# STATES OF JERSEY

# PROPERTY AND INFRASTRUCTURE REGENERATION: THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED

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**Lodged au Greffe on 2nd June 2009**
**by the Council of Ministers**

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**STATES GREFFE**

# PROPOSITION

**THE STATES are asked to decide whether they are of opinion −**

(a) to approve the proposals and structure of the Property and Infrastructure Regeneration process as set out in Paragraphs 2–11 of the report of the Council of Ministers dated 2nd June 2009; and

(b) to refer to their Act dated 12th December 1995 by which they approved the establishment of Waterfront Enterprise Board Limited (the "Company") and approved the Memorandum and Articles of Association of the Company and to their Act dated 14th September 2005 by which they approved the extension of the Company's original tenure, and –

(i) to agree that the role and remit of the Company should be extended to allow it to undertake, from time to time, the regeneration of redundant States of Jersey assets within designated Regeneration Zones and where appropriate to act as the preferred developer for Jersey Property Holdings' projects either via joint ventures with third party developers or directly;

(ii) to agree that the name of the Company should be changed to "The States of Jersey Development Company Limited" and to approve the revised Memorandum and Articles of Association of the Company as set out in Appendix 2 of the report of the Council of Ministers dated 2nd June 2009, with the amendments reflecting the revised remit of the Company, incorporating the recommendations of the Comptroller and Auditor General in his Report, "Waterfront Enterprise Board Limited: Review of Corporate Governance" dated 24th November 2008 and extending the remit of the Comptroller and Auditor General so that he or she is able to have access to independently audited papers of the Company and to authorise the Greffier of the States for and on behalf of the States of Jersey to pass, together with the Treasurer of the States, one or more special resolutions of the Company in respect of the change of name and to adopt such revised Memorandum and Articles of Association.

COUNCIL OF MINISTERS

## REPORT

### 1. Introduction

The purpose of this Report and Proposition is to present proposals for structuring the planning, development and implementation of major property and associated infrastructure regeneration projects in Jersey, with particular reference to St. Helier.

The report also responds to the recommendations of the Corporate Services Scrutiny Sub-Panel's report on the Report and Proposition for the formation of the Jersey Enterprise Board[1], the recommendations of the Corporate Services Scrutiny Sub-Panel on the revised Memorandum and Articles of Association for Waterfront Enterprise Board Limited[2] and those of the Comptroller and Auditor General regarding the review of the governance of Waterfront Enterprise Board Limited[3].

Since its inception, the Waterfront Enterprise Board Limited has performed dual roles. It has been responsible for creating the necessary Masterplans for the St. Helier Waterfront and also for promoting and delivering the developments thereon. These roles have created conflicts. The proposed structure of The States of Jersey Development Company is designed to separate the functions. Master planning will be the sole responsibility of the Minister for Planning and Environment and his Department. Co-ordination and delivery of public sector developments to realise the regeneration objectives of the Masterplans will be the sole responsibility of The States of Jersey Development Company under the guidance of the Regeneration Steering Group.

### 2. Proposals for Property and Infrastructure Regeneration – Objectives for the States of Jersey

The Council of Ministers believes that in terms of a desired regeneration strategy there are 5 primary objectives for the States of Jersey. These are –

- To ensure the primacy of the States of Jersey in the governance of regeneration policy in Jersey and any associated property development agency.
- To ensure the effective participation of the appropriate Scrutiny Panel in effective oversight of such governance.
- To enable a consistent and co-ordinated Island-wide approach to regeneration which aligns with the current and future requirements of the Island.
- To deliver a structure which is able to work with the private sector whilst protecting the States of Jersey's interests.
- To ensure a clear division of responsibilities between strategic planning, policy, project management and delivery.

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[1] .S.R.9/2008: "Review into Proposed Establishment of the Jersey Enterprise Board", Corporate Services Scrutiny Panel, 12th June 2008.
[2]. S.R.1/2009: "Waterfront Enterprise Board (P.12/2009)", Corporate Services Scrutiny Panel, 18th March 2009.
[3] . R.122/2008: "Waterfront Enterprise Board Limited: Review of Corporate Governance", Comptroller and Auditor General, 24th November 2008.

## 3. Regeneration Zones

A Regeneration Zone is an area which will be subject to an area-wide strategy and includes a collection of development sites. By virtue of having an area-wide strategy, it will have a Masterplan and a design framework or code.

A Masterplan is a comprehensive document that sets out an overall development strategy for a defined area which includes both present property uses as well as future land development plans.

A Development Brief is a document to provide information on the type of development, the design thereof and layout constraints relating to a particular site.

Each of the development sites within a Regeneration Zone will have a Development Brief which complies with the Masterplan and design framework.

A Regeneration Zone is characterised as an area of land where physical intervention by States controlled bodies is required to bring about long-term physical, social and economic benefits from change. Such areas are defined as those that require significant initial expenditure to provide essential infrastructure. They will typically include the provision of areas of public realm, will usually be in multiple ownership thereby requiring site assembly and result in multi-use occupancy.

The Island Plan, as approved by the States of Jersey, will indicate Regeneration Zones. The initial Regeneration Zones will include the East of Albert Areas, the Esplanade Quarter, the Airport and other St. Helier Regeneration Areas. The Island Plan will also include a mechanism to designate future Regeneration Zones where it is felt appropriate.

The Masterplans providing the details of each Regeneration Zone will be approved by the Minister for Planning and Environment, following consultation with the Regeneration Steering Group, as set out in the diagram overleaf.

There will be ongoing maintenance costs associated with the new areas of public realm created as part of the Regeneration Zones. The States of Jersey Development Company Limited, described below, will establish a funding mechanism to meet any ongoing obligation when completed public realm is transferred to Property Holdings.

## 4. Structure

The structure proposed to satisfy the primary objects of the States of Jersey is designed to –

- Ensure that the regeneration strategy is set by the Minister for Planning and Environment and Regeneration Zones are adopted by the States of Jersey via the Island Plan process;

- Maintain the independence of the Minister for Planning and Environment and his Department from property development;

- Enable the Regeneration Steering Group (a sub-group of the Council of Ministers accountable to the States of Jersey) to provide guidance to The

States of Jersey Development Company Limited (a newly designated regeneration and property development company reconstituted from Waterfront Enterprise Board Limited);

- Ensure the activities of The States of Jersey Development Company Limited are reviewed and reported on regularly to the Regeneration Steering Group;

- Integrate the strategic planning and development of States' property assets with Island-wide regeneration projects;

- Minimise development and delivery risks.

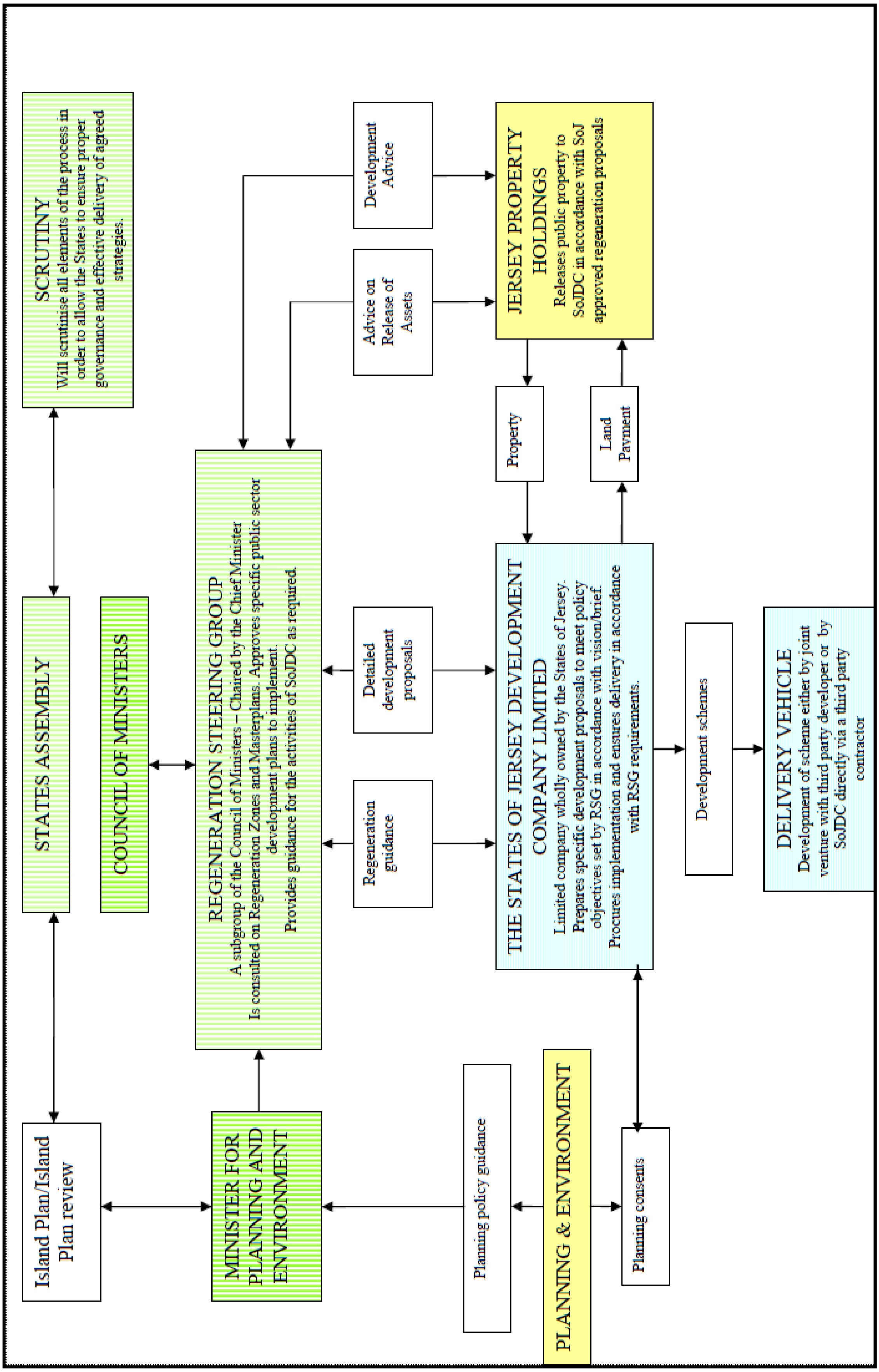
A chart outlining the proposed structure and the relationships is set out overleaf.

It is important to note that all bodies involved in the proposed regeneration process will be open to scrutiny by –

- The Public Accounts Committee;

- The Corporate Services Scrutiny Panel.

All scrutinising authorities will remain independent of the Regeneration Steering Group and The States of Jersey Development Company Limited in order that their respective positions will not be compromised.


SCRUTINY
Will scrutinise all elements of the process in order to allow the States to ensure proper governance and effective delivery of agreed strategies.
STATES ASSEMBLY
COUNCIL OF MINISTERS
Island Plan/Island Plan review
MINISTER FOR PLANNING AND ENVIRONMENT
REGENERATION STEERING GROUP
A subgroup of the Council of Ministers – Chaired by the Chief Minister
Is consulted on Regeneration Zones and Masterplans. Approves specific public sector development plans to implement.
Provides guidance for the activities of SoJDC as required.
Development Advice
Advice on Release of Assets
Detailed development proposals
Regeneration guidance
JERSEY PROPERTY HOLDINGS
Releases public property to SoJDC in accordance with SoJ approved regeneration proposals
Property
Land Payment
THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED
Limited company wholly owned by the States of Jersey.
Prepares specific development proposals to meet policy objectives set by RSG in accordance with vision/brief.
Procures implementation and ensures delivery in accordance with RSG requirements.
Development schemes
DELIVERY VEHICLE
Development of scheme either by joint venture with third party developer or by SoJDC directly via a third party contractor
Planning policy guidance
PLANNING & ENVIRONMENT
Planning consents

## 5. The Role of the States Assembly

The role of the States Assembly, *inter alia*, is to –

- Determine the Island Plan and any amendments thereto on the recommendation of the Minister for Planning and Environment – this sets the framework for the regeneration strategy and designates the initial Regeneration Zones.

- Appoint the directors of The States of Jersey Development Company Limited.

- Hold the Ministers to account for the delivery of effective regeneration in line with the States' agreed strategy.

- Ensure that all elements of the process are open and responsive to scrutiny.

## 6. Regeneration Steering Group (RSG):

The prime purpose of the Regeneration Steering Group is to provide a political steer and/or guidance in order to inform policy guidelines for all major Public property and infrastructure regeneration projects in Jersey and to guide the activities of The States of Jersey Development Company Limited.

The overriding objective of the Regeneration Steering Group is to ensure that future major Public property and infrastructure projects –

- Contribute to the future economic wealth of the Island;

- Enhance the quality of the Island's built environment;

- Improve transportation links to, from and within the Island;

- Provide the necessary infrastructure to support public and private activities;

- Encourage sustainable, green development;

- Meet the objectives of the States Strategic Plan.

The Regeneration Steering Group will consider the overall regeneration strategy. It will respond to Masterplans and Development Briefs proposed by the Minister for Planning and Environment.

It will consider and approve detailed scheme proposals for the implementation of the Masterplans and Development Briefs. This leads to the production of a Development Plan, as set out in Section 10 of this report.

**Accountability**

The Regeneration Steering Group will be accountable to the Council of Ministers for its activities.

**Composition**

The Group will comprise –

- The Chief Minister – who will chair the Regeneration Steering Group
- The Minister for Treasury and Resources
- The Minister for Economic Development
- The Minister for Transport and Technical Services
- The Connétable of St. Helier
- A Co-Opted Connétable for a Parish in which a major regeneration scheme is taking place.

**Relationships**

The Regeneration Steering Group will take input from –

- The Minister for Planning and Environment
- The Economic Development Department on Socio-Economic issues
- Jersey Property Holdings through the States Property Plan
- The States of Jersey Development Company Limited
- Stakeholder groups including other commercial associations and planning bodies as appropriate.

**Scope of activities**

The Regeneration Steering Group will –

- Coordinate the activities of a number of strategic planning groups in both the public and private sectors.

  Currently there are a number of strategic planning initiatives across the States of Jersey which have a bearing on the regeneration of property and infrastructure on the Island. These include –

  - The States Strategic Plan
  - The Island Plan
  - Input from the Economic Development Department on Socio-Economic issues
  - The States Property Plan
  - The Energy Policy
  - Planned Infrastructure Investment
  - Airport Operational Plan
  - Harbours Plan
  - Integrated Transport Plan
  - Housing Needs Survey.

In order to avoid conflicting and counterproductive activity it is essential that these activities, in so much as they relate specifically to property and infrastructure, should be drawn together in an overarching delivery strategy.

- Ensure the interests of the Public are protected throughout the promotion, commissioning, and implementation stages of each project as it steers The States of Jersey Development Company Limited and receives regular progress updates from The States of Jersey Development Company Limited in respect of specific schemes.

- Direct the activities of Jersey Property Holdings in terms of the release of public sites for regeneration projects through Strategic Plans and Business Plans.

By means of the Regeneration Steering Group, the Public retains an interest in each regeneration project throughout delivery.

**7. The States of Jersey Development Company Limited**

Building on the corporate structure already in existence in respect of Waterfront Enterprise Board Limited, the Council of Ministers wishes to propose that a restructured company, to be known as: "The States of Jersey Development Company Limited", in conjunction with the private sector, acts as the developer of property assets currently belonging to the Public where the asset is not otherwise required to meet States needs or where such properties are integral to the delivery of a Regeneration Zone. The restructured company will continue the activities of Waterfront Enterprise Board Limited in developing the St. Helier Waterfront but will also purchase and develop property assets that are required to achieve the regeneration strategies of the Regeneration Steering Group.

In addition to its continuing activities, the restructured company would have the following new roles –

(1) Acting as the developer of property assets, in conjunction with the private sector, currently belonging to the Public that are located within designated Regeneration Zones and purchasing or entering into joint ventures in respect of third party properties where appropriate and necessary to achieve a cohesive regeneration strategy; and

(2) Implementing and co-ordinating the development within Regeneration Zones in accordance with approved Masterplans, Development Briefs and other relevant guidance prepared by the Minister for Planning and Environment.

The prime purpose of The States of Jersey Development Company Limited is to act as the delivery vehicle for property development for the States of Jersey and is charged with undertaking the following –

- Developing detailed development proposals for specific projects of major regeneration of property and infrastructure within Regeneration Zones for consideration by the Regeneration Steering Group;

- Providing forward funding for preparing the detailed development proposals;

- Procuring the services of appropriate design and development consultants;
- Managing and developing detailed designs for specific sites;
- Submitting detailed planning applications to the Minister for Planning and Environment;
- Procuring and managing project implementation as agreed and directed by the Regeneration Steering Group either via a joint venture with a third party developer or direct;
- Providing quarterly progress reports to the Regeneration Steering Group in respect of development taking place.

**Managing Risk**

This section should be read in conjunction with the Memorandum of Understanding (attached at Appendix 1) which deals in detail with the assessment and management of specific risks relating to development.

The objective of The States of Jersey Development Company ("SoJDC") is to deliver the objectives of the Regeneration Steering Group ("RSG") in the most beneficial and risk averse manner.

The States of Jersey ("SoJ") own prime real estate principally in St. Helier, on behalf of the Public of the Island. Unlike regeneration areas in the UK, SoJ does not need to address market failures; however it needs to provide for the socio-economic needs of the Island. There are a limited number of sites within Jersey capable of development unless there is further impingement into the countryside. These Regeneration Zones will be nominated in the Island Plan. SoJ controls much land capable of development. This significantly limits competitive risk.

To date, the States of Jersey has commissioned and procured all of its public infrastructure directly rather than in conjunction with the private sector and given the importance of the infrastructure concerned, and the risk/public costs associated with any delays or defects, these infrastructure works should be commissioned and procured by the States of Jersey directly via SoJDC. The costs and risks of delivery remain with the SoJ but the value of the associated land is enhanced by the delivery of infrastructure and public realm provision.

There is a limited number of on-Island developers with the capabilities of undertaking this large scale of regeneration. Experience to date suggests that the barriers to entry make Jersey a difficult place to attract large developers from outside of the Island along with concerns about external developers' commitment to Jersey.

It would be possible for SoJDC to manage a single joint venture or consortium of developers/contractors for large developments so long as this is delivered through a transparent open tender process.

There may however be specific circumstances where it would prove financially and strategically beneficial for the SoJDC to undertake a development directly in order to fully control what is delivered and to take full advantage of the profits generated thereon provided the risk is minimal.

SoJDC will use advanced financial and risk modelling techniques to enable the risk profile of projects to be identified. The development model that delivers the most appropriate risk profile and return will be followed.

There are a number of risk management and risk mitigation measures that will be introduced and adhered to ensure that the States of Jersey is protected. These are set out in detail in the Memorandum of Understanding between SoJDC and the Minister for Treasury and Resources which set the parameters within which SoJDC operates. Such measures include –

**Planning** – before any land transfer takes place between Property Holdings and SoJDC, the Minister for Planning and Environment must have adopted the Regeneration Zone within which the assets are located and approved the Masterplan for that particular Regeneration Zone. This will partly remove the planning risk of the regeneration proposals and will enable a detailed planning application to be worked up within the parameters of the adopted Masterplan and Development Brief according to the agreed Development Plan set with the RSG.

**Infrastructure Works –** no infrastructure works will be procured until detailed planning permission has been received on vacated development sites and detailed financial appraisals support the development of the scheme.

SoJDC will commission and procure the provision of the infrastructure in accordance with SoJ capital project procurement and delivery procedures.

**Sales** – If it is proposed that a specific development is undertaken directly by SoJDC, before committing to construction costs SoJDC will have to secure a sufficient level of legally binding pre-sales or pre-lets to fund the costs of constructing the first phase of a scheme. This will remove part of the sales risk of a particular development project and will ensure that there will be no financial liabilities relative to a particular development's construction costs.

**Pre-development Costs –** all detailed design costs and fees will be funded directly by SoJDC out of equity.

**Development –** SoJDC will procure development schemes in conjunction with the private sector unless there are specific reasons for direct development. All development proposals will be subject to a transparent open tender process**.**

**Phasing –** SoJDC will phase large development schemes if practically feasible to do so.

**Design and Specification** – SoJDC will ensure that every development proposal is fully designed and fully specified with bills of quantity. These documents will be put out to the construction market for tendering the build.

**Construction –** SoJDC will follow the SoJ guidelines and best practice in the procurement of construction works. All construction works will be open tendered. All tenders must price the bills of quantity provided by SoJDC and must be a fixed price.

SoJDC will only enter into fixed price, fixed delivery construction contracts with third party main contractors with good market and financial credibility.

During the construction process a Project Manager employed by SoJDC will monitor the construction works. Monthly design team meetings for each construction project will be held between SoJDC, the Project Manager, the Contractor, the Architect and the Quantity Surveyor in the same way as States of Jersey capital projects are monitored and costs controlled.

SoJDC will manage and limit risk by adhering to the above risk management techniques.

**Accountability**

The States of Jersey Development Company Limited will enter into a Memorandum of Understanding with the Minister for Treasury and Resources to ensure that The States of Jersey Development Company Limited minimises risks to the Public and activities are conducted in accordance with States of Jersey policies. The Memorandum of Understanding is appended to this Report at **Appendix 1**.

The States of Jersey Development Company Limited will report progress on developments on a quarterly basis to the Regeneration Steering Group.

**Structure**

It is recommended that The States of Jersey Development Company Limited is established by restructuring the existing company Waterfront Enterprise Board Limited whereby:

- the name of the existing company is changed to The States of Jersey Development Company Limited;

- the current board of Waterfront Enterprise Board Limited becomes the new board of The States of Jersey Development Company Limited, subject to the substitution of non-executive directors for the current States Directors in accordance with the recommendations of the Comptroller and Auditor General;

- the current Memorandum and Articles of Association of Waterfront Enterprise Board Limited are replaced with those set out in **Appendix 2**.

**Composition**

It is proposed that the board of The States of Jersey Development Company Limited shall comprise –

- An independent Chairman
- A Managing Director
- A Finance Director
- A non-executive director appointed by the Minister for Treasury and Resources

- Two non-executive directors with relevant financial, banking, commercial and/or property expertise.

**Scope of Activities**

It is proposed that the scope of activities of The States of Jersey Development Company Limited should include the following –

- A remit for both public and private major property development implementation in conjunction with the private sector;

- A requirement for all consultant and contracting services to be openly competitively tendered;

- The ability to engage in the utilisation of property to be retained by the Public for the purpose of investment/income generation;

The States of Jersey Development Company Limited will continue the existing activities of Waterfront Enterprise Board Limited.

**Governance**

The States of Jersey Development Company Limited would continue to have all the normal powers of a company including the power to buy and sell land and the power to borrow money. The States of Jersey Development Company Limited would continue to be exempt from paying income tax in the same way as Waterfront Enterprise Board Limited on the basis that all profits will be expended wholly and exclusively to improve and extend public infrastructure and works for the good of the Public of the Island.

## 8. Jersey Property Holdings

Jersey Property Holdings ("JPH") acts on behalf of the Minister for Treasury and Resources as the holding body and corporate estates management function in respect of all Public property. In that context JPH is actively engaged in developing strategic plans for the more effective utilisation of public property assets to support the delivery of improved public services in financially sustainable accommodation.

It is essential that these activities are fully integrated with the proposed Island-wide regeneration, planning and development.

JPH will seek to co-ordinate its inward investment in public assets used by States of Jersey departments with that of The States of Jersey Development Company Limited by releasing assets where the property or the value of the asset is surplus to States of Jersey requirements and which fall within designated Regeneration Zones to The States of Jersey Development Company Limited to enable regeneration projects and, where appropriate, acquiring private property assets needed for regeneration schemes.

Assets will be transferred at open market value subject to recognising the cost of providing significant upfront infrastructure costs and public realm. In this case the Minister for Treasury and Resources may agree to the transfer of assets from JPH to

The States of Jersey Development Company at less than open market value or on a deferred payment basis.

Once a Regeneration Zone has been approved by the States Assembly via the Island Plan process and the Masterplan for such Regeneration Zone has been approved by the Minister for Planning and Environment, any States' properties within that particular Regeneration Zone, where the property, or the value thereof, is not required by the States, or the property is needed to be developed to deliver the socio-economic needs of the Island, will be transferred by JPH to The States of Jersey Development Company Limited.

**9. The Minister for Planning and Environment and his Department**

The key planning roles for the Minister for Planning and Environment in the regeneration process are –

- to propose areas that will be designated as Regeneration Zones within the Island Plan process;

- to prepare and approve Masterplans and Development Briefs for sites within Regeneration Zones;

- to consult with the Regeneration Steering Group in the preparation of Masterplans and Development Briefs;

- to determine planning applications submitted in respect of development proposals.

This process is described in greater detail in **Appendix 3** which outlines the protocol for the role of the Minister for Planning and Environment. Under the Planning and Building (Jersey) Law 2002, the Minister for Planning and Environment with advice from officers, has the duty to prepare longer term plans for the development of land on the Island. As a result of this duty, the Minister will prepare a Masterplan and Development Briefs for each designated Regeneration Zone and sites within a Regeneration Zone.

Once approved, these Masterplans together with Development Briefs for the Regeneration Zones will be used to progress detailed development schemes by The States of Jersey Development Company Limited.

The Minister for Planning and Environment also has a duty under the Planning and Building (Jersey) Law 2002 to determine applications for development proposals. The schemes which emanate from the work of The States of Jersey Development Company Limited will need to go via this route and planning permission sought.

Once planning permission has been sought for specific development proposals, there will be no further involvement in the planning process by the Regeneration Steering Group or other political members as this will be the sole responsibility for the Minister for Planning and Environment.

## 10. The Regeneration Process

The proposed regeneration process is fundamentally identical to a typical property development process with the addition of the need to establish overarching policy guidelines and master-plans within which site-specific plans may be developed. This leads to a succession of inter-related activities with the following phases:

<u>Responsibility of the States Assembly:</u>

- **Approving the Island Plan** – which identifies Regeneration Zones.

<u>Responsibility of the Minister for Planning and Environment:</u>

- **Strategic master-planning** – developing the major environmental and socio-economic planning objectives in order to establish clear policies and political direction for property and infrastructure regeneration. This leads to a Masterplan for a defined area.

- **Masterplanning** – developing an overall development strategy for a defined area which includes both present property uses as well as future land development plans.

- **Development Briefs** – developing a brief which provides information on the type of development, the design thereof and layout constraints relating to a particular site.

<u>Responsibility of the Regeneration Steering Group:</u>

- **Development Planning –** the development of economically viable Development Plans to meet the objectives of the Masterplans and Development Briefs.

<u>Responsibility of the States of Jersey Development Company:</u>

- **Design development –** the development of detailed design proposals for the redevelopment/regeneration of specific sites.

- **Promotion –** the promotion of specific site proposals through the planning process to secure relevant development permissions.

- **Commissioning –** the entering into of a construction contract with an independent contractor, the procurement of a development partner or the disposal of a site to a developer able to finance and implement the development.

- **Financing –** the provision of risk finance to procure the implementation of the development.

- **Implementation –** procurement and management of the construction of the development.

- **Utilisation –** marketing and securing occupiers for the completed development and the overall investment interest where appropriate.

## 11. Role of the Minister for Treasury and Resources

In parallel with the adoption of new Memorandum and Articles of Association for The States of Jersey Development Company Limited ("SoJDC"), the Council of Ministers recognises that it is appropriate to have political commitments for the Minister for Treasury and Resources, who would be politically accountable for SoJDC under the proposed arrangements.

In overview, the role of the Minister for Treasury and Resources is to maximise the long-term value of the States' interest in SoJDC and to ensure that SoJDC operates in accordance with the agreed policies of the States of Jersey.

In order to promote accountability, transparency and awareness the commitments of the Minister for Treasury and Resources are as follows –

- To bring relevant States' decisions to the attention of SoJDC directors;

- To approve the key elements of SoJDC Business Plan (including consolidated accounts, whilst observing commercial confidentiality) and ensure that they are presented to the States annually and also reflected within the Treasury and Resources Business Plan;

- To keep under review the actions of SoJDC and, where necessary, ensure that they are in accordance with States policies and decisions;

- To keep abreast of the latest developments at SoJDC, ensuring that the Minister is able to respond in an informed manner to questions by States Members;

- To publish Ministerial Decisions relating to property transactions, or in the event of the issuing of a Direction pursuant to Article 22 of the proposed Articles of Association of SoJDC, or in relation to any other matters on which it is necessary for the Minister to take decisions;

- To ensure that Ministerial Decisions relating to SoJDC are subject to a fifteen day 'grace' period in order to allow for sufficient transparency and scrutiny.

The Minister for Treasury and Resources will appoint a non-executive director to the board of SoJDC, who may be a States Member, to represent his interests on the board.

## 12. Review of Corporate Governance of Waterfront Enterprise Board Limited

Members will recall that, following debate by the States Assembly on the Esplanade Quarter in July 2008, the Comptroller and Auditor General was requested to review the Corporate Governance of Waterfront Enterprise Board Limited ("WEB").

The aim of the review was to examine how WEB reached its decisions concerning the proposed development of the Esplanade Quarter. The Comptroller and Auditor

General wanted to establish whether the proper rules of corporate governance had been established and applied by WEB in this instance. He also wanted to ascertain whether WEB had the required arrangements in place to recognise any potential conflicts of interest. The final aspect of the review was to ensure that the board of WEB had gathered all commercial evidence and advice that was available to the board and that the board's decisions had been based upon this.

The Comptroller and Auditor General completed his review which was published on 24th November 2008.

**Summary of Findings:**

In summary, the Comptroller made the following findings and recommendations:

- That WEB is in compliance with normal corporate governance practice;
- That WEB should recruit a professional company secretary;
- That WEB should be accountable to a single Minister;
- That:

  (1) the position of States Director currently enshrined in WEB's Memorandum and Articles of Association should be discontinued;

  (2) States Members should not ordinarily be members of WEB's Board unless they serve as representatives of the Sponsoring Minister;

- That accountability arrangements should at least include the following:

  (1) the Sponsoring Minister should be accountable to the States for the oversight of WEB's activities;

  (2) where appropriate, the Sponsoring Minister's decisions in respect of WEB (for example, approving proposed transactions) should be recorded in the form of Ministerial Decisions. Decisions would therefore be in the public domain so that States Members would be able to subject them to such scrutiny as they think appropriate;

  (3) the Sponsoring Minister should be responsible for laying WEB's annual report and accounts before the States formally when received. Members of the States would therefore be notified of the results of WEB's activities and thus have another opportunity to subject them to scrutiny;

- That WEB's Memorandum and Articles of Association should be reviewed and then revised thoroughly.

Members have had concerns about the need to ensure that there is appropriate political accountability for the activities of WEB and that WEB has an awareness of the political will which ought to, and does, govern the development and use of designated Regeneration Zones which are so significant for the Island.

The structure which is put in place for The States of Jersey Development Company Limited must provide a practical basis on which persons outside of the States of Jersey will be prepared to serve as non-Executive Directors of the company.

## 13. Benefits of the proposed structure

The proposed structure and process for property and infrastructure regeneration addresses the key issues raised by the Corporate Services Scrutiny Sub-Panel and the recommendations of the Comptroller and Auditor General and provides the following benefits:

- It creates a coherent structure which will ensure effective, democratically acceptable regeneration in accordance with States policies;
- A clear division of responsibilities for the control of policy determination, strategic planning, project definition and development implementation;
- It removes the role of masterplanning from the Waterfront Enterprise Board Limited;
- A consistent and co-ordinated approach to Island-wide regeneration;
- Clearly defined objectives which align with current and future needs of the Island;
- Transparency and accountability to the States Assembly throughout the development process;
- The ability to assemble public and private land required to facilitate major property and infrastructure projects within the boundaries of current legislation;
- It creates a dedicated States of Jersey company to redevelop agreed States of Jersey assets;
- The means of funding the design development stages of the regeneration process to a point at which projects may be granted planning consent and competitively tendered in the open market.

## 14. The withdrawn proposals for the Jersey Enterprise Board

Members will recall that on 19th December 2007 a Report and Proposition was lodged *au Greffe* which recommended the establishment of a new property development company called the Jersey Enterprise Board ("JEB"). The proposals recommended the establishment of a Regeneration Task Force which would report directly to the Council of Ministers and provide the political leadership and direction needed for the regeneration of St. Helier.

Subsequently, the Corporate Services Scrutiny Panel reviewed these proposals and published its report on 12th June 2008.

Following the publication of this report, and in light of the comments and recommendations made by the Scrutiny Panel, the Council of Ministers withdrew its proposals for the establishment of the Jersey Enterprise Board in order to undertake further research and to provide greater clarity in presenting proposals for directing the planning, development and implementation of major property and associated infrastructure regeneration projects in Jersey.

In developing revised proposals for a new property development company, the considerations of the Corporate Services Scrutiny Panel have been taken into account, together with the recommendations of the Comptroller and Auditor General in his report "Waterfront Enterprise Board Limited: Review of Corporate Governance".

The proposals have been subject to an independent external review by property funding experts DTZ, principally from its knowledge of structures in the U.K., and their report is attached at **Appendix 4**. The report reviews the proposals, evaluates the proposed structure against alternative structures in the marketplace, provides a critique of the benefits identified and comments on the original observations of the Corporate Services Scrutiny Panel.

As part of this review, DTZ have identified and discussed issues where it was thought the proposals required clarification or amendment. The report identifies these issues, along with an explanation as to how they are addressed by the proposal.

In overview, the report is supportive of both the proposed structure and the benefits identified as part of the proposal. One of the key issues raised and discussed has been that of exposure to risk. DTZ has identified that the proposals provide the option of SoJDC accepting more risk than might typically be accepted in the UK context. This particularly relates to circumstances when SoJDC may undertake direct development. Having reviewed this in the Jersey context and with regard to the risk mitigation processes which form part of the proposal, including Section 7 and the MoU with the Minister for Treasury and Resources, DTZ have concluded that there is a case for SoJDC retaining more risk than would be typical in the U.K. It should be noted, however, that the proposals within this proposition are designed to ensure that no significant risks are taken by SoJDC and that in all instances risks are controlled and mitigated.

## 15. Responding to the Corporate Services Scrutiny Panel

In January 2008 a sub-panel of the States Scrutiny Committee was formed to examine the proposed establishment of the Jersey Enterprise Board, its remit and terms of reference, the proposed interaction with the States Property Holdings Department; the Regeneration Task Force; and Waterfront Enterprise Board Limited and to consider any further related issues that the Panel considered relevant.

The sub-panel identified the following issues –

- *Are the objectives of JEB clearly set out?*
- *Is JEB an appropriate vehicle to meet the objectives set and to ensure effective regeneration?*
- *Is the mechanism being used to establish this vehicle appropriate and correct?*

- *Are the remit and terms of reference relevant to the objectives?*

- *Are both the remit and terms of reference explicit and properly understood?*

- *Is the role of JEB an appropriate one for the States to pursue?*

- *Do any constraints exist, whether internal or external, which may preclude the success of the proposal?*

The Scrutiny Sub-Panel report included the following observations and recommendations (the Council of Ministers responses follow each recommendation and are shown in bold below) –

> *"Whilst the Sub-Panel recognises the importance of establishing a clear structure for the development of surplus States property it is not able to support the proposition as currently made.*
>
> *In the Sub-Panel's opinion the rationale behind the basic proposition is unproven; the proposal appears unduly rushed, lacks clarity in a number of areas and has the potential to expose the States to far greater risk than other approaches.*
>
> *To that end the Sub-Panel recommends that the sponsors of this proposition should:*
>
> *a.* *Revisit the analysis of options contained in the December 2007 Report supporting the proposition and the conclusions reached therein as to the best vehicle seeking in particular evidence of other approaches to public/private partnerships.*
>
> **The options contained within the December 2007 report have been re-analysed. It is still considered that the States can obtain best value by controlling all elements of the regeneration and redevelopment process. Paragraphs 2-11 of this report set out the proposed revised structure detailing how this is to be achieved and how the States retain control and approval of the regeneration and property development process.**
>
> *b.* *As part of the analysis in (a) consider, in particular, the benefits of transfer of legal interests in property between Property Holdings and JEB as the Sub-Panel does not consider this case has been properly made or indeed considered.*
>
> **Given that most regeneration projects require upfront infrastructure works and/or remediation before a site can be developed, it may be necessary to transfer the legal title of the property at the outset in order that external funding can be obtained for the aforementioned works. Before any commitment is entered into in this regard the States of Jersey must have considered and approved the proposals of the particular regeneration project.**

c. *Reconsider the roles of the various organisations proposed, testing, in particular, the rationale for and value for money of the Regeneration Task Force, the specific role of which needs defining, but which appears to overlap with both the Planning Department and JEB with the consequential risk of frustrating progress.*

**Under the revised proposals there is no overlap and roles and accountability are much clearer.**

d. *Identify specifically the benefits which arise from the formation of JEB rather than any other model and how the risks identified in 4.2.5 and 4.2.6 above can be mitigated.*

**Under any other structure the States of Jersey would still be exposed to the residual risk of non completion of a project. There are a number of ways to reduce the risks identified in the Scrutiny report. These include inter alia:**

- **regular monitoring of local market data on prices/rents, demand, supply and government policy;**
- **regular monitoring of UK, EU and global market trends;**
- **performing full development financial appraisals to assess the profitability of a particular development;**
- **undertaking scenario analysis on development appraisals – in particular the costs and values to assess whether a development is financially viable under the worse case scenario;**
- **entering into pre-sale/pre-let agreements before committing to a scheme;**
- **entering into fixed price construction contracts;**
- **requiring the contractor to provide full latent defects cover;**
- **requiring the contractor to provide adequate performance bonds;**
- **requiring adequate retentions from the contractor; and**
- **selling units "off-plan" during construction.**

**These risk mitigation measures will form part of a Memorandum of Understanding between The States of Jersey Development Company Limited and the Minister for Treasury and Resources (attached at Appendix 1).**

e. *Ensure that any proposals set a framework which provides sufficient flexibility for the States to respond to development opportunities in a way which is both fit for purpose and enables clear quantification of risks involved in each project.*

**The revised proposals as set out in this report provide clear lines of accountability, reporting, approvals and direction from the States of Jersey as a whole and the Regeneration Steering Group as the responsible political reporting body**.

f. *Review the effectiveness of the Waterfront Enterprise Board to date in achieving its objectives."*

**WEB produces annual Business Plans which set out the Company's objectives and against which its performance is monitored. WEB also produces five year revolving objectives on an annual basis**.

**Corporate Services Scrutiny Panel Report on P.12/2009**

The Council of Ministers lodged *"Waterfront Enterprise Board: Revised Memorandum and Articles of Association"* (P.12/2009) earlier this year. The purpose of this proposition was to amend the composition of the Board of Directors of WEB and, in particular, would remove States Directors (i.e. States Members form the board) in line with the recommendations of the Comptroller and Auditor General.

The Corporate Services (WEB) Scrutiny Sub-Panel subsequently reviewed P.12/2009 and published its report on 18th March 2009 (S.R.1/2009). The Panel's key findings were that:

- *"The proposal to remove States Directors from the Board of WEB can, in itself, be justified and is consistent with previous decisions of the States Assembly.*

- *Any new plans for WEB will need to be monitored carefully to ensure there is an appropriate balance between the maintenance of commercial confidentiality and a sufficiently high degree of transparency".*

The Scrutiny Sub-Panel report included the following recommendations (the Council of Ministers' responses follow each recommendation and are highlighted in bold):

- *An Oversight Committee of WEB, consisting of States Members, should be established.*

  **Given that the proposed Regeneration Steering Group is composed of six (possibly seven) States Members it would be for this group to provide oversight and a political steer to The States of Jersey Development Company Limited ("SoJDC"). In addition, the Public Accounts Committee and the Corporate Services Scrutiny Panel would also play an important role in the scrutiny and oversight of the activities of SoJDC.**

- *Further clarification should be provided on the role to be played by the Ministerial Appointee.*

  **The Ministerial Appointee would represent the interests of the Minister for Treasury and Resources, which are clearly outlined in Paragraph 11, of this report. The Ministerial Appointee would report to the Minister for Treasury and Resources.**

- *Ministerial Decisions relating to WEB should be subject to a fifteen day 'grace' period in order to allow sufficient transparency and scrutiny.*

  **This recommendation forms part of the proposed role of the Minister for Treasury and Resources as outlined above.**

- *The remit of the Comptroller and Auditor General in relation to WEB should be widened.*

  **The Public Accounts Committee has lodged a Proposition (P.54/2009) which will put this recommendation into effect.**

- *WEB's annual accounts should be formally presented to the States Assembly.*

  **The Minister for Treasury and Resources has already presented WEB's 2008 Annual Accounts to the States earlier in the year. In future it is proposed that the Minister continues to do this on an annual basis.**

**16. Implementation**

Subject to approval by the States, it is proposed that WEB should be reconstituted as The States of Jersey Development Company Limited as soon as practicable. As a target date, it is proposed that the reconstituted company should commence operations in, or before, January 2010.

**17. Conclusion**

The Council believes that the proposals outlined in this Report and Proposition provide the right structure and mechanisms for directing the planning, development and implementation of major property and associated infrastructure regeneration projects in Jersey. In particular these proposals:

- Provide an effective, coherent structure with clear division of responsibilities to progress regeneration projects in a consistent and co-ordinated manner in accordance with States policy.

- Provide for transparency and clear accountability to the States Assembly throughout the development process.

- Replace the current Waterfront Enterprise Board with a new entity with a broader remit dedicated to maximising the potential of States property assets.

- Remove the current conflict between masterplanning and delivering development by placing the role of masterplanning solely with the Minister for Planning and Environment and removing it from the role of the development company.

The Council believes that the establishment of The States of Jersey Development Company Limited will provide the necessary flexibility, expertise and accountability to which will enable it to play a key part in the implementation of a strategy for regeneration in Jersey and particularly that of St. Helier.

**18. Financial and manpower implications**

WEB is financially self-supporting. It is proposed that The States of Jersey Development Company Limited should also operate on this basis. There will not therefore be any financial and manpower implications for the States arising directly from these proposals.

In the first instance, it is proposed that the executive responsibilities of The States of Jersey Development Company Limited will be carried out by the staff currently employed by WEB. It is possible that additional staff may be needed in due course, but this will be a matter for the board of directors of The States of Jersey Development Company Limited. Any increased costs resulting from a decision to employ additional staff would in any event need to be borne by The States of Jersey Development Company Limited and not by the States of Jersey.

**COUNCIL OF MINISTERS**
**2nd June 2009**

**APPENDIX 1**

**Memorandum of Understanding between The States of Jersey Development Company Limited and the Minister for Treasury and Resources**

## 1. Introduction

The States of Jersey ("SoJ") own prime real estate in St. Helier on behalf of the Public of the Island. Unlike regeneration areas in the U.K., SoJ does not need to address market failures, however it needs to provide for the socio-economic needs of the Island. There are a limited number of sites within Jersey capable of development unless there is further impingement into the countryside. These are nominated in the Island Plan. SoJ controls much of the land capable of development. This limits risk.

The regeneration of these brownfield sites could provide much needed residential accommodation within the existing urban area. This potential for residential land requires significant public infrastructure expended before development to unlock the sites in question. Further, this public infrastructure provision is critical to the Island.

To date, the States of Jersey had commissioned and procured all of its public infrastructure directly rather than in conjunction with the private sector and given the importance of the infrastructure concerned, and the risk/public costs associated with any delays or defects, these infrastructure works should be commissioned and procured by the States of Jersey directly via The States of Jersey Development Company Limited ("SoJDC"). The costs and risks of delivery remain with the SoJ but the value of the associated land is enhanced by the delivery of infrastructure and public realm provision.

There is also a limited number of on-Island developers with the capabilities of undertaking this scale of regeneration. Experience to date suggests that the barriers to entry make Jersey a difficult place to attract large developers from outside of the Island.

It would be possible for SoJDC to manage a single joint venture or consortium of developers/contractors for large developments so long as this is delivered through a transparent open tender process.

Given the above and the demand and sales values achieved on the latest West of Albert development sites, there may be specific circumstances where it may prove financially and strategically beneficial for the SoJ through a wholly owned company to undertake the development directly in order to take full advantage of the profits generated thereon provided the risk is minimal.

SoJDC will be a property development company (wholly owned by the SoJ) created by the restructuring of Waterfront Enterprise Board Limited. Its prime purpose will be to produce socio-economically viable schemes under the direction of the Regeneration Steering Group ("RSG") and in accordance with the planning parameters established by Masterplans and Development Briefs for a particular area and to ensure the delivery of best value to the Public.

SoJDC will be responsible for the formulation of site-specific property development proposals for major property and infrastructure regeneration projects. These detailed proposals will be presented to the RSG for consideration and approval. As a result of limited on-Island developers of a standing capable of undertaking these areas of regeneration, SoJDC may undertake the redevelopment of these areas directly (by using a third party construction contractor) if it is deemed to be in the best financial interests of SoJDC and therefore SoJ. SoJDC will procure, finance, implement and manage the development scheme. SoJDC will provide quarterly progress reports to the RSG throughout the development phase of a project.

## 2. Purpose of the Memorandum

The aim of this Memorandum is to establish the risk parameters within which SoJDC is able to operate where it is in the financial interest of the Public to develop a site. This is to ensure that there is no major loss on any development scheme and to ensure that no significant risks are taken by SoJDC and that in all instances risks are controlled and mitigated by all possible measures.

There are 4 primary stages to any development project (land purchase, planning, construction and sales) and this Memorandum will establish the boundaries of each stage of the process for SoJDC to operate within and adhere to in order to ensure that the SoJ is not exposed to any significant risks or losses.

## 3. Principles

**Planning** – before any land transfer takes place between Property Holdings and SoJDC, the Minister for Planning and Environment must have adopted the Regeneration Zone within which the assets are located and approved the Masterplan for that particular Regeneration Zone. This will partly remove the planning risk of the regeneration proposals and, once the assets have been transferred, will enable a detailed planning application to be worked up within the parameters of the adopted Masterplan and Development Brief according to the agreed Development Plan set with the RSG.

**Infrastructure Works –** no infrastructure works will be procured until detailed planning permission has been received on vacated development sites and detailed financial appraisals support the development of the scheme.

Given the importance of the public infrastructure works, SoJDC will commission and procure the provision of the infrastructure in accordance with SoJ capital project procurement and delivery procedures.

**Sales** – If it is proposed that a specific development is undertaken directly, before committing to construction costs SoJDC will have to secure a sufficient level of legally binding pre-sales or pre-lets to fund the costs of constructing the first phase of a scheme. This will remove part of the sales risk of a particular development project and will ensure that there will be no financial liabilities relating to a particular development's construction costs to the SoJDC.

**Pre-development Costs –** all detailed design costs and fees will be funded directly by SoJDC out of equity.

**Development –** SOJDC will procure development schemes in conjunction with the private sector unless there are specific reasons for direct development. All development proposals will be subject to a transparent open tender process. It is likely that most developments would take place with a single joint venture partner. However, for some large-scale developments it may be that a consortium approach is beneficial. It is assumed that land that is subject to the development will be provided to the development vehicle by SoJDC with the benefit of infrastructure and public realm.

**Land sales –** for projects that require significant upfront infrastructure works, pre-sales may include the sale of part of the land to third party developers. This is to ensure that at any time SoJDC/the SoJ has minimal capital at risk.

**Phasing –** SoJDC will phase large development schemes if practically feasible to do so.

**Design and Specification** – SoJDC will ensure that every development proposal is fully designed and fully specified with bills of quantity. These documents will be put out to the construction market for tendering the build.

**Construction –** SoJDC will follow the SoJ guidelines and best practice in the procurement of construction works. All construction works will be open tendered. All tenders must price the bills of quantity provided by SoJDC and must be a fixed price. The appointment will be with a third party main contractor who will undertake the entire construction contract. The fixed contract price must include minimal provisional sum items (limited to up to 15% of the total contract sum). SoJDC will only enter into fixed price, fixed delivery construction contracts with known third party main contractors with good market and financial credibility.

During the construction process a Project Manager employed by SoJDC will monitor the construction works. Monthly design team meetings for each construction project will be held between SoJDC, the Project Manager, the Contractor, the Architect and the Quantity Surveyor in the same way as States of Jersey capital projects are monitored and costs controlled.

SoJDC will manage and limit risk by adhering to the above risk management techniques.

**APPENDIX 2**

**Proposed Memorandum and Articles of Association of The States of Jersey Development Company Limited**

**COMPANIES (JERSEY) LAW 1991**

**COMPANY LIMITED BY SHARES**

**MEMORANDUM OF ASSOCIATION**
**of**
**THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED**

1. The name of the Company is: “The States of Jersey Development Company Limited”.

2. The capacity of the Company is unlimited and the Company shall have all the powers of a natural person.

3. The liability of each member is limited.

4. The capital of the Company is £20,000,000 divided into 20,000,000 shares of £1.00 each.

5. The Company is a public company.

**ARTICLES OF ASSOCIATION**

**of**

**THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED**

## INTERPRETATION

1. In these Articles:

| | |
|---|---|
| **"Articles"** | means the Articles of Association of the Company and "Article" shall be construed accordingly; |
| **"Auditors"** | means the auditors for the time being of the Company; |
| **"Board"** | means the board of Directors of the Company from time to time; |
| **"Chairman"** | means the non-executive chairman of the Board from time to time; |
| **"Company"** | means the company incorporated under the Law in respect of which these Articles have been registered; |
| **"Development Brief"** | means a document that provides information on the type of development, the design thereof and layout constraints relating to a particular site; |
| **"Director"** | means any director of the Company from time to time; |
| **"executed"** | includes any mode of execution; |
| **"Finance Director"** | means the person appointed in accordance with these Articles as the Finance Director from time to time; |
| **"holder"** | in relation to shares means the member whose name is entered in the register of members as the holder of the shares; |
| **"Property Holdings"** | means the department known as States of Jersey Property Holdings; |
| **"Masterplan"** | means a comprehensive document that sets out an overall development strategy for a defined area (which includes both present property uses as well as future land development plans). |
| **"Managing Director"** | means the person appointed in accordance with these Articles as the Managing Director from time to time; |
| **"Minister"** | means the Minister for Treasury and Resources; |

| | |
|---|---|
| **"Ministerial Appointee"** | means a Non-Executive Director appointed by the Minister as the Ministerial Appointee in accordance with these Articles from time to time; |
| **"Non-Executive Director"** | means a person appointed in accordance with these Articles as a Non-Executive Director of the Company and which shall, for the avoidance of doubt, include the Ministerial Appointee and the States Appointees but exclude the Managing Director and the Finance Director; |
| **"office"** | means the registered office of the Company; |
| **"ordinary resolution"** | means a resolution of the Company in general meeting adopted by a simple majority of the votes cast at that meeting; |
| **"Regeneration Steering Group"** | means a group set up to provide guidance on all major Public property and infrastructure regeneration projects in Jersey in accordance with an Act of the States dated [ ]; |
| **"Regeneration Zone"** | means an area of land in Jersey adopted by the States as a Regeneration Zone; |
| **"seal"** | means the common seal of the Company; |
| **"secretary"** | means the secretary of the Company or other person appointed to perform the duties of the secretary of the Company including a joint, assistant or deputy secretary; |
| **"States"** | means the States of Jersey; |
| **"States Appointees"** | means the Chairman and two non-executive directors of the Company appointed by the States as Non-Executive Directors in accordance with these Articles from time to time; |
| **"the Law"** | means the Companies (Jersey) Law 1991 including any statutory modification or re-enactment thereof for the time being in force. |

Unless the context otherwise requires, words or expressions contained in these Articles bear the same meaning as in the Law, but excluding any statutory modification thereof not in force when these Articles became binding on the Company.

The Standard Table prescribed pursuant to the Law shall not apply to the Company and is hereby expressly excluded in its entirety.

## SHARE CAPITAL

2. Subject to the provisions of the Law, and without prejudice to any rights attached to any existing shares, any share may be issued with such rights or restrictions as the Company may by ordinary resolution determine.

## CERTIFICATES

3. Every member, upon becoming the holder of any shares, shall be entitled, without payment, to one certificate for all the shares of each class held by him. Every certificate shall be sealed with the seal and shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up thereon.

## TRANSFER OF SHARES

4. An instrument of transfer of a share may be in any usual form or in any other form which the Directors may approve and shall be executed by or on behalf of the transferor and, unless the shares are fully paid, by or on behalf of the transferee.

## GENERAL MEETINGS

5. (a) The Company shall in each year hold a general meeting of the members of the Company as its annual general meeting in addition to any other meeting in that year. Annual general meetings shall be held once in each year at such time and place as may be determined by the Directors.

(b) All general meetings other than annual general meetings shall be called extraordinary general meetings.

(c) The Directors may call general meetings and on the requisition of members, pursuant to the provisions of the Law, shall forthwith proceed to call a general meeting for a date not later than two months after the receipt of the requisition. If there are not sufficient Directors to call a general meeting, any Director or any member of the Company may call such a meeting.

## NOTICE OF GENERAL MEETINGS

6. An annual general meeting or a general meeting called for the passing of a special resolution shall be called by at least 21 clear days' notice. All other meetings shall be called by at least 14 clear days' notice but a general meeting may be called by shorter notice if it is so agreed by all the members entitled to attend and vote thereat. The notice shall specify the day, time and place of the meeting and the general nature of the business to be transacted and in the case of an annual general meeting, shall specify the meeting as such and shall be given to all the members, the Directors and the Auditors.

7. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

## PROCEEDINGS AT GENERAL MEETINGS

8. No business shall be transacted at any meeting unless a quorum is present. One person entitled to vote upon the business to be transacted, being a member holding not less than fifty per cent (50%) in nominal value of the shares then in issue carrying the right to vote (or a proxy for such a member) shall be a quorum, failing which two persons entitled to vote upon the business to be transacted, each being a member (or a proxy for a member) shall be a quorum.

9. The Chairman or in his absence some other Director nominated by the Directors shall preside as chairman of the meeting, but if neither the Chairman nor such other Director (if any) is present within 15 minutes after the time appointed for holding the meeting and willing to act, the members present shall elect one of their number to be chairman and, if there is only one member present and willing to act, he shall be chairman.

10. A Director or a representative of the Auditors shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting.

11. The Chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for 14 days or more, at least seven days' notice shall be given specifying the day, time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

12. A resolution put to the vote of a meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll is duly demanded. Any member shall be entitled to demand a poll.

13. Unless a poll is duly demanded, a declaration by the Chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

14. A poll shall be taken as the Chairman directs and he may appoint scrutineers (who need not be members) and fix a day, time and place for taking the poll and for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

## VOTES OF MEMBERS

15. Subject to any rights or restrictions attached to any shares, on a show of hands every member who is present in person shall have one vote and on a poll every member present in person or by proxy shall have one vote for every share of which he is the holder.

16. On a poll votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion.

17. An instrument appointing a proxy shall be in writing in any usual common form, or as approved by the Directors, and shall be executed by or on behalf of the appointer.

18. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of such power or authority, shall be deposited at the office or at such other place as is specified for that purpose in the notice of meeting or in the instrument of proxy issued by the Company before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, before the time appointed for taking the poll and in default the instrument of proxy shall not be treated as valid.

19. A vote given or poll demanded by proxy or by the duly authorised representative of a body corporate shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

## REPRESENTATIVES

20. The States whilst a member of the Company may be represented at any meeting of the members of the Company or any meeting of any class of members of the Company by the Greffier of the States, the Deputy Greffier of the States or any other officer appointed to discharge the functions of the office of Greffier of the States under Article 41(15) of the States of Jersey Law 2005 or by any person duly authorised in writing in that regard by the Greffier of the States or the Deputy Greffier of the States. The States shall be deemed to be present in person at any meeting attended by any such person.

## RESOLUTIONS OR NOTICES IN WRITING

21. (a) Anything that may be done by a resolution passed at a meeting of the members of the Company (other than a resolution for the removal of the Auditors) may be done by a resolution in writing signed by or on behalf of each member of the Company.

(b) The States whilst a member of the Company shall be entitled to execute a resolution in writing or any other notice in writing by means of an instrument in writing signed by the Greffier of the States, the Deputy Greffier of the States or any other officer appointed to discharge the functions of the office of the Greffier of the States under Article 41(15) of the States of Jersey Law 2005. Any such resolution, notice or instrument shall take effect upon delivery thereof to the office.

## DIRECTIONS

22. (a) If the Minister shall, in his discretion, be of the opinion that a matter of material public interest has arisen and that it is appropriate to do so, the Minister shall be entitled by notice in writing to give the Directors directions to refrain from doing a particular thing or to do a particular thing which the Directors have power to do and the Directors shall be bound to comply with any such direction.

(b) Any such direction or other written instrument shall be validly executed on behalf of the Minister if recorded in accordance with ministerial procedures as a Ministerial Decision. Any such direction or other written instrument shall take effect upon delivery thereof to the office.

## NUMBER OF DIRECTORS

23. Unless and until otherwise determined by the Company by ordinary resolution, or during the period of any vacancy, the Board shall comprise the Chairman, the Managing Director, the Finance Director, the Ministerial Appointee, and two States Appointees (in addition to the Chairman).

24. A Director need not be a member of the Company.

## POWERS OF DIRECTORS

25. (a) Subject to the provisions of the Law, the memorandum and these Articles and to any directions given to the Directors by direction in writing made in accordance with the provisions of Article 22, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company in any part of the world. No alteration of the memorandum or these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the Directors by these Articles and a meeting of Directors at which a quorum is present may exercise all the powers of the Company exercisable by the Directors.

(b) In the exercise of their powers of management of the Company the Directors shall have regard to:

(i) the objectives for which the Company is established, namely:

(a) To promote, co-ordinate and implement a comprehensive strategy for the development of the whole of the St. Helier Waterfront area and including the greater harbour area and La Collette in accordance with approved Masterplan(s), Development Brief(s) and other relevant guidance prepared by the Minister for Planning and Environment and, where expedient, to undertake development directly.

(b) To exercise administrative control over the use of the land and the adjacent shore and water areas in the St. Helier Waterfront area and to liaise and consult with all relevant Ministers of the States and other governmental and regulatory authorities in relation to investment in infrastructure projects in and development of the St. Helier Waterfront area.

(c) To prepare detailed development proposals for specific projects of major regeneration of property and infrastructure within Regeneration Zones (for consideration by the Regeneration Steering Group).

(d) To undertake the regeneration of redundant States' assets within Regeneration Zones in accordance with approved Masterplans and Development Briefs (including the purchase of third party properties where appropriate) and to act as the preferred developer for projects of Property Holdings (procuring and managing project implementation as agreed and directed by the Regeneration Steering Group.

(ii) any decisions of the States which directly concern the land, shore and water areas within the control of the Company.

(iii) any political steer and/or guidance provided by the Regeneration Steering Group.

(c) The Directors shall cause to be prepared annually (in consultation with relevant parties) a business plan and report which shall be sent to the Minister at such time as may be reasonably required setting out the objectives, policies and programmes of the Company and reporting on progress.

(d) The Directors shall respond timeously to such reasonable requests for information and reports as are made to them by the Minister.

(e) The Directors shall report progress on developments on a quarterly basis to the Regeneration Steering Group.

26. The Directors may, by power of attorney or otherwise appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

27. Subject to the prior written consent of the Minister (which may be given generally or specifically and recorded in accordance with ministerial procedures as a Ministerial Decision), the Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, and to issue debentures and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party. All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments, and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors shall from time to time by resolution determine.

## APPOINTMENT, RETIREMENT AND REMOVAL OF DIRECTORS

28. The Ministerial Appointee shall be appointed and may be removed by the Minister by a formal Part A Ministerial Decision.

29. Subject to Article 30 and Article 32, the Non-Executive Directors shall be appointed for fixed periods of 3 years' duration. Each Non-Executive Director shall enter into a non-executive directors' service agreement with the Company upon such terms as the Board shall determine. Upon the expiration of the period of office for which they are appointed the Non-Executive Directors shall, ipso facto, retire from office but shall be eligible for re-appointment.

30. (a) The States Appointees shall be appointed by the States on the recommendation of the Minister and such appointment shall take effect upon delivery to the office of notice in writing to that effect executed in accordance with Article 21(b).

(b) The States may remove any States Appointee from office as a Director and such removal shall take effect upon delivery to the office of notice in writing to that effect executed in accordance with Article 21(b).

31. The Directors shall have the power at any time, from time to time without the sanction of the Company in general meeting or otherwise to appoint a person to act as the Managing Director and a person to act as the Finance Director. The Company shall enter into an agreement with each of the Managing Director and the Finance Director for his employment by the Company and for the provision by him of services to the Company. Each such, agreement shall be made upon such terms as the Board shall determine and the Board may remunerate each of the Managing Director and the Finance Director for

his services as it thinks fit. In the event of the termination of the employment of the Managing Director or the Finance Director pursuant to their respective service agreements, the appointment of the Managing Director or the Finance Director, as the case may be, as a Director shall, ipso facto, terminate.

32. The office of a Director shall be vacated in any of the following events namely:

(a) If he resigns his office by notice in writing under his hand to that effect sent to or left at the office which notice shall be effective upon such date as may be specified in the notice, failing which upon delivery, to the office.

(b) If he becomes bankrupt or insolvent or makes any arrangement or composition with his creditors generally.

(c) If he becomes of unsound mind.

(d) If he ceases to be a Director by virtue of any provision of the Law, or becomes prohibited by law from or is disqualified from, being a Director.

(e) If he shall for more than 6 consecutive months have been absent without permission of the Directors from meetings of the Directors held during that period and the Directors resolve that his office be vacated.

## REMUNERATION OF DIRECTORS

33. The Non-Executive Directors shall be entitled to such remuneration as the Board may, with the approval of the Minister, determine and, unless otherwise determined, the remuneration shall be deemed to accrue from day to day. The Ministerial Appointee shall not be entitled to remuneration where he or she is a member of the States.

## DIRECTORS’ EXPENSES

34. The Directors may be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or general meetings or separate meetings of the holders of any class of shares or of debentures of the Company or otherwise in connection with the discharge of their duties.

35. Subject to the provisions of the Law, and provided that he has disclosed to the Directors the nature and extent of any material interests of his, a Director notwithstanding his office:

(a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;

(b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested;

(c) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and

(d) may act by himself or his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as though he were not a Director.

36. For the purposes of the preceding Article:

(a) a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement with a specified person or class of persons shall be deemed to be sufficient disclosure of his interest in any such transaction or arrangement; and

(b) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

## DIRECTORS' GRATUITIES AND PENSIONS

37. The Company may provide such benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any Director who has held but no longer holds any executive office or employment with the Company or with any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary, and for any member of his family (including a spouse and a former spouse) or any person who is or who was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit as the Directors think fit.

## PROCEEDINGS OF DIRECTORS

38. Subject to the provisions of the Law and these Articles, the Directors may regulate their proceedings as they think fit. A Director may, and the secretary at the request of a Director shall, call a meeting of the Directors. Questions arising at a meeting of Directors shall be decided by a majority of votes. In the case of an equality of votes the Chairman shall have a second or casting vote.

39. Unless he is unwilling to do so, the Chairman shall preside at all meetings of the Directors at which he is present. If the Chairman is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the Directors present may appoint one of their number to be chairman of the meeting.

40. The quorum for the transaction of the business of the Directors shall be four Directors. Any Director enabled to participate in the proceedings of a meeting by means of a communication device (including a telephone) which allows all of the other Directors present at such meeting to hear at all times such Director and such Director to hear at all times all other Directors present at such meeting (in each case whether in person or by means of such type of communication device) shall be deemed to be present at such meeting and shall be counted when reckoning a quorum.

41. The continuing Directors or the only continuing Director may act notwithstanding any vacancies in their number, but, if the number of Directors is less than the number fixed as the quorum, the continuing Directors or Director may act only for the purpose of calling a general meeting.

42. All acts done by a meeting of Directors or by a person acting as a Director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote.

43. A resolution in writing signed by all the Directors entitled to receive notice of a meeting of Directors shall be valid and effectual as if it had been passed at a meeting of Directors duly convened and held and may consist of several documents in the like form each signed by one or more Directors.

44. A Director may not vote in respect of any transaction, arrangement or proposed transaction or arrangement, in which he has an interest but provided that he has disclosed any such interest in accordance with these Articles he may be counted towards a quorum at any meeting of the Directors at which any such transaction or arrangement or proposed transaction or arrangement shall come before the Directors for consideration.

45. The Directors shall cause minutes to be made:

(a) of all appointments of officers made by the Directors;

(b) of the names of the Directors present at each meeting of Directors;

(c) of all resolutions and proceedings at all meetings of the Company and of the Directors.

Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were held, shall be evidence of the proceedings.

## SECRETARY

46. Subject to the provisions of the Law, the secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit and any secretary so appointed may be removed by them.

## MINUTES

47. The secretary shall cause minutes to be maintained in books kept for the purpose in accordance with the Law.

## THE SEAL

48. (a) The common seal shall only be used by the authority of the Directors. The Directors may determine who shall sign any instrument to which the common seal is affixed and unless otherwise so determined it shall be signed by a Director and the secretary or by two Directors.

(b) Subject to the provisions of the Law, the Directors may determine to have:

(i) an official seal for use in any country, territory or place outside the Island of Jersey, which shall be a facsimile of the common seal of the Company. Any such official seal shall in addition bear either the name of the country in which it is to be used or the words "branch seal";

(ii) an official seal for use only in connection with the sealing of securities issued by the Company and such official seal shall be a facsimile of the common seal of the Company but shall in addition bear the word "securities".

## DIVIDENDS

49. Subject to the provisions of the Law, the Board may declare dividends in accordance with the respective rights of the members in such amount as the Board may determine.

50. Subject to the provisions of the Law, the Directors may pay interim dividends if it appears to them that they are justified. Profits will typically be expended wholly and exclusively to improve and extend public infrastructure and works for the good of the Public of the Island of Jersey.

51. Any dividend or other moneys payable in respect of a share may be paid by cheque sent by post to the registered address of the person entitled thereto and payment of the cheque shall be a good discharge to the Company.

52. No dividend or other moneys payable in respect of a share shall bear interest against the Company unless otherwise provided by the rights attached to the share.

## ACCOUNTS AND AUDIT

53. The Directors shall cause to be kept proper accounts of the Company for each accounting period to be prepared in accordance with generally accepted accounting principles in the Island of Jersey consistently applied and that such accounts shall be forwarded to the Minister not more than 4 months after the end of the period to which they relate. The accounts shall include an income and expenditure statement of the Company in respect of the applicable accounting period and shall include the balance sheet as at the end of that accounting period.

54. The Company shall at each annual general meeting appoint the Auditors to hold office from the conclusion of that meeting, until the conclusion of the next annual general meeting.

55. The accounts shall be audited by the Auditors and shall be accompanied by a report by the Auditors stating that the accounts and financial statements attached thereto have been examined in conjunction with the books and records of the Company and whether the Auditors have obtained all the explanations and information which they have required. The Auditors shall further report whether the accounts are in their opinion properly drawn up in accordance with such books and records and give a true and fair view of the affairs of the Company.

56. The Directors shall submit to the Minister in each year by such date as may be appointed by the Minister a budget of the Company's estimated capital expenditure and receipts and of revenue expenditure and income for the next financial year of the Company.

57. Such person or persons as may be designated by the Minister from time to time shall at any time during the office hours of the Company be entitled to inspect all accounting records or other books or documents of the Company and the Directors shall upon request procure production of the same. The Directors shall co-operate fully with the Comptroller and Auditor General, including enabling access to independently audited papers as appropriate.

## NOTICES

58. Any notice to be given to or by any person pursuant to these Articles shall be in writing except that a notice calling a meeting of the Directors need not be in writing.

59. The Company may give any notice to the States by sending it by post in a pre-paid envelope (care of the Greffier of the States) to the States Greffe, St. Helier, Jersey JE1 1DD. The Company may give any notice to the Minister, the Ministerial Appointee or the Treasurer of the States by sending it

by post in a pre-paid envelope to PO Box 353, Cyril Le Marquand House, St. Helier, Jersey JE4 8UL.

60. A member present, either in person or by proxy, at any meeting of the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

61. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

## WINDING UP

62. If the Company is wound up, the Company may, with the sanction of a special resolution and any other sanction required by the Law, divide the whole or any part of the assets of the Company among the members in specie and the liquidator or, where there is no liquidator, the Directors may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members, and with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

## INDEMNITY

63. In so far as the Law allows, every present or former officer of the Company shall be indemnified out of the assets of the Company against any loss or liability incurred by him by reason of being or having been such an officer. The Directors may without sanction of the Company in general meeting, authorise the purchase or maintenance by the Company for any officer or former officer of the Company of any such insurance as is permitted by the Law in respect of any liability which would otherwise attach to such officer or former officer.

**APPENDIX 3**

## The Protocol for Planning Within the Regeneration Delivery Structure and the Role of the Minister for Planning and Environment

There are key planning roles for the Minister for Planning and Environment in the regeneration process. These are –

(1) To propose areas that will be designated as Regeneration Zones within the Island Plan process.

(2) The preparation and approval of Masterplans and Development Briefs for regeneration zones and sites within them.

(3) To consult with the Regeneration Steering Group in the preparation of Masterplans and Development Briefs.

(4) The determination role in respect of planning application submitted in respect of development proposals.

### 1. To recommend areas for designation as Regeneration Zones

The Minister for Planning and Environment is empowered under the Planning and Building (Jersey) Law 2002 to make plans and proposals for the development of land on the Island.

As part of this role, the Minister will identify and recommend to the States Assembly areas for designation as Regeneration Zones as part of the Island Plan process.

### 2. Policy-making role to create the Masterplan and Development Briefs for designated Regeneration Zones

The Minister will also produce and approve plans and proposals relating to a Regeneration Zone and will consult with the Regeneration Steering Group. The Minister for Planning and Environment will approve the Masterplan for the Regeneration Zone.

Specific Development Briefs will be prepared and approved under Ministerial powers.

The Masterplan will then be used by the Regeneration Steering Group to direct more detailed work to formulate development proposals and planning applications.

The Minister for Planning and Environment will play no role in any commercial decisions as he is involved in decision making on any planning applications submitted.

### 3. The Development Control process stage to secure planning consents

Once the Regeneration Steering Group has received the approved Masterplan and Development Briefs, they will formulate detailed development proposals and planning applications.

These will be submitted to the Planning and Environment Department for determination. The Minister for Planning and Environment is responsible for all planning decisions.

He has the right to call in any specific applications for his own determination, direct them to planning panel or to allow officers to make delegated decisions.

Once in the planning development control process, there will be no further involvement of the Regeneration Steering Group or other political members as this is the sole responsibility of the Minister for Planning and Environment.

Any planning consents will be issued to The States of Jersey Development Company Limited for implementation.

**DTZ Final Report**

DTZ

# States of Jersey
## A Review of Proposals for The States of Jersey Development Company

**Confidential**

DTZ
125 Old Broad Street
London
EC2N 2BQ

May 2009

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## Contents

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## 1. Scope of Work and Methodology

1.1 The Chief Executive of the States of Jersey (SoJ) has instructed DTZ to carry out an independent external review of the proposed establishment of the States of Jersey Development Company Ltd (SoJDC) relative to the other structures that might be available. The terms of reference of this review have been agreed as follows:

- To review the report proposing the establishment of SoJDC and provide comments on the arguments used to justify the recommended structure.
- To identify alternative structures and provide a detailed analysis of the strengths and weaknesses of each in comparison to the proposed SoJDC.
- To carry out an analysis of the proposed creation of SoJDC in relation to extending the role and remit of the Waterfront Enterprise Board (WEB). During the course of our advice, proposals have been developed such that SoJDC will include the activities and assets of WEB.
- Subsequently, we have been asked to consider the JPH paper which provides initial recommendations on the basis upon which assets will be transferred into SoJDC.

1.2 DTZ has undertaken a high level review based on the papers provided and our assessment of the appropriate alternative structures, principally from our knowledge of structures used in the UK. Legal and tax advice has not been sought or included. In order to deliver our advice, DTZ has undertaken the following workstreams:

- Stage One – reviewing the SoJ objectives that any new structure should contribute towards and providing our assessment of risk, the basis of asset transfer and overage.
- Stage Two – identifying alternative partnership models and structures that could be available to SoJ and establishing a framework for evaluating these approaches and structures.
- Stage Three – drawing conclusions from the evaluation in the form of strengths and weaknesses of the alternative structures relative to the objectives set out in Stage One.
- Stage Four – recommendations including a critique of the proposals for SoJDC having regard to the alternatives and the arguments used in the proposal paper to justify the recommended structure; this critique will also assess the potential to extend the role and remit of WEB.

1.3 During the course of our reporting we have identified and discussed certain issues such as the extent of risk that SoJDC will bear and the treatment of asset value at transfer where we considered the proposals needed clarification or amendment. We have identified these issues within this report together with changes adopted.

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## 2. Establishing and Prioritising SoJ's Objectives

2.1 The Corporate Services Scrutiny Panel established criteria in its assessment of the original proposals for the establishment of the Jersey Enterprise Board. An important theme from this analysis was the need for clear objectives.

2.2 There are multiple and complex objectives for a new regeneration structure within Jersey. The over-arching objective is stated in the brief to DTZ as being:

> **"To ensure that effective regeneration takes place and to encourage the provision of low cost and other housing. It may also have a role to play in major infrastructure projects."**

2.3 The first draft of the SoJDC proposal paper also included implicit reference to the objectives (for example through reference to the rationale and benefits of the proposed structure). Notwithstanding the clear objective stated in the instructions to DTZ and the implied objectives in the SoJDC proposal paper, we considered that it would be helpful for the proposal paper itself to set out clear objectives as this was an area of uncertainty coming out of the Scrutiny Committee. The revised SoJDC proposal paper now includes a clearer definition of the roles of SoJDC and its objectives which are stated to be:

- To ensure the primacy of SoJ in the governance of regeneration policy in Jersey and any associated property development agency
- To ensure the effective participation of the appropriate Scrutiny Panel in effective oversight of such governance
- To enable a consistent and co-ordinated Island-wide approach to regeneration which aligns with the current and future requirements of the Island
- To deliver a structure which is able to work with the private sector whilst protecting SoJ's interests
- To ensure a clear division of responsibilities between strategic planning, policy, project management and delivery.

2.4 Based on the contents of the proposal paper, the strategic questions previously posed by the Scrutiny Committee and best practice from other relevant examples, we consider that the objectives for the SoJDC structure fall into three categories:

- The need to deliver regeneration and policy objectives including housing and infrastructure.
- The need to create a structure which optimises the socio-economic, financial and market considerations.
- The need to optimise risk to SoJ and for the structure to protect the public interest.

2.5 Against this background, we have interpreted the following objectives for the new structure:

**Regeneration and Planning Policy Objectives**

- To enable a consistent and coordinated island wide approach to regeneration which align with the current and future needs of the Island.
- To consolidate the current activities of the WEB in order to deliver transformation at the St Helier waterfront and other regeneration zones.
- To establish and coordinate development aspirations through an Island wide strategic regeneration framework.
- To bring surplus SoJ land and buildings into effective use.
- To provide clear accountability and separation between SoJ's policy objectives and the delivery.
- To create a strong policy framework and design guidance that drives quality standards into the development process.
- To ensure a balance between physical, social, economic, financial and environmental objectives.

2.6 These objectives point to the need for a structure which coordinates and raises the profile of regeneration on the island and which is closely aligned to policy and focussed on delivery. It will be necessary to agree where CPO powers sit within the structure. The structure will need activities to be separated and be sufficiently flexible to balance different objectives.

**Market and Financial Objectives**

- To deliver a structure which provides value for money to SoJ.
- To ensure development schemes being promoted are financially viable and to create conditions that will attract significant and long term private sector finance.
- To facilitate the assembly of public and private land required to facilitate development.
- To ensure that the pre-development stages of the regeneration process can be funded.
- To ensure that SoJ benefits from development profits through the distribution of a dividend.
- To use private sector expertise, where appropriate, and private sector capital.
- Where appropriate, to transfer risk to the private sector.
- To unlock economies of scale throughout the development process.

2.7 These objectives mean that the structure will need to bring forward schemes which optimise value. Schemes may need "pump priming" by the new vehicle where delivery (for example phasing or delivery of quality design) is critical.

DTZ

**Legal and Governance Objectives**

- To ensure a clear division of responsibilities between SoJ policy, strategic planning, project definition and delivery.
- To establish a structure which has appropriate governance, accountability and is vires.
- To ensure the delivery of best value and absolute transparency and accountability to SoJ throughout the development process.
- To enable SoJ to receive an appropriate fair value for its sites at transfer into SoJDC.
- To ensure that there is an appropriate exit strategy for SoJ when required.

2.8 These legal and governance objectives require a structure that is transparent and which is defensible both legally and in being able to demonstrate additional value. Best value, in the context of SoJ's objectives and the specific circumstances prevailing in Jersey, and the mitigation of risk will be critical criteria in ensuring that this set of objectives is met.

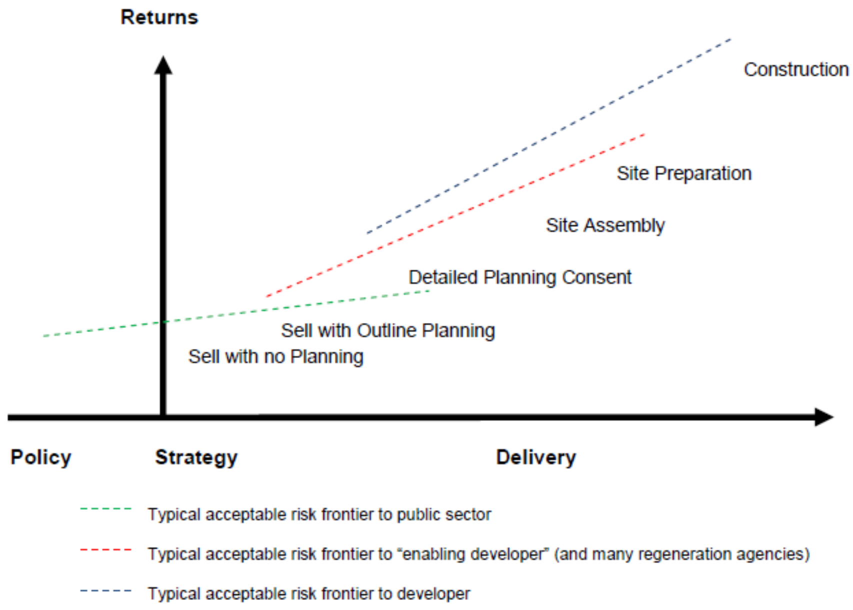
2.9 To avoid any perception of a conflict of interest, the statutory roles of planning policy making and the determination of planning applications should be separated from the role envisaged for SoJDC and its delivery partners.

2.10 We include within this report our observations and recommendations on the proposals in relation to the mechanism for SoJ to receive market value when assets are transferred to it.

**Risk**

2.11 Many of the objectives listed above relate to the appropriate assessment and management of risk. An overarching policy objective which we believe should be clarified upfront is the extent to which SoJ wishes to bear market, financial and development risk. There is a clear relationship between the returns that are possible and the associated risks. An optimum structure should therefore balance risk and return rather than *de facto* delivering the highest returns. In simple terms the relationship between the amount of pre-sale delivery activities and returns can be expressed as in the diagram overleaf, against which we have plotted the typical "risk frontier" that will be acceptable to participants in the development process:

Diagram 1: Risk Transfer




2.12 In our experience, the public sector in the UK is generally reluctant (or in some cases statutorily unable) to bear significant development and market risks other than where it has a specific mandate to deliver development or regeneration outputs (as has been the case, for example, in various stages in the evolution of the UK's Homes and Communities Agency and with some of the UK's Regional Development Agencies). There are of course also examples of where the public sector has borne the risks of site assembly and site preparation – typically with regeneration agencies that have intervened in situations of market failure where the private sector has not been prepared to engage.

2.13 Development vehicles and partnerships, in the broad form proposed for SoJDC, allow the public sector to take progressively higher risks to take more control over the form and timing of delivery and in expectation of higher returns. A well structured development vehicle will allow the public sector to participate with private sector finance and resources to allow it to have more control (and potentially more return albeit at a higher risk) in the development and delivery process. Although we will examine examples where the public sector has participated in 50% of the risk, the principle of limiting the public sector's exposure to excessive market and project risk should still be an important objective of the new structure. There are some cases where the public sector will actively engage in direct development beyond the site assembly and site preparation stages such as Waterfront Edinburgh.

2.14 In our draft report and advice, we recommended that the project delivery stage should involve private sector delivery partners who might typically bear at least 50% of the direct project risks with SoJ contributing land assets as part of its equity contribution. We observed that the proposal paper envisaged that SoJDC would have **the option** either to engage with the private sector or to retain all of the development risk itself by undertaking direct development without private sector involvement. In our draft report, we considered that this would impose excessive risk on SoJDC and we recommended that SoJDC should share the risks more equally with the private sector except for projects which have exceptional circumstances. In discussions with JPH and WEB, we have subsequently had regard to:

- The processes that are now proposed to be put in place in order to mitigate risk, as described in the proposal paper and the MOU.
- The fact that SoJ controls the majority of strategic land on the island and so can control the supply of this land and thus manage risk.
- The specific circumstance prevailing in Jersey, most notably the fact that there are very few potential development partners which have both a substantial balance sheet and significant experience on the island. Also, the need to safeguard the delivery of major infrastructure projects.

2.15 The current proposals still envisage SoJDC bearing greater than 50% of risk including pre development, planning and construction. We have discussed this with officers in JPH and WEB and have concluded:

- The role of developer that SoJDC will assume carries risks that cannot be completely eliminated. The risk mitigation processes envisaged in the proposal paper and MOU do however combine to help mitigate risks to SoJ.
- The fact that SoJ controls the majority of the strategic land on the island is an additional protection on the assumption that SoJ and SoJDC agree to coordinate the supply of land in the future.
- We believe that there could be potential to use the creation of SoJDC to challenge the lack of a substantial private sector development capacity on the island by creating an asset backed vehicle which would create critical mass to challenge some of the barriers to entry. In this way, SoJDC could be used to attract developer appetite beyond the existing participants. We have however been advised by WEB that this is not a key objective and, in these circumstances, the continued lack of private sector development capacity is an influencing factor that tends to support the proposal to retain development and risk on the SoJ balance sheet.

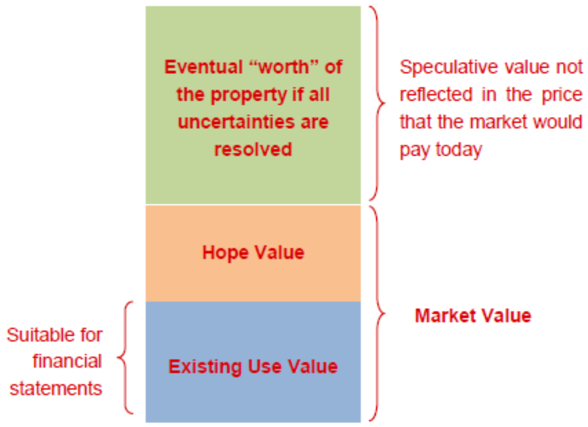
2.16 Against this background and having regard to the circumstances set out above, and on the assumption that the risk mitigation processes envisaged in the proposal paper and the MOU, we consider that there is a case to support the proposition that SoJDC should retain more risk than would be typical in the UK.

**Asset Pricing at Transfer**

2.17 Irrespective of the structure adopted, SoJ will need to consider at what point, and on what basis, the underlying value of the assets should be received. We have read the JPH paper recommending the basis of asset transfer and concur with its conclusions and we understand that it is now proposed that it will be the standing presumption that assets will transfer at Market Value (as described below) and that any exception to this will be at the discretion of the Minister for Treasury and Resources. The key departure from the principle of Market Value is envisaged to be the where there is a significant cost of providing upfront infrastructure costs and public realm. As most of the scheme's are envisaged to be in a Regeneration Zone, and in turn most regeneration projects require upfront infrastructure and/or public realm, it is likely in practice that many schemes will fall into the category of sites which require the Minister to exercise its discretion.

2.18 To assist in establishing the principles, we have illustrated below the component parts of an asset's value. This is not to scale as the proportion of each component will vary between assets and indeed, for any particular asset, will change over time depending on circumstances such as development certainty.

Diagram 2: Segmenting current and future value




2.19 DTZ considers that it would be appropriate, as a general principle, for SoJDC to pay **Market Value at the date of transfer**. As opposed to Existing Use Value, Market Value includes such expectation of a change in the circumstances of the property that buyers generally in the market would reflect in the price. The Royal Institution of Chartered Surveyors (RICS) gives examples of circumstances where hope value would impact on Market Value as being "the prospect of development where there is no current permission for that development; and the prospect of...merger with another property."

2.20 We consider that it is logical that properties that have been declared **surplus** and which are transferring from JPH to SoJDC for **development** should transfer at a price that includes hope value (to the extent that the market generally would reflect future prospects, as per the definition of Market Value) rather than being constrained to the definition of Existing Use Value. It should be further noted that the RICS Valuation Standards states that Existing Use Value should only be used for valuing property that is owner occupied for inclusion in financial statements.

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2.21 The fact that the transfer will be to a company owned by SoJ does not imply to DTZ that Market Value should not be paid. In the UK, the general rule is that transfers between Departments are at Market Value. HM Treasury guidance (Managing Public Money, February 2009) states that "public sector organisations may transfer assets among themselves without placing the property on the open market, provided they do so at market prices." We consider that transfer at Market Value will protect SoJ in the event of a catastrophic failure in a project (so that SoJ will at least have received asset value even if it does not receive development profit) and it will impose a discipline on SoJDC so that its focus is on maximising and unlocking the latent development value over and above the Market Value. In this way, separating asset value receivable at transfer from development profit receivable after development will be an important mechanism for SoJ controlling its risk.

2.22 In the event of any regeneration projects it might be appropriate, by exception, for assets to be transferred at below Market Value. This is the basis of the approach set out in the proposal paper. This should be a transparent decision made on a case by case basis having regard to the regeneration benefits that might accrue. In the UK for example, public bodies have the opportunity under the General Disposals Consent 2003 to dispose at less than best consideration (capped at £2m "loss") in cases where it can demonstrate "social and economic wellbeing." We consider that if there are any regeneration projects in Jersey that require transfer to SoJDC at less than Market Value then such a disposal would need to be an exception and subject to appropriate approvals.

2.23 As stated above, we understand that it is now agreed that the assets will transfer at Market Value other than by exception at the discretion of the Minister for Treasury and Resources. This enables the Minister to consider for example whether infrastructure and public realm should be paid for in lieu of asset value.

**Overage and Dividends**

2.24 Adopting Market Value (and therefore such hope value and marriage value that would be payable in the market) does not infer that development profits will not be available to SoJDC. Hope value is generally at a discount to the eventual "worth" of the property reflecting uncertainties such as the prospects of obtaining planning permission and the conditions that will attach to any planning permission. The potential for uplifts in value by resolving the development uncertainties is illustrated by the green segment in diagram 2.

2.25 It will therefore be appropriate for SoJ to share in development profits created by SoJDC having regard to the risks, capital and other resources incurred by SoJDC and its delivery partners. Clearly any private sector partner will require a profit commensurate with these costs and risks and these will need to be paid as a priority ahead of any overage. The share of overage/net profit would be set by the Minister for Treasury and Resources. The amount due from SoJDC could be calculated and become payable on a project by project basis or through an annual corporate dividend.

2.26 We consider that there needs to be a clear policy under which SoJDC distributes dividends back to SoJ. The precise dividend policy has not yet been established but our interim observations are that this could either be a pre-determined and fixed dividend (provides apparent certainty but relies on an accurate projection of the future profitability of SoJDC), or it could be based on a fixed "tariff" system based on outputs (this has the advantage of clarity but it is inflexible) or it could be based on a "business plan" approach through which SoJDC prepares a five yearly rolling business plan which includes annual budgets against which dividends can be drawn (having the advantage of more flexibility in the event that cash is needed to be retained within SoJDC for future investment - but at the expense of certainty). In any event we consider that an "open book" approach would improve accountability without any significant loss of operational integrity to SoJDC.

**Summary**

2.27 We have identified three primary objectives of SoJ:

- To enable a consistent and coordinated island wide approach to regeneration which align with the current and future needs of the Island.
- To deliver a structure which is attractive to the private sector whilst protecting SoJ's interests.
- To ensure a clear division of responsibilities between policy, strategic planning, project definition and delivery.

2.28 Additional objectives of the States have been identified within three categories: regeneration and policy objectives; market and financial objectives; and legal and governance objectives.

2.29 A vision statement would help to clarify the over-arching purpose of SoJDC and the associated structures to the multiple stakeholders.

2.30 The proposals envisage SoJDC bearing more risk than we would consider typical compared to the public sector's exposure in similar vehicles in the UK, but for the reasons stated, we do think that these circumstances combine to provide a case for SoJDC to retain this risk particularly when it performs the role of developer. Clearly, SoJ will need to be satisfied that it is aware of the risks that SoJDC will bear and that the proposed mitigation risks adequately reflect the risk profile that it is acceptable to the States.

2.31 We consider that properties should be transferred into SoJDC at Market Value, the definition of which includes such "hope value" that the market generally would attribute based on the circumstances of the property at transfer. We understand that this has been accepted as the general presumption with any exceptions being a Ministerial decision.

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## 3. Alternative structures and evaluation of different options

3.1 We first identify the alternative structures that should be considered, followed by a commentary on the appropriate evaluation criteria.

**Alternative Structures**

3.2 There is no single definition or type of partnership solution involving public assets. Most previous examples in the UK have addressed regeneration aims and have been set up in a variety of forms such as straight land sales, Development Agreements and Joint Venture Agreements, regeneration vehicles such as Urban Regeneration Companies and wider Public Private Partnerships, for example the Property Regeneration Partnership model introduced by BWB, and regeneration agencies One North East and EMDA.

3.3 More recently the UK Government has encouraged local authorities to consider applying the principles of the regional PRP model in Local Asset-Backed Vehicles (LABVs) in which the council inject both operational/non operational and development assets into the vehicle, and the private sector injects the equivalent equity. There is the capability to borrow against this equity to invest in new development and improved assets, with profits being shared.

3.4 Without a single, centrally approved vehicle or primary legislation there have been numerous examples of potential structures from within the experience of the UK alone. Appendix 1 lists over 30 different structures which have been used to deliver regeneration and service transformation. Each structure has different characteristics reflecting varying objectives and purposes.

3.5 Against this background, we have selected the following category of structures as being potentially available to SoJ and therefore requiring assessment. In short listing these structures, and in the subsequent analysis, we have not reflected any legal or tax consequences which may in practice change the assessment.

3.6 The alternative structures available to SoJ fall into three broad categories:

- A national programme of **individual land sales and/or development agreements**, for example the ongoing programme of sale of surplus NHS assets in the UK

- A leadership and coordinating role of delivering economic regeneration such as an **Urban Regeneration Company (URC) structure**, for example Sheffield One, or Urban Development Corporation (UDC).

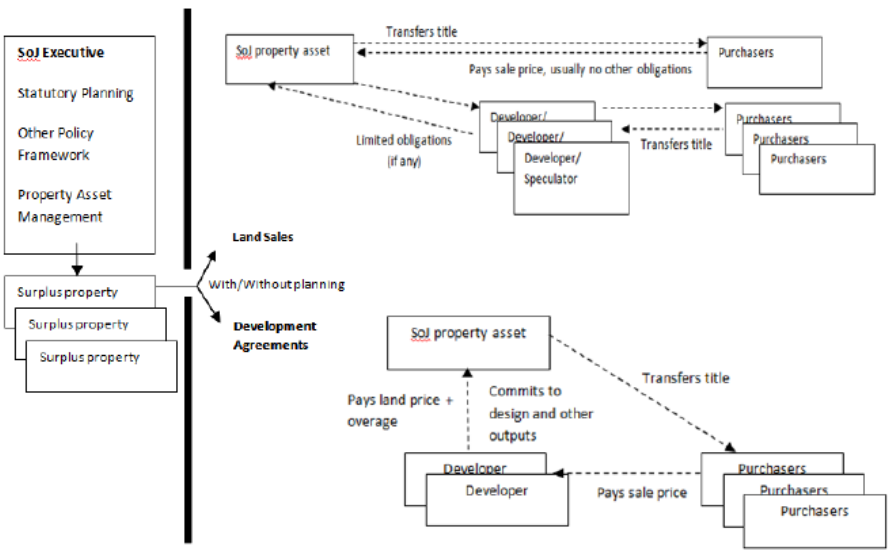
- City or regional joint ventures with the private sector such as **Property Regeneration Partnerships and Local Asset Backed Vehicles** including City Development Companies. There are several recent or emerging examples including London Borough of Croydon and Blueprint (East Midlands Development Agency, English Partnerships and Igloo).

3.7 The characteristics of each approach are summarised overleaf together with examples of best practice which may be applicable to SoJ aspirations.

**Programme of individual land sales and/or development agreements**

3.8 Although a very familiar and basic concept, the key features of this approach are illustrated below as it would apply for SoJ for comparison with the alternative approaches and to demonstrate the rigid separation (bringing pros and cons) between policy and delivery:

<u>**Diagram 3: A coordinated sales programme**</u>




3.9 The key features of this approach are:

| | |
|---|---|
| **Scope of activities (SoJ)** | • Establish policy and property strategies<br>• Identifying surplus assets<br>• Obtain planning consent prior to sale where appropriate, or overage where sold without planning<br>• Maximise competition between purchasers<br>• Establishing some exemplar schemes through development agreements |

| | |
|---|---|
| **Objectives** | • Orderly disposal of assets<br>• Minimise risk to SoJ |
| **Structure** | • No formal structure for delivery activities<br>• Template sales agreements and development agreements would increase efficiencies |
| **Sources of assets** | • JPH would identify surplus assets and this approach only related to these surplus public assets |
| **Sources of funding** | • Private sector incurs all development costs |
| **Flexibility, Control and Risks** | • Phasing is supply led (release of surplus assets) rather than demand led<br>• SoJ has control of supply of assets but limited control of design beyond normal planning policies and through development agreements |
| **Exit Strategy** | • Ongoing disposal programme without a need for an exit strategy |
| **Best Practice Guidance** | *From NAO Audit of NHS Estates*<br>• Set clear targets for site disposals and exemplar standards<br>• Strengthen estate strategy to improve information in regard to disposal programme plans<br>• Establish whether there is a persistent concentration of sales completed at the year end and investigate the value for money provided by these sales<br>• Improve contact and liaison between estates team and planning officers (subject to vires constraints)<br>• Strengthen guidance on the best use of presale valuations<br>• Assess scope to complete some sales more quickly with potential to bring forward receipts and reduce sales costs<br>• Create a named clearance house arrangement to improve awareness and notification procedures |

**Urban Regeneration Company (URC) and Urban Development Corporation (UDC) structures**

3.10 URCs are a key delivery vehicle in terms of regeneration in the UK. They have been promoted by the Government in an attempt to achieve focussed and integrated regeneration for key towns and cities. They are independent companies established by the local authority and appropriate Regional Development Agency. They work alongside English Partnerships and other local stakeholders including employers, amenity groups and community representatives. They are perceived as strong in terms of achieving co-ordination and co-operation through integrating different streams of regeneration initiatives.

3.11 They were created to champion and stimulate new investment into areas of economic decline and to co-ordinate plans for their regeneration and redevelopment. Their principal aim is to engage the private sector in a sustainable regeneration strategy, working within the context of a wider Strategic Regeneration Framework or masterplan which takes full account of the problems and opportunities for the whole area.

3.12 In terms of funding for URCs, they are responsible for co-ordinating plans and attracting new investment through the "purposeful and imaginative" promotion of their areas. They require prioritisation of public sector funding over a substantial period (10-15 years) in order to attract private investment at the levels required to bring about sustainable renewal. In most cases, URC's operating costs are funded by the key public sector organisations involved in them which in the UK are the relevant RDA, the Local Authority and EP.

3.13 Urban Development Corporations are similar development vehicles to URCs with a strong emphasis on physical regeneration. They were first established under the Local Government, Planning and Land Act 1980, but have since been revived through the UK Government's Sustainable Communities Plan of 2003 where the Government stated that it would seek to establish new mechanisms in growth areas to drive forward development. UDCs have since been established in Thurrock Thames Gateway, London Thames Gateway and West Northamptonshire.

3.14 The purpose of a UDC is to:

- Bring land and buildings into effective use
- Encourage the development of existing and new industry and commerce
- Create and attractive environment
- Ensure that housing and social facilities are available to encourage people to live and work in the area.

3.15 On this basis UDCs are able to acquire, hold, manage, reclaim and dispose of land and other property (including CPO powers), carry out building and other operations, seek to ensure the provision of water, electricity, gas, sewerage and other services and carry on any business or undertaking for the purpose of regenerating its area.

3.16 UDCs are also invested with development control powers for strategic planning applications in support of their objectives/purpose. Each UDC has a term set for seven to ten years with a review after five years. They are funded by Central Government (DCLG) and run by Boards, Members for which are appointed by the Secretary of State following advertisements through the media but with guaranteed local authority representation.

3.17 A URC/UDC structure as it might apply in Jersey is illustrated below:

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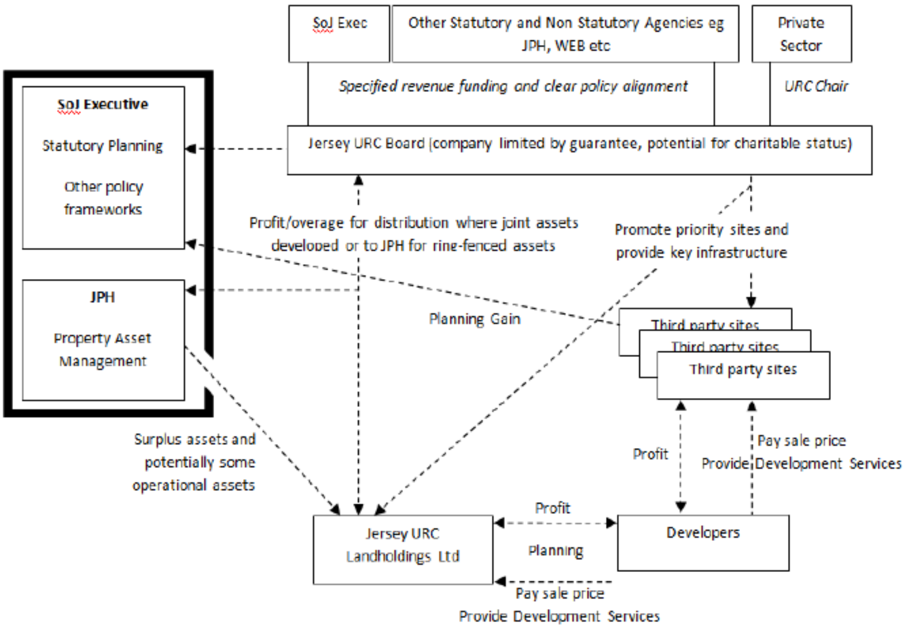
Diagram 4: A URC style structure




3.18 The key features of this approach are:

| | |
|---|---|
| **Scope of activities** | • Integrated public support, both financial and policy<br>• Recognition in Jersey Development Plan<br>• Focus on prioritising projects, infrastructure and some delivery (eg to address market failure)<br>• URC Board potentially chaired by private sector representative<br>• Determine and respond to island wise priorities rather than being reactive |
| **Objectives** | • Strong link between island wide programmes – policy and delivery |
| **Structure** | • No formal structure for delivery activities |
| **Sources of assets** | • Land from SoJ (JPH)<br>• Third party land can be promoted for development |
| **Sources of funding** | • URCs do not have any additional resources or powers over and above those that the partners commit. Instead they tend to |

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| | champion, influence, guide and stimulate investment into an area.<br>• All funding members of URC should commit at outset to specified revenue funding and indicative capital funding for say 3 years and a longer term commitment (10-15 years). |
| **Flexibility, Control and Risks** | • Business plan led |
| **Exit Strategy** | • Time limited body<br>• Agree exit strategy (long term and *force majeure*) at outset |
| **Best Practice Guidance** | *From URC Guidance and Qualification Criteria May 2004 UK Government*<br>• The need for a long term business plan<br>• The requirement for all funding members to sign up to the URC and the reporting framework<br>• Maintaining a three year rolling funding programme<br>• Establishment of a system of joint approvals for capital projects |

**Property Regeneration Partnerships and Local Asset Backed Vehicles**

3.19 Innovative Public Private Partnerships are increasingly being explored as a means to facilitating the renewal of large urban areas where other regeneration models are having, or likely to have, little impact.

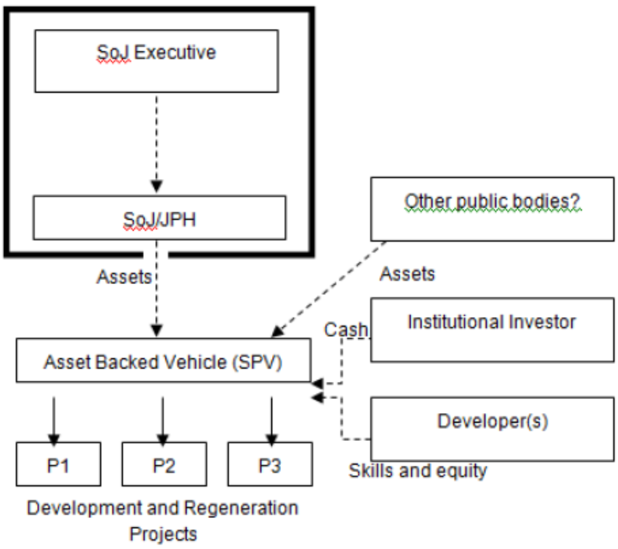
3.20 In the UK, the Housing Green Paper in July 2007 proposed the creation of Local Housing Companies (LHCs) – public private partnerships designed to boost house building rates. LHCs would see local authorities investing land in the development process and private developers and other investors providing funding to an equivalent amount. The joint venture will be jointly owned with a 50:50 split, or 51% by the private sector and 49% by the public with both organisations sharing the risk and benefits of the development process. The theory behind LHCs is that it will strengthen local authorities' position at the centre of the development process, provide a range of opportunities for investors and development partners and at the same time help to increase the supply and range of new homes available. Around 50% of all new homes built by LHCs will be for affordable sale and rent.

3.21 Local Asset Backed Vehicles (LABVs) are another example of a PPP. They were first set up by some RDAs and combined significant public investment with long-term commitment from the private sector. LABVs are organisations with equal public and private sector assets, whose purpose is to comprehensively regenerate an area. Public sector assets, such as land or property, are invested into the vehicle, with the private sector partner providing funding of an equivalent value. The LABV uses its assets to raise further funds from banks and other lenders in order to carry out regeneration projects. Existing examples of LABVs are as follows:

- Isis Waterside Regeneration – a joint venture between regulator British Waterways, the Igloo regeneration fund and developer Muse
- Blueprint – a partnership between East Midlands Development Agency, EP and the Igloo regeneration fund
- PxP – a partnership between regional development agency Advantage West Midlands, developer the Langtree Group and the Bank of Scotland
- Croydon Council Urban Regeneration Vehicle – involving four town centre sites including the council's town hall.

3.22 An asset backed structure as it might apply in Jersey is illustrated below:

Diagram 5: An asset backed structure




3.23 The key features of this approach are:

| | |
|---|---|
| **Scope of activities** | • SoJ establishes priorities and policy<br>• 50/50 SoJ and private sector vehicle<br>• Vehicle establishes property strategies and individual masterplans |

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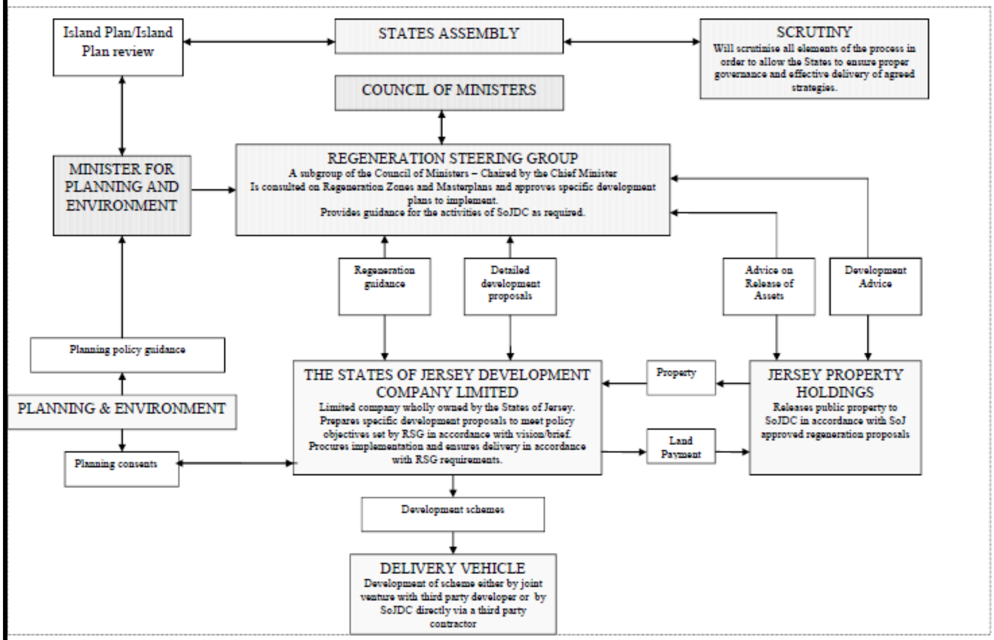
| | |
|---|---|
| | • Physical delivery led by private sector but with SoJ sharing in upside (and some project risk)<br>• Can kick start regeneration in areas of weak market appetite because of long term life and profit sharing<br>• Generates a commercial return for distribution between SoJ and private sector<br>• Strong control of deliverables including design and quality |
| **Objectives** | • Strong link between island wide programmes – policy and delivery<br>• Strong focus on delivery of regeneration – and quality<br>• Unlock additional investment |
| **Structure** | • Limited liability partnership<br>• 50% SoJ, 50% private sector<br>• Equal voting rights |
| **Sources of assets** | • Land from SoJ (JPH)<br>• Third party land can be acquired |
| **Sources of funding** | • Private sector "match funds" equivalent to value of public sector assets<br>• Able to leverage debt funding |
| **Flexibility, Control and Risks** | • Alignment between SoJ and private sector<br>• Equal sharing of risk<br>• Control shared between public and private sectors<br>• Flexible length of life |
| **Exit Strategy** | • Time limited body<br>• Agree exit strategy (long term and *force majeure*) at outset |
| **Best Practice Guidance** | • Secure political support<br>• Need to demonstrate additional value created by LABV<br>• Need for appropriate governance given it is a 50/50 vehicle<br>• Establish mechanisms to sustain stakeholder engagement<br>• Financial treatment of assets as they leave SoJ balance sheet<br>• Need for early wins |

**Proposed Structure for SoJDC and Related Agencies**

3.24 The current proposal for SoJDC and associated agencies has been explained as illustrated below:

<u>**Diagram 6: Current Proposals for SoJDC and other functions**</u>




3.25 The key features of this approach are:

| | |
|---|---|
| **Scope of activities** | • Clear separation of roles:<br>○ Policy (Planning and Environment Division)<br>○ Vision and Strategy (RSG advised by RAB)<br>○ Scrutiny (SoJ Executive and Scrutiny Committee)<br>○ Ensure best value of property at transfer (JPH)<br>○ Strategic estates planning and delivery (JPH)<br>○ Delivery shared between SoJDC and private sector (although we note that SoJDC can still bear more than the 50% risk that we recommend) |

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| | |
|---|---|
| **Objectives** | • Clear distinction and separation of roles to maintain independence of Planning and Environment, ownership and delivery.<br>• To ensure that effective regeneration takes place and to encourage the provision of low cost and other housing and major infrastructure projects. |
| **Structure** | • Separate functions between Planning and Environment Minister (policy and determination of planning applications); Regeneration Steering Group (strategy) and SoJDC (delivery).<br>• The role of the Planning and Environment Minister is set out in the protocol paper provided by JPH.<br>• In addition, SoJDC will be directed by a political group comprising RSG which will be chaired by the Chief Minister. The parameters within which SoJDC will operate are set out in the draft Memorandum of Understanding with the Minister for Treasury and Resources.<br>• SoJDC to be a limited company with a single share held on behalf of the Minister for Treasury |
| **Sources of assets** | • Surplus assets from JPH<br>• Third party land can be acquired if needed to facilitate development |
| **Sources of funding** | • Part funding from Treasury<br>• Part funding from private sector in joint ventures |
| **Flexibility, Control and Risks** | • Structure appears reasonable rigid but activities within each can be flexible<br>• MoU seeks to manage risks by establishing risk boundaries at each stage of development process<br>• DTZ has recommended that SoJ should seek a development partner that will take at least 50% of the risks. The proposals still envisage SoJDC bearing more than this risk. We acknowledge that the MoU has some measures that seeks to allow the public sector risks to be assessed and accepted/rejected for each development at key "gateway" stages.<br>• SoJ should receive Market Value for the sites at transfer into SoJDC in order to protect against a "double whammy" risk of losing underlying asset value and development profit in the event of a catastrophic project failure. Any exception to this will be at the discretion of the Minister for Treasury and Resources.<br>• RSG and SoJDC will be subject to independent scrutiny by the Public Accounts Committee and the Corporate Services Scrutiny Panel. |
| **Exit Strategy** | • SoJDC assets to be transferrable back to SoJ |

**Summary**

3.26 There is no single definition or type of partnership solution involving public assets. We have identified over 30 structures which have been used elsewhere.

3.27 Structures can be grouped into three broad categories which in a Jersey context are: a coordinated programme which raises the profile of JPH and which drives out efficiencies in the process rather than a formal re-alignment of structure; a URC style approach which would be an independent company which champions the development of SoJ's surplus assets and attracts new investment; and an asset backed vehicle with equal public and private sector assets, whose purpose is to comprehensively regenerate areas of Jersey.

3.28 SoJDC is closely aligned to an asset backed vehicle structure and shares many common themes. The principle of private sector engagement needs to be clarified.

## 4. Conclusions on the strengths and weaknesses of the alternative structures and the proposals for SoJDC

4.1 In the previous section we have provided the characteristics of each structure. We have sought to consider and address the following key questions:

- Does the structure give sufficient flexibility and control?
- Does the structure integrate policy objectives and help to deliver island wide priorities?
- Is there sufficient transparency of separation between policy and delivery?
- To what extent are activities focussed on promoting and preparing sites for development and to what extent on the physical delivery of development?
- Do the proposed structure and activities actively help to deliver housing and infrastructure?
- Is the approach reactive or proactive?
- Is funding for project delivery principally from the public resources, private sector or both?

4.2 This analysis forms the basis of the following table:

DTZ

**Table 1: Evaluation Summary**

| | Control and flexibility? | Island wide policy integration? | Separation between policy and delivery? | Scope of activities? | Housing and infrastructure delivery? | Reactive or proactive? | Funding? |
|---|---|---|---|---|---|---|---|
| **Land Sales/ Dev Agreements** | ▪ Very flexible as sites dealt with individually | ▪ Scope for inefficiency | ▪ Yes | ▪ Planning and disposal only | ▪ Not addressed directly | ▪ Reactive | ▪ Private |
| **URC style structure** | ▪ Flexible approach with control over SoJ assets | ▪ Strong focus on coordinating an island wide approach | ▪ Yes | ▪ Some direct development (shared with private sector) but mainly policy led | ▪ A key aim would be to focus delivery on housing and infrastructure priorities | ▪ Proactive | ▪ Both but principally private sector for delivery |
| **Asset Backed Vehicle** | ▪ Strong control but potentially inflexible | ▪ Strong focus on coordinating an island wide approach | ▪ Yes but may be perception of conflict of interest | ▪ Direct development 50/50 with private sector | ▪ A key aim would be to focus delivery on housing and infrastructure priorities | ▪ Proactive | ▪ Shared 50/50 with private sector |
| **Proposed SoJDC** | ▪ Strong control on the assumption that our recommendation that Market Value is received at transfer is accepted | ▪ Strong focus on coordinating an island wide approach | ▪ Rigid separation between policy and determination of planning applications (Minister), strategy (RSG) and delivery (SoJDC) | ▪ DTZ recommends that that SoJDC engages with the private sector to balance risks and returns. | ▪ A key aim is to focus delivery on housing and infrastructure priorities | ▪ Proactive | ▪ SoJDC will, where appropriate, access private funding but will bear the majority of the development risk. |

**Key**

Likely to meet objectives of SoJDC
Partly meets or requires modification to meet minimum requirements of SoJDC
Unlikely to meet requirements of SoJDC

**Summary**

4.3 We can draw the following strengths and weaknesses from this analysis:

- A coordinated land sale approach is straightforward and flexible but unlikely to meet SoJ objectives

- A URC style approach would add value by raising the profile of development and regeneration activities and clarifying policy objectives with a clear champion role. The strong asset base that could be provided by SoJ would probably be sub-optimised by this structure.

- An asset backed vehicle and the SoJDC approach have similar themes, particularly in that both structures separate policy from delivery and we consider that the SoJDC approach does this effectively. The LABV approach envisages a more side-by-side balance of risk between the public and private sectors whereas SoJDC involves less risk transfer for the reasons stated in this report.

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## 5. Conclusions including a critique of the benefits stated in the proposal paper

5.1 In critiquing the arguments used to justify SoJDC in the proposal paper, we have:

- Reviewed each stated benefit by seeking to provide an evidence case to support the assertion; and identifying additional potential benefits.
- Reviewed the observations of the Scrutiny Committee to assess the extent to which the arguments provided in the proposal paper address the concerns raised.

**Benefits of the proposition used in the proposal paper**

5.2 We set out below each benefit used in the proposal paper together with our opinion of the extent to which these are evidenced.

**Table 2: Critique of stated benefits**

| **Proposed justification used in the proposal paper** | **Comments**<br>(✓ positive ■ neutral × weak/uncertain) |
| --- | --- |
| A clear division of responsibilities for the control of policy determination, strategic planning, project definition and development implementation. | ✓ The proposed structure clearly separates policy, strategy and delivery with a transparent separation of planning approvals |
| A consistent and coordinated approach to regeneration; Island wide | ✓ We believe that this is a strong feature of the proposals for SoJDC and the other functions and that the new structure will be able to demonstrate a distinctive role which is adding value to the ambition of a consistent and coordinated approach.<br>✓ The separation of the functions will enable clear ownership of responsibilities to be established within a consistent framework.<br>✓ The proposed structure gives clear ownership and accountability and moves away from a fragmented approach. |
| Clearly defined objectives which align with the current and future needs of the Island | ✓ The structure and functions appear to be flexible to take account of future changes in policy.<br>✓ The structure would enable SoJ to align objectives of multiple stakeholders. |
| Absolute transparency and accountability to the States Assembly throughout the development process. | ✓ The structure clearly identifies that responsibility will be with SoJDC with accountability to RSG.<br>× As stated elsewhere, the scope of activities (primarily in relation to funding and risk) of SoJDC involve more risk than comparable structures in the UK. |

| | |
|---|---|
| | ▪ We anticipate that (once clarified) the roles, responsibilities and limitations of SoJDC will be established through Articles of Association. |
| The ability to assemble public and private land required to facilitate major property and infrastructure projects within the boundaries of current legislation | ✓ We consider this is clear although a legal opinion will clearly be required.<br>▪ We believe that the proposal paper should clarify whether funding for third party land purchase will be from SoJDC (and SoJ funds) or will include private funding.<br>▪ The proposal paper could helpfully include clarification on where CPO powers will sit within the structure. |
| The means of funding the design development stages of the regeneration process to a point at which projects may be granted planning consent and competitively tendered in the open market | ✓ Subject to the clarification referred to previously, we consider that this benefit is clearly established.<br>✓ A coordinated structure as proposed should also enable non-market facing projects to be progressed with cross funding from other profitable projects.<br>▪ A 50/50 structure would enable SoJ to benefit from development profits without taking 100% of the risk but this structure is not being pursued because of the lack of private sector development capacity in Jersey and other circumstances prevailing on the island. |
| By undertaking the redevelopment of States owned property via joint venture SPVs between Property Holdings and the Jersey Development Company, the States of Jersey maintains direct control of its assets | ✓ Taking forward direct development projects will by definition provide total control.<br>✗ A joint venture of at least 50% private sector equity is more normal in the UK and SoJ needs to be comfortable that the circumstance in Jersey support the proposal to retain most of the risk within SoJDC.<br>▪ |
| Further, if ownership of the developments is retained there are the following benefits:-<br>• the potential to create income generating assets;<br>• greater financial rewards for the Public of the Island from its land ownership and property assets;<br>• greater control over what is built in terms of use/size of units etc. and the design; and<br>• alternative land use for certain activities that may be necessary to diversify the Island's economy | ✓ We agree with these stated benefits, particularly the control of design (although recognising that this can be achieved through design codes, planning consents etc).<br>▪ We consider that the effects of risk need to be addressed as well as alternative opportunity costs of releasing these assets. |

5.3 We consider that the following additional benefits could be stated:

**Table 3: Additional benefits**

| Additional benefits | Comments |
|---|---|
| • Leveraging additional private sector capital | ▪ Could be demonstrated if SoJDC structured to accommodate this. |
| • Promoting a long term view | ▪ The structure could be established so that a private sector partner was incentivised by performance over a long period, say 10-20 years. |
| • Creating efficient procurement processes and demonstrating best value | ▪ Projects can be added to main partnership structure potentially without the need for separate procurement |
| • Enabling cross subsidy | ▪ Structure allows for non-market facing schemes to be cross funded by profitable schemes |
| • Economies of scale | ▪ Combining projects within the vehicle could bring economies and private sector debt at cheaper rates |
| • Risk Transfer | ▪ If structured appropriately, SoJ could benefit from the transfer of specified risks to the private sector. |

**Observations of the Scrutiny Panel**

5.4 The Corporate Services Scrutiny Panel established criteria in its assessment of the original proposals for the establishment of the Jersey Enterprise Board. We have listed these below and provided n assessment of whether the current proposals address these criteria.

**Table 4: Responding to Scrutiny Panel observations**

| Scrutiny Panel Observation | Comments |
|---|---|
| • Are the objectives clearly set out? | ▪ On the basis of our comments earlier (on having a separate section on objectives) being accepted, we consider that the objectives will be clearly established. |
| • Does the vehicle structure, its remit and the terms of reference contribute to meeting the objectives relative to alternative structures? | ✓ Subject to clarification on the engagement with the private sector we consider that the proposals represent an appropriate balance between the benefits of an asset backed vehicle and a strong policy based approach typical of a URC. |
| • Is the role envisaged for the State in the proposed structure appropriate? | × We have stated our concerns about the risk of 100% |

| | |
|---|---|
| | development risk. |
| • What are the internal or external constraints which may preclude the success of the proposal? | ▪ Subject to discussion with JPH, we are not aware of any constraints. |
| • Is there a demonstrable benefit from the proposition? | ✓ The benefits listed above combine to provide added value. |

**Extending the role of the Waterfront Enterprise Board**

5.5 Given the perception problems referred to by the Scrutiny Panel, we agree that SoJDC must not be seen as "WEB by any other name." Equally, we do not believe that it would be helpful for WEB to operate in parallel with SoJDC as this would cause confusion in the market.

5.6 We are not aware of the legal implications but in principle we consider that it would be appropriate for WEB to be seen to be disbanded and SoJDC taking its place with a different remit. In practice it may be beneficial for WEB to become a subsidiary of SoJDC so that assets and projects can transfer but it would seem important that this is seen in the public consciousness as a fresh vehicle with a different agenda focussed on excellent design, purposeful delivery, long term value and built on the principles of partnership.

DTZ

# Appendix 1

## Alternative Structures

## List of indicative alternative structures used in the UK to deliver regeneration and service transformation goals in conjunction with public or private partners

- LABV (Local Asset Backed Vehicles)
- PIP (Property Investment Partnerships)
- PPP (Public Private Partnership)
- UDC (Urban Development Companies)
- URC (Urban Development Company)
- LHC (Local Housing Company)
- CDC (City Development Company)
- LSP (Local Strategic Partnership)
- URC (Urban Regeneration Company)
- DA (Development Agreement)
- Planning Agreement (S106 TCPA 1990)
- UA111 (Unilateral Agreement Section 111 Local Government Act 1972)
- Well being (Section 2, Local Government Act 2000)
- LEP (Local Economic Partnership)
- HA (Highways Agreement s278 TCPA 1996)
- LIFT (Local Improvement Finance Trust)
- MAA (Multiple Area Agreement)
- LAA (Local Area Agreement)
- PFI (Private Finance Initiative)
- URV (Urban Regeneration Vehicle)
- PRP (Property Regeneration Partnership)
- IPPP (Institutional Public-Private Partnerships)
- EDC (Economic Development Companies)
- BID (Business Improvement District)
- LDA (Local Development Agencies)
- BSF (Building Schools for the Future)
- LEP (Local Education Partnerships)
- RSL (Registered Social Landlords)
- HMR (Housing Market Renewal)
- Pathfinders
- LAPF (Local Authority Property Fund)
- TIF (Tax Increment Finance)
- BRS (Business Rate Supplement Business Rate)
- CIL (Community Infrastructure Levy)