



**STATES OF JERSEY**  
**TUESDAY, 10th FEBRUARY 2009**  
**Corporate Services (WEB) Sub-Panel**

**Review of *Waterfront Enterprise Board: Revised Memorandum and Articles of Association* (P.12/2009)**

**Panel:**

Connétable D.J. Murphy of Grouville (Chairman)  
Senator S.C. Ferguson  
Deputy C.H. Egré of St. Peter

**Witness:**

Senator B.E. Shenton

**Present:**

Mr. W. Millow (Scrutiny Officer)

**Connétable D.J. Murphy of Grouville (Chairman):**

Thank you very much for coming. We appreciate your concern in this area and we obviously were asking you because of the amendment that you have proposed on the decision taken by the States, or the decision they want to take, regarding the directorships of the Waterfront Enterprise Board. The first question is please can you tell us your views on the current structure of W.E.B. (Waterfront Enterprise Board)?

**Senator B.E. Shenton:**

I think the current structure ... and this is a conversation I also had with Chris Swinson. I think the current structure has a little bit of difficulty because of the ... it does not really take into account ministerial government and the fact that we have had a ministerial government. The biggest weakness, of course, with the current structure is that it is not in place at the moment. You are meant to have 3 non-States Members and 3 States-elected Members to provide the due diligence

that a board requires. Of course, Gerald Voisin left some time ago, Jimmy Perchard left some time ago, Deputy Huet lost her seat at the last election, so it is questionable whether you could still count her as a States Member. The structure of the board also should be such that people are chosen for what they bring to a board. This is how a company would operate. A company would operate that they would put in place a board where the talents of the individuals complement each other, but also where you have experience in the area that the company operates in. Certainly, from my experience on the Council of Ministers, the selection for the board was not on their ability to provide value for W.E.B. and for the people of the Island; the choice of the board was more political inasmuch as who would be more malleable and sort of less robust in voicing any concerns that they may have.

**The Connétable of Grouville:**

Okay. You mentioned earlier on about it does not fit in with ministerial government, but surely if they are proposing to make it a ministerial responsibility, that is part of ministerial government?

**Senator B.E. Shenton:**

They are proposing to make it a ministerial responsibility, but I think if you read the Comptroller and Auditor General's report he initially talked about having a committee to oversee the trading companies and report to the States, and W.E.B. would be part of the sort of trading companies that would be overseen. In his report, he states that it was not met with very much favour and he proceeded down the ministerial route. Now, the problem we have with ministerial government, of course, is we do not have a party political system. So, in effect, rather than having Ministers tied to the policy of parties, we have Ministers tied to their own individual thoughts and ideas. You do not have a party system behind them to hold them to account, the whip or the Prime Minister or so on and so forth. By pushing it towards one individual Minister, you are not actually making it particularly accountable from the States point of view with regard to the transparency of the States knowing exactly what is going on. Because that Minister could have an agenda that is slightly different from the agenda of the States.

**Senator S.C. Ferguson:**

Are you in favour, then, of retaining States directors?

**Senator B.E. Shenton:**

I think at the moment I think it is important to maintain States directors. I think the board itself has been ... to say the track record is chequered would be an understatement. It has been absolutely awful, the track record of the board. We have had one fallout after another. But I think what we need to move towards is having a board that is made up of very strong individuals selected for their experience or expertise in the area rather than where they fit in politically.

**Senator S.C. Ferguson:**

So, you are advocating the retention of States Members as directors?

**Senator B.E. Shenton:**

I would at this stage, yes, although ultimately I think we are moving towards a new structure and then we can look at it in the round. But at the moment I believe that the latest move is just like putting a sticking plaster on a dam: it does not really achieve anything.

**Senator S.C. Ferguson:**

You mean the proposition that we are scrutinising?

**Senator B.E. Shenton:**

The proposition of the States to ...

**Senator S.C. Ferguson:**

Of the Council of Ministers?

**Senator B.E. Shenton:**

... to move towards making W.E.B. accountable to Senator Ozouf?

**Senator S.C. Ferguson:**

Well, no, and also to having non-States Members as directors.

**Senator B.E. Shenton:**

Yes, but again it goes back to the process of how you select those non-States Members. I do not want to draw too much criticism to the current non-States Members, but I think from a property development viewpoint they bring very little to the table.

**The Connétable of Grouville:**

We discussed this morning obviously with the C. and A.G. (Comptroller and Auditor General), who was here with us, we went through the various options which he had considered, and some discarded and he went ahead with this one in the end. In our discussion, we asked him whether, in fact, he thought it would be a good idea to have, as you say, professional people on the board of W.E.B. who are acquainted with that area of responsibility in their lives, even albeit not on a fully professional, fully paid-up fee basis, and that one had an elected group of States Members as an oversight committee, almost as a scrutiny committee, just watching W.E.B. and reporting back to the States.

**Senator B.E. Shenton:**

Well, that would be my ... there is something akin to that in his report, but then it seemed to have been dismissed for some reason. My personal opinion was it was just missed because the Ministers would have felt that they were losing control over W.E.B. and passing control over to the States Assembly. Now, I think from my point of view as a politician I think it is much better that the States Assembly has control over W.E.B. rather than any individual Minister.

**The Connétable of Grouville:**

No, we are not talking about control, we are talking about scrutiny over it.

**Senator B.E. Shenton:**

Well, scrutiny, yes, but also insight. One assumes that W.E.B. would report through the committee and, therefore, the committee would be ...

**The Connétable of Grouville:**

No, that is not where we are going at all. What the idea was, was that you would have a board of directors of W.E.B. who would, as you want, be professional people who are acquainted with that area of expertise. You then have the Minister and you then have a scrutiny type committee appointed by the States to oversee W.E.B. itself; in other words, it is separate from the Minister but overseeing W.E.B.

**Senator B.E. Shenton:**

And what access would that scrutiny committee have?

**The Connétable of Grouville:**

Well, the same as a scrutiny ... it would not give scrutiny control over W.E.B. but it would give scrutiny the right to ask for information on W.E.B. as it went along.

**Senator B.E. Shenton:**

I think the only problem you would have from that point of view is that the board of W.E.B. could argue in numerous cases that the information required by scrutiny was commercially sensitive.

**The Connétable of Grouville:**

Well, that is exactly what I said, used the same words.

**Senator B.E. Shenton:**

Therefore, you could end up with a dog with no teeth because they could be there asking for the information but they would not be empowered to actually get the information.

**The Connétable of Grouville:**

That is a problem.

**Deputy C.H. Egré of St. Peter:**

It was described, this committee, as an overseeing committee that would review the ministerial decision-making that surrounded the way that W.E.B. operated. Now, as we understand it, the Chief Minister would have a control, a determination over what W.E.B. does, and the ... or specific authority would have to be given by the Treasury Minister. What this group would do would be to overlook, oversee that decision-making process. We did talk about having a gap, a time gap, to avoid the possibility of something being signed off and, therefore, only being able to review it in hindsight.

**Senator B.E. Shenton:**

I can see that working to a certain extent. I also have a concern that the Minister responsible would be the Treasury Minister because obviously the Treasury Minister's remit and responsibilities, which is to do with funding and maximising value for money, would be, say, with regard to the Waterfront completely different to the Environment Minister's remit with regard to the Waterfront, which is to make sure that it is open space and good for the people of Jersey, which would be different to the other Ministers. So, I do wonder whether the Chief Minister would have been the better road if you were heading towards sort of ministerial direction in that way.

**The Connétable of Grouville:**

Yes, I can understand that. I can understand the point of the Chief Minister having responsibility rather than the Treasury Minister. That is almost a given, is it not, because it is not the Treasury responsibility.

**The Deputy of St. Peter:**

That, in effect, is what the C. and A.G. said. The Chief Minister would direct W.E.B. and the Treasury Minister would approve the specific ...

**The Connétable of Grouville:**

Yes, but I think this is all to do with an industry committee they are thinking of appointing, is it not, where they are going to try and get oversight over all the commercial companies, which would then come under ... I think already comes under the Treasury Minister.

**Senator S.C. Ferguson:**

Well, no, the utilities ... there is an investment advisory group to look after utilities and a separate group which might look at some of the other trading companies, but in the initial area would be overseeing W.E.B. Because the thing that obviously bothers all of us is the accountability, and I think you will not ... and this is something obviously that you, Senator, are concerned about as well. Do you not think that taking the States Members away and pinning it to the Chief Minister and the Treasury Minister, do you not feel that that makes the whole set-up more accountable?

**Senator B.E. Shenton:**

No, I do not think it does because I think they will always hide behind the: "We were just doing the policy set out by the States" and I think it would be very difficult to hold a Minister accountable. I think also there is a large element of distrust among the public of the Island with regard to W.E.B. because of what has happened in the past. It may be totally unjust but I think there is a distrust

there. I think the concept of taking States Members off the board I think most of the public of the Island would not agree with that.

**Senator S.C. Ferguson:**

But do you not feel that they are totally conflicted because they have ... yes, they may want to a certain degree to be accountable, but under the rules of being a company director, you cannot go and blurt out the whole sort of business of the company in open debate in the States.

**Senator B.E. Shenton:**

No, but what you can do at board level is represent the public of the Island and represent the policies that have been put forward by the States, and where those policies clash, for example, with the policies of W.E.B., which may be to maximise profits, when in fact it is not right to maximise profits ... I am talking about perhaps a larger area of open space may fall more in with the policy than putting something there that generates a significant amount of revenue. I think also we - the government of this Island - have fed millions of pounds into W.E.B. over the years and you look back at the different propositions and the money going in and we seem to launch these propositions every so often but we do not actually ever deliver on them, or very rarely deliver on them.

**The Connétable of Grouville:**

But going back to the accountability side of it, you have a double accountability as a Member. You mentioned just now whether they have an open space or whether they maximise the revenue potential of a certain area. The directorship of W.E.B. would entail that they must vote in favour of the company's best interests, which would maximise the money, and at the same time, being a States Member, they would then think: "I prefer to have an open space" from the public's point of view. So that is what I think he meant when he was talking about double accountability as well.



**Senator B.E. Shenton:**

Yes. There is obviously a conflict there, as you mentioned before, because you are also in a board meeting surrounding. You may come across something that you may wish to express politically which, because you have learned about it at a board meeting level, you cannot do so. So there is a problem there.

**The Deputy of St. Peter:**

So how would you manage that conflict?

**Senator B.E. Shenton:**

On the board of W.E.B.?

**The Deputy of St. Peter:**

Yes.

**Senator B.E. Shenton:**

With a great deal of difficulty, but I would feel more ... as a resident of the Island, I would still feel more comfortable knowing that there were politicians on the board.

**The Deputy of St. Peter:**

Do you see any other way of achieving that accountability without having States Members on the board?

**Senator B.E. Shenton:**

No, I think the problem we have got ourselves into is that the W.E.B. board has been so weak, and no one can argue with that. Certainly, during the last 7 or 8 months you cannot argue that the board of W.E.B. has not been weak. It has had no chairman. It has been short on members. We are coming up to a very crucial time. We have a very weak board and, of course, then you have

W.E.B. itself which ... W.E.B. are there to do a job and you take a certain ... I am trying to phrase this without ... you have a certain type of individual would be running W.E.B. at any one time. You do need a strong board then. I think what the Council of Ministers should have done is they should have replaced the current board members of W.E.B., like they were going to do originally, the politicians and the non-politicians, and they should have gone off with a clean sheet of paper and said: "Right, we are going to strengthen the board of W.E.B. so it is running at 100 per cent over the next however long it takes and then we will come back to the States with proposals which we have scrutinised, we have been through, we have checked, we have double checked, and which we have consulted on, we have identified whether there are people available that will be doing this, we have identified the level of remuneration you will have to pay, and then come back to the States. You do not wait until ... I think all the directors were up on 31st March. You do not wait until 2 months before all the directors and then stick a ... rush through a proposition. You put on the proposition as well ... and this is part of the problem with W.E.B. W.E.B. belongs to the people of Jersey and the revenues generated by W.E.B., although technically they are not in the States pot. They are really, you know, they belong to me as a resident of the Island. So on the proposition that the Council of Ministers have lodged, they have lodged that there is no financial implications of this proposition. They are moving from not paying directors, because the States directors are not paid, to paying directors. Now, if you are moving from not paying directors to paying directors, there are financial implications. Okay, I think the directors of W.E.B. only get about ten grand and I am not quite sure ...

**The Connétable of Grouville:**

No, I think ...

**Senator B.E. Shenton:**

It is more than that, is it?

**The Connétable of Grouville:**

Yes.

**Senator B.E. Shenton:**

And then the chairman gets more. But there are financial implications. But they have clarified that in the proposition by saying: "There are no implications for the people of Jersey because this is W.E.B. and it is nothing really to do with the States, so there are not any financial implications." So, even in their proposition they are tying themselves up in knots.

**Senator S.C. Ferguson:**

But do you not think that the directors have been hamstrung to a degree by the way the States have been changing their mind? Every now and again, up comes a proposition and some of the policy changes have arisen and they are, in fact, carrying out the policy of the States because these have all been voted.

**Senator B.E. Shenton:**

Well, they have been voted, but I think in 2000 you voted to put a police station and a hotel and a school on the Waterfront. That was all replaced with putting in a new road. I mean, the fact we have already got a road there seems to have passed people by, but putting in a new road on the Waterfront instead of the school and the police station and so on and so forth. So, unfortunately, as the Planning Minister or the Council of Ministers change, the politicians do change their tack. Three years ago we did a long-term strategic plan which it now looks like we are going to rewrite every three years, which is a strange way of doing long-term strategic planning. You update a strategic plan; you do not rewrite it every three years. So, you do need a strong board because the world is changing and we are in for quite a serious economic downturn in Jersey. There will be big question marks raised over the financing of the whole Waterfront project.

**The Connétable of Grouville:**

Okay. Can I go back here for a second? The idea was when I first brought it up with you that if the States directors came off W.E.B. because of this accountability problem, that a committee would be elected by the States of Jersey on an oversight basis, a scrutiny committee. Would you agree that that is a good idea or not? In other words, replacing States directors on W.E.B.'s board with an oversight committee?

**Senator B.E. Shenton:**

It would depend on how much power that committee had with regard to the access to the information.

**The Connétable of Grouville:**

Well, as a scrutiny committee I assume that they would have full powers to investigate.

**Senator S.C. Ferguson:**

Well, it would be ... I think as envisaged it would be set up with, yes, directors but effectively a scrutiny committee whose main remit was looking at W.E.B.

**The Connétable of Grouville:**

Yes, a single entity.

**The Deputy of St. Peter:**

But the concept of what has just been described, what is your view on that concept?

**Senator B.E. Shenton:**

Is this sort of tying in with the C. and A.G.'s recommendation of reporting through the Treasury Minister with perhaps the Assistant Treasury Minister sitting on the board?

**The Connétable of Grouville:**

Well, I do not think you need have a ... we are not talking about any States Members on the board. We are talking about obviously orders ... let us face it, the board is powerless while you have the Treasury Minister in control. He will just tell them what to do. If they do not do it, obviously they do not stay there, do they, if they disagree with him?

**Senator B.E. Shenton:**

I think it may work, but I think you would also have to review the Appointments Commission and make sure that everything is going through the Appointments Commission with regard to the board itself.

**The Connétable of Grouville:**

Yes, exactly. That is going to be the problem.

**Senator B.E. Shenton:**

The Appointments Commission tends to get a little bit full of ex-civil servants, and I think you would have to make sure that the Appointments Commission is a proper Appointments Commission that appoints the right people. I mean, going back to when I was on the Council of Ministers, when we were looking initially to replace Jimmy, the ability of the individual was not a factor but political leanings were. With the Appointments Commission, you have to make sure that they appoint the right people, even if they are not of the same political persuasion as a Minister or the Chief Minister.

**The Connétable of Grouville:**

I think we are with you 100 per cent on that, but the person who went on the board of W.E.B. would have to earn their coin. They have to be a person who is capable of earning their coin in that particular job situation. But all round, then, there might be an agreement there with you on

the outlines of it. Okay. To move on, what work do you think, if any, the Public Accounts Committee will be doing in relation to W.E.B.?

**Senator B.E. Shenton:**

At the moment I have not had a chance to sit down with the C. and A.G. and I think the C. and A.G. did have some concerns with regard to his remit with regard to W.E.B. I do not believe he has the power to go into W.E.B. as he would a States department because it is a body outside of the States, albeit 100 per cent owned by the States.

**The Connétable of Grouville:**

We have discussed that with him, yes.

**Senator B.E. Shenton:**

Yes, and we will be looking at that to see and we may well come to the States to try and extend the power of the C. and A.G. with regard to ...

**The Connétable of Grouville:**

But we had better toss up who is going to do the amendment, then. **[Laughter]**

**Senator B.E. Shenton:**

I do not mind.

**Senator S.C. Ferguson:**

Yes, as I said this morning, there are already amendments to the Public Finances Law being put together in one way or another ...

**Senator B.E. Shenton:**

Yes, I am picking up on work that Senator Ferguson has already done.

**The Connétable of Grouville:**

Yes, that is good. Okay. So we are pretty well agreed on that, then.

**Senator B.E. Shenton:**

Yes.

**The Connétable of Grouville:**

Okay.

**Senator S.C. Ferguson:**

If your proposition is adopted, what do you intend to do before the expiry of your term of office on 31st March?

**Senator B.E. Shenton:**

Well, I would obviously offer myself going forward from 31st March, but it would give me an opportunity to review the minutes in detail of previous meetings, albeit confidentially, to look at some of the ... to talk to the other directors, but also to put forward a view based on 31 years in the investment business of what contingency plans they have in place if the current development is unfundable, how they intend to realise monies going forward with regard to the development, how they propose to move the whole organisation forward, and also to look at the whole structure. W.E.B. as an entity sets its own remuneration and so on and so forth, and they have been criticised in the past for a lack of internal corporate governance. So, again, it would be a chance to have a look at that. Now, obviously, I could not then go off and run off to the BBC or the *J.E.P.* (*Jersey Evening Post*) or anyone else with anything I do find, but at least I will be able to satisfy my own mind as to ... so that the company is operating as a company should.

**Senator S.C. Ferguson:**

Well, yes, although I think the C. and A.G. reckoned that the corporate governance was back on track, did he not, in his report? He certainly commented favourably.

**Senator B.E. Shenton:**

They were told to go out and employ a proper company ... a professional company secretary to undertake the very important duties of a company secretary. It just seemed a little bit amazing that a company responsible for such a large sum of money should take their company secretary responsibilities so sort of ... with such negligence. It will be interesting also to see what feedback I get from the other board members and to try and ascertain the qualities that took them to the board in the first place.

**Senator S.C. Ferguson:**

Well, that is the running of the company, but would you say that you have the property development knowledge to bring something to the party with that?

**Senator B.E. Shenton:**

I have in my 30 years been quite actively involved in most areas of finance, including property development, so I do have ... although I am not a professional property developer as such, I do have a certain amount of knowledge with regard to property development and I can certainly understand a contract and the terms that are put forward and whether it is favourable for the people of Jersey or not.

**The Connétable of Grouville:**

Is there anything else you think we should know that you would like to tell us before we wind you up? **[Laughter]**



**Senator B.E. Shenton:**

No. I am a little disappointed at the way that this whole thing has worked its way through because we were given assurances, as you saw in my proposition, by the Chief Minister at the time that W.E.B. would finally be sorted out. I have concerns that they are basically running fairly uncontrolled at the moment inasmuch as you hear stories, which I do not know whether it is true or not, that they are getting involved in areas outside their remit.

**The Connétable of Grouville:**

Such as?

**Senator B.E. Shenton:**

Such as down at East of Albert. The other thing is ...

**The Connétable of Grouville:**

I just want to go a bit further on that one. As I understand it, East of Albert, they are acting as agents for the States, are they?

**Senator B.E. Shenton:**

I do not know. I would be interested to find out.

**The Connétable of Grouville:**

They are acting as agents for the States. I thought perhaps you might have a bit more information on that.

**Senator B.E. Shenton:**

I would also like to get a better understanding of the financial controls that are going on down there and whether they have got over this practice which unfortunately is what could stifle the whole W.E.B. If you are so focused on achieving something, sometimes the deal may not be as

favourable as you think. If you are so focused on achieving something, you will go ahead with it anyway. I think the Waterfront hotel was an example of that where the desire to get a Waterfront hotel down on the Waterfront at any cost superseded any business logic that should have been prevalent at the time. You do worry whether the desire to get the Hopkins master plan through will make those involved so blinkered that they will not be aware of what else is going on in the world.

**The Connétable of Grouville:**

We were not given the full details of that hotel deal, were we, ever?

**Senator B.E. Shenton:**

No, but if you go back to the proposition, 2002 Policy and Resources Committee, it does not actually tell you how much the hotel was meant to have raised for the public of the Island, but those figures have never been made public.

**The Connétable of Grouville:**

That is right. Certainly lack of openness and transparency there.

**Senator B.E. Shenton:**

We have not heard a great deal back from W.E.B., to be honest with you. We have given them land which is probably worth £100 million and, to be honest, we may well have just been better off selling it off and banking the money because ... and even on the returns that were promised from the Hopkins proposal - a new road and the infrastructure in place plus obviously I think £50 million cash - it is still questionable whether that is good value for money.

**The Connétable of Grouville:**

Okay. Nothing, Colin, Sarah? No. Thank you very much indeed, Senator, for coming to see us.

**Senator B.E. Shenton:**

That is all right.

**The Connétable of Grouville:**

We appreciate very much your remarks. We have taken it all on board and it will be incorporated and you will have a copy of the transcript, obviously. I do not have to tell you. So, that is it, all over.

**Senator B.E. Shenton:**

When do you think you will get your report done?

**The Connétable of Grouville:**

Very quickly. Very quickly. It should not be that long. We are asking for written evidence from the ex-directors of W.E.B. and once we have that in that is about our evidence taken, is it not?

**The Deputy of St. Peter:**

Chief Minister tomorrow.

**The Connétable of Grouville:**

Oh, the Chief Minister tomorrow morning, yes. But, yes, no reason why we should not bundle it up very quickly.