



Scrutiny Office

Public Accounts Committee

Fuel Farm

WEDNESDAY, 5th OCTOBER 2016

Panel:

Deputy A.D. Lewis of St. Helier (Chairman)

Deputy J.A. Martin of St. Helier

Connétable C.H. Taylor of St. John

Mr. R. Parker

Witnesses:

Chief Officer, Department for Infrastructure

Chief Officer, Department of Economic Development, Tourism, Sport and Culture

Also present:

Comptroller and Auditor General

[14:03]

Deputy A.D. Lewis of St. Helier (Chairman):

Just a couple of housekeeping things. If anybody has got their phones on, if they could switch them off. I am the worst culprit for that. I got fined in the States last week. Firstly, thank you very much to the 2 officers for coming along today, Mr. John Rogers from Infrastructure and Mr. Mike King from Economic Development, Tourism, Sport and Culture. Today we are going to be talking about the fuel farm lease renewal and we are going to be reviewing the timeline and a number of other elements to the process that was gone through. For the purpose of the record, if we could

go round the table first so that we can make sure the mics are working and we have got everybody's name on the record, starting perhaps with the Comptroller and Auditor General.

Deputy A.D. Lewis:

Thank you, gentlemen. Some minor apologies for the condition of the room at the moment. The air conditioning is all being replaced and it seems to have been going on for rather a long time. So if it gets a bit cold in here ... it was very cold when we came in earlier. I know it is a nice sunny day out there but it was quite cold when we came in. There is no way of controlling it at the moment. What I am going to do, gentlemen, if I may, just a little bit of preamble here to set the scene so it puts in context what we are going to be talking about. It is very much a fact-finding mission so that we can put it into context with some other interviews that we have already done, which I will speak about in a moment, which have all been very useful. You 2 gentlemen were involved with this process in different ways, very different ways in fact, so it is going to be really interesting to hear some of your views on this matter. So if I just take us back a little bit to Friday, 4th March 2016. The then Minister for Infrastructure sent out an email to States Members informing that he had signed a ministerial decision on the previous day, the effect of which was to renew for a further 10 years the lease on the fuel farm at La Collette, St. Helier, to the current operator La Collette Fuel Terminal Limited, better known as Rubis. As there was little or no time to scrutinise the lease that was signed on behalf of the public, the Public Accounts Committee considered it to be of value to find out what happened in the lead-up to the renewal to ensure that it was in the best interests of the Island in respect of fuel supplies and prices. The P.A.C. launched its review to determine whether the procedure for renewing the lease was followed correctly, whether opportunities to tender the fuel farm to other operators had been fully explored, whether adequate notice of upcoming leases in place was given and whether Rubis offers the best value for money option for the States of Jersey. Areas of interest include but are not restricted to whether or not good value for money has been achieved and whether appropriate controls and governance agreements were followed. We have already held, as I said before, public hearings with the Group Chief Executive of Ports of Jersey, Doug Bannister, the Director of Estates, Ray Foster, as well as the Chief Executive, John Richardson. We have also gathered evidence from the Solicitor General and the Emergency Planning Officer who, of course, is also the Fire Chief these days. What we will do is go straight into some questions. The first question, which I am sure you will both have opinions on, perhaps different ones, which is what this exercise is all about really, is: in your opinion who had overall responsibility for 4 things: safety, security, value for money and the overall fuel supply for Jersey from 2006 onwards? Do you want me to repeat that question? Who, in your opinion, had overall responsibility for those 4 elements: safety, security, value for money and the fuel supply for Jersey?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

I will answer first, John, if you want to...

Deputy A.D. Lewis:

Yes, if you would like to go ahead, Mike.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

The simple answer to your question is if you are trying to establish whether any one individual, department or Minister had responsibility for all of those things, then the answer is no.

Deputy A.D. Lewis:

That is one of the things that we really wanted to know.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

There was not anyone who had overall responsibility for that. I think the truth is that the organisation is not configured in that way. Responsibility for elements of energy supply, energy policy, for instance, sit underneath the Department of Environment. We assist with that from an economic perspective, particularly with the policy, but the areas of safety and security of supply sit in other areas. So there is no single point at which fuel supply and the assets that the States may own, which is the lease of the fuel farm in this instance, sit under a single point of investment.

Deputy A.D. Lewis:

From a structural perspective, Mike, and you having a lot of knowledge of structure and restructuring and so on, do you think that it is a structural failure to not have anybody overall responsible for a key strategic asset such as this?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

As you know, you and I have exchanged emails in the past about the nature of this, the shape of the organisation and the fact that form should follow function. If you take something which is a key strategic input to the economy such as energy and fuel then logically, in an ideal world, yes, I think you probably would have a single point of responsibility for that, but that is not the way the fundamental structure of the States of Jersey organisation sits.

Deputy A.D. Lewis:

Coming back to the question, who, in your opinion, at that point was responsible for those 4 elements if it was not one sole entity, which clearly it was not?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

Some of those things you talk about are regulatory functions, so safety and security very much sit with the Fire Service in terms of fire safety legislation. Could you just go through them one by one?

Deputy A.D. Lewis:

So, safety and security, as far as you are concerned that would be the Fire Service.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

Yes, because that is issued through, effectively, a certificate which is issued by the Fire Service which confirms compliance with the safety regulations that apply to the fuel farm at any given time.

Deputy A.D. Lewis:

Value for money?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

Well, value for money ultimately, I guess, as with all things in the Island, rests with the competition authority. If there are issues with value for money in terms of the users of any given service or facility, such as the fuel farm, then the users, if they have a legitimate complaint with the operator, should have recourse to the competition authority. Value for money in this particular context, and I think I have sent an email to you on 1st September which was quite specific in this regard ... value for money as far as the fuel farm is concerned, in terms of fuel supply as a whole in the Island, the fuel farm is a very small and fairly stable element of that, but for damage from the fuel farm there is very significant volatility. If there are issues in any part of that supply chain then ultimately we have the competition law, recourse to the competition law if there has been any abuse of monopoly, over-charging or whatever.

Deputy A.D. Lewis:

Continuity of supply, the economic concern?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

Ensuring continuity of supply I guess is really about making sure that there is nothing ... in terms of what we own and control, nothing that we do, and this is particularly pertinent to the Ports of Jersey and the facilities that they provide for fuel importation ... nothing from that perspective that prevents supply to the Island or is in any way an impediment to that. I do not think there are issues, let alone serious issues, that are related to security of supply. Certainly over the time I have been here - and John has been here slightly longer and may be able to comment on it - I do not think we have had any significant issues around security of supply. One of the things that interestingly is built into the certification, I think, which is issued by the Fire Service is the requirement for minimum stock levels, for instance, and one of the aspects of security of supply is that they have to hold a minimum level of stock to supply the Island should there be any interruption.

Deputy A.D. Lewis:

We will come back to that one later because we have a question on that which relates to the numbers of days, which we were perplexed about.

Mr. R. Parker:

Mike, you said earlier that it was down to the competition authority related to the value for money. Is there not an overriding responsibility related to economic development, related to the cost of significant items like fuel in relation to the industry of the Island, to make sure it is competitive with other jurisdictions?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

Yes, there is and indeed we have taken steps over the course of the last 3 to 4 years, maybe a little bit longer, to ensure that, for instance, through something as simple as price marking legislation, that garages now have to display openly and clearly what the price of their fuel is. Prior to that I think there was the opportunity, perhaps, for a lack of transparency in the retail market that does not exist. What we have started to see as a consequence of that is prices in more and more outlets converging to the lower end of the price spectrum rather than the higher end of the price spectrum. I think the most recent example of that is probably the garage at the Marks & Spencer at St. Peter which previously was probably towards the higher end and is now down around, I saw this morning, 97.9, which is about where Airport Cars and Motor Mall are, which are known as the lower cost providers. So there are interventions such as that that we have undertaken to ensure value for money.

Mr. R. Parker:

But if the fuel is coming through one area, being the fuel farm, that effectively has a particular price point at that stage.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

Yes, it does.

Deputy A.D. Lewis:

So they are the gatekeeper in effect. Do they control the price as a result?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

As you will know - hopefully this has been circulated to you - I think that what Economic Development proposed on 3rd March 2015 was that the lease renewal for the fuel farm was qualified by an operating agreement which locked in the conditions precedent in the C.I.C.R.A. (Channel Islands Competition and Regulatory Authorities) approval of the acquisition of the Esso equity in the fuel farm to ensure that the rate of return was considered to be reasonable, based on

market choice, and that access and throughput rates were uniform for anybody coming through the terminal. As C.I.C.R.A. said in their report of November 2015, there is no evidence, based on all the information they have, of any abuse of dominant position in that particular aspect of the fuel supply chain.

[14:15]

So I think the answer to your question is, yes, but I think the underlying answer is: does that have a major impact on the underlying price of fuel in the Island? Not to the extent that other aspects of the supply chain do, particularly in the retail aspect which is downstream of the fuel.

Deputy A.D. Lewis:

We will come back to that later on. John, your involvement here is perhaps even more so now because we understand that Infrastructure is very much responsible for that site and Property Holdings, of course, now sits in your department. But at the time that this all occurred, who did you regard to have responsibility for those 4 aspects?

Chief Officer, Department for Infrastructure:

What date, 2006?

Deputy A.D. Lewis:

We are going back to 2006, yes.

Chief Officer, Department for Infrastructure:

2006 I was not involved at all. My involvement started in 2009 when I became chair of the Hazard Review Group at La Collette. In terms of safety and security, it is the Fire Service and we stepped in to help them in terms of negotiations and in terms of the improvements on the site that were required following Buncefield.

Deputy A.D. Lewis:

The engineering aspect of your department, would that have some influence? Would it be collaboration between you and the Fire Service?

Chief Officer, Department for Infrastructure:

From an engineering perspective, my background in the real world is help them do the right specification, make sure everything was in order and give them some project management expertise from one of my staff to help them guide through the process. At the same time, we were developing and we put in a new replacement fire ring main and pumping station for this area.

Deputy A.D. Lewis:

So as far as you are concerned, the continuity of supply, who would that sit with in terms of there is a lot of equipment down there, the majority of which is owned by Rubis themselves and some of which may have been infrastructure that the States own. It could be, for example, plugging it into the electric system, the other ...

Chief Officer, Department for Infrastructure:

Sorry, Andrew, plugging into ...?

Deputy A.D. Lewis:

For example, the infrastructure around the plant is our land, it is States-owned land, as is where the fuel farm is. The fuel farm itself, the equipment, is owned by the operator.

Chief Officer, Department for Infrastructure:

That is correct, yes.

Deputy A.D. Lewis:

Is there any equipment around it and any facilities that are supplied to it that are within your control?

Chief Officer, Department for Infrastructure:

The only thing I am aware of is the sewage connections and the fire water system, which is a ring main that feeds all of La Collette.

Deputy A.D. Lewis:

What was your understanding of which department or Minister was responsible for the negotiation of the renewal of the fuel farm lease? Who was responsible, which Minister or which department? We are talking here now, we have got to the end of the lease and we are now renewing it, we are negotiating. Which department had responsibility for that or was it very much a partisan cross-departmental process? We have got to the end of the lease now. So who is responsible?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

The lease obviously ... all property that is owned by the States is ultimately administered ... and you said yourself earlier. When the lease was renewed, the ministerial decision on the lease was signed by what was the Minister for Transport and Technical Services at the time, was it not?

Chief Officer, Department for Infrastructure:

No, it was ... which lease, sorry?

Deputy A.D. Lewis:

I am talking about the renewal here. So, the original lease I believe was signed by the Minister for Treasury in 2006. The new lease, in my understanding, was signed or agreed by the Minister for Infrastructure, because by that stage Property Holdings was sitting in Infrastructure.

Chief Officer, Department for Infrastructure:

Had transferred across, correct.

Deputy A.D. Lewis:

So is that your understanding?

Chief Officer, Department for Infrastructure:

The leases sit with Property Holdings. The property of the Island under States control sits with the Property Holdings Minister and prior to 1st January this year that sub-department sat under the Minister for Treasury. So there was an Assistant Minister for Property Holdings who was the same person who is our Minister now.

Deputy A.D. Lewis:

What involvement did either of you have in that process?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

Now you are talking about the process of the renewal of the lease?

Deputy A.D. Lewis:

Renewal of the lease, yes.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

Let us go right back to 2012-13, I guess, when the real issue there 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, and that was one of the issues that E.D.T.S.C. (Economic Development, Tourism, Sport and Culture) ... because at the time E.D.D. (Economic Development Department) as it was, had oversight of C.I.C.R.A. which is obviously now transferred to the Chief Minister's Department, under Senator Ozouf. So we had involvement from the perspective of ensuring that ... or liaising with C.I.C.R.A. to establish the position and the conditions precedent on that and whether or not the lease was then the appropriate instrument which could capture that conditions precedent to make sure that the operation of the fuel farm was consistent with that. The consistent advice that we got, from Law Officers and others, was the lease itself was not fit for purpose from that perspective, which is why, going all the way forward to 3rd March 2015 and based on experience that we had had with the ramp permit and Condor at Ports of Jersey, I proposed, at a meeting I

think on 3rd March or 2nd March, attended by Ministers and officers - I have got the record of the meeting here - that that lease should be conditioned by a separate operating agreement which had built into it termination clauses which were related to potential breaches of the competition law and breaches of the conditions precedent in the terms of ...

Deputy A.D. Lewis:

You are talking about 2016?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

No, 2015.

Deputy A.D. Lewis:

I was going to say, it might have been the day before but ...

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

No, 2015.

Deputy A.D. Lewis:

John, is there anything you want to add there?

Chief Officer, Department for Infrastructure:

My involvement started in 2009 when I became the Chief Officer of Transport and Technical Services and I then took over chairmanship of the Hazard Review Group. That was a group set up at La Collette for all parties involved, public and private sector, to go through the complexity and ramifications of the Buncefield incident. In doing so, the capital project to replace the fire system ... the work we did with, at the time it was, Esso and Shell, who were quite difficult because they were both trying to get out of the market and we were trying to get them to invest in their assets with assisting the Fire Service. So there was a basic group coming together where my goal was to make sure we had a safe and secure site down at La Collette for the Island. We got an agreement, we got to the point where the initial phase of the asset renewals was in place, which meant standards that the Fire Service were happy with. The second phase of their investment was into the millions and they wanted their lease signed so that they could make sure there was some payback on that investment. At that point, taking Mike's point but from my simple position, I was happy that the company was working in the same spirit that we intended. We had done our bit, 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. They had presented to the Emergency Planning Board a mechanism that showed that they were optimising the tanks while they were doing the refurbishment. They had invested a lot of money. By this time Rubis had taken over and was, as far as I am concerned, very supportive about the future. At that point my element of this work, do

we have a safe system for delivering fuel into Jersey and do we have a safe future for that, was basically I was happy for that lease to be signed from my perspective.

Deputy A.D. Lewis:

So you both took on quite a lot of work here during this period. Mike, with your bringing agreement, John with all aspects regarding safety and security and everything else. So the question really was: which department or Minister was responsible for negotiation of the lease? Was it both Infrastructure and E.D.D.? Was it collaborative? Who was actually responsible?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

So the operating agreement, the negotiation of the operating agreement?

Deputy A.D. Lewis:

No, it is the lease, which then ended up forming like an addendum to the lease agreement.

Chief Officer, Department for Infrastructure:

The lease was Property Holdings because this is just a lease and if you want evidence of ...

Deputy A.D. Lewis:

Yes. So that is your department?

Chief Officer, Department for Infrastructure:

No, not then, it was not then. It was Treasury initially when this ... it was only my department since 1st January.

Deputy A.D. Lewis:

This does not help, does it?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

If you look at the time when the lease was actually signed, the responsibility for Property Holdings then rested with the Treasury. The responsibility in practical terms for negotiating the operating agreement, which was instigated by E.D.D., as it was at the time, but then became a more collaborative effort because obviously you had to bring in ... the Law Officers' Department were involved in all of the meetings, the Fire Service were involved in all of the meetings, Infrastructure, T.T.S. (Transport and Technical Services) were involved in all of the meetings, and those meetings were chaired at an officer level by the Chief Executive of the States. So it was a collective effort because the dynamics in the operating agreement were more complex than just the access to the facility, the costs and the competition law breach or potential penalties for breach of the competition law.

Deputy A.D. Lewis:

Let us go back a bit to 2012. Judy, do you want to come in there?

Deputy J.A. Martin:

Yes. Following, I think, from what you said there, Mike, and you, John, were both senior officers from early 2012 when the renewal of the lease was discussed at those joint meetings, and so what was the delay? Why did the States only know a day before that it was signed and backdated 3 months?

Deputy A.D. Lewis:

So negotiations clearly began in 2012 and I think you said you became involved ...

Deputy J.A. Martin:

You knew in March ... it was really in March 2015.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

No. The negotiations ... no. The first meeting at which the notion of there being an operating agreement that effectively qualified the lease and sat alongside the lease was on, I think, 4th March 2015. If Caro wants to come ... we have talked about coming to see all the emails. It is all there. Between March 2015 and the period immediately before the lease was signed, and the operating agreement was signed because the operating agreement was signed before the lease was signed, immediately before, there was a process of negotiation. The lease is a very simple document: here is a patch of land, it is a 10-year lease for it. The operating agreement, however, the negotiation effectively was instigated at that meeting on 4th March and concluded probably days before that lease was signed. It was a complex negotiation because the first element of that negotiation was to establish that La Collette Terminal Limited accepted the principle of the lease being conditioned by an operating agreement. That was a completely new principle that we introduced, which gave us far more control and the ability to terminate in the event of material breaches of competition law. So we started off by getting agreement to the principle of it. We then started getting agreement on the form and that is the detailed legal negotiation, which was conducted from a legal perspective by Law Officers and their legal representatives, involving officers from all the departments I have just discussed and Ministers as well. The process to conclude that, because there were certain red lines on both sides that had to be negotiated, took for the best part of 12 months, I think, to conclude.

Deputy A.D. Lewis:

But is this all a bit last minute though? If you were to do something more radical ... not suggesting you should or you had to. You would have seen the transcripts of the last hearings and so on. We are particularly interested in break points, opportunities to consider other options. By this time in

2015 you are kind of back against the wall, you have got to do something. Were you both involved earlier than that and were there discussions about what other options may exist back in 2012? You are dealing with kind of an emergency now, you have got to deal with this. There is a year left to go and there is no operating agreement, which you have suggested would have been a very good idea and has turned out to be a very good idea. The lease was found to be deficient, hence the operating agreement, but there was an opportunity 2 years before, 3 years before to consider other options. Were you involved with that?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

I think the answer to that is no. I think I said in my note here I do not recall ever being consulted by Ministers or others about acquiring what we called euphemistically the chemistry set.

Deputy A.D. Lewis:

That is what we are getting to really.

Chief Officer, Department for Infrastructure:

I sat through the hearing with Ray and there is this: why did we not have that discussion? What discussion do you think we should have had? What are you trying to get us to say?

Deputy A.D. Lewis:

That, I guess, is what we would like to hear from you. As asset managers in your department ...

Chief Officer, Department for Infrastructure:

You used that term a lot with Ray and I do manage lots of assets, but we lease out a piece of ground which then somebody else takes the responsibility for the asset on and it is their asset.

[14:30]

So the asset management line of questioning does not really hold water for me there because we have not got any responsibility to manage the risk of that asset.

Deputy A.D. Lewis:

That is what we are trying to drill down to. Whose responsibility was it?

Chief Officer, Department for Infrastructure:

We did a lease. We had a lease on a scrapyards and the operation of that scrapyards was terrible through environmental reasons and through noise pollution and through custom and practice and health and safety, but we had a lease. We could not do anything about the operation. We changed how we worked in partnership with the scrapyards following that event. With the fuel farm,

we lease a piece of land to a fuel farm and they operate the fuel farm. That asset responsibility does not sit with us and cannot because we cannot manage the risk. We have not got the competence to manage the risk, we do not understand it.

Deputy A.D. Lewis:

That is why you have a lease holder that has that experience to do it.

Chief Officer, Department for Infrastructure:

Yes.

Deputy A.D. Lewis:

The bit we are trying to get at is that if there was a strategic goal here to manage the fuel coming into the Island in a different way, if that was a strategic goal, it may not be, and one of the goals was to maintain control to a certain extent of the price of fuel ... and there was a lot of rumblings going on, particularly from your Minister at the time, the Minister for Economic Development going back a number of years - I am talking about Senator Ozouf - who was particularly concerned about competition in that market. We are aware that there was an opportunity to change things because if you wanted to change this you had to give quite a lot of notice, not only on the lease but also a plan to be in place to do something different, which takes years of planning, years and years of planning. So I am just trying to drill down to was there a plan, I guess, and if there was going to be a plan, how far in advance would you need to work and should people have been looking at this opportunity, if there was even deemed to be an opportunity, several years before and who was responsible?

Chief Officer, Department for Infrastructure:

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. I was surprised about that because I did not know that.

Deputy A.D. Lewis:

So were we when we found out.

Chief Officer, Department for Infrastructure:

All I knew is we rented a piece of land to them, or leased or whatever the term is, and there are many strategic elements of the operation of the Island that that does not happen ... there is no control over.

Deputy A.D. Lewis:

So you were surprised by it, John. If there was an opportunity to change that or you suggest that change should be considered, should that not have been considered?

Chief Officer, Department for Infrastructure:

If you then start wrapping up the politics 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 since sliced bread and the majority of the Council of Ministers had that ethos at the time. To nationalise the importation of fuel sounds completely bananas and I think we are now looking at it from a very different perspective. From that point then ...

Deputy A.D. Lewis:

I do not think anybody has mentioned nationalisation. It was a question of there was a cry about tendering, for example, so another operator being involved, which could only have happened if the lease had ended or been broken.

Chief Officer, Department for Infrastructure:

But there is a competition regulator who deals with those things and, as far as I am concerned, that is where this sits fairly and squarely.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

If there had been a material issue, there is work that has been undertaken. There have been numerous studies of the fuel market going back to since well before my time. Work has been undertaken by Oxera, work has been undertaken by C.I.C.R.A., and pretty much everybody has come to the same conclusion. I read to you the conclusion of C.I.C.R.A.'s latest report was that in terms of there being any form of abuse of a dominant position or any unreasonable return on capital if employed and any over-investment of capital other than that which we require to make the thing safe, there was no evidence of that, and I can reiterate to you again what C.I.C.R.A.'s report said. I think I sent through to the Chairman and the Scrutiny Officer the Competition and Markets Authority study on the Highlands, which again concludes that the levels of return on capital and the treatment of the throughput agreements that apply are nothing other than industry standard. They are, because the formula, interestingly, that is captured in the throughput agreement that sits with the operating agreement which conditions the lease is exactly the same as that which the Competition and Markets Authority use in their oversight of similar facilities in the U.K. (United Kingdom).

Mr. R. Parker:

Mike, when was C.I.C.R.A. basically tasked with doing this report?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

C.I.C.R.A. did not do a report. C.I.C.R.A. had to approve the acquisition of Esso's equity in the Rubis ... sorry, Rubis's acquisition of the Esso equity in La Collette terminal.

Deputy A.D. Lewis:

That is what sparked it off, is it not?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

Yes. At that point they undertook that and what they wanted to do is they put conditions precedent on that acquisition to ensure that any party that was not Rubis had a ... there was a formula, which is based on that which has been used by the Competition and Markets Authority, that determined what that throughput rate was, and I think I quoted it in one of the emails that I sent you. It is exactly the same as in the Competition and Markets Authority. But that is when they got involved and they subsequently were involved in a review of the fuel market which was commissioned I guess towards the early middle of 2015, which reported at the end of November 2015, which concluded what I have said. It went on to say: "If concerns are raised about the operation of the fuel farm or operation of the throughput agreement with potential competitors, C.I.C.R.A. can investigate further." To the best of our knowledge, there have been no complaints made, formal complaints made to the competition regulator although if there have and we have not been informed then ...

Deputy A.D. Lewis:

It is something perhaps we can ask the regulator. Let us move on to a question from Chris, if we can go to question 6, Chris, and then on to 7 and 8, which is related to what we have just been talking about.

The Connétable of St. John:

Basically the question we have is: was valuation done at any time for, as we commonly call it, the chemistry kit?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

No.

The Connétable of St. John:

So no valuation was ever done?

Chief Officer, Department for Infrastructure:

Why would you do that, Chris?

The Connétable of St. John:

To find out what the value might be to ... information is valuable when making decisions. Decisions were being made without knowing what the value of the chemistry kit might be and if the valuation came in at a low level it may have opened up the market to other opportunities.

Deputy A.D. Lewis:

That would be a matter of the public gaining control of the site, including the chemistry set, which you do not have the expertise to run anyway but then you would ...

Chief Officer, Department for Infrastructure:

This term "chemistry set", it has been bandied about a lot.

Deputy A.D. Lewis:

It was not used by us, by the way.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

It is my term, I am sorry.

Chief Officer, Department for Infrastructure:

It has been overused. What I would say is, I will give you an example which I think might highlight my issue here. Fuel is received in the Island off a jetty and that jetty is not on fuel farm land, it is on Ports land. That land is maintained by my department on behalf of the Ports and on that land you have got assets which are owned by the J.E.C. (Jersey Electricity Company), you have got assets that are owned by the fuel company and you have got assets that are owned by Jersey Gas.

Deputy J.A. Martin:

I think what we are trying to get at, and just keeping on to the fuel farm, is at any time whose responsibility was it to initiate discussions to look at whether the public, the States, wanted to buy the asset of the current holder?

Chief Officer, Department for Infrastructure:

If you just let me finish what I am trying to explain.

Deputy J.A. Martin:

I am sorry, John, I thought you had.

Chief Officer, Department for Infrastructure:

The reason all those assets ... we have had a problem with those assets in terms of the engineering standards, the explosive-proof nature of the electrical installation, the maintenance, the damage from one asset to the other. When it comes to critical assets such as this, to disconnect the chemistry set from the operation and from other things puts a massive risk on the people involved, and we are talking about this in a very simplistic way to suggest that it is a simple thing that somebody else can operate. What I am trying to get at is the way these assets are run and the assets are maintained, it is an integral thing. It is not just concrete. This is mechanical and electrical equipment, it is pumping equipment and it is steel that rusts over a very short period of time in a marine environment. So you have got a very difficult situation. You get the valuation of the asset. I know Rubis has spent significant amounts of money refurbishing their tanks, so at what point do you get that valuation: when they have finished the refurbishment or before? So it is not like valuing a house. This is a piece of equipment which has a valuation which is a very difficult one to do, but we did not get a valuation, it is as simple as that.

Deputy J.A. Martin:

So in the circle no Minister ever came to either of your departments and said: "Value these assets. We might want to put it to the States: do the public want to own it"? This never happened? That is fine.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

If they had, provisions would have had to be made in the capital programme and, as John as already alluded to, the capital programme at the time was extremely stretched.

Chief Officer, Department for Infrastructure:

There were bids for 5 times the amount of money that was available.

Deputy A.D. Lewis:

We accept it was a bad time to make a bid but we were just looking at where was the box ticked to say these people are making an informed decision based on: "We know it is a bad time for capital bids but we do not even know what the capital bid would be anyway because we have not got a valuation." So it was just ticking the box. We felt that was quite an important thing to do because things change in capital programmes, as you well know, and there may have been an opportunity seeing that it was looking way into the future. To futureproof our fuel supplies and the ability also to use that land some time, which we will come on to later, could have been looked at at that point, but it is difficult to do without knowing what it is worth.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

I guess the issue is if there had been significant issues which had been brought to light that there was an inefficient operatorship of the fuel farm or there has been an abuse of the monopoly position of the fuel farm and therefore we need to be ... then maybe we would look at it but all of the evidence suggests that that is not the case, that we have available to us. The fuel farm, the throughput is about 4p a litre or something like that. You can go through the calculation very simply and it is about 100 million litres a year, so you can work it out. Our lease cost is around about £500,000, so about half a pence of that. Some of it is the operating cost, some is the capital return on it and some is depreciation. It is that and you divide it by the number of litres and that is what you get, and everybody gets that. It is not out of whack in terms of return with other similar facilities. There is not a massive sum of money to be saved by doing it and, interestingly, let us say it is 4p a litre, the variation today in the retail market between the lowest and the highest price is almost 4 times that. So was it considered to be ... was it ever brought to the fore as a material issue by anybody at the time? I think the answer is no.

The Connétable of St. John:

Can I bring you back to this question. In or around 2012 investment was being stopped because there was a certain amount of upgrading that was needed to comply with fire regulation, safety and so on, and because the lease was coming to an end, there was a time around 2012 where investment was slowing because they were not going to make it unless the lease was going to be renewed. Now, that was well before the 18-month termination clause. Why was not at that time and before then a valuation made, because if negotiations were stumbling you need to examine every possible avenue?

Chief Officer, Department for Infrastructure:

You are suggesting negotiations were stumbling. By that time the operator had done everything that they would have been asked to do in a timely fashion, based on the assets which are still live while they are doing this work.

Deputy A.D. Lewis:

That was not what the Fire Chief told us. The Fire Chief told us that they were way behind on their renewals and improvements post Buncefield and there was ...

Chief Officer, Department for Infrastructure:

They were. That is until I got involved in 2009 and the delay was because when it was Esso and Shell, they were trying to get out of the market. So when Rubis got involved and Arnaud was the managing director ...

Deputy A.D. Lewis:

The Chief Fire Officer was suggesting that there was a delay between 16 and 12 or 15 and 12 and he kept asking when would the lease be renewed because Rubis are saying: "We are not doing any more improvements until ..."

Chief Officer, Department for Infrastructure:

Exactly. Your suggestion is that Rubis have done a significant amount of improvements and got to the point where ...

The Connétable of St. John:

Up until they got to 2012. After 2012 ...

Chief Officer, Department for Infrastructure:

... their board would not sanction anything else until the lease was signed and that is the position they were in. So they did not slow it down. They got to the position where: "This lease really needs to be signed now for us to get the return of the investment. We have done the basic stuff. The enhanced stuff needs to happen." So they put the ball back in our court to sign the lease.

The Connétable of St. John:

When that ball went back in your court in and around 2012, what other options were explored, why was not the site valued and why were not other options considered?

Chief Officer, Department for Infrastructure:

I think we have covered that, but I do not see why you would do any of that when no one is ... there is no issues of commerciality. They have got a programme of safety improvements which is satisfactory and the security of supply had been guaranteed with presentations to the Emergency Planning Board, et cetera.

[14:45]

Deputy A.D. Lewis:

But there was a 2-year delay between they stopped doing any more work, so they were not doing any more ...

Chief Officer, Department for Infrastructure:

Because the lease was not signed.

Deputy A.D. Lewis:

Yes, exactly. So why did it take 2 years when they said: "We are not investing any more in this plant until you give us the lease"? A bit of a gun-to-the-head scenario really, but I can understand what they would do it commercially.

Chief Officer, Department for Infrastructure:

You can say gun-to-head, because that is the rhetoric we are in now, but it is an investment that needs a return on it and they are a commercial business.

Deputy A.D. Lewis:

That is what I am saying. It is a commercial business so I quite understand why they would say it. As you were involved as senior managers during this period, what was that delay of 2 years of negotiation? Why would it take 2 years to negotiate that lease?

Chief Officer, Department for Infrastructure:

With whom?

Deputy A.D. Lewis:

With Rubis.

Chief Officer, Department for Infrastructure:

We had signed off on our elements in that they had fulfilled their requirements. The delay was not a negotiation with Rubis delay. It was a delay in terms of signing the lease.

Deputy A.D. Lewis:

That is what I mean. There was 3 years between when they said they are not doing any more investment and when the lease was signed. Do you know why that was? Which department was responsible for that really, is what I am getting at? Was it Treasury? Property Holdings sat there then.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

Well, as I sent you a note, I think, if you look at Property Holdings sat in Treasury, capital sat in Treasury ...

Deputy A.D. Lewis:

So it was Treasury?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

I am not saying that was the fact.

Male Speaker:

There is a clue, is there not?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

The underlying point is at that time I think we were going through the process of ... C.I.C.R.A. were going through the process of approving the M. and A. (merger and acquisition) and they had put conditions precedent on that and there was a desire to try and reflect those conditions precedent because it was moving to a monopoly supplier or monopoly provider of that service in the lease. I think people struggled for many, many months, and sounds like years, to solve that issue and did not, and it was only until I think we suggested rather than putting it in the lease itself, having a separate operating agreement which allowed the lease to be terminated should those conditions not be satisfied, that we broke the back of it. When we established the principle of that with Rubis, we moved forward to being able to sign the lease, albeit 12 months of fairly hard negotiation ...

Deputy A.D. Lewis:

Three years.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

At the end of that 2-year period, we broke the back of that by saying that we should have an operating agreement. That took 12 months to negotiate and that was quite hard negotiation because I was party to most of it.

Chief Officer, Department for Infrastructure:

Is it worth mentioning, that 2 years, that was not 2 years negotiation with Rubis?

Deputy A.D. Lewis:

No, it was 2 years delay.

Chief Officer, Department for Infrastructure:

It was 2 years delay.

Deputy A.D. Lewis:

Yes, and we are just trying to work out what caused that delay.

Chief Officer, Department for Infrastructure:

Then it was a year of tough negotiations, with Mike leading that.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

What the new lease has done is triggered the completion of the investment or advancing of the investment that was waiting for the lease to be signed because now there is a period of lease over which that investment can be amortised.

Deputy A.D. Lewis:

Yes, but during that period of 3 years that was the time when ... it was not exactly a break clause but I believe there was an opportunity to say: "We are not going to renew your lease" but you had to be fair about this and give them I think it was 18 months' notice, was it not? Did you want to ask that question about tendering?

The Connétable of St. John:

Yes. What I was working towards is you had a period there during which there was an opportunity to invite other tenders and to examine other avenues.

Chief Officer, Department for Infrastructure:

To tender what, Chris? What would you tender?

The Connétable of St. John:

To tender the lease of the fuel farm.

Deputy A.D. Lewis:

The Rubis lease is coming to an end. If you were to agree that you were not going to renew it then you would have to give them 18 months' notice of that. In reality, if you were going to change the facility in any way you would have to plan that years before that again. But if you were using it just in the fuel farm and they were prepared to sell it to a new operator as part of a tender process then that was the time to think about. But we did not know how much it was worth and there was not a tender process so public ...

Chief Officer, Department for Infrastructure:

How would we lead with that? I understand the break clause, but what are we tendering?

Deputy A.D. Lewis:

The lease for the fuel farm.

The Connétable of St. John:

The lease for the fuel farm.

Deputy A.D. Lewis:

It was ending, was it not, so you either renew it or you tender it out?

The Connétable of St. John:

It is no big deal. It is quite simple. There was a period from 2012 when reinvestment stopped and up until 2016 when the lease was signed, the very beginning of 2016 say, there was a 3-year period there during which reinvestment for safety reasons had stopped because there was not sufficient time left on the lease to get their money back. During that period there were options, firstly to value what the fuel farm might be worth, given an option then to tender it to other suppliers who may supply it at a much cheaper throughput, we do not know but you do not know until you have tendered it. So, there were these options. Why were they not taken? That is the question we need to have answered. Whose responsibility would it have been to take those options?

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

I think this probably comes back to one of the initial points I made. The organisation is not configured in such a way that we give single point responsibility for all aspects of the decision you have just discussed. However, if there had been material concerns expressed at the time and they had been evidence-based, based on the work that had been by C.I.C.R.A., Oxera and others, I am sure that may have come ... but there were not. 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. John's question was quite pertinent, not that we should be the ones asking the questions, but there is the lease itself which is just the land and what the tender I presume you are talking about would have been for is the operation of the fuel farm.

Deputy A.D. Lewis:

Well, no, the lease is the lease. It is the land. It is then up to the new party to either purchase the equipment or for Rubis to clear the site.

Chief Officer, Department for Infrastructure:

Can I suggest at a very similar time I did exactly what you are suggesting with the scrapyard, and I think it is quite a good analogy. The scrapyard was ... we were having horrendous problems with it. I do not want to go into the history of it.

Deputy A.D. Lewis:

It was bad neighbours.

Chief Officer, Department for Infrastructure:

The bad neighbour issue. The main issue we had with the scrapyards is they produced a scrapyards residue which basically contaminated my Energy from Waste plant, which was a huge amount of heavy metal contamination and rubber and plastics from the fragging mechanism they had at the scrapyards. So, from an environmental perspective, from an operational perspective, from a strategic partner perspective we wanted to tender that operation, and we did so. What we did was, the only lever we had on the scrapyards was a lease on the ground. The ground then was subsequently contaminated and we had a big legal battle to deal with the contamination, but that is another story. The new tender was for operating a scrapyards and it did not have one asset from the existing operation. The new company's incumbent had to bring in their own assets. They could have, if they chose, bought the assets from the previous company but it was not part of it because they were their assets. If you upscale that to a fuel farm, that becomes a very challenging and difficult position. The only real chance you have got of a fair tender and a mechanism in that, I would suggest, is having a new site.

Deputy A.D. Lewis:

That is something we would like to come on to, John, because we can discuss this briefly.

Chief Officer, Department for Infrastructure:

I am sure you would. So would I, yes.

Deputy A.D. Lewis:

There is another asset value here which is La Collette in its entirety and perhaps this is a good time to come on to it. In 2006 in the strategic plan that you will have been involved with, and *Imagine Jersey* kicked off just shortly before that, there was an item that was discussed about a redevelopment of the port area. This was pre-incorporation. What interested us greatly here was that they were suggesting that there was an opportunity to build up to 800 units in the port area and that consideration could be given strategically as to how you manage and plan that area. Remember this is pre-Buncefield. When was Buncefield?

The Connétable of St. John:

2007.

Deputy A.D. Lewis:

It is 2006, this is. At that point the blast zone was different so you could have developed ... particularly round the Normans area and so on but it was extending down into La Collette, but it was predicated on the basis of where the fuel farm was going to be located. So at that point, this is just after the last lease had been agreed, 2005, there was an opportunity then to look forward 10, 20 years as to how we can best use that land. A very valuable piece of land, been reclaimed over many, many years and lots of commercial units down there which give some rent but not a

massive amount. There is a huge opportunity in the entire area for regeneration, a bit compromised by a fuel farm in the middle of it. We are just curious to know from an economic perspective and an engineering perspective what are the options and solutions to removing this fuel farm. Of course, one may have been this trigger point that came up with the end of that lease which ended in 2015. There was an opportunity in 2012 to think about that strategically in terms of its location and position and the value of that land for other things. Was that discussed as part of your corporate management team, let us say, because you are involved with this, John from an engineering point of view and where do we put it next, you from an economic development point of view? There are huge investment possibilities for the harbour area which you were looking at, Ports of Jersey were looking, before they incorporated of course, but you could not do that without unlocking this piece of land. An opportunity existed then in 2012. Was that discussed again post the strategic plan in 2006, bearing in mind there had been a game change at Buncefield?

Chief Officer, Department for Infrastructure:

There was an East of Albert working group. Stephen Izatt was heavily involved in it, as was the Ports, and basically it was a case of taking the existing ports location for the railroads and moving them to La Collette. In doing so, the fuel farm invariably had to move and there was lots of options discussed at a very high level. One was the quarry at Ronez was an option.

Deputy A.D. Lewis:

Yes. That is something that we would like to expand on but we are coming ...

Chief Officer, Department for Infrastructure:

It has got more risks than anything but ...

Deputy A.D. Lewis:

Well, that is something we would like to find out.

Chief Officer, Department for Infrastructure:

The other option was to move it to the further south area of the La Collette reclamation site. There was even an option to build an island further out beyond the Dog's Nest which was in the Ramsar area, which was very popular with some elements.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

All this work was done. Some of the sites were not actually in the reclaimed area of the land at the time, were they? They were in the tip of La Collette but it was outside.

Chief Officer, Department for Infrastructure:

That is right, yes. There has always been an issue with La Collette in terms of how long will it take us to fill it and back in 2006 we were saying it is going to go by 2014, 2015, definitely full by 2020. But my job is to not fill it. My job is to make sure this Island recycles as much as possible.

Deputy A.D. Lewis:

Recycles, yes. If there was a strategic objective not to do that because one of the benefits and gains was this asset that would become more valuable if you filled it in the right places and moved things around, would that trump recycling?

Chief Officer, Department for Infrastructure:

It has done in the past, Andrew, yes. The fuel farm in its current location is not on reclaimed land. It is on sand that was pumped in, so that was built exactly for that reason because that was very remote at the time. It is not remote anymore, is it, because it is surrounded. If there is a strategic objective, but you have got to balance the environmental needs and my role is to not fill up La Collette as long as possible because it is a massive asset for the Island.

Deputy A.D. Lewis:

But strategically collectively as a management board, is this the sort of discussion that should be happening, a 10-year plan, we have started talking about in 2006? Interestingly enough, it says in the actual report, which I have now got in front of me, that approximately 600 to 800 dwelling units could be developed if the existing port facilities were moved to La Collette, which we were just talking about. This figure is seen as a long-term option outside of the 10-year lifespan of the revised plan. So there they were only talking about 10 years. That was 2006. We are now 2016 so we should be now talking about the next 10 years. What I am talking about is strategic planning of which infrastructure is hugely important here and economic development is hugely important. Are you satisfied there is enough joined-up thinking and one of the things may be moving the fuel farm?

Chief Officer, Department for Infrastructure:

The challenge with that project, the endgame was an amazing opportunity. If you look at the detail of the development scheme, what sank it, if you do not mind the pun, was the cash flow. There is a massive investment in infrastructure without any return for a long time and the cash flow, the capital investment you need to then get you a return was over a very long period of time and it sort of fell away pretty much because of that and the recession.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

Yes, but having said that, I think shortly the Ports ... and I have not seen this so I have no idea what it is in it. They published an airport master plan and I think they will shortly publish a master

plan for the port area. I do not know whether that covers the operational port or whether it extends to cover La Collette.

[15:00]

But I think what is beyond argument was that if it were possible to relocate the fuel farm facility. If you were to build one today based on the levels of current and future demand, would it look like the current fuel farm?

Deputy A.D. Lewis:

We are told not.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

No, it would not. But if you could move that to a more peripheral area of La Collette, or somewhere else for that matter, would you unlock a lot of what is effectively sterilised land and land value? Yes, you would and provide alternative uses.

Deputy A.D. Lewis:

Whose responsibility is that plan? It is not Ports, because they have got the land the other side. It is not you guys but you have got the idea, which is great.

Chief Officer, Department of Economic Development, Tourism, Sport and Culture:

It is not my idea.

Deputy A.D. Lewis:

No, but it is a good idea. It is thinking like an entrepreneur and not an economic development person, which is what you are, but from a pure practical perspective, John, who is going to ask you to look at that closely and do something about that idea? Would you wait to be asked or would you go to them and say, look ...

Chief Officer, Department for Infrastructure:

We try and master plan all the areas under our control. I think there is a need for a bigger picture plan, probably not as ambitious as the East of Albert plan but certainly something that guides us. We have never really had that for that area, land that is growing. Generally speaking, we do land reclamation, we then develop on it, then we dig it all out and then we put it on our next land reclamation. It is a great cycle and we have only been doing it for about 30 years. La Collette is slightly different in that most of the uses down there have been light industrial and most of them are mine for waste services, but there is still a big tract of land which needs to be made and then there is a great opportunity, whether it is the port development, whether it is the movement of other

bad neighbour areas out there, whether you can develop it into an energy park and put wind turbines up there. There is lots of opportunity for La Collette.

Deputy A.D. Lewis:

But there is not a firm plan at the moment, is what you are saying? It sounds like you think there should be.

Chief Officer, Department for Infrastructure:

The master planning process should happen for these areas. It is key and it should not be a 5-year plan. It should be a 50-year plan.

Deputy A.D. Lewis:

Yes, exactly.

Deputy J.A. Martin:

Sorry, Chair, I just want to come in there because when we had the Chief Executive in here he said there will be ... there were opportunities missed, possibly, and explained it has fallen between departments. He absolutely assured us that going forward over the next 10 years there will be a plan, there will be a strategy, and it goes to you.

Chief Officer, Department for Infrastructure:

Lovely.

Deputy J.A. Martin:

Did you know? It is all in the transcript. You did not know? It is not worrying, but for us it is something ... it might not be the biggest scheme, as the East of Albert was, but there is a great piece of value of land there and the thing sitting in the middle stopping a lot of things is the fuel farm. If you do not start the work on it now and have someone leading it, which we were told was you and hopefully it will be you ...

Chief Officer, Department for Infrastructure:

It is me, yes. I am happy to lead it.

Deputy A.D. Lewis:

Has he told you that?

Chief Officer, Department for Infrastructure:

Yes, we have had that discussion.

Deputy A.D. Lewis:

Has he told you that there is a strategy?

Chief Officer, Department for Infrastructure:

A strategy needs to develop. There have been lots of strategies and I think the first point of the strategy is to get all the strategies together and take them all.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Yes, and remember, in terms of fuel supply - and this is a serious point - we have an energy policy. We have an integrated transport policy. Both of those, if they are delivered in their entirety, will result in material reductions in the level of fuel being used in the Island. That means that you would configure a fuel farm in a very different way. So there is the site and then there is what sits on the site. In an ideal world, coming back to the idea of tendering, if you had the site and you had a very good handle on future demand, you could then tender for facility and everything that wraps around it at that point. But what we needed to ensure ...

Deputy A.D. Lewis:

We do have some of that information. We have a vision now and there was an opportunity to realise that vision with the early stages of the plan at a time when a lease on a tract of land that is fairly key to this came up for renewal.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Yes, but remember that the ...

Deputy A.D. Lewis:

We seem to be now working out strategy on the hoof when an opportunity was missed 3 years ago to perhaps start that strategy.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Well, I think the batting order has to ... and I think the Chief Executive did mention this and it was the thing that guided a lot of the work that John did and we did subsequently on the operating agreement. The batting order is safety first, ultimately first.

Deputy A.D. Lewis:

Yes, we accept that.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Then security of supply, then commercial considerations. But given where we were in 2011 to 2012, could we have made the move to a relocated fuel farm at that point? No. Was the best way

of guaranteeing security of supply probably to carry on and do what we did and put much harsher conditions associated with the lease to ensure we have a period within which we can plan sensibly to do what we have just been discussing? I think the answer is yes.

Deputy A.D. Lewis:

But even though 10 years before this idea to capitalise on that land was floated, 10 years later when there is an opportunity to start moving that strategy forward, the opportunity was not taken. Was it just market conditions at the time, the ports being incorporated, capital budgets being squeezed? Is that ...?

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Evidence based recognition.

Chief Officer, Department for Infrastructure:

No evidence of a commercial issue. I think the other thing we very easily forget is the austerity we were faced with then, and the mind-set was minimising costs and mitigating costs and how else do we deliver services. The adventurous East of Albert processes and project, that died a death because the capital requirements were massive and the payback was very long term. There were lots of schemes at the time which have not come to fruition because of that and the mood in that period was Jersey was struggling and we had to make sure that we could do everything in the best value possible to then ... I just did not ... my priority was safety, and security of supply was also something which we negotiated. The commercial elements were not within my remit, but the safety bit was the bit that we had sleepless nights over because Buncefield was an event no one anticipated. The effect of Buncefield still has shockwaves today.

Deputy A.D. Lewis:

It does, yes.

Chief Officer, Department for Infrastructure:

What has happened is ... and this is where perhaps it becomes more trickier and I am less worried about the fuel farm now than ever in that we have far more control over it. We have far more investment in it. We have the safety systems from our side which are now up to pace and not aged assets that we could not maintain. So I am very comfortable that what we have now is safe for the public of Jersey. What we need to do is make sure that the future is potentially different and we need to look at that, but we need to look at that with very open eyes and not focus on if we can get it a penny cheaper. I would rather pay a penny more and have a safe fuel system in this Island.

Deputy J.A. Martin:

Which goes back to the full strategy for the overall ...

Chief Officer, Department for Infrastructure:

That is right.

Deputy J.A. Martin:

... and not missing any opportunities. So do you have a timescale or a budget or anything to deliver this?

Chief Officer, Department for Infrastructure:

I have not really recovered from last week if I am honest. **[Laughter]**

Deputy J.A. Martin:

It is not an excuse, I was there, too.

Mr. R. Parker:

John, going back to your comments ...

Deputy J.A. Martin:

No, I want an answer.

Mr. R. Parker:

Okay, sorry.

Chief Officer, Department for Infrastructure:

No is the simple answer.

Deputy J.A. Martin:

Okay, no.

Mr. R. Parker:

Sorry, going back to your comments on basically costs and so forth and safety and those other aspects, under the lease there was a break clause which required 2 years. Mike, you said it is very difficult as you were dealing with the operating agreement. If you had been negotiating that operating agreement prior to the break clause, which would have given you much more ... will have given you a much stronger negotiating position, would you have negotiated a better deal if this had been done on a more timely basis?

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

What do you mean by a better deal?

Mr. R. Parker:

I do not know. You were the one doing the negotiating ...

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Okay, what ...

Mr. R. Parker:

... but if you were stuck in a position where you cannot operate the break clause because it is 2 years before the end of the lease ...

Deputy A.D. Lewis:

So your back is against the wall, you have to negotiate something.

Mr. R. Parker:

Yes.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Sure. So what the operating agreement does is it ensures that anybody who wants to put product through the fuel farm can do so at the same price which is calculated in a transparent manner. It also says that if the fuel farm operator is found to be in breach or was found in the past, because of their past actions, to be in breach of the competition law, if it is extreme enough those are grounds for the lease to be terminated.

Deputy A.D. Lewis:

They are tripwires.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Yes, there are effectively quite significant tripwires in there. None of that existed before that, so what else would we have negotiated at the time in terms of an operating agreement? I do not know what because ultimately the cost of that particular element of the supply chain ... it is a very simple thing, bit of capex, bit of opex, bit of depreciation, divided by the input through ...

Mr. R. Parker:

In your own words, Mike, we ended up with C.I.C.R.A. being commissioned after you had started on negotiating the operating agreement with the report coming out in November of last year.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

But there were ...

Mr. R. Parker:

So if you had taken this whole lot, and I would have suggested you probably would have had a review by C.I.C.R.A. prior to entering into those operating agreement negotiations ...

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

There were a series of reviews going all the way back to way before 2005. I think there was a review done by ...

Chief Officer, Department for Infrastructure:

2003.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

... James Milne who looked at the whole supply chain ...

Chief Officer, Department for Infrastructure:

Yes, independent.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

... independent review into the supply chain that again included pretty much exactly the same as what these guys have concluded. It is not in the transportation premium. It is not in the operation of the fuel farm. If there are issues, it is related to probably the retail end of the market rather than other aspects of the market. That is what he was saying. In fact, they actually say here that there is not a huge issue with the retail but ... and they have concluded that. The various fuel market studies that were undertaken by the J.C.R.A. (Jersey Competition Regulatory Authority) as it was at the time when Senator Maclean was Minister for Economic Development and subsequently this have concluded broadly the same thing ...

Mr. R. Parker:

So what do you mean by ...

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

... that there is not an issue.

Mr. R. Parker:

So just before that you said it was not a huge issue. Does that mean it could have been tighter?

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Well, if, for instance, there was a rate of return being made on the fuel farm operation which was far in excess of industry norms, then there would have been room for negotiation, but there was not.

Mr. R. Parker:

So we have heard that we were obviously in a position of austerity and you probably have industry norms that were set up in a time when there was not that sort of austerity. There were various things like prices and margins being reduced during that period of austerity.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Yes, but what ... and it is very instructive to read the Competition and Markets Authority analysis of what happened in the Highlands and Islands - which was written at a time of U.K. austerity, which is far greater than the austerity we suffer here - that said given the risk involved in running facilities of this nature, a 12 per cent net return on capital employed is not unreasonable. That is exactly what C.I.C.R.A. determined in 2015 when we were right in the middle of what we would describe as austerity.

Chief Officer, Department for Infrastructure:

Just to overlay the consequential effect of Buncefield, the additional regulation, the additional safety standards, the additional investment they have to put in terms of control systems and safe systems of work means that they cannot cut corners.

Mr. R. Parker:

No, I understand that. I just have a different ...

Chief Officer, Department for Infrastructure:

So their cost model is actually going up.

Mr. R. Parker:

No, I understand that. It is the word "unreasonable" rather than "competitive" and obviously I see a difference between those 2, but anyway.

Deputy A.D. Lewis:

The airport authority now run their own fuel farm, am I right in saying?

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

No, the airport have ...

Deputy A.D. Lewis:

They set their own one and then it is run by ATF, is it?

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

I think they have granted a lease now, have they not, to ...?

Chief Officer, Department for Infrastructure:

Is it a lease?

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

I think they have granted a lease to ATF I think to operate that, yes.

Deputy A.D. Lewis:

So they are operating it, okay. Chris, did you want to mention any more about Ronez?

The Connétable of St. John:

Not at this stage, no.

Deputy A.D. Lewis:

Because you started talking about Ronez ...

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Yes, Ronez is an option.

Deputy A.D. Lewis:

... and I am just curious to know whether it was a serious option. Because just as a complete layman - I am not an engineer - it is a big hole in the ground that is remote. If it was to close down, as it is for sale, the trucks that come out of there at the moment would not be replaced by more trucks, it would be just the same trucks but they would be fuel trucks rather than cement trucks. Is it practical to locate your fuel farm there, and gas potentially? It is a very low centre of population and there is a fuel ... not fuel, there is a jetty there; whether it is capable of taking fuel tankers I have no idea. That completely frees up the land at La Collette from that kind of difficult piece of kit that is there at the moment. Because the other thing that concerns me - and perhaps you can answer this at the same time - is we have most of our strategic assets there. So we have your incinerator plant, your auxiliary power plant, the J.E.C. power plant, we have our fuel farm, our gas plant and the port that brings everything into the Island. So everything is in one place. Perhaps there are some good things about that as well but from a disaster recovery perspective there is not. If one of those elements was moved well away from there, perhaps the most sort of

combustible element, let us say, to somewhere like Ronez, is that practical and is it possible and should it be considered?

Chief Officer, Department for Infrastructure:

Yes is the answer to all 3 of those things. I think my recollection is the safety case did not work in that there was a bigger risk in terms of the transportation of fuel land based through tankers than there was the fuel operation bit at La Collette because the majority of people live in St. Helier and St. Saviour in the south-east corner. So you are transferring more; there are a lot more road miles of tankers. So that, I believe, was the reason.

[15:15]

Deputy A.D. Lewis:

Is that a problem in this day and age, though, bearing in mind a lot of the people that are in town would perhaps be on mains gas and not as many sort of fuel tanks, I guess, for domestic fuel, and the garages for the Island's ...

Chief Officer, Department for Infrastructure:

Domestic fuel is not an issue. It is more about petroleum and ...

Deputy A.D. Lewis:

Well, petroleum, the garages are all over the Island, are they not?

Chief Officer, Department for Infrastructure:

Yes.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Yes.

Deputy A.D. Lewis:

So it would not matter where it was.

Chief Officer, Department for Infrastructure:

The understanding was on the road from St. John it was a bigger risk, but we can look at that again.

Deputy A.D. Lewis:

Is it a strategic opportunity? That is what we are trying to ...

Chief Officer, Department for Infrastructure:

Possibly, yes, but the development of a port in the north, there are other issues there and it is not ... it is beyond my expertise so I am not going to comment.

Deputy A.D. Lewis:

The Constable is keen for the rates.

Chief Officer, Department for Infrastructure:

I am sure he is, yes.

Deputy A.D. Lewis:

But is that part of the strategic overview that you might be ...

Chief Officer, Department for Infrastructure:

It could well be, yes.

Deputy A.D. Lewis:

... looking at in this new strategy that you are working on?

Chief Officer, Department for Infrastructure:

Yes, why not? [Laughter]

Deputy A.D. Lewis:

No, no, seriously. Without being flippant about it, is it something that should be considered?

Chief Officer, Department for Infrastructure:

Yes.

Deputy A.D. Lewis:

The fact that Ronez have announced that they wish to sell that business, is this a good time to be looking at it?

Chief Officer, Department for Infrastructure:

Have they?

Deputy A.D. Lewis:

Apparently, yes.

Chief Officer, Department for Infrastructure:

Openly said that?

Deputy A.D. Lewis:

Yes. It was in the press last week.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

As John was saying earlier, if we are looking at a 30, 40, 50-year horizon, which we should be, then options such as that have to be evaluated because with the ... and the other thing is ...

Deputy A.D. Lewis:

That is strategic planning.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Yes, but I think the only thing is that a departure of that nature, the level of investment either from our perspective or from the perspective, for instance, in this instance of somebody who would operate that fuel farm would be liable to be far higher than a relocation where some of the jetty infrastructure, for instance, down at La Collette is already there. But these options should be evaluated because there may be other non-commercial, so safety and security of supply, issues that may act in its favour. So, in terms of an options appraisal going forward, then it has to be a yes.

Chief Officer, Department for Infrastructure:

It could be a great place for importing aggregates, which at some point we will have a lot of aggregates, so it could be a great place for doing fuel, oil, for cement, for all sorts ...

Deputy A.D. Lewis:

So as a commercial port it has some possibility?

Chief Officer, Department for Infrastructure:

As a commercial port there is some validity to it, yes.

Deputy A.D. Lewis:

Is there any possibility of considering bunkering there or would it be too much of a diversion for ...?

Chief Officer, Department for Infrastructure:

I do not know.

Deputy A.D. Lewis:

This is one for you, Mike, really on the cruise ship front as well. Is it too much of a diversion?

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Cruise ship and fuel?

Deputy A.D. Lewis:

Yes, too much of a diversion I would have thought.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Not a good one.

Chief Officer, Department for Infrastructure:

As long as you do not smoke you are all right. [Laughter]

Deputy A.D. Lewis:

It is just that Gibraltar makes a fortune out of this so ...

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

In terms of bunker fuel for a cruise ship would be okay, but you do not want to put petrol anywhere near those. There is a huge differential, by the way, between anything you do with petrol and everything else.

Chief Officer, Department for Infrastructure:

Yes, it is a different tier.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Petrol is a completely different tier. So you can have a diesel jetty and all that stuff storage, which is interesting what we now have at the airport and heating oil, as soon as you start bringing petrol into it, it changes the game completely.

Deputy A.D. Lewis:

This is what the Fire Service said to us, yes. Okay. Right, finally, given that the 10-year lease is now signed, what steps have been taken to ensure that up and coming lease renewals are given time to be considered and options evaluated?

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

For the fuel farm ...

Deputy A.D. Lewis:

Yes.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

... or in general?

Deputy A.D. Lewis:

So we are now 6 months into a new lease. Is there a plan in place to monitor that, evaluate it, so that we are not in the same position in 9 years' time as we found ourselves at the beginning of this year?

Chief Officer, Department for Infrastructure:

Well, the piece of work we are going to commission we have time to do the proper analysis and do proper master planning to see what the 30, 40, 50-year horizon is and what the needs will be and demands will be then. It is a big piece of work that will need to be done and we need to start planning that and assigning budget to it and getting some budget to do it.

Deputy A.D. Lewis:

Did we not have the same conversation in 2005 over the same lease?

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

It was before my time so they may have had, but I was not here. But I think that the ... you know, thinking of a 30, 40, 50-year horizon, is there a presumption that the fuel farm will be where it is today? Absolutely not because that may not be the optimum solution for the Island. And remember, this lease runs for another 9 years. Well, in terms of planning - planning and then Planning - and then installation and commissioning we are probably talking about something which would take a very good chunk of that anyway so that work ...

Deputy A.D. Lewis:

So with one department now with overall control of this infrastructure, we can see a solid strategic vision and plan coming out over the next few years for this sort of thing going forward into the future?

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

To which I am ...

Deputy A.D. Lewis:

Because there is now one person responsible for it, one Minister, one Chief Executive. That has to be a good thing, does it not?

Chief Officer, Department for Infrastructure:

Great. [Laughter]

Deputy A.D. Lewis:

Whereas before there had to be ... some of the conversation we have had today has been as a result of it would appear that no single department or person took responsibility for this particular situation. There was a lot of collaboration, there was some good collaboration by the sounds of things, but some of it came quite late in the day. But moving forward, are you happy and content that now it is in one place perhaps some of the criticisms that occurred in recent times can be avoided?

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

From my perspective, the answer is yes. Command and control, single point command and control, for any issue such as this and other issues is something that we could do with a lot more of. Everybody, I think - I can speak from my perspective; I know from the guys doing planning, the Fire Service I know you have talked to - will be very happy to collaborate to the greatest extent with John and the Infrastructure team to come up with what is the optimum long-term solution. There is no issue about working collaboratively, but I think leadership and responsibility is key.

Deputy A.D. Lewis:

Because my final question was really what steps have been taken to ensure that last minute arrangements are not occurring again, and it sounds like that is the plan, one point of contact.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Has to be.

Deputy A.D. Lewis:

One sole responsibility for it with collaboration with those departments that need to be spoken to.

Chief Officer, Department for Infrastructure:

I think the Chief Exec made it very clear, did he not?

Deputy A.D. Lewis:

Yes. It is your job.

Chief Officer, Department for Infrastructure:

It is my job, yes. [Laughter]

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

The army works well. I remember Sir John McColl telling us when he came in to see us at E.D., he said he always used to get worried when he walked into a room in N.A.T.O. (North Atlantic Treaty Organisation) I think it was and he asked who was responsible for something and 3 people put their hands up. So if one person puts their hand up ...

Deputy A.D. Lewis:

I think possibly we are where we are today because that was the situation we found ourselves in then, but we have come a long way since then. Even ministerial government was new then.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Yes, I think so, and I think it is important in the overall ... and I think I have tried to point this out in the emails. In the overall supply chain, if we want to address the overall cost of fuel in the Island, we need to be looking outside this very narrow area of the fuel farm. We need to be looking particularly both upstream of it but particularly downstream of it and looking at the total level of capital that is employed, not by the States but in the supply of fuel in this Island. Because we have a lot of petrol stations and by definition the majority of them work on, as I said, fairly low volume, high margin. That does have an impact on the price to the consumer, but the price to the consumer is in a better position now than it was 5 years ago simply because of the price visibility. Things like Jersey Fuel Watch, which is done by the Consumer Council, is very instructive because it does tell you if you want to go and get the cheaper petrol where to go, and that is important.

Deputy A.D. Lewis:

Wearing your environmental hat, then higher fuel prices may involve more people getting on their bikes.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Well, I have an electric car so I do not go to petrol stations anymore.

Deputy A.D. Lewis:

Or electric car, there you go. So there is a balance there, is there not? But that is a question for another day. Any other questions, panel members?

Deputy J.A. Martin:

No.

Deputy A.D. Lewis:

Well, thank you very much for giving your time up today and we will be producing a report eventually on this. We may well have some other questions for you.

Chief Officer, Department for Economic Development, Tourism, Sport and Culture:

Yes, and the offer to Caro or any of your officers to come and look through the email system is still there should you wish to.

Deputy A.D. Lewis:

Okay. Thank you for your time.

[15:22]