

STATES OF JERSEY



JERSEY INTERNATIONAL FINANCE CENTRE (S.R.8/2017): RESPONSE OF THE MINISTER FOR TREASURY AND RESOURCES

**Presented to the States on 20th September 2017
by the Minister for Treasury and Resources**

STATES GREFFE

**JERSEY INTERNATIONAL FINANCE CENTRE (S.R.8/2017):
RESPONSE OF THE MINISTER FOR TREASURY AND RESOURCES**

Ministerial Response to: S.R.8/2017

Ministerial Response required by: 25th August 2017

Review title: Jersey International Finance Centre

Scrutiny Panel: Corporate Services

INTRODUCTION

The Minister for the Environment welcomes the Corporate Services Scrutiny Panel's report on the Jersey International Finance Centre, and has responded to some of the Findings and Recommendations as appropriate.

Deputy S.G. Luce of St. Martin
Minister for the Environment

The Minister for Treasury and Resources has made a number of observations on the Panel's findings and is able to accept most of the Recommendations. It is pleasing that substantial progress continues to be made on the development.

Senator A.J.H. Maclean
Minister for Treasury and Resources

Senator I.J. Gorst
Chief Minister

FINDINGS

	Findings	Comments
1	The Ministerial approval for the enabling loan for Building 4 of the Jersey International Finance Centre was signed on 14th October 2014 (the day before the 2014 elections).	Noted.
2	The Panel encountered one instance where information requested from SOJDC was actually held by the Department for Treasury and Resources and could have been provided at an earlier stage (in contravention of the Scrutiny Code of Practice).	Noted. This matter has been discussed with the Panel.
3	The Panel was asked to sign non-disclosure agreements which included unlimited personal liability for Panel members and Scrutiny Officers. This would have conflicted with	Noted, and now resolved.

	Findings	Comments
	the parliamentary privilege afforded to States Members, as members of a parliament.	
4	There is evidence that the financial implications of delivering the Esplanade Masterplan as laid out in P.60/2008 significantly changed during 2008 from a predicted return of £70 million to a loss of £50 million. This would have been known to Ministers at the time.	The finding is not agreed. The negotiated deal with Harcourt Developments Limited was for a base return of £50 million and sales overages that could have amounted to a further £20 million. In the event, Harcourt could not deliver the required £95 million bond and the then Waterfront Enterprise Board Limited terminated the Heads of Terms with Harcourt in July 2009. The reference to a “loss of £50 million” relates to the Harcourt proposal only from Harcourt’s perspective. There would have been a return to the States, not a loss.
5	The Trowers & Hamlin/King Sturge report on the 2008 deal with Harcourt to implement the Esplanade Masterplan was never published, despite assurances that it would be made available to States Members.	There would be no benefit in publishing this report. It relates to a specific development proposal which has been superseded.
6	A proposition supported by the Council of Ministers requiring SoJDC to deliver the Esplanade Quarter in phases was rejected by the States in 2011 but delivery has still taken place in phases.	SoJDC is obligated under P.73/2010 to secure pre-lets and pre-sales to ensure that the risk of delivering a project is minimised. P.73/2010 further states that SoJDC will phase large development schemes if practically feasible to do so. These risk mitigation measures are also set out in the Company’s Memorandum of Understanding with the Shareholder (the Minister for Treasury and Resources). The States’ rejection of P.24/2011 did not change the requirements of P.73/2010 and the States knew that SoJDC would be delivering the Esplanade Quarter. The delivery of any masterplan is normally phased due to: (i) the logistics of delivering a large volume of space; and (ii) financially in order to match known demand. Furthermore, SoJDC could only deliver the lowering of La Route de la Libération as envisaged in the current Masterplan when it has the financial means to do so.
7	The timetable for delivery of the Esplanade Masterplan has changed, such that the majority of the public realm will be delivered at an unspecified later date.	<u>DoE</u> Each planning permission granted, to date, for new buildings ¹ within the Esplanade Quarter site has been conditional upon the provision of, prior to the first use/ occupation of the building, landscaped areas, public access to those areas, public art, and of replacement car parking provision. Each permission has also been made

¹ Building No. 1 – P/2013/0993; Building No. 4 – P/2012/1141; Building No. 5 – P/2014/2192; Building No. 6 – P/2016/1876.

	Findings	Comments
		<p>conditional upon the submission of a ‘phasing plan’ to include a timetable of delivery for the wider Esplanade Quarter works, beyond the Phase 1 JIFC. This phasing plan also has to include for the phased delivery of the sinking of La Route de la Libération and for the balance of the works highlighted in the masterplan, including the broader public realm improvements.</p> <p>It is acknowledged that as the development is progressing on a building-by-building basis, there is currently no security or strategic co-ordination over the delivery of those wider-ranging elements.</p>
8	<p>The Panel is concerned that delivery of the other key parts of the Masterplan may never materialise. This includes sinking La Route de la Libération, public space including the winter garden and ultimately, the delivery of a new town quarter.</p>	<p><u>DoE</u></p> <p>The concern of the Panel is acknowledged. The ongoing review of the masterplan for the St. Helier Waterfront will review the objectives of the plan and seek to ensure that it is deliverable in order that the opportunity to create a new town quarter is fully realised in a way that makes the most appropriate contribution to the Town of St. Helier and the Island.</p>
9	<p>Sinking La Route de la Libération is key to delivering the current version of the Esplanade Masterplan. However, no planning has yet gone into implementing this. The connectivity benefits envisaged by the present Esplanade Masterplan will not be achieved if the road is not sunk.</p>	<p><u>DoE</u></p> <p>One of the principal objectives of the current masterplan is to integrate the old town with the Waterfront and to address the separation presently caused by the La Route de la Libération. The ongoing review of the masterplan for the St. Helier Waterfront will review all of the objectives of the plan, including this one, to establish whether it remains appropriate and is deliverable.</p> <p>At this stage of the review, having engaged with built environment experts associated with the Design Council/Commission for Architecture in the Built Environment (“CABE”), the review of this aspect of the masterplan is of fundamental significance to the overall review of the plan. Work is being undertaken to explore how better integration between the town and the Waterfront might be achieved; what that means in practice; whether sinking the road is the best way to achieve this; and whether other, better options might be more appropriate. This will involve stakeholder and community engagement as an integral part of the masterplan review.</p> <p>The planning consents issued thus far, in relation to the delivery of SoJDC refer to as Phase 1, does not preclude the delivery of those other elements contained within the current masterplan.</p>

	Findings	Comments
10	It is not clear, from the minutes of the Regeneration Steering Group, how much room the members of the RSG have to independently and privately discuss policy matters, in order to provide an appropriate level of political guidance to regeneration projects.	See response to Recommendation 10.
11	The wording of the Proposition which set up the States of Jersey Development Company (P.73/2010) lays down a specific condition in relation to the value of legally binding pre-lets that must be obtained by SoJDC before committing to construction costs. The Minister for Treasury and Resources accepts that this condition relates to the capital value of the lease but considers that it includes the value of the unlet part of the building.	See response to Recommendation 11.
12	Whilst the Minister for Treasury and Resources includes the value of the unlet part of the building in his interpretation of P.73/2010, this is not mentioned anywhere in the P.73 condition.	See response to Recommendation 11.
13	It is clear that an unlet space cannot have a legally binding pre-let agreement attached to it.	Whilst unlet space cannot have a legally binding pre-let agreement, unlet space still has value in a completed building. See response to Recommendation 11.
14	The States put in place conditions to ensure that a risk-averse approach was followed. In the event that the Council of Ministers wished to take a more risky approach, this should have been brought back to the States Assembly.	The Council of Ministers do not agree that a more risky approach has been followed and that developments have been undertaken within the remit of P.73/2010, thus not requiring any propositions to be brought back to the States Assembly for approval.
15	The condition included in P.73/2010 in relation to pre-lets is not sufficiently clear.	See response to Recommendation 11.

	Findings	Comments
16	Development of JIFC Building 4 commenced before the pre-let agreement with UBS and the construction contract with Camerons were signed.	The Minister for Treasury and Resources does not agree that pre-enabling works are considered as development.
17	Relative to other recent private sector developments, JIFC Building 4 commenced with a significantly lower level of pre-lets.	The level of pre-lets for JIFC Building 4 met the conditions required under P.73/2010, and it was therefore appropriate for development to commence.
18	In providing an update on the profitability of the JIFC in 2015, the Minister for Treasury and Resources referred publicly to a draft report. This report has not been made available to Scrutiny.	The Minister for Treasury and Resources has not yet received the final report of this review. The Panel is aware of issues involved related to confidentiality on the part of the report authors.
19	The valuations of profitability for the JIFC do not take account of the land value of the JIFC plots.	The SoJDC appraisal was concerned with the net receipt from the development of the JIFC (land and profit). This appraisal was used to assess the cash receipt from delivering the JIFC and the public infrastructure associated with Phase 1 of Esplanade Quarter.
20	The Panel is not convinced that the predicted profits of the JIFC will be sufficient to cover the costs of providing the public realm as set out in the Esplanade Quarter Masterplan.	The Minister for Treasury and Resources meets with SoJDC on a quarterly basis, and is satisfied through information provided at those meetings that the predicted profits will be sufficient to cover the costs of providing the public realm as set out in the <u>current</u> Esplanade Quarter Masterplan.
21	The majority of space within the JIFC is likely to be taken up by existing on-Island businesses. There is little evidence of the JIFC attracting inward investment (i.e. businesses from outside the Island).	Demand for high-quality office space from existing on-Island businesses is increasing, and it is appropriate that developments like the JIFC should be offered to such businesses who are keen to relocate. SoJDC are also in discussion with businesses from outside of the Island and some space within Building 4 has now been let to such businesses.
22	Taking into account the JIFC and all other private sector developments, there is a development pipeline of around 1.5 million sq.ft. of office space. To put this into context, approximately 470,000 sq.ft. of office space has been developed and taken up over the last 10 years.	<u>DoE</u> The masterplan envisaged the provision of 620,700 sq.ft of office floor space within the bounds of the masterplan area with 470,000 sq.ft of that destined for the Phase 1 site. The already approved Building Nos. 1, 4, 5 and 6 of the Esplanade Quarter are expected to yield 337,240 sq.ft of office space if all constructed and occupied for office use. However, recent developments at 66–72 Esplanade (Gaspé House), Weighbridge House, 27/28 Esplanade and 29–31 Seaton Place will yield approximately

	Findings	Comments
		267,000 sq.ft. of high-grade office space which was not envisaged when the 2008 masterplan was adopted. One of the tasks of the review is, therefore, to assess the current and future demand for new high-grade office space within St. Helier. To this end, we will be seeking expert advice from Design Council/Commission for Architecture in the Built Environment, who will also assist the department in scoping out a framework for a vibrant and viable mix of uses within the Esplanade Quarter.
23	The move to direct development has led to greater risk being borne by SoJDC, and ultimately the States. That is why the pre-let condition set by the States in P.73/2010 is more onerous in order to mitigate such risk.	P.73/2010 allows SoJDC to undertake direct development, and each proposal is assessed on its own merits. The Board of SoJDC always gives due consideration to direct development versus joint ventures when assessing individual site proposals.

RECOMMENDATIONS

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
1	There is a 15 day 'grace' period which applies to Ministerial Decisions in relation to the States of Jersey Development Company. This should mirror the provisions contained within the Standing Orders of the States of Jersey in relation to Land Transactions, so that any decisions taken by the Minister must be presented to the States in a report at least 15 days before the decision is effective.	T&R	Reject	The Report concedes that the Minister for Treasury and Resources has routinely followed the 15 day 'grace' period for MDs that are signed in relation to SoJDC.	N/A
2	Ministers and Departmental Officers should ensure that they are aware of the provisions of the Code of Practice for Scrutiny Panels which require the Executive to provide any additional relevant information relevant to a review, whether or not this is specifically requested.	CMD/ T&R	Accept	Chief Officers will be reminded that, to their best endeavours, they should provide the information that has been requested.	Ongoing

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
3	The Chief Minister should work with the Chairmen's Committee to ensure that the protocol for engagement between Scrutiny and the Executive provides for appropriate access by Scrutiny to information held by arm's-length entities. Once complete, the Privileges and Procedures Committee should bring forward any necessary changes to Standing Orders to provide a legal basis for Scrutiny to obtain such information in a straightforward and expedient way.	CMD	Partially accept	The Chief Minister will work with the Chairmen's Committee to agree the protocol for engagement between Scrutiny and the Executive. The second part of the Recommendation relating to the Privileges and Procedures Committee is a matter for the PPC.	March 2018
4	Where a Masterplan for development of a particular site or area is of sufficient importance to require endorsement or approval by the States Assembly, any significant changes made to it should be brought back to the Assembly for approval. The States Assembly should be asked to endorse any Masterplans for development of land owned either directly or indirectly by the States of Jersey.	DoE	Accept	Article 6 of the Planning and Building (Jersey) Law 2002 requires the Minister to consult any Minister or statutory authority with an interest in the development before any such guidelines, such as a masterplan, are published. Although the Law does not require that any masterplan be brought to the States Assembly for endorsement or approval, I accept that any significant change to an existing masterplan that was originally endorsed or approved by the States should be brought back to the States for approval. Similarly, I accept that it would be prudent, and in the interests of probity and transparency, to bring any masterplan for development of land owned either directly or indirectly by the States of Jersey to the States Assembly for endorsement. This principle has already been accepted and endorsed by the Minister for the Environment and the States Assembly in its	Ongoing

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				approval of Proposals 15 and 16 of the Revised 2001 Island Plan. It is envisaged that any proposed revision of St. Helier Waterfront Masterplan will be considered by the States in early 2018.	
5	The Minister for the Environment should ensure that where public realm is included in a planning approval, delivery of that public realm is prioritised.	DoE	Accept in part	<p>Planning permissions can be very complex and may include, other than the principal development itself, many related elements; from essential infrastructure, highway safety works, public art, public realm provision and off-site works that are essential in making a development proposal acceptable.</p> <p>I agree that the provision of additional public realm is important, especially within the town of St. Helier, where the majority of the Island's population live and work; but also where the pressure for new development is at its greatest. To this end, officers in the Department of the Environment are currently working on a Public Realm Strategy which will highlight where there are shortfalls in the provision or quality of open space and explore the most effective mechanism for securing new provision.</p> <p>In terms of the recommendation to prioritise the delivery of public realm when proposed as part of a planning proposal, this is something that would have to be assessed on a case-by-case basis. The important thing is to ensure that there is a robust planning mechanism in place to ensure that any public realm proposed is delivered in an effective and timely manner,</p>	Ongoing

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				either through conditions on a planning permission or through a Planning Obligation Agreement.	
6	It is important that the ongoing review of the Esplanade Masterplan by the Minister for the Environment includes careful consideration of how connectivity can realistically be achieved.	DoE	Accept	<p>Work already undertaken on the review of the Masterplan has highlighted the issue of connectivity as being, perhaps, the key to achieving the delivery of a successful Esplanade Quarter development that helps link town with the waterfront and harbours.</p> <p>At this stage of the review, having engaged with built environment experts associated with the Design Council/ Commission for Architecture in the Built Environment, the review of this aspect of the masterplan is of fundamental significance to the overall review of the plan.</p> <p>Work is being undertaken to explore how better integration between the town and the Waterfront might be achieved; what that means in practice; whether sinking the road is the best way to achieve this; and whether other, better options might be more appropriate.</p> <p>This will involve stakeholder and community engagement as an integral part of the masterplan review.</p>	Target: Q4 2017
7	It is important that the ongoing review of the Esplanade Masterplan by the Minister for the Environment is completed in a timely manner, and includes appropriate consultation and time for scrutiny as mentioned in the Minister's announcement in September 2016. The Panel notes that the existing	DoE	Accept	<p>It is acknowledged that the existing masterplan is no longer fit for purpose and that a replacement Masterplan, or some other form of development framework, is required at the earliest opportunity.</p> <p>Work is ongoing with the Design Council/Commission for Architecture in the Built Environment to bring this about</p>	Target: Consultation and Scrutiny briefing Sep./Oct. 2017

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	Esplanade Masterplan will continue to apply to any new planning applications for the site until a new Masterplan is agreed.			with a view to bringing a revised Masterplan, or development framework, to the States in Q1 2018. This will involve stakeholder and community engagement as an integral part of the masterplan review, together with formal liaison with Scrutiny Panels, as appropriate and required.	
8	Any changes to the Esplanade Masterplan resulting from the ongoing review by the Minister for the Environment should be brought to the States Assembly for approval.	DoE	Accept	See response to Point (4) above.	Target: Dec. 2017 – March 2018
9	The Regeneration Steering Group (“RSG”) should take a more clearly defined role in guiding (and leading) regeneration projects in line with the approved policies of the States Assembly.	CMD	Accept	RSG acts in accordance with the principles adopted in P.73/2010, and in doing so will be mindful of the recommendation.	Ongoing
10	Attendance at RSG meetings should be limited to members approved by the States Assembly other than officers where updates are required. The RSG should ensure that sufficient time is allowed in meetings for confidential policy discussions.	CMD	Accept	Attendance at RSG meetings is in accordance with P.73/2010. The Chairman determines if other individuals should attend for specific topics.	Ongoing
11	In order to avoid any future ambiguity, the wording of P.73/2010 needs to be clarified in clear and simple terms to reflect the wishes of the States Assembly. Any amendments should be brought back to the States for approval.	T&R	Accept	A review of the wording of P.73/2010 will be undertaken and brought to the States Assembly for approval to address any ambiguity in the current wording.	31st March 2018

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
12	The condition set out in P.73/2010 regarding the level of pre-lets required by SoJDC in relation to a particular building or development should be interpreted to mean that the legally binding pre-lets (when capitalised) must equal or exceed all costs that relate to completing the project, without taking into account the unlet part of that building or development.	T&R	Reject	A review of the wording of P.73/2010 will be undertaken and brought to the States Assembly for approval to address any ambiguity in the current wording.	N/A
13	For the purposes of P.73/2010, development should be deemed to commence in line with the Planning Law definition of development.	T&R	Reject	<p><u>T&R</u></p> <p>A review of the wording of P.73/2010 will be undertaken and brought to the States Assembly for approval to address any ambiguity in the current wording.</p> <p><u>DoE</u></p> <p>In April 2017, the DoE adopted and published a supplementary planning guidance note relating to time limited planning permissions.</p> <p>This Practice Note included the following definition of what constitutes ‘commencement’ of a development.</p> <p><i>“The moment at which the carrying out of any element of lawful development including building, engineering, mining or other operation on, over or under the land or, the material change of use of a building or land, approved by a planning permission would have required planning permission in its own right²”.</i></p>	31st March 2018

² Article 5 of the [Planning and Building \(Jersey\) Law 2002](#) expands on the definition of ‘development’.

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				<p>This interpretation does not include the carrying-out of development that would be ordinarily permitted by a Development Order, such as the Planning and Building (General Development) (Jersey) Order 2011.</p> <p>It should also be noted that for a development to be regarded as being 'lawful', all conditions attached to a permission that require action <u>prior</u> to commencement should have been successfully fulfilled.</p>	
14	All contracts signed by the States of Jersey should include express provision for Scrutiny access to information.	CMD	Neither accept nor reject	<p>Panels must be able to effectively hold the executive to account for its actions and policies, including accessing appropriate information; and with this in mind, powers have been conferred on Panels to call any person, papers or records. In addition, procedures exist to resolve any disputes relating to the provision of information, including consideration by the PPC, including on the grounds that documents are legally privileged, and the relevance, necessity and usefulness of the information requested. These arrangements are broadly considered adequate, including in relation to contacts, especially those entered into by Ministers as corporate sole, although issues appear to remain around arm's-length bodies: in particular, those operating in a competitive environment where contacts include commercially sensitive information (although in the case of this review, full access to contracts was provided to the Panel's advisers, which was able to inform their</p>	N/A

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				analysis). In line with Recommendation 3 above, it would be valuable to continue to consider this issue as part of the wider review of the Code of Practise for Scrutiny Panels and the Public Accounts Committee, and the development of the Code of Practice for engagement.	
15	The Minister for Treasury and Resources should adopt a risk-averse approach when assessing profit estimates for development undertaken by SoJDC, by using current market yields (rather than anticipated yields), backed up by appropriate evidence.	T&R	Reject	The Minister for Treasury and Resources considers a wide variety of information when assessing profit estimates. Given the relatively low level of high-grade office property disposals in Jersey, relying solely on “current” market yields (or historical transactions) would not be appropriate.	N/A
16	It is important that yields used to assess the pre-let condition are in line with market norms at the time of commitment to development. Assumptions and forecasted yields should be demonstrated to be prudent and in line with market norms.	T&R	Accept in part	The Minister for Treasury and Resources always takes a prudent approach to the assessment of yields and the pre-let conditions. However, relying solely on the yields at the time of commitment to development is not necessarily appropriate if other verifiable information that could affect these yields is available.	Ongoing
17	SoJDC and the Minister for Treasury and Resources should outline clearly for each development project undertaken by SoJDC, the specific reasons why direct development is preferable.	T&R	Accept	The risks and benefits of each development are initially assessed by the SoJDC Board before being presented to the Minister for Treasury and Resources. Further independent assessment is then undertaken within SoJ to ensure that all matters have been considered. The Minister has the ability to seek additional independent advice if he feels it would be appropriate.	Ongoing

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
18	Both the Regeneration Steering Group and the Treasury and Resources Department should keep the operating model underpinning SoJDC under regular review to ensure it represents the best value for money and best risk profile for the Island. This should include review of the specific circumstances which lead to direct development being favoured.	CMD/ T&R	Accept	It is right that the operating model underpinning SoJDC be subject to review, especially in relation to the development of new sites on behalf of the Public, and being cognisant of the interaction between public and private development and the role of government. At the same time, SoJDC was established as recently as 2010 to undertake activities which are long-term in nature, so equally requires a degree of stability and certainty, especially given the size and extent of the JIFC. See response to Recommendation 17 in relation to direct development.	Ongoing
19	An exit strategy for SoJDC assets, in line with the requirements of P.73/2010, should be published by the Minister for Treasury and Resources and should contain specific exit dates for each asset.	T&R	Reject	P.73/2010 provides the mechanism for asset disposal and valuation protocol for the transfer of assets. Exit strategies for each individual development are discussed prior to the commencement of construction, and at the regular quarterly updates provided by SoJDC to the Minister for Treasury and Resources. Exact dates for disposal will generally be driven by market conditions, SoJDC's requirements for future funding, and other factors. There is little value in publishing specific exit dates, as this is likely to provide potential purchasers with an opportunity to drive down prices as SoJDC could be perceived to be in a 'forced sale' scenario.	N/A

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
20	By the end of December 2017, the Minister for Treasury and Resources should publish a clear exit date for the assets which the States Assembly agreed as part of P.73/2010 should be transferred to Jersey Property Holdings.	T&R	Accept	Some of the assets detailed within P.73/2010 have already been sold and the details provided separately to the Corporate Services Scrutiny Panel following the quarterly hearing in July 2017. A timeline for the exit of the remaining assets will be discussed with SoJDC and a decision made on whether the publication of a timeline is appropriate. It is important to note that P.73/2010 envisages that such assets will be transferred at market value, so it is important to consider such funding in the context of other funding bids.	31st December 2017
21	The Panel notes the planned review by the Comptroller and Auditor General in relation to Arm's-Length Organisations connected to the States. The Panel recommends that once this report is published, consideration is given as to whether a specific review of the effectiveness of the role played by SoJDC should be undertaken by the Public Accounts Committee or the Comptroller and Auditor General.			Noted. This recommendation is not directed to a States department.	N/A
22	In the interests of transparency, the conditions for achieving bonuses for SoJDC Personnel should be published.	T&R	Reject	The Minister for Treasury and Resources will maintain regular dialogue with the Remuneration Committee of SoJDC in relation to Executive Pay. The Minister will continue to satisfy himself that bonus schemes are appropriately structured and targeted. The quantum of Executive bonuses is reported annually in the company's Financial Statements.	N/A