

STATES OF JERSEY



ESPLANADE QUARTER: PLANNING OBLIGATION AGREEMENT – ENDORSEMENT (P.111/2010) – COMMENTS

Presented to the States on 27th September 2010
by the Council of Ministers

STATES GREFFE

COMMENTS

Part (a)

The Council of Ministers believes that Deputy Rondel's Proposition should be opposed as it fails to recognise the important social, economic and financial benefits that will be delivered by the Waterfront development.

The Proposition, if passed, is flawed in that it will halt all development on the Waterfront, not only the Esplanade Quarter. The residential schemes of Castle Quay 2, Westwater and Zephyrus will be stopped – all of which have planning permission to develop. The Waterfront Enterprise Board may then be exposed to damages for breach of contract, which could be substantial.

The proposed Waterfront development is not reliant on public sector funding. The scheme will be funded by the private sector at no cost to the taxpayer; it will also generate significant land payments to the Public. As a privately-funded development, which brings income to the States of Jersey, it is difficult to understand how the States projects mentioned by the Deputy would be detrimentally affected if this scheme were to proceed.

There would clearly be financial and manpower implications to the Island if the Waterfront project was delayed as suggested. In May 2009 the States Assembly agreed a fiscal stimulus package to support the local economy during difficult times. A key aspect of this is to bring forward public sector capital construction projects to support the local construction industry. It is difficult to reconcile this with a proposal which would halt private sector inward investment of c.£350 million being spent on construction projects within the economy.

The Deputy also fails to recognise the much broader long-term benefits that the development will bring to the Island. Jersey has a real opportunity of benefiting from the current economic climate and the return to growth that will occur as a natural consequence of the economic cycle. In the short term, it is fully expected that there will be a "flight to quality" of mobile investments held in the offshore financial sector. With the Island positioned on the OECD "white list" and with world-class regulatory standards, Jersey can be a jurisdiction into which global financial services institutions will consolidate their operations to in the medium term. It is this short-term and medium-term consolidation of the sector that represents an enormous opportunity for the Island, its working population and the long-term future of public finances.

However, none of the above will bring success by itself. If business is to consolidate in Jersey, it will require a strong Island proposition that must include the availability of sufficient high-quality office space. This is exactly what the Esplanade Quarter will deliver.

With 3 years required before the first buildings will be ready and current market conditions favourable for beginning construction projects, a delay would mean insufficient office space would be available at the precise time it is needed. If this were to happen, Jersey would miss this major opportunity with potentially profound consequences. Institutions might consider reducing their commitment to the Island, undermine the tax and employment base and, as a consequence, undermine the quality and nature of public service provision.

It is clear that it is the private sector that will decide whether economic conditions are appropriate for the development of the Esplanade Quarter. Mindful of this, the Waterfront Enterprise Board (WEB) will ensure that construction does not commence on the Esplanade Quarter until pre-let agreements are in place, which will give a clear indication of demand and confidence in the local economy by major financial institutions in advance of any construction.

The Council of Ministers believes that Jersey is in a strong position to take advantage of a return to better economic circumstances. Delaying this development will mean the Island will not be ready to take the opportunity that a return to better economic circumstances will provide.

Members should also note that, in addition to office accommodation, the Esplanade Quarter scheme provides much-needed residential accommodation for the Island. It is a key part of the longer-term strategy of regeneration within the urban area of St. Helier and the reduction of development pressure on the countryside. Delaying the scheme will therefore have a negative impact on the supply of residential units, which will increase the pressure to develop elsewhere, especially outside of town.

Finally in relation to Part (a) of the proposition, members may recall that the Deputy's original Proposition (P.77/2009 as amended) proposed the deferral of works by Harcourt Developments Limited. The Council reminds Members that the Waterfront Enterprise Board Limited has subsequently terminated its contractual relationship with Harcourt Developments Limited and therefore does not believe that P.77/2009 has been violated in any way.

Part (b)

General

Under Article 25 of the Planning and Building (Jersey) Law 2002, the owner of an interest in land may enter into a planning obligation agreement (POA) with the Minister for Planning and Environment.

A POA is not a development agreement which often immediately precedes works commencing on site.

Generally, POAs are used where, as a direct consequence of a proposed development, additional infrastructure or amenities are required, either on or off the site of the development. The Minister will negotiate with the applicant/owner the provision of appropriate facilities and the method of their delivery. This may be by direct provision of the facility by the developer, or by commuting the obligation to a monetary contribution towards the carrying-out of the works by another body.

The underlying principles of a POA are –

- That it is necessary to make a development acceptable in planning terms;
- That it is relevant to planning;
- That it is directly related to the proposed development;
- That it is fairly and reasonably related in scale and kind to the proposed development; and
- That it is reasonable in all other respects.

The most common usage of POAs, since the legal provision was first introduced under the old Law in 2003, has been for off-site drainage and highway improvements, but they have also been used extensively in relation to governing the occupation and tenure of housing developments on sites zoned in the 2002 Island Plan for Category A Housing.

A development agreement is an agreement between the landowner and a developer which sets out the contractual arrangements for a developer to develop land in the control of the landowner. It is a distinct commercial agreement and it plays no part of the planning system or planning decision

Esplanade Quarter specifics

In the case of the Esplanade Quarter, the Minister has entered into this legal and contractual agreement with the Minister for Treasury and Resources (landowners on behalf of the States), the Minister for Transport and Technical Services (owners of some of the roads) and WEB (as leaseholders) to provide the full benefits and works required to make the scheme acceptable in planning terms. In essence to protect the interests of the public and ensure that those interests are not prejudiced by the granting of the consent.

The POA covers matters which cannot be controlled by the use of planning conditions. It is not a Development Agreement between the leaseholder (WEB) and a developer. The outline planning consent granted does not permit the commencement of work on site. The POA covers a broad range of issues all deemed to be important, relevant and necessary to make the development acceptable in planning terms.

The POA was registered in the Royal Court on 3rd August 2010. The endorsement, or non-endorsement by the States, would not change this. A copy of this document is already in the public domain and is available on request. (Link – <http://www.gov.je/Government/Departments/PlanningEnvironment/Pages/PlanningObligationAgreements.aspx>).

The planning permission is in outline only, and further details are still required to enable development to commence. No work can begin on site without further planning applications being submitted to and approved by the Minister, and no planning application in pursuance of the outline consent can be submitted (under the terms of the POA) without the Minister for Treasury and Resources giving his consent.

The Deputy might be reassured therefore, if it is his concern that work may abruptly and shortly commence on site, that there are significant planning matters that need to be addressed before this could take place. I believe no useful purpose would therefore be served by asking the States to endorse the POA, as it has already been entered into and registered in the Royal Court.

Resource Implications: Any delay to the timely and proper commencement and completion of the Esplanade quarter could lead to severe economic consequences if suitable office space is not available for the business community when investment decisions are being made as the economy comes out of recession.

Summary

In summary, any delay imposed on the development of the Waterfront development site runs the risk of impeding the Island's ability to benefit from the global economic recovery. Without adequate supply of modern, purpose-built office accommodation the Island will not be able to provide its principal industry with suitable space which it fundamentally requires. Stopping residential development could result in further increases to local property prices, as well as putting pressure on developments outside the urban area.

In addition, the development of the Waterfront will provide significant work for the local construction industry using private sector inward investment. Any deferral will have consequences for the local construction industry and runs contrary to the States approved fiscal stimulus package.

The Council of Ministers urges States Members to oppose this Proposition.