

STATES OF JERSEY



WATERFRONT ENTERPRISE BOARD LIMITED: PROVISION OF INFORMATION BY THE POLICY AND RESOURCES COMMITTEE (P.106/2003) - COMMENTS

**Presented to the States on 22nd July 2003
by the Policy and Resources Committee**

STATES GREFFE

COMMENTS

1. The Committee considers that the report accompanying the proposition is factually incorrect and misrepresents the notion of corporate governance.
2. The answers to the questions Senator Syvret asked on 11th March and 7th April were delivered later than had been hoped. However, this was because the questions needed to be thoroughly researched and the answers did indeed need to be carefully and painstakingly crafted. Senator Syvret was kept informed of this delay and the reasons for it. The Committee could not have done otherwise, given the potential for serious consequences occurring had they been drafted in haste and been found to be inaccurate. The Committee therefore considered it imperative that it carried out this scrutiny task in a thorough and businesslike manner.
3. The report implies that the answers to the Senator's question No. 6 provide '*facts [which] largely confirm a shambolic and incompetent approach to the process of re-developing the Island Site; a process which failed to meet the requisite standards of corporate governance and the necessary appearance of impartiality*'. The Committee strongly disagrees with this interpretation and, as has been made clear, it has acted to ensure that any corporate governance issues were identified and are being addressed.
4. The report also states that the cost benefit analysis document '*will be key in gaining an understanding of the judgements arrived at*'. In so doing he demonstrates a lack of understanding of the processes adopted by WEB, which were clearly aimed at selecting a development partner rather than a development scheme. The report in question was, of course, only one piece of evidence amongst many others, upon which WEB based its decision.
5. Although the Policy and Resources Committee has political responsibility for WEB, the Committee does not - nor should it - involve itself directly in the detail of WEB's individual schemes or projects. These are matters for the Environment and Public Services and the Finance and Economics Committees and the appropriate licensing authorities and the Policy and Resources Committee has no power to, nor should it, seek to interfere with those authorities.
6. It should be remembered that in adopting P.45/2002 only 15 months ago in April 2002 and by 45 votes to 3, the States:
 - (i) *approved the leasing by the public to the Waterfront Enterprise Board Limited of the six areas of land shown outlined in red on drawing No. 1 (Disposal Plan), excluding the areas coloured green, for a period of 150 years, at an annual rental of £1 payable in a lump sum on the passing of the contract, with the land to be used for the purposes agreed with the Planning and Environment Committee and otherwise on such terms and conditions as might be agreed between the Board and the Finance and Economics Committee;*
 - (ii) *agreed that the Waterfront Enterprise Board Limited should be permitted to sub-let or hypothecate the land or assign the lease of the land referred to in (i) above, on terms to be approved by the Finance and Economics Committee, and with the land to be used for the purposes agreed with the Planning and Environment Committee;*
 - (iii) *approved the sale by the public to the Waterfront Enterprise Board Limited of the parcels of land shown coloured in green on drawing No. 1 (Disposal Plan) being areas of land to be used, as agreed with the Planning and Environment Committee, predominantly for the construction of residential accommodation for the sum of £10 for each parcel and otherwise on such terms and conditions as might be agreed between the Board and the Finance and Economics Committee;*
 - (iii) *agreed that the Waterfront Enterprise Board Limited should be permitted to retain any capital receipts from the sale, leasing or sub-leasing of any of the areas of land referred to in paragraph (iii) above and the sub-leasing, assignment or hypothecation of the lease or any part*

thereof referred to in paragraph (i) above for the purpose of funding further infrastructure work in order to complete the St. Helier Waterfront developments agreed with the Planning and Environment Committee, and, thereafter to allocate any surplus receipts to the sinking fund established by the Finance and Economics Committee to meet the cost of the company's share capital.

7. It should also be remembered that the company Waterfront Enterprise Board Ltd. has two shareholders: the States which has the majority of shares issued in its name and the Treasurer of the States who has one share issued in his name, as nominee of the States. At meetings of the company the States may be represented by the Greffier (or legal substitute) and the Treasurer of the States. The shareholders - the States and the Finance and Economics Committee, can direct WEB and its Directors through normal company processes at meetings attended by shareholders. The Policy and Resources Committee does not have this direct link to the company.
8. Thus the States has delegated responsibility for monitoring and influencing planning and financial aspects of WEB's activities to the Environment and Public Services Committee and the Finance and Economics Committee. The Policy and Resources Committee rightly maintains an overarching, watching brief as part of its co-ordinating role within its general terms of reference.
9. In the particular case highlighted in the report, the Committee's duty in scrutinising the selection process for finding a development partner for the Island Site, was not to try to second guess WEB's decision on which company was best suited for the role. WEB was set up by the States to make these types of decisions and to then get on with implementing them. What the Committee rightly did was to establish whether the selection process was appropriate and whether WEB abided by that process. As may be seen from the answers provided to Senator Syvret's questions, the Committee found some minor fault with aspects of the process and has raised those concerns with WEB. However, in arriving at these conclusions the Committee also found nothing to indicate that, had those minor shortcomings not occurred, the Board might have arrived at a different decision. The Committee also noted that this finding was confirmed by all of the WEB Directors who were in office at the time, both collectively and individually. The Policy and Resources Committee has carried out a full investigation of the issues and has seen the necessary documentation. It has reached clear conclusions and has taken action. This process has been thorough and robust.
10. Trust is essential to the commercial process. WEB was set up as a private company precisely so that it could operate in a commercial way and would be on an equal footing with those private sector entities with which it dealt. WEB could be directed to disclose documentation by its shareholders (the States). However, those shareholders would need to consider issuing any such direction in the full knowledge that should such documentation, which would probably contain information which had been provided to WEB on a strictly confidential basis, become available to persons outside of the company, this would represent not only a breach of corporate governance but would amount to a breach of trust between the Board and its trading partners. Were this to happen, it could effectively be impossible for WEB to continue. Companies dealing with WEB would probably not be as open as hitherto and, in many cases, would not be prepared to do business with WEB at all. Such a breach might also leave the Directors and the States, as shareholders, open to litigation, if a third party believed its business or reputation had been damaged by such disclosure.
11. The Committee believes that the States has set in place sufficient rigorous controls over the actions of WEB and that it would be to the detriment of WEB and hence the Island for this proposition to be approved. The Committee therefore urges the States to reject it.