

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Public Accounts Committee



Fuel Farm Lease Renewal

Presented to the States on 14th December 2016
P.A.C.3/2016

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1. Terms of Reference – Fuel Farm Lease Renewal

- 1) To examine whether or not good value for money has been achieved and appropriate internal controls and governance arrangements were followed, including:
 - a) whether the procedure for renewing the lease was followed correctly;
 - b) whether opportunities to tender the fuel farm to other operators had been fully explored;
 - c) whether adequate notice of upcoming leases is in place;
 - d) whether Rubis offers the best value for money option for the States of Jersey.

Public Accounts Committee

The Public Accounts Committee's remit is different to that of other Scrutiny Panels in that it has a retrospective perspective and holds States Officers, rather than States Members, to account for their implementation of policy and procedures. The PAC incorporates both States Members and non-States Members. Its remit includes following up on reports by the Comptroller and Auditor General and reporting its findings to the States Assembly. It takes a retrospective look at whether public funds have been applied for the purpose intended by the States and whether sound financial practices have been applied throughout the administrations of all States departments.

Committee Members

Deputy Andrew Lewis, Chairman

Connétable Simon Crowcroft of St Helier, Vice-Chairman (from September 2016)

Deputy Judith Martin of St Helier

Connétable Chris Taylor of St John

Mr Robert Parker

Mr Michael Robinson

Mr Gary Drinkwater

2. Chairman's Foreword

The PAC is charged with reviewing all public expenditure and decisions made by government that have both a long and short term impact on the public purse.

During its review the PAC was shocked to discover that no single department had overall responsibility for the management of a key strategic asset such as the fuel farm.

The PAC is very concerned that despite the significant value of land and buildings owned by the States (exceeding that of the strategic reserve), it appears that insufficient skills and resources are dedicated to managing such a vast estate. The failure of government to address deficiencies contributed to a lack of forward planning in respect of the fuel farm. This resulted in missed opportunities to attain the best outcome for the public in respect of the supply of fuel.

Failure to act in a timely manner may have had a negative impact on the cost of fuel to the Jersey taxpayer. Failure to capitalise on the opportunity to gain complete control of the land on which the fuel farm sits, could have a long term negative effect on the future value of significant and strategic land assets, and on long-term strategic planning. The PAC accepts that safety and security of supply of fuel to the Island must come first, but concluded that this did not have to be achieved to the detriment of good strategic planning.

The PAC commends the Chief Executive for accepting the main lesson learnt, namely that strategic planning is essential for the protection of Jersey's strategic assets. The PAC has been assured that robust structures and procedures have now been put in place and is pleased to note that one department, namely the Department for Infrastructure has ultimate responsibility for the management of assets.

The PAC will continue to monitor progress over the ensuing years and is likely to undertake a wider review of States' asset management in 2017.

I would like to thank all the officers who very openly cooperated with the PAC in this review, and my Committee and its officer for their hard work in reviewing evidence and compiling recommendations.



Deputy Andrew Lewis, Chairman of the Public Accounts Committee

3. Summary of PAC's Key Findings and Recommendations

KEY FINDING 1: No department had overall responsibility for the co-ordination of the lease of the fuel farm with associated procedures and arrangements.

RECOMMENDATION 1: The Chief Executive should task (and ensure sufficient resources for) one department to have overall responsibility for strategic assets.

KEY FINDING 2: No coherent plan was devised or published for the relocation of the fuel farm.

RECOMMENDATION 2: The Chief Executive should consider whether the fuel farm should be relocated in order to maximise the value of the current site (as part of the cohesive strategy of recommendation 3).

KEY FINDING 3: Although separate aspects of the lease were discussed by a number of departments, these were not formulated in a cohesive strategy, and this led to a lack of clarity.

RECOMMENDATION 3: The States of Jersey should publish a cohesive strategy for the management of the fuel farm.

KEY FINDING 4: Officers questioned did not consider it their responsibility to formulate options for the future operation of the fuel farm.

RECOMMENDATION 4: The Chief Executive should ensure that key stakeholders, including States Members are briefed on issues relating to key strategic assets so they can be part of an informed decision-making process.

KEY FINDING 5: Jersey Property Holdings considered its role to be the maintenance and upkeep of States assets rather than strategic planning.

RECOMMENDATION 5: The Chief Executive should undertake a high level review of the management of key strategic assets, including the fuel farm, and present a report to the States.

KEY FINDING 6: The Emergency Planning Officer was consulted at a very late stage on the feasibility of contingency plans.

RECOMMENDATION 6: The Emergency Planning Officer should be consulted at all stages to ensure a robust contingency plan is in place at all times for the supply of fuel.

4. Introduction

- 4.1 On Friday 4th March 2016 the Minister for Infrastructure sent an email to States Members informing them that he had signed a Ministerial Decision on the previous day, the effect of which was to renew, for a further ten years, the lease on the Fuel Farm at La Collette, St. Helier, to the current operator, La Collette Fuel Terminal Ltd (Rubis).
- 4.2 Some States Members were alarmed that this notice appeared to be in contravention of a requirement set out in Standing Order 168 (3):
- (3) The Minister for Infrastructure must, at least 15 working days before any binding arrangement is made for an action described in paragraph (1)(a) which does not, by virtue of paragraph (2), require the prior agreement of the States, present to the States a document setting out the recommendation which he or she has accepted.**
- 4.3 Notwithstanding the Minister's explanation as to why the renewal did not require him to provide the customary 15-day period for scrutiny (revisions to Standing Orders in 2014 allow the Minister to give a ten-year lease on the Fuel Farm to a single operator), the Committee considered it to be of probative value to find out what actions were taken in the lead-up to the renewal to ensure the renewal was in the best interests of the Island, in respect of fuel supplies and prices.

Gathering Evidence – Public Hearings

- 4.4 The Panel undertook a series of Public Hearings and heard evidence from the Chief Executive of the States of Jersey (John Richardson), the Chief Executive Officer of the recently incorporated Ports of Jersey (Doug Bannister), the Director of Estates for Jersey Property Holdings (JPH) (Ray Foster), and Chief Officers: Mike King of Economic Development, Tourism, Sport and Culture and John Rogers, Department for Infrastructure.

Private Meetings

- 4.5 Private meetings were held with the Solicitor General, Emergency Planning Officer (EPO), and Senator Philip Ozouf (Assistant Minister for the Chief Minister's Department) and the Chief Executive, in order to gain an understanding of what, if any negotiations had taken place to secure fuel supplies to Jersey.

Documentation

- 4.6 Email correspondence (including from Senator Ozouf who advised officers and other Ministers, from an early stage, that the fuel farm arrangements should be prioritised¹), confidential reports to the Council of Ministers, and summaries of oral evidence inform the substantive body of this report.

¹ Private meeting (18th August 2016), between Senator Ozouf and Deputy Lewis, attended by officers of CMD and PAC.

5. Chronology - Timeline of the ten year lease

Background

- 5.1 By 2005, properties (apart from trading companies and social housing) owned by the States were vested in Jersey Property Holdings (JPH), then part of the Treasury and Resources Department.
- 5.2 The fuel farm, which had been built at the extreme end of the reclamation site (La Collette Phase 1) in the 1970s, was encircled by the development of La Collette (Phase 2) by 2005. Following the fuel storage fire in Buncefield, UK, in 2005, the States had commissioned a review of La Collette Fuel Farm.

2007

- 5.3 On 22 June 2007, the States, on behalf of the public, entered into a ten year lease with a Shell/Esso Consortium for the fuel storage site at La Collette. The lease was backdated to 2006, in recognition of the negotiations and tenancy of the fuel farm operators from that time. The Chief Executive² confirmed that at that time Jersey Property Holdings (now part of the Department of Infrastructure) was involved in the land lease, together with the Economic Development Department (EDD, now EDTSC) and the Harbours Authority³ (now Ports of Jersey).
- 5.4 The Hazard Review Group was formed in 2007 to consider fuel farms and the hazards and zones around them. The Emergency Planning Officer sat on the Hazards Review Group and reported to the Emergencies Planning Board or Emergencies Council on progress.

2008

- 5.5 In 2008, the Atkins Fuel Farm Review⁴ made 93 recommendations including improving the safety of the fuel farm at La Collette and the gas storage in Gas Place. The Chief Executive, who was then Head of Transport and Technical Services (TTS, now Infrastructure) until 2009, also chaired the Hazard Review Group.

2009

- 5.6 In 2009 the States agreed to the lease being assigned to La Collette Terminal Limited (LCTL), which was a wholly owned subsidiary of Rubis SCA⁵. The Channel Islands Competition Regulation Authority (CICRA) reviewed the agreement for there to be a sole operator of the fuel farm, and deemed it to be fair.
- 5.7 The Chief Executive advised the PAC that the renewal of the lease had not been discussed earlier, but discussions were held with all the relevant authorities, including Fire, Police, and Ports, together with the fuel farm operators, petroleum importers and the gas company, regarding safety concerns and hazard zoning.
- 5.8 By this time, John Rogers had taken over as Chief Officer, Department for Infrastructure and he also took over chairmanship of the Hazard Review Group. He recalled the negotiations and discussions surrounding necessary improvements to the

² PAC Public Hearing with Chief Executive, 12th September 2016.

³ Group Chief Executive, Ports of Jersey, Doug Bannister clarified by email of 11th November 2016, that the Harbours' involvement would have been due to its being part of the EDD.

⁴ ([Atkins Report La Collette](#) interim report)

⁵ LCTL is a subsidiary company wholly owned by Rubis – the names Rubis and LCTL are interchangeable for the purposes of this report.

site that were required following Buncefield.⁶ However he explained to the PAC that, at that time, there was no overall strategy:

“When I got involved in this, which was 2009 onwards, I was surprised that the States had no involvement whatsoever with the importation of a strategic asset like fuel into Jersey.”⁷

5.9 He confirmed that he considered his department’s responsibility at that time to be limited to the leasing of the land to the fuel operators:

“All I knew is we rented a piece of land to them”

5.10 When the PAC tried to establish who had overall responsibility for the safety, security, value for money and the fuel supply for Jersey, the Chief Officer, EDTSC, stated:

“... if you are trying to establish whether any one individual, department or Minister had responsibility for all of those things, then the answer is no8.”

KEY FINDING 1: No department had overall responsibility for the co-ordination of the lease of the fuel farm with associated procedures and arrangements.

RECOMMENDATION 1: The Chief Executive should task (and ensure sufficient resources for) one department to have overall responsibility for strategic assets.

2010

5.11 A follow up review of the firefighting equipment on the site was carried out by Trident in 2010 (this was not covered by the initial Atkins report) and the Emergency Planning Officer (EPO) recalled that⁹ there had been discussions around the lease, but mainly focussing on safety concerns.

5.12 However, the PAC has seen confidential correspondence between officers of Jersey Property Holdings and the fuel farm operators, at this stage, confirming they were mindful of negotiating future lease terms and conditions.

2011

5.13 The EPO advised that, by 2011, further safety works had been agreed with Rubis and the Fire & Rescue Service. The Chief Officer, EDTSC, told the PAC that, at that stage, security of supply rightly overrode commercial considerations, and (despite officer-level discussions) there were no moves to relocate the fuel farm.

KEY FINDING 2: No coherent plan was devised or published for the relocation of the fuel farm.

RECOMMENDATION 2: The Chief Executive should consider whether the fuel farm should be relocated in order to maximise the value of the current site (as part of the cohesive strategy of recommendation 3).

⁶ CO, Department for Infrastructure, PAC Public Hearing with CO, EDTSC and CO, Infrastructure, 5th October 2016.

⁷ CO, Department for Infrastructure, PAC Public Hearing with CO, EDTSC and CO, Infrastructure, 5th October 2016

⁸ CO, EDTSC, PAC Public hearing with CO, EDTSC and CO, Infrastructure, 5th October 2016.

⁹ Meeting between Mark James, EPO, Chairman and Connétable C. Taylor of PAC, 8th September 2016.

5.14 The Chief Officer, EDTSC considered that the best way to guarantee a safe and secure supply of fuel to Jersey was to continue the negotiations in the way they had been doing, albeit devising stringent conditions for the operator.

2012

5.15 Discussions between Rubis and the Department for Infrastructure were initiated in anticipation of the expiry of the original lease. Bearing in mind that Rubis had agreed to undertake additional fire safety works in 2011, following the Trident Review, plus there had been an explosion at Gas Place, the outstanding works were becoming of increasing importance.

5.16 However, by this stage the fuel farm operators had become resistant¹⁰ and insisted on assurance that the lease would be renewed before they undertook the £1-2 million of recommended improvements.

5.17 The EPO stated that he had continually raised and discussed the progress of the lease at the La Collette Hazard Review Group from June 2012 onwards and throughout 2012, 2013 and 2014, and had been repeatedly assured by TTS and Jersey Property Holdings (both now Infrastructure), that negotiations were taking place and that the signing of the lease was imminent. He also noted that, in part, the delay was also due to awaiting the outcome of the CICRA review (which had been tasked to determine whether Rubis could be the sole fuel supplier to the Island¹¹).

KEY FINDING 3: Although separate aspects of the lease were discussed by a number of departments, these were not formulated in a cohesive strategy, and this led to a lack of clarity.

RECOMMENDATION 3: The States of Jersey should publish a cohesive strategy for the management of the fuel farm.

5.18 At a public hearing in September 2016, the Chief Executive admitted there had been an option clause in the lease, namely to purchase the assets. Because the deadline to do so was July 2014, the Chief Executive advised that discussions would have had to commence at the latest, by eighteen months previously, that is, nearing the end of 2012. He commented that, if the option to purchase had been pursued, the fuel farm operator could have argued that, with no security of tenure beyond 2015, the States' would have to fund the remaining phase of safety maintenance:

“But because it was not considered, that option was never taken. When it became apparent, which was only later, it was after the trigger point which is July 2014.”¹²

5.19 The Chief Executive, when questioned why negotiations to purchase the assets or at least value them in order to commence negotiations at this point, were not pursued, commented:

“...from a strategy point of view Jersey had an updated fuel farm because an investment had been made and it had provision for the long-term continuity. ...but I think the key point is there was a clause in a

¹⁰ Meeting between Mark James, EPO, Chairman and Connetable C. Taylor of PAC, 8th September 2016.

¹¹ The Chief Executive further clarified by email 7th November 2016, that, “my recollection is the fire-fighting facilities were always planned but it was the timing of the lease expiring that caused a delay in getting the work completed”

¹² PAC Public Hearing with Chief Executive, 12th September 2016

lease which was not invoked. The lease provided for an option for the States, if they wished, to procure the assets.”

5.20 The PAC queried why this option was not brought to the attention of States Members at the time, and the Chief Executive accepted:

“Very simply because that option was not brought to anyone’s attention. There was one clause in the lease and that clause was not invoked”

5.21 When questioned on whose responsibility it was to notify the relevant decision makers, he confirmed the responsibility for initiating discussion up to and including the invoking of the clause had fallen between the departments of Ports, Economic Development and Property Holdings¹³:

“Those were the 3 main parties involved and somewhere in that mixture that clause was not highlighted for someone to take the decision.”

5.22 The Chief Officer, Department for Infrastructure was also questioned on why the site was not valued at that time, or other options considered, to which he replied:

“I do not see why you would do any of that ...there is no issue of commerciality... (Rubis) have got a programme of safety improvements which is satisfactory and the security of supply had been guaranteed”¹⁴

5.23 He also advised that the department, if not the States as a whole, were struggling financially at the time and would have been unlikely to consider undertaking the running of the fuel farm:

“(at the time) we are under significant financial pressure, our capital programme is shot, we are really struggling to maintain the existing assets we have and to keep them to a high standard. We are in a position where outsourcing is the best thing ... and the majority of the Council of Ministers had that ethos at the time.”

KEY FINDING 4: Officers questioned did not consider it their responsibility to formulate options for the future operation of the fuel farm.

5.24 The Chief Officer, Department for Infrastructure confirmed that the leases of States-owned properties “sits” with Property Holdings. However, when questioned on whether opportunities to consider alternative options were missed, the Director of Estates, Jersey Property Holdings, commented:

“I cannot answer that ...The property function did not consider opportunities, but nor will we take the lead on those matters. It would be beyond our remit to do so.¹⁵”

2013

5.25 Although discussions regarding the lease continued through 2013, these mainly centred on ongoing safety maintenance and competition regulations of fuel supply to

¹³ Group Chief Executive, Ports of Jersey, Doug Bannister clarified by email of 11th November 2016, that 2010 saw the transfer of the asset to JPH, therefore in the run up to 2014, the Harbours Authority had no direct involvement with the fuel farm lease, its only involvement was with the fuel jetty and contingency planning.

¹⁴ CO, Department for Infrastructure, PAC Public Hearing with CO, EDTSC and CO, Infrastructure, 5th October 2016

¹⁵ Director of Estates, PAC Public Hearing 18th May 2016

the Island. The Chief Officer, EDTSC stated that the (States) organisation was not configured so that there was one point of responsibility:

“I certainly cannot recollect a meeting where it was said the thing we should be doing is looking at purchasing those assets and then tendering on whatever basis.”

5.26 He advised that as far as his department were concerned, its priority was:

“making sure that C.I.C.R.A. had at least a determination on the acquisition of the Esso equity in the Rubis lease... we had involvement from the perspective of ...liaising with C.I.C.R.A. to establish the position and whether or not the lease was then the appropriate instrument”¹⁶

5.27 The Director of Estates was questioned on why, if his department was aware of the lease options, as evidenced in correspondence six years previously, he had not considered raising the issue prior to the option to purchase the assets. He replied:

“Did we formally issue a notice to Government? The answer is no, we did not formally issue a notice to Government. Were Government aware of the option to purchase? I am sure they were.”¹⁷

RECOMMENDATION 4: The Chief Executive should ensure that key stakeholders, including States Members are briefed on issues relating to key strategic assets so they can be part of an informed decision-making process.

2014

5.28 The Chief Executive reiterated that the focus at this stage had been on the interest and holdings in the assets and how the fuel farm was operated:

“That was subject to a C.I.C.R.A. review ...allowing one operator to buy out the other operator’s shares and become the predominant operator”¹⁸

5.29 The PAC established that 31st July 2014 was the 18-month end date, by which, under the previous lease, the public would have had to notify the leaseholder of its intent to exercise an option to purchase. There was a process for agreeing a value on those assets, before inviting other potential operators to tender, and the Director of Estates stated:

“I am not aware of discussions that may or may not have taken place, but I received no instructions to exercise that option.”¹⁹

5.30 When asked if he had been approached by any other potential operators about the lease, he advised:

“Not at that time, as I am aware.”

¹⁶ PAC Public Hearing with Mike King, Chief Officer, EDTSC, 5th October 2016

¹⁷ Director of Estates, PAC Public Hearing 18th May 2016

¹⁸ PAC Public Hearing with Chief Executive, 12th September 2016.

¹⁹ Director of Estates, PAC Public Hearing 18th May 2016

5.31 When questioned again on whether it was Property Holdings' responsibility to present a proposal or report on costs and options available to the States, the Director of Property Holdings disagreed:

"The notice would have come from our department because we are the department that would communicate with our leaseholders under the terms of the lease. But that is very much the notification end of what would have been a corporate decision-making process to get us to that point...I have not seen any hard proposals, proposition in draft, or any other documentation that would support acquiring those assets."²⁰

5.32 He did not accept that it was Jersey Property Holdings' responsibility (at this stage) to notify the relevant decision-makers because, in his mind, the lease was already under discussion and there was correspondence between departments:

Deputy A.D. Lewis: The department was not asked to do any kind of valuation?

Director of Estates, Department for Infrastructure: No. We were not asked to do any valuation so, no.

Deputy A.D. Lewis: Do you think you should have done as a matter of course as part of the routine of being the asset manager?

Director of Estates, Department for Infrastructure: If there was a proposal put forwards, we would have undertaken a valuation. We were not asked to undertake a valuation.

Deputy A.D. Lewis: So you, as asset manager, did not really feel it was your role. You were waiting to be instructed to do that?

Director of Estates, Department for Infrastructure: The knowledge of the option to purchase had been discussed and set forward so it was in the corporate arena.

5.33 He maintained that there had not been any consideration as to what should happen at the point of expiry of the lease, other than renewal of the lease, and further, that, having passed the deadline of 31st July 2014 with no decision to acquire the asset, the public simply had a ground lease of a site for a fuel farm.:

"...there was only one fuel farm. There was only one option to renew the lease having not exercised any other option that was available by the public."

KEY FINDING 5: Jersey Property Holdings considered its role to be the maintenance and upkeep of States assets rather than strategic planning.

RECOMMENDATION 5: The Chief Executive should undertake a high level review of the management of key strategic assets, including the fuel farm, and present a report to the States.

²⁰ Director of Estates, PAC Public Hearing 18th May 2016

2015

- 5.34 The PAC has seen confidential correspondence between, amongst others, the then Minister for Transport and Technical Services, the Treasurer, the Chief Executive and the Director of Estates in late 2014/2015 (after the cut-off date for acquiring the equipment of the fuel farm) which set out concerns regarding ongoing negotiations with LCTL in respect of the signing of the new lease.
- 5.35 The Chief Officer, Department for Infrastructure considered that it was reasonable for Rubis to expect a lease renewal before investing further:

“...they wanted their lease signed so that they could make sure there was some payback on that investment... they had done their bit in terms of security of supply and how they managed the quantities of fuel that were stored in the Island...my element of this work, do we have a safe system for delivering fuel into Jersey and do we have a safe future...basically I was happy for that lease to be signed”²¹

Operating Agreement

- 5.36 The Chief Officer, EDTSC, advised the PAC that, at a meeting attended by both Ministers and officers, in early March 2015, he had proposed that that lease should be conditioned by a separate operating agreement:

“which gave us far more control and the ability to terminate in the event of material breaches... The process to conclude that... took the best part of 12 months.”²²

- 5.37 In May 2015, LCTL (La Collette Terminal Ltd or Rubis) were sent draft terms for the new lease, for no fewer than ten years, together with the compulsory requirement to enter into an operating agreement. Further negotiations followed, including attempts by officers on behalf of the States to enter into a shorter lease and/or include a break clause in the lease, which were rebutted by Rubis. Their stance was that they would have to halt operations on the fuel farm and begin to de-stock the fuel supply in the absence of a lease agreement.

Contingency Planning

- 5.38 The Chief Executive advised that other options were explored in the event that Rubis did not accept the new terms of the lease and/or operating agreement, including contingency plans for the supply of fuel to the Island. An interdepartmental group, chaired by the Chief Executive had been brought together over a year before the expiration of the lease to examine opportunities. The Group Chief Executive, Ports of Jersey advised that one such contingency plan had been drafted:

“...in the event that negotiations broke down... We had a really short timeframe that we could have activated it. It would not have covered 100 per cent of the daily needs of the Island for all fuel types. It was 100 per cent for most fuel types and then one fuel type it was about 92 per cent.”²³

²¹ CO, Department for Infrastructure, PAC Public Hearing with CO, EDTSC and CO, Infrastructure, 5th October 2016

²² CO, EDTSC, PAC Public Hearing 5th October 2016

²³ Group Chief Executive, Ports of Jersey, PAC Public Hearing, 18th May 2016.

5.39 However the Chief Executive maintained that exercising that option carried significant risk:

“I became aware of the problem with the lease not being signed and there were delays ...we did look at alternatives (but they were) high risk.²⁴”

2016

5.40 Correspondence from the start of 2016 continued between officers and Ministers, some of which contained pleas for a full assessment of the options available at that time, including a detailed consideration of the ability of other parties to run the fuel farm and an investigation into any continuing safety issues, plus the viewing of any throughput arrangements or operating agreement prior to the lease being signed.

5.41 The EPO confirmed he had only been aware of a possible contingency plan in January 2016 and had been surprised that he had not been consulted earlier on the proposals:

“The Chief Executive and I were shown the plan on the 3^d February 2016. It was not detailed enough to be called a contingency plan, rather it was a schematic outline of what might be possible to be put in place if negotiations for the lease had fallen through. It lacked necessary detailed considerations of safety aspects including unloading, storage, distribution, transport and decanting of fuel into road tankers. In my opinion, if it had gone ahead we would have instigated a plan with more risk factors than the one we already had issues with.²⁵”

5.42 The EPO advised that if negotiations had been instigated at a much earlier stage, a detailed and robust contingency plan could have been drawn up and ready to implement in six months which would have satisfied safety criteria, (notwithstanding there would also have to be further training required, planning permissions, risk assessment, operating procedures and equipment procurement that would take at least three months).

KEY FINDING 6: The Emergency Planning Officer was consulted at a very late stage on the feasibility of contingency plans.

RECOMMENDATION 6: The Emergency Planning Officer should be consulted at all stages to ensure a robust contingency plan is in place at all times for the supply of fuel.

²⁴ PAC Public Hearing with Chief Executive, 12th September 2016

²⁵ Meeting between Mark James, EPO, Chairman and Connetable C. Taylor of PAC, 8th September 2016.

6. Lease Renewal

- 6.1 The PAC queried whether the recent agreement constituted a new lease or a lease renewal and the Director of Estates advised:

“It is less than 3 per cent difference so it is substantively the same area so it is identified as the same parcel of land...The legal advice that we received - I cannot share with you publicly the legal advice - is that it is a renewal of lease and the Minister was recommended to sign his Ministerial Decision referencing Standing Order 168(95) as a lease renewal.”²⁶

- 6.2 The Council of Ministers had agreed the decision to renew the lease by early February 2016, and, as previously noted, the Minister for Infrastructure signed a Ministerial Decision to that effect on 3rd March 2016.

- 6.3 The Chief Executive expressed satisfaction that there were, in effect, five levels of control over fuel farm operations now in place:

“there is a lease, which is a piece of a land on which the operator can operate; there is an²⁷ operating agreement, which is very clear in terms of what the operator has to achieve... a throughput agreement, which allows for other operators to throughput fuel and a fuel-back facility. There is also the Fire Service Fire Safety Certificate²⁸ (plus) C.I.C.R.A. as a regulator on pricing.”

- 6.4 The EPO agreed that with the renewal of the lease secured, safety works were:

“...continuing apace and are due to be completed before the deadline specified in the Operating Agreement. When completed these will provide the highest level of fire protection available for a fuel storage facility.”

- 6.5 The PAC noted that the terms for a new (ground) lease ran from the expiration of the old one, and was in conjunction with the Operating Agreement of the same duration. Clause 13.1.4 of the (renewed) lease provides that the lease may be cancelled:

“if the tenant commits a fundamental breach of the operating agreement or ceases to be a party to the operating agreement”.

- 6.6 This clause, in effect, ties the lease to the operating agreement. Clause 8.2 of the Operating Agreement also sets a completion schedule for the necessary safety works to be completed by December 2016²⁹, with financial penalties and/or revocation of the lease if they are not complied with.

- 6.7 The EPO advised the PAC that he was content with the implementation of the operating agreement as it gave “teeth” to the terms of the lease and makes the ramifications and financial penalties much more robust and enforceable, to ensure Rubis’ compliance with safety regulations³⁰.

²⁶ Director of Estates, PAC Public Hearing 18th May 2016

²⁷ Chief Executive amended to read ‘an operating agreement’ rather than ‘a free operating agreement’, 14th September 2016.

²⁸ The correct term for the certificate is “Petroleum Spirit Licence”, issued by the Fire and Rescue Service, as the Licensing Authority under the Petroleum (Jersey) Law 1984.

²⁹ Because of delays in finalising the Operating Agreement, this was subsequently amended to “no later than 31 March 2017”.

³⁰ Meeting between EPO, Chairman and Connétable C. Taylor of the PAC on 8th September 2016.

7. Conclusion

- 7.1 The PAC has concluded that opportunities for States Members to consider options for acquiring the assets of the fuel farm had been missed, due in large part to no single department having overall responsibility for the security of fuel supply to the Island.
- 7.2 The PAC further concludes that there were other factors instrumental in the failure of officers to fully consider options in respect of the lease renewal:
- opportunities to negotiate procurement of the assets were not undertaken in 2012-2014
 - 2015 contingency plans for the supply and distribution of fuel in Jersey were too high risk and not planned well enough in advance
 - The timescale to put out to tender or purchase the (un-costed) equipment, assets and stock, on an extended lease by late 2015, was too short.
- 7.3 The PAC was disappointed to note that options for the future of the Fuel Farm were not brought to the attention of States Members at any time before they were notified of the decision to renew the lease in 2016. At this late stage, the only reasonable course of action open to them was to ratify the renewal of the lease to the current operators.
- 7.4 Members may well have agreed with the Chief Officer for Infrastructure that, between 2012 and 2014, when the option to acquire the assets of the fuel farm was negotiable, they would have been unlikely to consider undertaking the running of the fuel farm. However, they should and could have been given the opportunity to debate the various options, with associated risks and benefits, to make an informed choice.
- 7.5 The PAC is pleased to note the Chief Executive has accepted that lessons should be learnt and that there was a need to plan well in advance:
- “...there is a 10-year horizon for moving the fuel farm if that is the decision that is taken, but it needs to be thought about well ahead.”³¹***
- 7.6 The PAC agrees that the Chief Executive should consider whether to move the fuel farm from its current position to maximise the value of the current site, and when appropriate, devise a strategy in time for a full debate by States Members.
- 7.7 The PAC commends the decision of the Chief Executive to charge one department (Infrastructure) with the responsibility of negotiating future leases. It considers that leadership and responsibility are key, and opportunities should not be lost due to poor management. In view of the high value and strategic importance of the assets owned by the States, the PAC recommends that a thorough review of Jersey Property Holdings and its portfolio is undertaken. By putting in place more robust structures, strategies and centralised plans, the value of key strategic assets can be maximised.
- 7.8 The PAC looks forward to monitoring the implementation of its recommendations.

³¹ PAC Public Hearing with Chief Executive, 12th September 2016.

8. Appendix 1: Statement made by Minister of Infrastructure:

10th March 2016

The Minister for Infrastructure, Deputy Eddie Noel, has made the following statement:
We are renewing a lease for the land at La Collette. We had no contract to tender as we only own the land, not the equipment needed to run the operation. That equipment is owned by La Collette Fuel Terminal Ltd (Rubis), so we could not tender the running of the fuel farm without buying the equipment.

The lease that expired on 31 January 2016 did contain a clause that allowed the States to buy the equipment from Rubis but, in order to do that, the decision had to be communicated 18 months before the end of the lease (July 2014 at the latest). In order to communicate that decision in July 2014, we would have had to decide to buy the equipment during 2012 so it could be included in the budget.

In 2012, Rubis was upgrading its operation in line with post-Buncefield safety requirements, and there had been no representations from any other operator. It would only have been sensible to buy the equipment if there was a clear public benefit from that purchase. So a decision was not taken to buy the fuel farm equipment. In September 2014 CICRA approved, with conditions, Rubis buying out Esso to become 100% owners of La Collette Terminal Ltd. The conditions were intended to permit fair, reasonable and non-discriminatory terms for other fuel operators wanting to use the terminal and a throughput agreement was required. It was CICRA's view that these conditions, together with an effective dispute resolution arrangement, appropriately addressed the risks posed by the lessening of competition arising from the acquisition.

In November 2015 a CICRA review of Jersey's fuel market, which covered the fuel farm, found that Rubis was not making excessive profits. It found no evidence to support concerns over prices and said that the rate of return over the previous 4 years was not out of line with reasonable comparators. Islanders are better served by a new operating agreement attached to the new lease. It gives other companies using the facilities access to arbitration and, if the operators break the competition law, CICRA has the power to correct the problem. If that isn't sufficient, the States now have the ultimate sanction of terminating the lease and buying the equipment without any compensation for loss of future business, then alternative arrangements would be put in place. It also allows the imposition of damages if any required safety work is not done to a tight timescale.

Competition issues will continue to be monitored closely and, if any party raises valid concerns, there is provision under the competition law to take further action and carry out detailed investigations into how the fuel farm impacts on fuel supply in the island. CICRA have already included in their work programme for 2016 a review of the effectiveness of the conditions they imposed at the fuel farm. I received correspondence from ATF and responses have been provided. All the information received has been taken into consideration.

We can't determine whether or not quoted price comparisons (1p versus 3.4p) are valid, but CICRA have reviewed the market and said that profits are not excessive. In the petroleum industry the key guiding principles are safety, security of supply and economic/commercial interests. All negotiations on the provision of fuel for Jersey are based on those principles and in that order.

9. Appendix 2: Statement made by Assistant Chief Minister:

18th March 2016

The Assistant Chief Minister, Senator Philip Ozouf, has issued the following statement

The renewal of the lease for La Collette Fuel Farm has caused some to question its impact on fuel pricing in the Island. While the details of the lease could not be discussed while negotiations were ongoing last week, I am now in a position to be more explicit.

I am pleased to be able to report that the new lease and accompanying operating agreement contain, for the first time, conditions that mean any breaches of the Competition Law or conditions imposed on the fuel farm by CICRA can result in the lease being cancelled by the States.

These significant new safeguards have been designed to lower the barriers to entry for businesses to supply fuel in Jersey. This will facilitate competition in the fuel market which will help to keep import costs down for the benefit of consumers.

Irrespective of who owns the fuel farm it is essential to allow competition and ensure that the facility is operated on a fair and non-discriminatory basis.

The inclusion of new safeguards in the lease is only the starting point and it is essential they are enforced fairly.

Having assumed the responsibilities for competition on the 1 January this year, it is my job to ensure that happens.

The major review of Jersey's competition framework, which was completed by Oxera and overseen by Professor Sir John Vickers, paves the way for a strengthening of our competition and regulatory arrangements overseen by the Chief Minister's department and working with CICRA to make sure that all markets work in consumers' interests.

I wish to re-state my commitment to ensure that all the 23 recommendations from that review are implemented.

This is essential if we are to deliver best value for Islanders in markets that have been the subject of long standing concern to consumers.

There will be continued focus and, where necessary, action on fuel pricing.

I wish to assure members of the public that I am determined to use the existing Competition Law, a strengthened CICRA and the new powers in the lease to improve transparency and make markets work for the benefit of Islanders.