agreement.
- 1.6 In order to satisfy our Terms of Reference, we also requested information on what the contractual arrangements between the States of Jersey and WEB's Managing Director were, as this was mentioned during a Public Hearing with the Minister for Treasury and Resources.
- 1.7 We fully appreciated that this was a very sensitive issue and stipulated that it would be dealt with in a strictly private and confidential way. Following numerous letters, the Chief Minister kindly agreed to allow access to the contract during a meeting with WEB itself but on a condition that this meeting would be held in private session. Unfortunately, during that meeting on the 1st October 2010, the Sub-Panel were only allowed access to a single paragraph taken from the contract. Questions remained surrounding the contractual obligations that made it impossible for a clear disassociation between WEB and SoJDC.
- 1.8 The Chief Minister's Department failed to produce the whole contract to the Sub-Panel which considerably impacted on the timing of our review, and resulted in an interim report being presented a day before the debate on the 12th October 2010. It was with great frustration that an interim, not a final, report was presented. Despite requesting for a deferral in order for the

final report to be presented, it was voted against in the States Assembly, so the debate had to follow.

- 1.9 Consequently, after a long debate, the proposition was accepted by the States on the 13th October 2010. It is important to note that the Sub-Panel Chairman received the whole contract of the Managing Director of WEB during that debate. To receive the sought after information during the debate was disappointing because having access to it earlier, would have allowed us to complete our final report.
- 1.10 The Sub-Panel still feel that it is necessary to present its final report. Throughout the review, numerous letters were sent back and forth between the Sub-Panel and the Chief Minister's Department which were subsequently appended to the interim report. The purpose of this was to demonstrate the time and energy it took to receive the required information.
- 1.11 Scrutiny follows an evidence based and objective approach, and in order to completely satisfy this concept, vital pieces of information from the Executive are required during any review. The Sub-Panel was indeed supplied with all the information it requested, however, the time and energy it took to obtain such information was unacceptable.
- 1.12 Deputy C.H. Egré was the Sub-Panel Chairman throughout the review, however, resigned from Scrutiny to become Assistant Minister for Planning. As this occurred at the very late stages of the review, a new Chairman was not appointed.



Deputy D.J de Sousa

Vice-Chairman, Jersey Development Company Sub-Panel

2. EXECUTIVE SUMMARY

- 2.1 This review has revisited the previous Corporate Services (Jersey Development Company) Sub-Panel's review to establish property and infrastructure regeneration, the States of Jersey Development Company, as set out in the re-issue of P.73/2010.
- 2.2 Our main objectives were to assess whether the recommendations made by the previous Sub-Panel had been adhered to, and to establish whether the scope, role and remit of the Jersey Development Company structure would be appropriate.
- 2.3 The Sub-Panel found that one recommendation made by the previous Sub-Panel had not been actioned even though it was accepted by the Chief Minister. The recommendation had stated that the proposition should be amended to show, without any room for doubt, that the States of Jersey Development Company would not be the same as the current Waterfront Enterprise Board. The Sub-Panel heard during a Public Hearing with the Minister for Treasury and Resources that a complete separation would not be possible due to contractual commitments with existing personnel.
- 2.4 Throughout the review, the Sub-Panel was unable to identify how the Jersey Development Company will differ from the Waterfront Enterprise Board (WEB). Evidence gathered during Public Hearings suggested that WEB had not been involved with the development of the proposition (P.73/2010), even though it supposedly reforms its role and remit.
- 2.5 The Sub-Panel have made two recommendations which include that the new States of Jersey Development Company Directors' service contracts should contain obligations to comply with directions made by the Minister for Treasury and Resources in his role on the Regeneration Steering Group.
- 2.6 The Sub-Panel also recommend that an independent review of resources and procedures within the States of Jersey Development Company should be undertaken by an external body, including an external "red book" valuation of WEB property assets.

3. KEY FINDINGS AND RECOMMENDATIONS

Key Findings

- 3.1 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 [section 6.13].
- 3.2 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 [section 6.16].
- 3.3 Confusion remains as to how the States of Jersey Development Company will differ from the Waterfront Enterprise Board [section 6.21].
- 3.4 The recommendation made by the previous Sub-Panel which suggested that the proposition should be amended to show, without any room for doubt, 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 [section 6.27].
- 3.5 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's report, in order for the States of Jersey Development Company to be successful [section 7.2].
- 3.6 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 [section 7.3].
- 3.7 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 [section 7.5].
- 3.8 P.73/2010 states that the Regeneration Steering Group will "*formulate detailed development proposals and planning applications*". 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 [section 7.8].

- 3.9 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 [section 8.3].
- 3.10 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 [section 9.4].

Recommendations

- 3.11 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 [section 9.4].
- 3.12 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 [section 8.3].

4. INTRODUCTION

For the purpose of this report:

- The proposition lodged on the 7th June 2010 “Property and Infrastructure Regeneration: the States of Jersey Development Company Limited” shall be known as P.73/2010.
- The “Waterfront Enterprise Board” shall be known as WEB
- “The States of Jersey Development Company” shall be known as SoJDC

- 4.1 On 7th June 2010, the Council of Ministers lodged P.73/2010. The Sub-Panel received P.73/2010 in its draft format from the Chief Ministers Department in May 2010. The Sub-Panel primarily raised concerns because it did not clearly separate SoJDC and WEB. In fact, it said that the States would be asked to decide whether they are of the opinion that the name of the Company should be *changed* to the “States of Jersey Development Company”.

The issue of the name change was highlighted during a private meeting with the Chief Minister and, after rewording within 24 hours which removed it, resulted in the lodging of P.73/2010.

It was apparent that, even though all the previous Sub-Panel’s recommendations had been accepted, P.73/2010 appeared not to adhere to what had been recommended and certainly merited a review.

- 4.2 As well as the previous review’s recommendations, the Sub-Panel focussed on DTZ, a company which carried out two independent reviews relating to SoJDC. One reviewed the proposals for SoJDC and was subsequently attached to P.73/2010 and the second reviewed WEB (R.67/2010) which had been published separately as a report to the States. The latter review followed the Sub-Panel’s previous recommendation which suggested before the SoJDC begins operation, the Chief Minister should implement a review of the activities undertaken by WEB, and present the results of the review to the States Assembly; and implement any actions arising.

- 4.3 P.73/2010 stated that the Council of Ministers believe that, as a result of the previous Sub-Panel’s report, the recommendations of which had been addressed by the DTZ review, the proposition had therefore been strengthened and clarified. The Sub-Panel however, feel that some of its recommendations had not been fully implemented or actioned. These issues shall be explored further on in the report.

- 4.4 P.73/2010 was originally due to be debated on 19th July 2010 and the Sub-Panel were grateful that the Chief Minister agreed to defer the debate twice which led to an eventual debate date of 12th October 2010. However, during the debate it was requested that it should be deferred for a third time because information that was paramount to the review had not been received from the Chief Minister's Department. The deferral was consequently voted against by the States Assembly.
- 4.5 We appreciate that the majority of our work occurred through the month of August and we would like to extend our gratitude to all those involved with our review at that time.

BACKGROUND INFORMATION

- 4.6 WEB was set up by the States of Jersey in 1995 to manage the development of the St Helier Waterfront. It is owned by the Jersey public and represented by the States of Jersey. The company was incorporated in Jersey on the 21st February 1996 when one million shares of £1 each were issued to the States of Jersey. In 1997, WEB's authorised share capital was increased from one million to twenty million.¹
- 4.7 WEB's main objectives were to promote, co-ordinate and implement a comprehensive strategy for the development of the St Helier Waterfront.
- 4.8 The main focus of our review was to consider the proposition lodged by the Council of Ministers which had proposed the establishment of a Jersey Development Company. In order to scrutinize the proposed SoJDC, the Sub-Panel also looked at WEB, because P.73/2010 called for the name of WEB to be changed to SoJDC with the Articles of Association being replaced. Past Scrutiny reviews carried out by previous Sub-Panels have also addressed issues surrounding WEB.
- 4.9 This is the fourth review the Corporate Services Scrutiny Panel has undertaken surrounding WEB and the establishment of a "new" company to approach property and infrastructure regeneration. The first (S.R.9/2008) investigated a proposition (P.194/2007) to establish Jersey Enterprise Board Limited (JEB). The proposition had explained that JEB would take on the activities of WEB, which would remain in existence and would become a subsidiary of JEB. This would therefore ensure that the transactions entered into by WEB since 1995 would remain in force. The Sub-Panel at the time was concerned that, as a result of past

¹ "Web History" found at www.jerseywaterfront.je/webhistory, accessed August 2010

dissatisfaction with work that had been undertaken by WEB, the expansion of WEB's remit by the creation of JEB might cause even greater concern for the general public.²

- 4.10 Following the completion of the Sub-Panel's report, the then Deputy Chief Minister issued a statement on the 10th June 2008 which said the Council of Ministers had agreed to hold further discussions with the Sub-Panel with a view to developing a more refined proposal. The Council therefore agreed that the report and proposition (entitled "Jersey Enterprise Board Limited – proposed establishment") would be withdrawn.
- 4.11 The second Scrutiny review (S.R.1/2009) investigated a proposition (P.12/2009) that would have amended the composition of the Board of Directors of WEB and, in particular, would remove States Directors (i.e. States Members) from the Board. This had raised the issue of how WEB would become accountable to the States. The proposition was ultimately withdrawn but it was understood that the proposed measures would be brought back to the States Assembly in due course.³
- 4.12 The third review (S.R.9/2009) undertaken most recently by the previous Sub-Panel, reviewed P.79/2009 which was the original proposition to establish SoJDC. Within its report it suggested that prior to the debate on P.79/2009 further clarity was needed in certain areas of the proposition including a clear difference between WEB and SoJDC. The Sub-Panel's recommendations were acknowledged by the Chief Minister and a number of amendments to P.79/2009 emanated. On 3rd November 2009 the States Assembly agreed that P.79/2009 should be referred back for further information. This in turn resulted in the revised proposition P.73/2010.

² "Review into the Proposed Establishment of the Jersey Enterprise Board" (S.R.9/2010), June 2008

³ "Waterfront Enterprise Board" (S.R.1/2009), March 2009

5. THE PROPOSITION

- 5.1 P.73/2010 presented new proposals for structuring the planning, development and implementation of major property and associated infrastructure regeneration projects in Jersey, making particular reference to St. Helier.
- 5.2 Within P.73/2010, it explained that since WEB's inception, WEB has performed dual roles due to a lack of clarity in its remit.
- 5.3 WEB has been responsible for creating Masterplans for the St Helier Waterfront as well as the promotion and delivery of developments. Within P.73/2010 the structure of the Jersey Development Company will separate these functions:
- **Master Planning:** The Minister for Planning and Environment and his department will have the sole responsibility for this function.
 - **Translating Masterplans:** The Regeneration Steering group will have responsibility for this in which it will translate Masterplans into workable and economically viable development plans.
- 5.4 P.73/2010 did not alter the central features of P.79/2009. The amendments that emanated from the Chief Minister at the time of the debate in 2009 remain and other changes sought to add or clarify the original proposition (P.79/2009).

6. THE RECOMMENDATIONS

- 6.1 The main changes from P.79/2009, which have been addressed following the previous Sub-Panel's recommendations, are set out as follows in P.73/2010:

The role of the Regeneration Steering Group (RSG)

- 6.2 The RSG will be primarily concerned with translating masterplans developed by the Minister for Planning and Environment. The plans are developed into workable and economically viable Development Plans. P.73/2010 explains that the RSG provides a guiding framework for the activities of SoJDC and, apart from receiving regular updates and agreeing changes to approved plans, will have no direct role in operational matters, which is for the Board of Directors.⁴
- 6.3 It is noted that the previous Sub-Panel found that P.79/2009 did not clearly show the relationship between SoJDC, the RSG and the Minister for Treasury and Resources. It found that WEB potentially had two masters and it questioned whether SoJDC would also be beholden to two matters, namely the RSG and the Minister for Treasury and Resources.⁵ However, it is now clear in P.73/2010, that the RSG will guide SoJDC solely in the context of an agreed Development Plan. The Minister for Treasury and Resources is now accountable for the operation of SoJDC in the context of its actions in the implementation of agreed plans and developments. It is also planned that he will appoint a non-executive Director to represent his interests on the Board of Directors.⁶

The activities of the States of Jersey Development Company

- 6.4 SoJDC now acts as the developer of the property assets currently belonging to the public sector where the asset is not otherwise required to meet the States needs or where such properties are integral to the delivery of a Regeneration Zone. Ultimately, SoJDC continues the activities of WEB in developing the St Helier Waterfront but will also purchase and develop property assets that are required to achieve the regeneration strategies of the RSG.⁷
- 6.5 In continuing its responsibilities on the Waterfront, SoJDC now has the following new roles:
- (1) Acting as the developer of property assets, currently belonging to the public that are located within designated Regeneration Zones. Purchasing or entering into joint

⁴ P.73/2010 "Property and Infrastructure Regeneration: The States of Jersey Development Company Limited", June 2010, p.4

⁵ S.R.9/2009 "Jersey Development Company", October 2009, p.17

⁶ P.73/2010 "Property and Infrastructure Regeneration: The States of Jersey Development Company Limited", June 2010, p.5

⁷ P.73/2010 "Property and Infrastructure Regeneration: The States of Jersey Development Company Limited", June 2010

ventures in respect of third party properties to achieve a cohesive regeneration strategy; and

- (2) Implementing and coordinating the development within Regeneration Zones in accordance with approved Masterplans, Development Briefs and other relevant guidance prepared by the Minister for Planning and Environment.

6.6 P.73/2010 explained that the prime purpose of SoJDC will be to act as the delivery vehicle for property development for the States of Jersey and will be responsible for undertaking the following:

- Developing detailed development proposals for specific projects of major regeneration of property and infrastructure within Regeneration Zones. This would be in accordance with Development Plans approved by the RSG.
- Providing forward funding for preparing the detailed development proposals.
- Procuring the services of appropriate design and development consultants.
- Managing and developing detailed designs for specific sites.
- Submitting detailed planning applications to the Minister for Planning and Environment.
- Procuring and managing project implementation, either via a joint venture with a third party developer or direct.
- Providing quarterly progress reports to the RSG in respect of developments taking place as part of an agreed Development Plan.

Assets held by SoJDC

6.7 DTZ reviewed the assets currently held by WEB and has subsequently proposed a set of principles to guide the treatment of such assets. DTZ has stipulated which assets should be retained and which should be divested to SoJDC. These principles are as follows:

- There should be a clear exit strategy for all assets.
- In the future, the identification of costs for maintaining public realm should be identified as early as possible within the original scheme (i.e. at planning stage).

- New infrastructure that would normally be capable of adoption should be transferred to the Parish and funded out of rates. For other areas of public realm within defined development curtilages, with higher than usual maintenance costs or carrying a contingent liability, provisions should be made to capture contributions through estate service charges arrangements or a commuted sum payable from WEB out of land receipts.
- Completed assets should only be retained by SoJDC where it is necessary to maintain management control in order to support the marketing and sale of new developments in the vicinity (in some cases this may mean retention by SoJDC for a number of years).
- Once developments have been completed, they should be sold in the open market or if there a strategic reason for long-term ownership by the States, transferred to the States of Jersey at market value.
- Where assets are sold into the market, they should be subject to an independent valuation to ensure best value is being achieved.

Risk Management Regime and Project Risk Plans

- 6.8 The previous Sub-Panel highlighted the importance of risk management being active and transparent. It made a recommendation in its report (S.R.9/2009) that a detailed risk management regime should be developed, which was to include individual risk management plans.
- 6.9 P.73/2010 explained that one objective of SoJDC will be to deliver projects in the most beneficial and risk averse manner. The assessment and management of specific risks to development will be included in a Memorandum of Understanding (MoU) between SoJDC and the Minister for Treasury and Resources.
- 6.10 In relation to the assessment of risk management, P.73/2010 explained that WEB already has a strong risk management framework in place which includes 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.⁸

⁸ P.73/2010 "Property and Infrastructure Regeneration: The States of Jersey Development Company Limited", June 2010

Asset Transfer Protocol

6.11 The previous Sub-Panel recommended that clear protocols should be set out for the transfer of assets between Jersey Property Holdings and SoJDC. A protocol has been developed (section 9 in P.73/2010) which will be used to guide the transfer of property.

Ability to Purchase Private Property

6.12 The previous Sub-Panel recommended that the Minister for Treasury and Resources should review the capacity of SoJDC to purchase privately-owned assets and put in place protocols to ensure that the most effective vehicle is used to effect such purchases. The SoJDC will have the ability to purchase and develop property assets that are required to achieve regeneration strategies. P.73/2010 outlined the following principles and protocols such purchases would be subject to:

- (a) All acquisitions of private, third party assets should be undertaken in the context of a need to rationalise land ownerships as part of a clear regeneration strategy rather than as ad hoc opportunistic purchases.
- (b) They should not be pursued in preference to the acquisition or transfer into SoJDC of States owned assets that would satisfy the same strategic objectives.
- (c) Proposed purchases should be subject to a business case approved by the Minister for Treasury and Resources which sets out the strategic and commercial rationale.
- (d) Acquisitions should be undertaken on a transparent arms length basis.
- (e) They should be negotiated on the basis of Open Market Value and underwritten by a third party valuer.
- (f) Individual property transactions will be approved by the Minister for Treasury and Resources and be subject to a published Ministerial Decision.
- (g) Compulsory Purchase should only be pursued as a last resort where acquisition by negotiation is unlikely to succeed.
- (h) Where compulsory purchase powers are required, the Minister for Planning and Environment will be the acquiring authority and States Assembly approval will be required.

Financial and Manpower Implications

- 6.13 P.73/2010 stated that the executive responsibilities of SoJDC will be carried out by the staff currently employed by WEB. The Sub-Panel were surprised to hear at a Public Hearing with WEB that it appeared WEB had not been involved with P.73/2010:

The Deputy of St. Peter:

“We are talking in the context of W.E.B. and proposition P.73, which is going in front of the States, which indicates quite clearly that the role of W.E.B. would be subsumed into the new company if it is developed.”

Acting Chairman, Waterfront Enterprise Board:

“So we have answered this point to you in writing, have we not, this question, by saying that we are not able to answer because we are not the Jersey Development Company? Jersey Development Company will be formed if this proposition were to go through. It would be a separate board of directors, separate chairman and separate board of directors, and so have responsibilities, presumably under the direction of the Minister, to produce a business plan.”⁹

KEY FINDING: 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.

- 6.14 Mixed messages continued to flow throughout the Public Hearings. The Sub-Panel heard during a Public Hearing with the Minister for Treasury and Resources: *“I am guarded in what I say about the existing entity because there are contractual commitments and people in post there will be issues that will need to be dealt with because the structure of the organisation is changing”*¹⁰. If there are contractual commitments, surely the Board of Directors of SoJDC will not be separate or new from WEB.

- 6.15 P.73/2010 stated [underlined are our own emphases]:

Structure

It is recommended that The States of Jersey Development Company Limited is established by restructuring the existing company Waterfront Enterprise Board Limited whereby –

- The name of the existing company is changed to The States of Jersey Development Company Limited;

⁹ Transcript from Public Hearing with WEB, 20th August 2010, p.3

¹⁰ transcript from Public Hearing with the Minister for Treasury and Resources, 25th August, P.8

- The current board of Waterfront Enterprise Board Limited initially becomes the new board of The States of Jersey Development Company Limited, subject to the substitution of non-executive directors for the current States Directors in accordance with the recommendations of the Comptroller and Auditor General;
- The current Memorandum and Articles of Association of Waterfront Enterprise Board Limited are replaced.¹¹

6.16 We failed to see any reason why WEB could not answer, or would not answer, our questions relating to what involvement it had had in the development of P.73/2010.

KEY FINDING: 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 from 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 be a separate Board of Directors and separate Chairman.

6.17 The Sub-Panel was unable to identify how the States of Jersey, as a shareholder of the company, will have no say in appointing who sits on the Board to develop publicly owned land. It is understood that the States Assembly shall appoint the non-executive directors, but why not the Executives? It was heard in a Public Hearing that it is not even a matter for the Chief Minister: *“appointments in terms of the executive are not a matter for the Chief Minister’s Department - and I am talking about the executive - they are a matter for the company”*.¹²

EXTENSION OR REFORM?

6.18 We focussed on one recommendation made by the previous Sub-Panel in particular: *“prior to the debate; the Chief Minister should ensure that the proposition is amended to show, without any room for doubt, that the SoJDC would not be the same as the current WEB”*.

6.19 In its report, the previous Sub-Panel questioned whether the original proposition (P.79/2009) accurately conveyed that it is more than just a change in name. During the time of the previous review, the Chief Minister acknowledged that the new company would be completely

¹¹ P.73/2010 “Property and Infrastructure Regeneration: The States of Jersey Development Company Limited”, June 2010, p.16

¹² Transcript from Public Hearing with the Treasury and Resources Minister, 25th August 2010, p.8

different¹³. In the original P.79/2009 the accompanying report stated “*to agree that the role and remit of the company should be extended*”¹⁴. This statement caused confusion for the previous Sub-Panel as it gave the impression that the new company would be an extension of the current WEB and not, in fact, completely different.

6.20 Confusion still remains today as to how exactly SoJDC will be different to WEB. The proposed Memorandum of Understanding in P.73/2010 stated “*Their Act of [date] agreed that the role and remit of the company should be extended*”¹⁵ [our emphasis].

6.21 However, the Sub-Panel note that P.73/2010 also states: “*Appendix two of the said Report which fundamentally reforms the role and remit of the Waterfront Enterprise Board Limited in accordance with the arrangements set out in the said Report...*”¹⁶ The Sub-Panel asked whether P.73/2010 simply called for WEB to be renamed as the States of Jersey Development Company. When questioned in a Public Hearing, the Chief Minister said:

The Chief Minister:

*That was said in the proposition quite rightly, because part of the activity requires the name of W.E.B. ... the name of the company to be changed to S.O.J.D.C. But the important part of the proposition is that the Articles of Association of the company are replaced ... the Articles of Association of W.E.B. are replaced in their totality by a new set of Articles of Association so it is, in effect, a new company.*¹⁷

KEY FINDING: Confusion remains as to how the States of Jersey Development Company will differ from the Waterfront Enterprise Board.

6.22 The DTZ report (“*A Review of Proposals for the States of Jersey Development Company*”) mentioned that, in principle, it considers that it would be appropriate for WEB to be seen to be disbanded and SoJDC taking its place with a different remit. The report goes on to say that it may be beneficial for WEB to become a subsidiary of SoJDC so that assets and projects can transfer. This would be important to be seen in the public consciousness as a fresh vehicle with a different agenda focussed on excellent design, purposeful delivery, long term value and built on the principles of partnership.¹⁸

¹³ Jersey Development Company (S.R.9/2009), presented 22nd October 2009, p.22

¹⁴ P.79/2009 “Property and Infrastructure Regeneration: The States of Jersey Development Company Limited”, June 2009, p.2

¹⁵ P.73/2010 “Property and Infrastructure Regeneration: The States of Jersey Development Company Limited”, June 2010, p.34

¹⁶ P.73/2010 “Property and Infrastructure Regeneration: The States of Jersey Development Company Limited”, June 2010, p.2

¹⁷ Transcript from Public Hearing with Chief Minister, 18th August 2010 p.6

¹⁸ DTZ, “Review of the Proposals for the States of Jersey Development Company”, May 2009, p. 27

6.23 It became increasingly clear that there could be no clear severance between WEB and SoJDC because of contractual commitments. The Minister for Treasury and Resources said that starting SoJDC afresh would be *“hugely expensive to do and extremely risky in terms of having to deal with the existing contractual relations”*.¹⁹ The Sub-Panel also heard:

Senator S.C. Ferguson:

“... and we did originally, with respect, Minister, in our previous report we recommended that you did have the break period between the two.”

The Minister for Treasury and Resources:

“But that is not possible, I am afraid.”

6.24 The Minister was also challenged regarding WEB moving from being a facilitator to developer. The Sub-Panel heard at the Public Hearing with WEB that it was carrying out a review into its internal resources, however, the Sub-Panel took the view that this should be organised before the change in function is made:

The Minister for Treasury and Resources:

I very much understand your dilemma and I have that dilemma, too, because it is chicken and egg. Because we are not creating a new entity in S.O.J.D.C. We are effectively setting out the guidance and the parameters of S.O.J.D.C. and we are reversing W.E.B. into it and we are going to achieve the end result. It will not be a silver bullet overnight. There will be a transition where we will be equipping this organisation to discharge these ... as you absolutely quite rightly say, the facilitator is the regeneration steering group and assisted and advised by Property Holdings and S.O.J.D.C. is going to be the developer. Now ...

Senator S.C. Ferguson:

But surely we need to be more businesslike. You know, you do not go into something like this and then just sort of say: “Oh, we will solve things as we go along.” We need to have ... to take from the review that they are doing and we need to do our own and as shareholder, which you will be, it is surely incumbent upon you to have that review of resources and personnel, all of them, before we actually go into this.

The Minister for Treasury and Resources:

You will, I hope, understand if I am guarded in what I say about the existing entity because there are contractual commitments and people in post that will be issues that will need to

¹⁹ Transcript from Public Hearing with the Minister for Treasury and Resources, 25th August 2010, p.23

be dealt with because the structure of the organisation is changing. But this really is chicken and egg...²⁰

CONTRACTUAL OBLIGATIONS?

6.25 Hearing that there were contractual commitment issues intrigued the Sub-Panel and a letter requesting the contracts of the Executive Directors of WEB was sent to the Chief Minister. At first, access to the contracts was denied because the Chief Minister felt that the request did not relate to the Terms of Reference. However, the Sub-Panel felt that the request *did* relate to one of the Term of Reference:

To assess whether the accepted recommendations made in S.R.9/2010 have been followed and implemented by the Council of Ministers.

This point was addressed in response to the Chief Minister, and a clear argument was presented as to why the Sub-Panel wished to look at the contracts.

6.26 The Chief Minister also stated in a letter dated 27th September 2010, that the “*contract of the Managing Director of WEB is a permanent contract which makes provision for its terms and condition to continue in circumstances where the company is reconstructed or amalgamated without a claim against the company*”. P.73/2010 states that “*The directors shall be appointed in accordance with the Companies (Jersey) Law 1991 and SoJDC’s Articles of Association.*”²¹ The Articles of Association state [relevant parts are emphasised]:

APPOINTMENT, RETIREMENT AND REMOVAL OF DIRECTORS

The Directors shall have the power at any time, from time to time without the sanction of the Company in general meeting or otherwise to appoint a person to act as the Managing Director and a person to act as the Finance Director. The Company shall enter into an agreement with each of the Managing Director and the Finance Director for his employment by the Company and for the provision by him of services to the Company. Save for remuneration, which shall be determined in accordance with Article 33, each such agreement shall be made upon such terms as the Board shall determine. In the event of the termination of the employment of the Managing Director or the Finance Director pursuant to their respective service agreements, the appointment of the Managing

²⁰ Transcript from Public Hearing with Minister for Treasury and Resources, 25th August 2010, p. 7

²¹ P.73/2010 “Property and Infrastructure Regeneration: The States of Jersey Development Company Limited”, June 2010, p.36

*Director or the Finance Director, as the case may be, as a Director shall, ipso facto, terminate.*²²

6.27 The Sub-Panel question the paragraph above. If the contract is permanent, how can the proposition propose that the Company “shall” enter into an agreement with each of the Managing Director and Finance Director? It would seem that due to contractual obligations it has already been done.

KEY FINDING: The recommendation made by the previous Sub-Panel which suggested that the proposition should be amended to show, without any room for doubt, 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.

²² P.73/2010 “Property and Infrastructure Regeneration: The States of Jersey Development Company Limited”, June 2010, p.50

7. DUE DILIGENCE

7.1 In order for SoJDC to be successful all parties involved must remain open and transparent, whilst having good working relationships. P.73/2010 suggested that the Regeneration Steering Group would take input from:

- The Minister for Planning and Environment
- States of Jersey Departments, including the Economic Development Department for Socio-Economic issues and the Transport and Technical Services Department for infrastructure and transport issues.
- Jersey Property Holdings through the States Property Plan.
- The States of Jersey Development Company Limited.
- Stakeholder groups including Parish Roads Committees, other commercial associations and planning bodies as appropriate.²³

7.2 The Minister for Treasury and Resources sought to implement a “best practice” shareholder model which would enable the Treasury to exercise proper oversight over the States’ investments. A review was carried out by Deloitte and resulted in a report “States of Jersey Owned Utilities Governance Review: Key Findings Report”. The report identifies “Shareholder Levers²⁴” which it says are appropriate in the context of Jersey.

KEY FINDING: 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.

7.3 The Sub-Panel noted that WEB has produced no dividend to the States over a period of 15 years since its inception. The DTZ report states:

“Although WEB has not at any time paid a financial dividend to the States it now holds total assets with an estimated open market value of £88.6m against a net transfer in value of £20.2m in 2004, a value uplift delivered substantially through the negotiation of valuable planning consents and development agreements.”

²³ P.73/2010 “Property and Infrastructure Regeneration: The States of Jersey Development Company Limited”, June 2010, p.11

²⁴ Deloitte LLP, States of Jersey Owned Utilities Governance Review: Key Findings Report, 10th June 2010

This could be perceived negatively in terms of public perception. The Sub-Panel questioned the Minister for Treasury and Resources:

The Deputy of St. Peter:

The facts are the facts that there is not one penny they have contributed to the States estate.

Mr. R. Law:

No dividend.

The Deputy of St. Peter:

No dividend.

The Minister for Treasury and Resources:

No, but one of the things that the Treasury is going to be doing is going to be reviewing the assets of the company and having discussions with the company in relation to a dividend.²⁵

KEY FINDING: 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.

RISK

7.4 During the review the Sub-Panel were concerned with the risk emanating from P.73/2010. When asked who bails out the Board if things were to go wrong, it was heard that this would lie with the States of Jersey:

Deputy Chief Executive and Chief Officer Resources:

Well, the States is the shareholder so ultimately ... but I think it comes back to what we were talking about before, in this world it is about managing that risk and it is absolutely essential to ensure that before any assets are transferred the scheme has been properly evaluated, the finance has been properly looked at and there is certainly a scheme that is then developed and can be implemented within the confines of which it has been originally designed.....²⁶

²⁵ Transcript from Public Hearing with the Treasury and Resources Minister, 25th August 2010, P.15/16

²⁶ Transcript from Public Hearing with Property Holdings, 15th July 2010, P.19

The Deputy of St. Peter:

Hopefully, as you have said, everything goes according to plan. But the point I wanted to make was at the end of the day if there is a problem, who bails out the board? I think we all reacted in the same way saying it is the States. So the final responsibility still rests with Jersey?

Deputy Chief Executive and Chief Officer Resources:

The States of Jersey are the shareholder in the States of Jersey Development Company.

Director, Jersey Property Holdings:

With a government organisation it always does.²⁷

- 7.5 It is fair to say that WEB's past developments have been far from ideal. The Sub-Panel questioned whether an expansion of its role and remit would benefit the Island, or would the States be left to "pick up the pieces":

The Minister for Treasury and Resources:

My job as Minister is to ensure that the right checks and balances are in place to ensure that these issues are properly raised and there is appropriate political alertness to risks. What are the checks and balances that we are putting in place here? We are putting in, I hope, a strong board itself in terms of S.O.J.D.C. with a strong executive testing difficult ... searching non-executive directors under a strong experienced chairman, which the board of W.E.B. at the moment is not what you would describe as a strong property development focused board. That is one control. Second control is an expert body, which we have in Property Holdings in the Treasury and Resources Department. The third control, the twin partner of financial control, is the Treasury, the Treasury signing off on transactions, being very unpopular because we ... Jason asks us very difficult questions all the time about transactions. Expert advice brought in on occasion. That is what I am looking at from a political point of view of how we manage risk.²⁸

KEY FINDING: 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.

- 7.6 As part of its review the Sub-Panel sought the views of Mr Richard Pettifor, Partner of HBJ Gateley Wareing. Mr Pettifor is an expert in large scale complex development projects,

²⁷ Transcript from Public Hearing with Property Holdings, 15th July, p. 20

²⁸ Transcript from Public Hearing with the Treasury and Resources Minister, 25th August 2010, P.15

advising land owners, developers, funders and local authorities in the UK. His full report can be viewed in Appendix one.

- 7.7 As part of his consultancy work, Mr Pettifor reviewed the proposals set out in P.73/2010 and agreed that the Regeneration Steering Group would exercise tight policy control over SoJDC. Within P.73/2010 it states that the RSG will:

“formulate detailed development proposals and planning applications.”

Mr Pettifor recommends that this is carefully considered because, if taken literally, the RSG could in effect become the shadow directors of SoJDC which could lead to confusion as to the role of the accountable Minister and uncertainty by third parties negotiating with SoJDC.

- 7.8 Mr Pettifor considers two solutions, to either incorporate RSG within SoJDC becoming its directors, or to provide that the function of RSG 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. Mr Pettifor recommends the latter position as preferable and that the Articles of Association address this by providing for directions which would be legally binding on the company and its directors. It is also recommended that Directors' service contracts include obligations to comply with such directions.

KEY FINDING: P.73/2010 states that the Regeneration Steering Group will “*formulate detailed development proposals and planning applications*”. 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.

RECOMMENDATION: 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.

8. RESOURCES

8.1 Richard Pettifor also made reference in his report to the resources of SoJDC. The main conclusions are as follows:

- There needs to be complete clarity as to the controls which the States of Jersey will exercise over SoJDC and the powers and responsibilities of the Accountable Minister.
- The role to be played by the Regeneration Steering Group is key to the maintenance of effective working relationships between the parties in the proposed structure.
- There should be separation between the planning and development functions, so that SoJDC is only responsible for implementation of development. This will require accurate assessment of risks; a clear approach to valuation issues; and strategic and master planning which recognises commercial considerations and takes them into account.
- The successful operation of SoJDC depends upon its leadership, management and skills base.
- The risk management process will need to be actively managed and subject to scrutiny on a continuing basis.
- The formation of separate corporate vehicles should be considered on a project by project basis to mitigate risk to SoJDC's overall operation.
- Supposed insulation from risks on fixed price construction contracts should not be taken for granted.
- The perspective of third parties negotiating with the States on regeneration proposals needs to be considered if effective working partnerships are to be created.

8.2 Within his report, Mr Pettifor predominantly agrees with the proposition. He says that:

Given the intended role of SoJDC as being responsible for implementation rather than policy, the way in which it is proposed to be constituted as outlined in the proposals seems appropriate. However we observe that:

The legal framework for the company in itself does not guarantee delivery, and the success or otherwise with which the company undertakes its functions is dependent upon the management and leadership exercised by its directors and the professionalism, skills

and expertise of its staff in relation to project management and construction. The performance of the directors and staff is perhaps the most significant issue and attention should be given to ensuring that their recruitment achieves the desired result and involves performance and management appraisal. The remuneration and expenses of directors should be controlled by the Accountable Minister and kept under review.

- 8.3 Mr Pettifor also mentions within his report (Appendix one: 11.3) that P.73/2010 offers a clear intention that SoJDC will use advanced financial and risk modelling techniques to enable the risk profile of projects to be identified. He goes on to say that the process of managing risk in development projects requires particular skills and can be complex. Effective risk management relies upon having staff to operate risk management processes on a sustained basis throughout a project, and SoJDC should be required to recruit appropriate skills.

KEY FINDING: 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.

RECOMMENDATION: 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.

- 8.4 The Sub-Panel also sought the views of Mr Colin Hunter. Mr Hunter was the Chief Executive of Waterfront Edinburgh Limited and was also the Companies Manager with the City of Edinburgh Council in March 2007.

Within the first eighteen months as the Chief Executive, Mr Hunter had to turn around a Company which was receiving extremely negative press coverage, had a poor corporate image and low staff morale and stabilise a serious financial situation. Mr Hunter’s full report can be found in Appendix two.

9. THE SCOPE, ROLE AND REMIT

9.1 During the review the Sub-Panel found that WEB had been sitting on a Board to develop the Airport. It became apparent that WEB's remit had expanded beyond its normal function which had originally been understood by the States Assembly to be the Waterfront. The Sub-Panel's main concern was that WEB appeared to be already taking on a role which the new company, SoJDC, would have taken on board. When questioned in a Public Hearing, the Chief Minister said:

Chief Minister:

"The airport is something which I know rather less about, other than that I believe there is a steering group there initiated, as I understand it, by the Airport Director, chaired by the Deputy Chief Executive and for which the Managing Director certainly of W.E.B., if not W.E.B. as a whole, have been asked to provide some technical advice and expertise.²⁹"

9.2 Within the Memorandum of Association of the Waterfront Enterprise Board, it states:

- (b) (i) In the exercise of their powers of management of the Company the Directors shall have regard to the objectives for which the Company is established, namely:
 - (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 authorities in relation to investment in infrastructure projects in and development of the Waterfront.³⁰

9.3 In comparison, within the Articles of Association of The States of Jersey Development Company set out within P.73/2010, it states:

²⁹ Transcript from Public Hearing with Chief Minister, 18th August 2010 p.2

³⁰ Companies (Jersey) Law 1991, Company Limited by Shares, Memorandum of Association of Waterfront Enterprise Board Limited, P. 9

- (b) In the exercise of their powers of management of the Company the Directors shall have regard to:
- (i) the objectives for which the Company is established, namely:
 - (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).³¹

9.4 As previously mentioned, P.73/2010 supposedly reforms the role and remit of WEB. The Sub-Panel question, as did the previous Sub-Panel, why the objectives of the two companies are so similar. It appears that the Articles of Association for SoJDC appear to extend (not reform) the role and remit of WEB.

³¹ P.73/2010 "Property and Infrastructure Regeneration: The States of Jersey Development Company Limited", June 2010, p.49

KEY FINDING: 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.

10. CONCLUSION

- 10.1 The Sub-Panel acknowledges that the States of Jersey Development Company has already been adopted by the States Assembly - 25 voted for and 22 against and 2 abstained.
- 10.2 During this review the Sub-Panel has found that the Waterfront Enterprise Board will essentially “morph” into the States of Jersey Development Company and be given an island-wide remit. Although the Sub-Panel does not disagree with the establishment of a new Company, it is noted that past developments of the Waterfront Enterprise Board have been far from ideal.
- 10.3 The relationship between the Minister for Treasury and Resources and the Board of Directors must remain open and transparent to ensure that past developments carried out by the Waterfront Enterprise Board and which were received negatively by the general public and media must not be repeated.
- 10.4 As the Sub-Panel has found during the review, 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 the States of Jersey Development Company in respect of specific schemes. The Sub-Panel recommend that 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 also include obligations to comply with such directions.
- 10.5 The messages received during the evidence gathering stage of the review, suggested that the Waterfront Enterprise Board would be reformed into the States of Jersey Development Company. However, the Sub-Panel has found that it is not so much a reform but an *expansion* of WEB’s role and remit. The Sub-Panel would strongly advise that an independent review of resources and procedures within the States of Jersey Development Company should be undertaken by an external body, including an external “red book” valuation of WEB property assets.
- 10.6 If the Sub-Panel had received all the information it requested in a timely fashion during the review, the presentation of an interim report could have been prevented. It is with frustration that we are presenting our final report after the proposition has already been accepted by the States. The Corporate Services Scrutiny Panel has built up strong relationships with the two departments within its remit, namely, the Chief Minister’s Department and Treasury and Resources Department. We hope that this continues for future reviews.

11. PANEL MEMBERSHIP AND TERMS OF REFERENCE

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

DEPUTY D.J. DE SOUSA, VICE-CHAIRMAN

SENATOR S.C. FERGUSON

DEPUTY C.H. EGRÉ, CHAIRMAN – It is acknowledged that Deputy Egré resigned from Scrutiny to become Assistant Minister for Planning.

11.2 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 role he had also filled with the previous Sub-Panel.

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

SENATOR S.C. FERGUSON, CHAIRMAN

DEPUTY T.A. VALLOIS

DEPUTY J.A.N LE FONDRÉ

[Deputy Le Fondré participated as a witness in the Public Hearing with Property Holdings as Assistant Minister for Treasury and Resources and did not take part in the proceedings as a Member of the Panel. Deputy Le Fondré became a Member of the Panel on the 18th January 2011]

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

1. To consider the proposition lodged by the Council of Ministers: “Property and Infrastructure Regeneration: The States of Jersey Development Company Limited” (P.73/2010), with particular reference to the following:
 - a. Proposals for Property and Infrastructure Regeneration – Objectives for the States of Jersey;
 - b. Regeneration Zones;
 - c. Structure;

- d. The role of the States of Assembly;
 - e. Regeneration Steering Group;
 - f. The States of Jersey Development Company Limited;
 - g. Jersey Property Holdings;
 - h. The Minister for Planning and Environment and his Department;
 - i. The Regeneration Process;
 - j. Role of the Minister for Treasury and Resources.
2. To assess whether the accepted recommendations made in S.R.9/2009 have been followed and implemented by the Council of Ministers.
 3. To establish whether the scope, role and remit of the Jersey Development Company structure proposed in proposition P.73/2010, due to be debated on the 19th July 2010 for new arrangements for property and infrastructure regeneration would be appropriate.
 4. To examine any further issues relating to the proposition that may arise in the course of the Scrutiny Review and which the Panel considers relevant.

12. METHODOLOGY AND EVIDENCE CONSIDERED

12.1 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

- Property and Infrastructure Regeneration: the States of Jersey Development Company Limited (P.73/2010)
- Property and Infrastructure Regeneration: the States of Jersey Development Company Limited (P.79/2009)
- Jersey Development Company (S.R.9/2009)
- DTZ: Review of Proposals for SoJDC (May 2009)
- DTZ: Review of Waterfront Enterprise Board (May 2010)
- Deloitte LLP, States of Jersey Owned Utilities Governance Review: Key Findings Report, 10th June 2010

Public Hearings

15th July 2010

Deputy J.A.N Le Fondré, Assistant Minister for Treasury and Resources

Mr J. Richardson, Deputy Chief Executive, Chief Officer of Resources

Mr. D. Flowers, Director, Property Holdings

18th August 2010

Senator T.A Le Sueur, Chief Minister

Mr W. Ogley, Chief Executive of the States of Jersey

20th August 2010

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

Jurat J. Tibbo, Acting Chairman, Waterfront Enterprise Board

Connétable D.J. Murphy of Grouville, Director, Waterfront Enterprise Board

25th August 2010

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

Mr. J. Turner, Deputy Treasurer of the States of Jersey

Mr. D. Flowers, Director of Property Holdings

13. APPENDIX ONE: HBJ Gateley Wareing Report

HBJ Gateley Wareing

Report

to

States of Jersey

Corporate Services Scrutiny Panel

Jersey Development Company Sub-Panel

**Review into the Jersey Development Company
Limited (P.73/2010)**

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Review into the Jersey Development Company Limited (P.73/2010)

1. Instructions and Terms of reference

- 1.1 HBJ Gateley Wareing have been instructed on behalf of the Corporate Scrutiny Services Panel to undertake a review of the proposals (P.73/2010) to establish the States of Jersey Development Company Limited (SoJDC). The instructions are set out in a letter from the Greffier of the States dated 8th July 2010.
- 1.2 The terms of reference of the Sub-Panel are noted. This review seeks to provide advice within our expertise on the main issues identified in the Terms of Reference.
- 1.3 This review concentrates on the main principles of the proposals with a view to assisting the Scrutiny process. We have not researched Jersey law as may be applicable and we have no knowledge or expertise in the local commercial conditions or any of the possible regeneration areas.
- 1.4 We have however looked at the overall structure in terms of the States objectives as proposed and drawn on our extensive experience of regeneration projects and mechanisms in the UK.

2. Our main conclusions

- 2.1 There needs to be complete clarity as to the controls which the States of Jersey will exercise over SoJDC and the powers and responsibilities of the Accountable Minister.
- 2.2 The role to be played by the Regeneration Steering Group is key to the maintenance of effective working relationships between the parties in the proposed structure.
- 2.3 There should be separation between the planning and development functions, so that SoJDC is only responsible for implementation of development. This will require accurate assessment of risks; a clear approach to valuation issues; and strategic and master planning which recognises commercial considerations and takes them into account.
- 2.4 The successful operation of SoJDC depends upon its leadership, management and skills base.

- 2.5 The risk management process will need to be actively managed and subject to scrutiny on a continuing basis.
- 2.6 The formation of separate corporate vehicles should be considered on a project by project basis to mitigate risk to SoJDC's overall operation.
- 2.7 Supposed insulation from risks on fixed price construction contracts should not be taken for granted.
- 2.8 The perspective of third parties negotiating with the States on regeneration proposals needs to be considered if effective working partnerships are to be created.

3. History

- 3.1 P.73/2010 is a revised proposal to set up SoJDC. We have been supplied with some useful background material on the earlier proposals including recommendations from reviews undertaken during 2009.
- 3.2 In this review we have concentrated on specific aspects of the proposals in P.73/2010, in particular picking up the main concerns expressed in the Scrutiny Sub- Panel's Report 'Property and Infrastructure Regeneration: The States of Jersey Development Company' (S.R.9/2009) and testing these against the proposals.
- 3.3 We see the main concerns of the Scrutiny Sub-Panel as:-
 - (a) The relationship between SoJDC and the Regeneration Steering Group (RGS) which raises accountability and governance issues;
 - (b) Whether SoJDC will differ sufficiently from the current Waterfront Enterprise Board;
 - (c) Whether the role of SoJDC has been properly defined in the proposals;
 - (d) The issue of asset transfers from Jersey Property Holdings;
 - (e) Risk management.

4. Key questions

- 4.1 In our consideration of the proposals and in the light of earlier scrutiny panel consideration we believe that there are two key questions on the proposals:-

- (a) What is the accountability of SoJDC to the States of Jersey executive? This includes in particular, consideration of the purpose and role of the Regeneration Steering Group.
- (b) The precise role of SoJDC, in particular the extent to which SoJDC itself should undertake commercial development and how should it deal with risk issues?

4.2 The primary objects of the States of Jersey and the functions of the Ministers have been expressed with some clarity in the proposals. In particular, the Council of Ministers wishes

“to ensure the primacy of the States of Jersey in the governance of regeneration policy in Jersey and any associated property development agency”.

The way in which this primacy is to be exercised needs to be clear to the States Assembly, the public in Jersey, and to potential inward investors.

4.3 Crucial to this is the control which the States wish to exercise in practice over SoJDC and the mechanism by which that control will be operated. The position of the Regeneration Steering Group seems to be a central issue but, as they are set out in the current proposals, its role and authority are either unclear or appear to encroach on the functions of a Company Board of Directors.

4.4 We perceive that the States wish to ensure that there is maximum control in the public interest over the way in which SoJDC operates but at the same time they wish to allow sufficient freedom for SoJDC to enter into transactions with the private sector including joint ventures in a way which minimises risk.

4.5 The policy intention, as we see it, is to confine SoJDC’s activities to that of a site developer by separating the Master Planning and Development Brief function which will not form part of SoJDC’s tasks, from the implementation of development, which will involve SoJDC translating the Master Plan and Development Brief into site-specific proposals which will receive planning permission and form the basis of disposal to purchasers.

4.6 The question is whether that separation will produce development proposals which are in accordance with market demand and price expectations and result in development which is of a quality which the States are seeking. Whether this is

achieved will depend upon the Master Plan and Development Briefs reflecting commercial reality. This should be eminently possible. There is no reason why, if the Master Planning process is well informed through stakeholder consultation and subject to commercial analysis, it should not result in development proposals which are achievable.

- 4.7 By separating the higher-level planning process from implementation there is a possible risk that the strategic process could be undertaken in a vacuum which might lead to unrealistic conditions being set for development. This is intended for resolution by the Regeneration Steering Group, so the way in which that group operates will be a key issue.
- 4.8 A further consequence of the separation is that it affects and could limit the negotiation process between SoJDC and private developers. In the case of some development this may not represent a problem. Where there is a ready market the States can set the standard they are seeking and specify non-negotiable terms. However, where partnerships or joint ventures are being considered, the input of the proposed partner in the form of the development is likely to be the subject of extensive negotiation and this should be allowed for.
- 4.9 We do not think that the separation of the processes considered above need necessarily be unworkable but sufficient flexibility should be built in for those projects in which there is to be significant private sector commitment. This is especially the case where it is intended (which should almost always be the intention) that maximum risk is passed to the developer, and as little as possible borne by the States.

5. Objectives for the States of Jersey

- 5.1 The objectives as set out in the proposals are high level statements which rightly are directed to governance and process. The objectives recognise that the structure must be able to work with the private sector whilst protecting the States of Jersey's interests.
- 5.2 The objectives are not a statement of regeneration policy as such and we have not researched the policy background to regeneration but we think that the objectives could usefully include statements to the effect that regeneration is to be a plan led process and that the return from regeneration development should be forecast on the basis of assessed risk.

6. Regeneration Zones

- 6.1 The proposals state that there will be a funding mechanism to meet on going obligations when completed public realm is transferred to Jersey Property Holdings but there is little detail about the basis of such funding. We would expect that such funding would be by way of commuted sums paid by SoJDC and/or its private sector partners to Jersey Property Holdings on transfer. The basis of calculation of commuted sums should be decided in advance at the development brief stage as the obligation would affect the consideration payable by purchasers and impact upon the net return.

7. Structure

- 7.1 We have considered the proposals in relation to structure (page 8 of the proposals) and note that operational accountability for SoJDC rests with the Minister for Treasury and Resources while guidance and detailed development proposals will be matters for the Regeneration Steering Group which in turn represents and has at least an informal reporting line to the Council of Ministers.
- 7.2 How that might work in practice no doubt rests on a political assumption that there will be collective responsibility amongst the Council of Ministers so that the Regeneration Steering Group always expresses a unanimous view, and that there are no conflicts which would weaken the formal line of accountability. In order to be fully accountable to the Council of Ministers, the Minister for Treasury and Resources will need to fully “own” the development proposals which are given to SoJDC including the risk profile for projects.
- 7.3 On balance we think that what is proposed is workable. Accountability will always need to be a matter of political judgement. Development objectives should be clearly and crisply defined. Risks and results should be measurable and thus capable of evidence based assessment.

8. The role of the States Assembly

- 8.1 We have no comments on these aspects of the proposal which appear to fully reflect the overall constitutional position.

9. Regeneration Steering Group (RSG)

9.1 We think that the reality of the RSG is that it would exercise tight policy control over SoJDC which would then act in effect as an implementation executive. According to paragraph 3 on page 57 of the proposals, RSG will

“formulate detailed development proposals and planning applications”.

This needs to be carefully considered. If taken literally the RSG could in effect become the shadow directors of SoJDC which could lead to confusion as to the role of the accountable Minister and uncertainty by third parties negotiating with SoJDC.

9.2 The solutions are to either incorporate RSG within SoJDC becoming its directors, or to provide that the function of RSG 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. We recommend the latter position as preferable and the articles of association (article 22) addresses that by providing for directions which would be legally binding on the company and its directors

9.3 This would give RSG the formal role of advising the Minister for Treasury and Resources (as the politically responsible Minister) and co-ordinating the interests of other stakeholders, including other States entities.

10. The States of Jersey Development Company Limited (SoJDC)

10.1 We note that Appendix 7 of the proposals express the prime purpose of SoJDC to deliver regeneration projects to provide the best socio-economic benefit to the States of Jersey and on page 13 of the proposals the prime purpose is expressed as being to act as a delivery vehicle for property development. It may be that these expressed prime purposes are the one and the same but we interpret the intention as being that regeneration and associated property development will bring wider benefits than purely financial return. That will clearly be the intention with all regeneration schemes and brings into focus the extent to which the States should bear the costs of a regeneration process which delivers development which has a commercial value.

10.2 Given the intended role of SoJDC as being responsible for implementation rather than policy, the way in which it is proposed to be constituted as outlined in the proposals seems appropriate. However we observe that:

- 10.2.1 The legal framework for the company in itself does not guarantee delivery, and the success or otherwise with which the company undertakes its functions is dependent upon the management and leadership exercised by its directors and the professionalism, skills and expertise of its staff in relation to project management and construction. The performance of the directors and staff is perhaps the most significant issue and attention should be given to ensuring that their recruitment achieves the desired result and involves performance and management appraisal. The remuneration and expenses of directors should be controlled by the Accountable Minister and kept under review.
- 10.2.2. Control of the company is to be formally exercised through the States Minister for Treasury and Resources exercising shareholder rights. We have referred earlier to control through directions and would recommend that Directors' service contracts include obligations to comply with such directions.

11. Risk Management

- 11.1 Development risk is likely to be a significant area of uncertainty and the proposals lack measures which seek to mitigate risks which might adversely affect the operation of SoJDC as a whole. Although the risk of the company is essentially the risk of the States to the extent that there may be shareholder liability to third parties, nothing in the proposal seeks to insulate SoJDC from individual development projects which suffer unexpected losses. We recommend that, subject to any local legal considerations, individual projects should be carried out by separate subsidiary corporate entities, formed specifically to carry out each project. Such subsidiary companies would need to be subject to a similar Ministerial control regime as that which applies in SoJDC articles.
- 11.2 In the case of Joint Ventures which are established by SoJDC and other partners, the Minister would need to approve the structure, including the articles of association so as to ensure that risks to SoJDC are effectively mitigated.
- 11.3 The proposals refer to managing risk (page 13) in some detail and it is clear that the intention is that SoJDC will use advanced financial and risk modelling techniques to enable the risk profile of projects to be identified. The process of managing risk in development projects requires particular skills and can be complex. Effective risk

management relies upon having staff to operate risk management processes on a sustained basis throughout a project, and SoJDC should be required to recruit appropriate skills.

- 11.4 There is also an issue of identifying and allocating development risks at an early stage before a project is undertaken by SoJDC. The proposals concentrate on measures that SoJDC will need to undertake to mitigate risk but, at the early planning stage some commercial assessment will need to be made as to assumed risks, as such assumptions will have a bearing on transfer value when properties are transferred from Jersey Property Holdings. An assessment and assumption will also need to be made as to the extent of risk third parties will in practice accept. This is likely to be a matter which purchasers may look to negotiate.
- 11.5 We think that the proposals for managing risk in relation to construction contracts may be optimistic although this will depend upon Jersey's culture of contracting. Although in the UK the development of the "Egan Principles" in contracting are leading to a partnership approach which is intended to ensure that relations between contracting parties are less adversarial, it is the general experience that the industry standard forms of contract, whilst intending to produce fixed price arrangements, have produced a claims culture. We do not have any knowledge about contracting culture in Jersey or forms of contract which may be in use but we flag this point up as a potential risk area. It should not be taken for granted that construction contracts let on a fixed price basis can be achieved.

12. Jersey Property Holdings (JPH)

- 12.1 Key to the development activities of SoJDC will be the mechanism by which JPH will release land on appropriate terms to SoJDC. Appendix 7 of the proposals sets out a protocol which establishes some basic principles, so that for regeneration land there will be an independent assessment which takes into account the cost of provision of public realm and public infrastructure, which would presumably be a deduction from the market price.
- 12.2 Whilst that principle, when applied, provides a purchase price which reflects the cost which SoJDC will have to incur to enable the land to be developed on commercial terms, the price necessarily reflects presumptions as to the risks involved in providing public infrastructure. The calculation will no doubt be undertaken before detailed design work (and detailed planning permission) and may depend upon

ground condition and other technical surveys which would need to be thorough if they were to inform a valuation calculation.

- 12.3 This will of course be a reflection of the skill and expertise with which SoJDC can assess the infrastructure costs. There appears to be nothing in Appendix 7 which enables the price to be adjusted if certain assumptions on which it is based later turn out to be incorrect.

13. The Minister for Planning and Environment

- 13.1 The proposals set out very clearly the separation of Ministerial functions between planning and development which will avoid difficulties of conflict of interest.

14. The Regeneration Process

- 14.1 The proposals make it clear that the regeneration process is plan led and there is a clear dividing line between the planning stages and implementation of the development.
- 14.2 This is not the type of model which is to be found in the UK (England, to be more precise).
- 14.3 Although we understand that the proposals do not intend for SoJDC to operate as a development agency in the sense that it will not be responsible for both regeneration strategy and implementation of development proposals, we have considered as background to our work whether the constitution of development agencies in the UK may provide a useful comparison for arrangements proposed in Jersey. We agree generally with the analysis provided in the DTZ paper (May 2009).
- 14.4 In the UK regeneration is currently undertaken through initiatives by statutory agencies (currently Regional Development Agencies – RDA's and Urban Development Corporations - UDCs) and local authorities either acting alone, or in association with the Homes and Communities Agency (the successor to English Partnerships) to set up Urban Regeneration Companies or Local Development Companies. The RDAs are currently proposed for abolition by the new government. Urban Development Corporations have existed since the early 1980s. Most have completed their functions and been wound up, but a new UDC was set up by the previous Government to cover land in the Thurrock area of Essex. RDAs and UDCs were established with a wide remit to further economic development and promote employment and given extensive legal powers to acquire, develop and dispose of sites and development. RDAs and UDCs exercise the powers of Ministers under

delegation and UDCs in particular are given some local authority planning powers. RDA's and UDCs are genuinely arms-length bodies but are subject to control by government through a regime of consents, directions and guidance.

- 14.5 The context of RDA's and UDCs is almost certainly different to the proposed role of SoJDC which is clearly intended to be a specialised "delivery vehicle" for specific sites in St Helier and elsewhere. URCs and LDCs are more comparable in scale but, since they do not draw their powers from Government directly, there are few transferable governance pointers.
- 14.6 The DTZ critique gives broadly positive comments in favour of the proposed SoJDC role. The proposals are based on the principle that the States wish to exercise maximum control over policy and the implementation aspects whilst insulating themselves from undue risk. The price paid for that could be that SoJDC will have little negotiating room with private developers and could be vulnerable to incorrect assumptions as to risk.
- 14.7 However, what is important in any regeneration process is a clear and constructive relationship between all the stakeholders involved in the process. The problem with rigid structures can be that they create an adversarial atmosphere which can detract from the overall priorities.

15. Role of the Minister for Treasury and Resources

- 15.1 This Minister is intended to be the Accountable Minister. The control structure for SoJDC should and will involve a high degree of control through consents and directions. It will therefore be important for staff reporting to the Minister to have sufficient resources, understanding and expertise to enable effective control to be exercised whilst at the same time enabling the directors of SoJDC to use their development skills to best effect.
- 15.2 The Minister will not be running SoJDC but will be taking key decisions which will affect how SoJDC performs. There will need to be effective co-ordination between the Minister's staff and those from the Chief Minister's Office who will be servicing the Regeneration Steering Group.

16. Summary

16.1 In our conclusions, commentary and advice, we have:

16.1.1 recognised the political imperatives of the States of Jersey in relation to the proposals for the States of Jersey Development Company, and advised the Corporate Services Scrutiny Panel and its Sub-Panel of ways in which these imperatives could be achieved in a manner consistent with UK best practice

16.1.2 suggested ways in which the respective roles of the Regeneration Steering Group, the Accountable Minister, and the SoJDC Board of Directors could be defined to avoid constitutional ambiguity and commercial uncertainty

16.1.3 stressed the importance of identifying, calculating and assigning risk in a rigorous manner so as to achieve the socio-economic goals of regeneration, minimise the risk to the public funds of the States of Jersey, and allow third party investors to reliably assess the risk which they are being invited to assume

16.1.4 emphasised that the real success of the SoJDC as a development company acting on behalf of the people of Jersey will rely as much if not more on the quality of its directors and staff and the excellence of their skills, judgement and decisions, as on the institutional forms of governance and control – important as these are.

14. APPENDIX TWO: COLIN HUNTER REPORT

Waterfront Edinburgh Limited

**Report for Corporate Services Scrutiny Panel
States Assembly
States of Jersey**

Colin Hunter

15 July 2010

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Background

I have been asked by the Corporate Services Scrutiny Panel of the States Assembly of Jersey to provide some consultancy advice with regard to the Review into the Jersey Development Company Limited. I have been asked to do this as a result of my previous experience as Chief Executive of Waterfront Edinburgh Limited and my role as Companies Manager with CEC (the City of Edinburgh Council). I have recently retired from the City of Edinburgh Council and the views and comments are from my recollections and documents which are in the public domain. I am bound by confidentiality not to disclose information on Board meetings or internal Council discussions which are not in the public domain. The views I disclose are mine and should not be construed as reflecting those of the City of Edinburgh Council. I also disclose that I am receiving payment for the time I have taken in putting this report together. The objectives of the consultancy are:-

“To provide the Panel with an independent, impartial and factual report on the history of Waterfront Edinburgh Limited. In particular, how the Waterfront Edinburgh Limited was managed and performed from the consultant’s role as Companies Manager and Alternate Director of Waterfront Edinburgh limited appointed by Edinburgh City Council. Any documents referred to should be attached to the report”.

I will also provide a brief overview of the Companies that the City of Edinburgh Council has involvement with and also how the credit crunch has adversely affected many of the property development companies. I also have provided detail of how CEC plan to take forward their development companies following the catastrophic drop in development land values.

Edinburgh

Edinburgh is a thriving city with high levels of economic growth, job creation and inward investment. Today, the City faces many challenges that result directly from that economic growth. There is need for more housing, for more modern office accommodation, retail space, hotels, leisure facilities and for better transport facilities. Without that investment, Edinburgh will be unable to retain and attract new businesses, to build on its status as the employment hub for east Scotland, or to fulfil its ambition to become one of the most liveable cities in the country. In contrast with the city’s growth, the decline of port related and industrial activity in waterfront areas has reduced the demand for industrial land.

Edinburgh City Region is a world influencer in science, business, education and the arts and is Scotland's judicial and administrative centre. Edinburgh was crowned the Best Small City

of the Future and Top Location for Economic Potential 2010/11 in the Financial Times fDi magazine awards. The city region offers investors a highly educated and skilled workforce; access to UK, European and English-speaking markets; a stable political and supportive fiscal environment; a competitive economy with potential for growth and an unbeatable quality of life.

Edinburgh City Region is the UK's second largest financial centre after London and Europe's fourth by equity assets. It also has vibrant general insurance, corporate finance, broking and professional services sectors. The financial services talent pool is broad, skilled and exceptionally well-qualified, with a high proportion of graduates.

It is with the above in mind, it is hard to understand how the fortunes of the development companies owned by CEC and other private sector companies have experienced such a decline in their net worth or in some cases have gone into liquidation.

Edinburgh's Waterfront

Edinburgh's Waterfront is one of the most significant sites in Scotland, comparable with other major waterfront developments in Europe. It has reached an important stage in its evolution. It includes three development areas each with their own distinctive masterplans and development challenges. Taken together they represent one of the largest regeneration projects in the UK.

Three companies - Waterfront Edinburgh Ltd, Forth Ports PLC and National Grid Property – are overseeing the flagship £1 billion project, which will transform the industrial periphery of Edinburgh into a new urban quarter for the city.

Less than 3km north of the city centre and 7km in length, over 800 acres of brownfield and contaminated land on the shores of the Firth of Forth are being transformed into a landmark residential, leisure, business and tourist destination.

The plan includes 30,000 new homes, 3.6m sq ft of commercial space, eight new schools, a marina and a proposed deepwater ocean liner terminal at Leith. The Waterfront will effectively be Edinburgh's second 'New Town'.

Granton Waterfront

Within the entire Edinburgh Waterfront, there are three distinct areas. These are Leith and Newhaven Harbour (initially all in the ownership of Forth Ports plc) and Granton which was owned by CEC, Forth Ports and British Gas (now National Grid).

In September 1998 the late Rt Hon Donald Dewar First Minister publicly launched The Vision for Granton (the Granton Development Framework prepared by EDAW planning consultant) which had the following as the main objectives: - .

- Regeneration of derelict land
- Economic development
- Social inclusion
- Connecting the Waterfront to the City.

Following the launch, Deloitte & Touché were commissioned to prepare a Business Plan to identify the scale of public investment necessary to overcome market failure of the area to enable it to function as an integral part of the City. The amount of public investment identified to bridge the gap between the cost of remediation and infrastructure provision and the market value of the proposed land uses in the Granton Development Framework, was £33,250,000. At the same time as the Business Plan was being prepared, Llewelyn Davies planning consultant was commissioned to take the Vision for Granton and develop it into a Master Plan that could be adopted by the planning authority as Supplementary Planning Guidance.

Joint Venture Agreement

In February 2000 a joint venture was entered into by the City of Edinburgh Council and SE (Scottish Enterprise) to set-up a Company, Waterfront Edinburgh Limited to implement the Master Plan on behalf of the Council, SE and Scottish Homes. Scottish Homes were at the time the agency responsible for social inclusion and social housing. (The reference to the Master Plan is the Llewelyn Davies Master Plan) The Council and SE agreed to provide funding and contributions in equal amounts, £16,625,000 over a period of time, these sums being the shareholding that both organisations would have in the Company. Scottish Homes did not seek a shareholding interest.

Principal Objectives

The JV agreement sets out how the venture was to be carried out in accordance with the principal objectives as follows:

- To promote, support and/or effect the development of the site at Granton, Edinburgh as identified in the Master Plan (the Project Site) in accordance with the Master Plan with a view to promoting economic development and having regard to the principles of sound commercial property development, management and investment and on

sound commercial profit making principles and so as to maximise the financial potential of the Project Site

- To assist in the creation of employment opportunities, and in particular (but without limitation) to acquire properties, interests in property and options over property within the Project Site
- To prepare the Project Site for development through decontamination and infrastructure works (which may include the provision of financial or other support in relation to the improvement of the southern access road from Ferry Road to West Granton Road, Edinburgh and the wider infrastructure serving the Project Site irrespective of the level of benefit thereby conferred on the Company
- To promote the Project Site as a development opportunity, and sell, grant leases and other interests in and options over and/or otherwise dispose of the Project Site or properties within the Project Site on the best terms reasonably available
- Pending such sale, lease or disposal, to manage the Project Site in accordance with the principles of good estate management
- To obtain statutory consents and/or other consents in respect of development of the Project Site and carry out such development of the Project Site for commercial, leisure, retail, residential or such other purpose or purposes as the directors may determine
- To carry on all such activities and take all such other steps as may be reasonably ancillary to any of the preceding matters including (without limitation) the establishment and implementation of joint ventures between the Company and third party developers

The final Master Plan was subsequently adopted by the Council in January 2001 and a more detailed indicative layout prepared by Page/Park Architects, both approved by the Council as the basis for future development.

Management

The venture was to be carried out in accordance with the Master Plan and so far as not inconsistent with the Master Plan have regard to the principles of sound commercial property development, management and investment. The management was to be conducted on sound commercial profit making principles so as to maximise the financial

potential of the Sites and to assist in the creation of jobs. The Shareholders agreed so far as is consistent with the Master Plan to keep potential profitability of the venture under review.

The Site

Granton Waterfront covers some 140 hectares (346 acres). Located 3 km (2 miles) north of the City Centre, the site provides a dramatic setting overlooking the Firth of Forth and stretches some three kilometres along the water's edge. A series of terraces look out across the estuary and Granton harbour to the Forth Bridges, the numerous islands, the Fife coast and the North Sea. While previously industry was a barrier to accessing the sea, the area offers an incredible opportunity to build on the distinguished urban heritage of Edinburgh creating a contemporary equivalent of the World Heritage site that includes the 18th century Edinburgh New Town.

Historical Context

In the 19th century Edinburgh was expanding and required land for a new gasworks to service the City's needs and also a means of exporting the coal from the Midlothian coalfield to the south. The Duke of Buccleuch was instrumental in initiating the construction of Granton Harbour in the 1850s with a railway link to the coalfield to enable coal to be shipped to the rest of the UK, and the construction of Granton Gas Works in the 1890s which used coal to produce gas. The breakwaters and central pier of the Harbour and the original gasholder remain as reminders of the past. As a consequence of the activity in the 19th century, the whole area became a busy industrial area until the late 1980s when the combination of market decline and a legacy of contamination left it substantially derelict and vacant and a blight on the local community.

Master Planning Context Design Strategy

In 2001 the City of Edinburgh Council adopted the Master Plan for Granton Waterfront prepared by Llewelyn Davies as the urban design framework. Outline planning permissions were subsequently granted to Waterfront Edinburgh Ltd based on an indicative layout prepared by Page\Park Architects and has been used to promote redevelopment. National Grid Properties and Forth Ports Plc also have outline planning permissions.

The Master Plan was subsequently adopted in the Draft West Edinburgh Local Plan. This has been recently incorporated in the Draft Edinburgh Local Plan which designates Granton Waterfront as an Area of Major Change. The urban design framework in the adopted

Llewelyn Davies Master Plan and subsequent planning permission's will allow development with:

- Up to 8,000 new houses, 15% of which will be affordable
- Offices and other business uses that will allow the area to become a major employment location, together with an element of industrial activity
- Two new neighbourhood centres that will provide local shopping, in one case a supermarket, and other community services
- Two new primary schools
- Hotel and leisure facilities that will make the area a new leisure destination for Edinburgh.

The urban design framework requires that development should provide a network of open spaces. This will focus on the foreshore and the historic mansion of Caroline Park House. In Granton Harbour, the existing marina will be retained and water features and moorings provided. Improved public transport accessibility is the key to unlocking full commercial development potential. Provision has accordingly been made for Tram Line 1B through the site.

Administration

The company agreed to follow the guidelines set out by the City of Edinburgh Council's Code of Guidance for Corporate Governance for Council Companies, and appropriate Scottish Enterprise guidance. The system of internal controls seeks to identify, assess, manage, and minimise risk. In addition to identifying, evaluating and managing the risks faced by the company, which is covered by the risk register, close attention was to be paid to evaluating the implications of all contingent liabilities, such as land burdens and planning gain.

The Board met monthly and had delegated responsibility to the Chief Executive for any capital expenditure commitments up to £75,000 and revenue up to £35,000, subject to the expenditure being within the approved business plan.

Code of Guidance for Corporate Governance

The City of Edinburgh Council's Code of Guidance for Corporate Governance for Council Companies, and appropriate Scottish Enterprise guidance include the following key issues: -

Board Attendance

In order for a Board to be effective and for sound corporate governance to be followed, it is essential that the directors maintain a consistently high level of attendance. The Company Secretary should maintain a detailed record of the attendance of each company director.

Shareholder Representative

It is necessary for each Shareholder to name a person as the Shareholder Representative. This named person has authority to vote at general meetings and sign all documents on behalf of the Shareholder.

Business Plan Process

As part of the 'Following the Public Pound' process, it is essential to ensure that the aims and objectives of the companies are in line with the policies and strategies of the Council. Audit Scotland also recommends that the policies and strategies of the companies and the Shareholders are aligned.

Risk Management

Company directors are responsible for good corporate governance and for reviewing its effectiveness. This includes ensuring the integrity of financial information and the company's system of internal control including Risk Management, financial, operational and compliance controls. Each Company's Annual Report should include a statement by the Directors indicating that their financial systems and internal controls, including risk management processes, are in line with best practice.

Colin Hunter's Role

My public sector background was based in economic development, business planning, business investment and working as a Non-Executive Director on numerous Joint Venture Companies for the City of Edinburgh Council. This role was high profile and challenging, but has given me considerable Board, Corporate Governance and investment experience.

I have recently taken early retirement from my post of Chief Executive of Waterfront Edinburgh Limited (WEL). In that role, I held overall responsibility for land remediation, land sales, developing new joint ventures, PR and linking job and economic opportunities with the local community. My retirement was mutually agreed as a result of the Board &

Shareholder agreeing to my recommendation to 'mothball' the project due to the major downturn in the property investment and redevelopment market.

In the first eighteen months as CEO of WEL I had to turn round a Company which was receiving extremely negative press coverage, had a poor corporate image & low staff morale and most importantly stabilise a serious financial situation. I was responsible for the restructuring and revaluating of the company's assets, whilst retaining the confidence of the Bank. I developed an entirely new three year business plan and set a new strategic direction for the Board.

Following the credit crunch and the devastating reduction in development land property values, I had to negotiate a debt forgiveness package with the bank. This resulted in savings of £3.2m and saving the company from potential liquidation.

Following my departure from WEL and CEC, I am now concentrating on continuing to run my farming, tourism and agricultural contracting business interests to their maximum potential, both financially and in an environmentally sensitive way.

Companies Manager 2002 – 2007

Prior to my role as CEO of WEL, I was Companies Manager for the Companies Development Team and also a former employee of Scottish Enterprise. I held a wide range of other relevant positions on behalf of the City of Edinburgh Council. These included acting as an Executive Director with both New Edinburgh Limited, the £100 million Edinburgh Park joint venture with Miller Group and with Shawfair Developments Limited, the New Town joint venture development creating 4,000 houses in Midlothian. My responsibilities included advising the Board, Councilors, Senior Officers and Shareholders on company strategy, business planning, risk assessment and measurement of outputs.

Previous to this, I was Acting Chief Executive of the EDI Group for a year, the commercial property development arm of the City of Edinburgh Council, and remained a director of EDI for a further five years.

City of Edinburgh Companies

Edinburgh Council is relatively unique in that it delivers a number of its' objectives through wholly owned companies or joint ventures with the private sector or provides substantial funding to companies limited by guarantee. The main companies are or were:-

CEC Holdings	Main Holding Company
The Edi Group	£50m property development company
New Edinburgh Ltd	£100m business park development JV
PARC	Regeneration of Craigmillar (4,000 houses)
Waterfront Edinburgh Ltd	Major regeneration project
Shawfair Develop.Ltd	4000 houses New Town development JV
The EICC Ltd	Premier Business Conference Centre
Lothian Buses Ltd	92% owned by CEC City Region Bus Company
Tie	Company set up to deliver £600m Tram
LIFE	Former investment company JV with RBS
DEMA	Edinburgh's Marketing company
Edinburgh Leisure	Provides leisure, recreational & sport facilities

I had responsibility for the main property development, investment and conference companies as my role as Companies Manager. Each Company was set up for a specific purpose and the development companies in particular were deliberately kept separate as they had varying objectives. Some were purely commercial (whilst delivering economic development objectives) such as EDI and NEL, whilst others were regeneration driven. EDI, they in turn had a number of subsidiary companies which were JV's with the private sector and financially ring fenced to ensure reduced financial risk to the Council.

As Companies Manager, I was responsible for a team that reviewed the Business Plans of the Companies and made recommendation to the Shareholders Representative of the Council (usually The Chief Executive of the Council) regarding if approval should be granted or declined.

I also had to deal with the Chief Executives of these companies on a regular basis and this was often very challenging. Some of these CEO's had their own views on the direction and objectives of the companies (which were sometimes not in line with Council objectives) and they would often circumnavigate me by going direct to politicians or senior officers to get their way. This sometimes made relationships difficult.

Working with Waterfront Edinburgh Limited

As Companies Manager, I worked closely with WEL and was responsible for providing advice to the City of Edinburgh and also working closely Scottish Enterprise, the other shareholder.

Business Plan

The Business Plan developed by the WEL Management Team for 2006/7 resulted in considerable clarifications and amendments being required. There were a number of factors, which might have had a significant effect on the deliverability of the planned receipts within the Plan. This included capital receipts which had been expected, but had not materialised, costs of infrastructure and importantly the relationship with Planning and the guidance they were attempting to provide. Frequently this advice was not taken.

The purchase of the heavily contaminated 'Shanks Site' in 2006 for £6.25m (plus estimated clean up costs by the previous management of WEL of £750,000) had increased the borrowings of the Company and the future gearing levels may have resulted in the Banks being unwilling to provide further finance. In my view, for the Company to survive, further substantial equity input may have been required from the Shareholders in future years if the Business Plan was not amended. (The cleanup costs are now estimated to be nearer £2m and the Shanks site has now a negative value)

Consequently the Shareholders advised the Company that regarding new capital projects or major operational expenditure, special temporary provisions would apply. This included restrictions on any expenditure in excess of £50,000 unless authorised by the Board and any such expenditure in excess of £250,000 would require prior Shareholder approval.

In addition, Shareholder approval for the capital expenditure of circa £1.9m for the development of the water feature was not given. It was also a condition of the Business Plan approval that the Company should not seek to act as JV or developer without Board and Shareholder authorisation. I also requested that the Company provided quarterly updates on progress compared to Business Plan, quarterly quality risk register, gearing ratios on book and internal values, and monthly updates on key milestones to achieve major receipts.

I also had concerns that the Company was becoming involved in direct development and staffing up the business accordingly. The original objectives of the Company were to facilitate land for development and I felt that direct development put the Company and Shareholders at greater financial risk. It was my believe that direct development would be better carried out by the private sector or through a joint venture agreement where the

private sector took the lead. This concern was recognised by the Board of WEL and in 2006 the Company withdrew from any plans for direct development with the subsequent staff reductions. There were already abortive of costs of circa £250,000 for the staffing, design and planning costs for a site which had been in the planning process for approximately eighteen months. The previous management of the Company eventually withdrew this particular planning application as it was likely that the application would have been refused.

Alternate Director - WEL 2004 -2005

As an alternate director of the Company, I am bound by confidentiality of Board discussions and decisions, unless they are in the public domain. It is my understanding that these Board papers are not in the public domain, but as this Company is wholly owned by a public sector organisation the Freedom of Information Act does apply.

However there was wider concern that the Company was receiving some fairly negative press coverage and relationships with neighbouring landowners and developers could have been much improved.

Chief Executive - WEL 2007 – 2010

In March 2007, following the decision the Chief Executive, Stephen Izatt, to resign and move to a new a new position in Jersey, the Shareholders of WEL appointed me to take over the role of Chief Executive, initially on a temporary basis, to carry out a review and determine the position of the Company. Following this review, I was asked to remain as CEO and to take the Company forward onto a more stable financial and reputational footing.

Extract from City of Edinburgh Council Committee Progress Paper 18th December 2007:

“Accordingly, following the departure of the previous Chief Executive in April 2007, both stakeholders, using senior staff secondments, took the opportunity to conduct a wholesale review of the project, its direction, strategy, basic assumptions, costs, and valuations. This has led some six months later to the production of a new Business Plan, which both recognises changing circumstances and aims to put the project on a firmer more sustainable footing. The overall vision of the project and its founding objectives remain the same, but a more robust, realistic attitude has been introduced to project delivery, also ensuring that future borrowing within the Plan at an acceptable gearing ratio in respect of the overall asset base”.

My appointment coincided with the end of the financial year for WEL (March year end) and I instructed JLL to carry out a valuation of the Company, based on the ‘Red Book’ principles

for the year end accounts. JLL had been retained as the Companies professional property advisors. Previous valuations had not been carried out on the Red Book basis, but on an output valuation method, with the previous management providing the capital costs of development to determine the final valuation. Following discussion with KPMG (WEL's accountants) and JLL the advice was that a Red Book valuation would be a much more prudent method of valuation. As I had concerns that this may result in a major reduction in valuation, I also instructed Montagu Evans, Chartered Surveyors to carry out a similar valuation. Both valuations figures turned out very similar.

The accounts for year ending March 2007 show a reduction in Shareholders' funds of £9,987,320. This reduction included exceptional write down in development land value of £7,444,100 and the remainder being the trading loss for the year. The decrease in the valuation results from a detailed analysis of the quantum of future infrastructure costs and Section 75 liabilities, a review of the phasing of the development and changes in the market conditions for the area due to the oversupply of two bedroom apartments.

With the dramatic reduction in Net Worth of the Company, I had serious concern at the level of Bank borrowing which was in excess of £11m, with interest payments in excess of £700,000 per annum. As a Company we were in danger of breaching our Banking Covenants. I was instructed by the Board to try and accelerate sales of land to reduce the debt burden. We were successful in that we achieved over £4m of sales, but by 2008 the credit crunch was starting to bite and future sales started slipping away.

In March 2008 a further Red Book valuation (for the year ending accounts) of all the company's property interests was carried out that indicated an annual drop in land value of almost 19%. The final accounts to 31st March 2008, reported a trading loss of £502k, and a further exceptional loss of £6.1 million attributable to the write down in land values. In 2009 there was a further £12m fall in the value of the land.

On the positive side, I found an increasing willingness of the surrounding landowners, developers and community groups to engage with the Company to explore ways of achieving a more integrated approach which benefited the community socially and culturally

Continuing Property Value Decline

With the onset of the credit crunch, land values started to plummet. Sometimes it is difficult to understand how small reductions in house or flat values can have such a disproportional impact on development land values.

In 2008, the Royal Bank of Scotland stated "A 20% reduction in flat value results in a c.70% reduction in land value"

The example below illustrates how the dramatic reduction in development land values takes place. If the sale value of a flat reduced by 20%, from £200,000 to £160,000, the built costs would remain the same. Consequently for the developer or landowner, the land value in this example would reduce by 73%.

FLAT VALUE		FLAT VALUE
£200,000	=20% DROP	£160,000
BUILD COSTS		BUILD COSTS
£145,000		£145,000
LAND VALUE		LAND VALUE
£55,000	=73% DROP	£15,500

The above illustration is borne out by the savage reductions in land values at WEL over the last three years. This has been mirrored by Forth Ports PLC who are the major land owner of land along Edinburgh's Waterfront. In Forth Ports financial year ending Dec 2008, their property portfolio dropped from circa £282m to circa £60m. Their valuer's DTZ, deemed about 80% of the development land bank to have no immediate development value.

Impact on WEL

With regard to WEL, on 27th February 2009, Montagu Evans carried out their annual valuation of the development properties and reported a reduction from £19,584,469 to £7,545,910. This resulted in a loss to the Company of £11.8m. An extract from the Audit Scotland report explains the consequence of this loss.

Audit Scotland Report on City of Edinburgh Council to Members & Controller of Audit 2008/9

As part of their review of Edinburgh Council, Audit Scotland highlighted the financial difficulties experienced by the Council's main development companies. The main comments are provided below:-

“The economic recession impacted on Edinburgh through the collapse of the property market, falling investment values and severe restrictions in bank lending capacity. For the council this was most noticeable through the group development companies, EDI Group, Waterfront Edinburgh Limited (WEL) and Shawfair Development Limited, which all experienced financial difficulties leading to consideration of their ability to continue as going concerns. To ensure the ongoing viability of WEL, the council was heavily involved in discussions with the company’s bank which led to debt forgiveness of £3.2 million and it also provided funding of £7.5 million to WEL in exchange for assets. Also, to support the EDI Group, the council approved the use of prudential borrowing to fund the purchase of EDI assets.”

The Report continues:-

“Waterfront Edinburgh Limited (WEL): This was previously a joint venture between the council and Scottish Enterprise but is now a wholly owned subsidiary of CEC Holdings Limited. WEL incurred a loss of £11.8 million for the year to 31 March 2009 and, continuing a trend from previous years, its net assets reduced from £14.4m to £1.4m as a result of the reduction in value of investment properties associated with the collapse of the property market. WEL commenced life with a capital injection of £33 million from the public sector. Similar to the EDI Group, WEL breached its bank facilities which resulted in complex negotiations with the company’s bankers to finalise an agreement to clear the company’s outstanding debt. This included an element of the debt being ‘forgiven’ by the bank concerned (£3.2 million). During this period the council acquired Scottish Enterprise’s shareholding for nil consideration.

On 30 March 2009, the council became the sole shareholder of WEL and transferred the company to CEC Holdings Limited. Since 31 March 2009, the council provided £7.5 million to WEL to clear debts with its bank and in return received the company’s rental property investment portfolio. Title to this property passed in August 2009 while WEL continues to manage those properties on the council’s behalf. At 31 March 2009, the council’s investment in WEL was reduced from £16.6 million to £4.4 million to reflect the loss made by the company during the year, the restructuring undertaken and the level of debt ‘forgiven’.”

Moving Forward

With such catastrophic reductions in the value of the development companies, it was clear that the status quo was not an option. In a paper to the January 2010 Board of WEL, I informed the Board that there was insufficient revenue to run the Company on the existing staff complement (even although the staffing levels and running costs had been dramatically

reduced through my time as CEO). I therefore recommended to the Board that the Company effectively be put on to a care and maintenance operation. This would include retaining the security function and property management in house, but all other post would be deleted or moved to part time. This included the function of Chief Executive. The Board accepted this recommendation and thanked me for my contribution through the difficult last three years. As a consequence of this I ended my secondment and returned to the Council. As my post of Companies Manager no longer existed (due to re-organisation within the department), I agreed to take early retirement from 31 March this year from the Council.

The Council has carried out a number of reviews on the way forward for the development companies and has now agreed a way forward.

The following is an extracts from a paper to the Economic Development Committee of CEC on 25th May 2010. The extract sets out the issues and how CEC plan to take forward the development companies.

“Over time, the Council set up a number of arms length delivery companies and joint ventures to deliver its physical regeneration activity. Over time, a lack of clarity developed over the objectives of some of these companies:

- Were they, as a priority, regeneration vehicles to deliver social objectives or were they commercial vehicles to deliver a commercial return?
- To what extent could the companies behave autonomously in their activities and to what extent did they have to refer back to the Council for approval for their strategy?

A review of the effectiveness of the governance arrangements of the property development arms length companies coincided with the turn in fortunes of property development companies in 2008. The review identified a number of areas which had to be addressed including:

- The need for a clear Council physical development strategy tied in closely to the wider aspirations of the Council;
- Establishment of rigorous and consistently applied appraisals for property development projects;
- The strengthening of Company Boards to include suitably skilled non executive directors;

- An enhanced role for CEC Holdings for setting and implementing strategy and monitoring performance ;
- The need for in depth review of individual company's strategic fit and financial viability.

Matters were overtaken by a world-wide economic recession, as it was identified that each of the companies faced major financial challenges which had to be addressed urgently, and rescue plans were effectively put in place to protect both the Companies and the Council's interests. These plans have in the main now been implemented, with for example the transfer of assets from both WEL and EDI into the direct ownership of the Council and the extinguishing of the bank debt at both those companies which could not effectively be financed, and some substantial cost cutting in the companies themselves.

This has been a difficult period for the Companies and their staff, for the Boards of those companies and for Council staff managing these activities. One benefit though has been that these difficult times have flushed out very clearly many of the weaknesses, and some of the strengths, in the existing model for the delivery of physical regeneration.

For example:

- The cultural tensions between the Council and some of the Companies have been very visible, but importantly now have been acknowledged;
- The need for clearer reporting lines and joined up governance arrangements in practice has been exposed, and started to be addressed through the joined up and close working that has taken place to meet the recent financial challenges;
- The duplication of governance structures and support services across the companies;
- The need for clear direction for the companies, and different perceptions of objectives between the Companies and the Council and occasionally within the individual companies and the Council themselves.

Three potential models for delivery were presented, which can be summarised as follows:

1. An in house model, with an enlarged Physical Development Council Team but no external delivery vehicle though additional support would be contracted in as required. Reporting lines would be to the Economic Development Committee;

2. A hybrid model whereby the in house team acted as client and commissioner of activity and actual delivery was contracted to a wholly owned arms length company. The arms length company would employ some delivery staff and contract in additional support as required. The Board of the arms length company would be made up of Members and external non executive directors;
3. An outsourced model whereby all physical development activity, including a degree of the planning and strategy, is contracted to an arms length or completely independent company. Council assets might also be transferred to the company to create an asset backed vehicle. The Board of the Company would consist of solely external directors.

A clear consensus emerged amongst Members that the hybrid model was likely to be the most appropriate model for the Council at the current time. In summary the hybrid model was chosen because it balanced the requirements for the Council to retain control in setting strategic and planning direction with the desire for flexibility, effective risk taking, and innovative and nimble management in operational delivery”.

This new model has a number of tax advantages for the Council and reduces the need for annual valuations of the property. Many of the problems of the development companies was more to do with crashing valuations and breaching of banking covenants than immediate cash-flow difficulties. Had the properties been retained within the Council, this would not have been a problem as the properties within the Council are not subject to annual valuations. This would have allowed a more long term approach to have been taken to these extremely important developments to Edinburgh. The new model should allow the flexibility for this to happen.