STATES OF JERSEY

STATES OF JERSEY DEVELOPMENT COMPANY: PRE-SALES PROVISIONS FOR RESIDENTIAL DEVELOPMENTS AND PRE-LET(S) PROVISIONS FOR COMMERCIAL DEVELOPMENTS (P.88/2024) : COMMENTS

Presented to the States on 20th February 2025
by the Corporate Services Scrutiny Panel

STATES GREFFE

COMMENTS

Introduction

1. The Comments of the Corporate Services Scrutiny Panel (hereafter 'the Panel') assess the Proposition *States of Jersey Development Company: Pre-sales Provisions for Residential Developments and Pre-Let(s) Provisions for Commercial Developments* [P.88/2024] - (hereafter the 'draft Proposition'). On assessing the revisions proposed by the draft Proposition, the need to amend the proposals became evident to the Panel. As such the Panel approached the Minister for Treasury and Resources with its proposals for an Amendment, which were agreed and taken forward by the Council of Ministers through the Amendment to the draft Proposition.

2. The Panel wishes to highlight the rationale for not proposing the Amendment itself but instead, in the first instance, inviting the Minister for Treasury and Resources to do so. Through its scrutiny of the draft Proposition, the Panel was confident in its view that the Amendment would provide further assurance regarding management of risk and, therefore, would enhance the draft Proposition. Considering that the shareholder function for States Owned Entities (SOEs) rests with the Minister for Treasury and Resources, the Panel agreed that it would be most appropriate to invite the Minister to consider its proposals and to bring those forward through an Amendment to the draft Proposition, should the Minister be in agreement with the Panel.

3. The Panel is grateful for early sight of the draft Amendment in confidence prior to lodging and for the agreement of the Minister for Treasury and Resources and the Council of Ministers to take forward its proposals through the lodging of the Amendment.

4. The States Assembly is being asked to approve the draft Proposition as amended. Following the Panel's review of the proposals, the Panel has concluded its support for the draft Proposition as amended by the Council of Ministers' Amendment.

Background

5. The Draft Proposition which was lodged by the Council of Ministers on 19th December 2024 proposes to revise the pre-sale and pre-let requirements so that the relevant provisions of *Property and Infrastructure Regeneration: The States of Jersey Development Company Limited* [P.73/2010] (hereafter 'P.73') do not inadvertently introduce additional development risk or delay to the delivery of future developments by the States of Jersey Development Company (hereafter the 'SoJDC').

6. P.73 setting out the requirements for structuring the planning, development and implementation of major property and associated infrastructure regeneration projects in Jersey was approved by the States Assembly in 2010.

7. P.73 includes requirements for *Managing Risk*[1] to ensure that the SoJDC can deliver on its objective of delivering projects in the most beneficial and risk averse manner. The risk management and risk mitigation provisions which followed and are set out in the Memorandum of Understanding between the SoJDC and the Minister for Treasury and Resources aim to ensure that the States of Jersey is protected from undue financial risk. P.73 includes such provisions for planning, infrastructure works, sales, pre-development costs, development, phasing, design and specification, and construction. The draft Proposition proposes to amend only the 'sales' provision by revising the wording of that provision in P.73.

8. The existing wording in P.73 for the 'sales' provision reads as follows:

   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.

9. The draft Proposition proposes to revise the wording for the 'sales' provision in P.73 as follows (effect of the draft Proposition shown in red):

   "Sales – If it is proposed that a specific development is undertaken directly by SoJDC, before committing to construction costs SoJDC will, on a residential development, have to secure a sufficient level of legally binding pre-sales in line with third party funding requirements or, on a commercial development, a sufficient level of legally binding pre-let(s)~~s~~ that, together with the unlet space, will deliver an end value of the completed building that exceeds ~~to fund~~ the costs of constructing the development ~~first phase of a scheme~~. This will remove part of the sales/letting risk of a particular development project. ~~and will ensure that there will be no financial liabilities relative to a particular development's construction costs~~."

10. As a result of a request by the Panel to amend the draft Proposition, the Council of Ministers lodged an Amendment on 11th February 2025 to the draft Proposition to further revise the wording for the 'sales' provision in P.73. Should the draft Proposition be adopted as amended, a further revision would be made to the wording to replace '*sufficient level*' with '*minimum of 25% of the Gross Development Value*', which would affect the wording as follows (effect of the Amendment shown in yellow):

    "Sales – If it is proposed that a specific development is undertaken directly by SoJDC, before committing to construction costs SoJDC will, on a residential development, have to secure a ~~sufficient level~~ minimum of 25% of the Gross Development Value as legally binding pre-sales in line with third party funding requirements or, on a commercial development, a sufficient level of legally binding pre-let(s)~~s~~ that, together with the unlet space, will deliver an end value of the completed building that exceeds ~~to fund~~ the costs of constructing the development ~~first phase of a scheme~~. This will remove part of the sales/letting risk of a particular development project. ~~and will ensure that there will be no financial liabilities relative to a particular development's construction costs~~."

[1] P.73/2010 – Pgs. 13 -15

11. The rationale for the proposed changes to the existing wording of P.73 is to ensure that the provisions of P.73 remain optimal. The Panel understands that although the existing wording for the 'sales' provision in P.73 has functioned effectively under previous economic conditions (low interest and low inflation), the wording does not reflect the current conditions where economic shifts to higher interest and increasing construction costs are occurring. Therefore, the proposed revisions aim to 'relax' the existing model provided in P.73, for ensuring financial security, to enable greater flexibility for the SoJDC to adapt to the current economic climate and to better align with lenders' requirements and market conditions. The intention is to reduce development timelines and mitigate the risks associated with prolonged pre-sales periods. The draft Proposition also recognises that unlet commercial developments (office space) and unsold residential units have value.

12. The rationale for the Amendment is to stipulate through the revised wording that '25% minimum of the gross development value' as legally binding pre-sales must be secured prior to construction commencing for residential units. The draft Proposition remains silent on the prescribed level – referencing a 'sufficient level'. The Amendment would provide a level of assurance to the States Assembly and the public that a minimum level of 25% pre-sales must be met before construction can begin.

Scrutiny of the Proposals

13. At face value, the basis for the draft Proposition in its original form appeared appropriate to the Panel in respect of the current economic climate. However, on reflection, and when considering that the proposed changes would ultimately 'relax' the provisions that were originally deemed necessary and put in place to provide the States of Jersey with financial security, the Panel wanted assurances as to what consideration was given to the effects of the proposals on the risk profile by the Minister for Treasury and Resources and the SoJDC. The Panel sought to understand how the draft Proposition was informed and whether the shift in the risk profile and financial security was assessed.

14. The Panel wrote to the Chief Minister on 7th January 2025 to request further detail on the proposals, a briefing on the draft Proposition, and for the States Assembly debate on the draft Proposition to be deferred from 4th February to 25th February 2025 to provide Scrutiny with the time required to be fully informed on the proposals. A response was received from the Minister for Treasury and Resources on 10th January 2025 to affirm the Panel's requests.

15. The Panel received an Officer-led briefing in private on 20th January 2025 and also explored the matter further during a public quarterly hearing[2] with the Minister for Treasury and Resources on 27th January 2025.

16. Considering that the SoJDC is a key stakeholder, the Panel agreed it would be pertinent to hear directly from the SoJDC on the proposed revisions to P.73 and requested a private meeting with the SoJDC's Chief Executive Officer and Chair of the Board. The meeting was held on 31st January 2025.

[2] Transcript – Minster for Treasury and Resources Pgs. 3-9

Panel's Observations

Engagement to inform the draft Proposition

17. The Panel notes that the draft Proposition was lodged by the Council of Ministers, however, the shareholder function for the SoJDC rests with the Minister for Treasury and Resources. The Panel sought to explore the process undertaken when agreeing the draft Proposition and the level of engagement that had occurred across the stakeholders including the Council of Ministers, Minister for Treasury and Resources, Regeneration Steering Group and SoJDC. The Panel also wished to determine how the draft Proposition was prompted and whether, at any stage in the process, any stakeholder had intervened.

18. The Panel heard from the Minister for Treasury and Resources about her involvement through direct discussions with the SoJDC in relation to the rationale for the proposed changes to P.73. The Minister also noted that discussions had taken place at meetings of the Regeneration Steering Group and Council of Ministers. Support for the proposals had been acknowledged by all involved. In addition, the Panel heard that the SoJDC had instigated the proposed changes being proposed by the draft Proposition.[3]

Changing risk profile and the impact thereof

19. The Panel was mindful that the draft Proposition would alter the risk profile for pre-sales and pre-lets by changing the requirements of the 'Sales' provision in P.73, which would necessarily affect the SoJDC and the States of Jersey (as the SoJDC is a SOE). However, it was unclear as to what steps had been taken by the Minister for Treasury and Resources and the SoJDC to determine the implications of the proposed changes in practice and wanted to identify whether, in preparing the draft Proposition, sufficient consideration had been given by both entities to the impact of the changes on the risk profile going forward.

20. The report to the draft Proposition notes that *whilst this pre-sale requirement exists as a risk mitigant under P.73, where third party financing is required - which is normally the case for SoJDC developments - lenders also require a level of pre-sale commitments. Similarly, the SoJDC Board has a duty to assess and mitigate risk associated with developments and will consider the level of presales to ensure the development risk is within tolerable limits for the company. The tolerable risk for both the lender and the Board may be below the level established by the P.73 requirement to ensure sufficient pre-sales to fund construction costs, having regard to the economic context of the time.*[4]

21. It appeared to the Panel that as a consequence of the proposed changes, the risk mitigation would be heavily reliant on the SoJDC Board and its lenders who would have their own risk appetite and view on appropriate thresholds to ensure the development risk remains within their tolerable limits. It was understood that the risk appetite of the SoJDC Board and lenders would be distinct, where the lenders would be primarily focused on repayments of any loans and the

[3] Transcript – Minister for Treasury and Resources Pg. 3
[4] P.88/2024

Board would have a broader perspective on the company's own risk management and financial strategy.

22. The Panel sought to understand the risk appetite of the SoJDC and of its lenders, as well as the current lending requirements for the SoJDC. This information was requested in confidence within correspondence to the Chief Minister[5]. The response noted that HSBC Bank in Jersey had provided SoJDC its property development and investment finance, to date. However, with regard to their risk appetite it was further noted that *as a lender's risk appetite is constantly changing in line with the macro and micro-economic environment prevailing at the time and in any event, may be commercially sensitive and not something that they would generally wish to share with third parties. Expressions of interest and lending appetite is only sought once a project is ready to commence construction and ultimately any lending proposal is tabled to the selected bank's Credit Committee for approval.* [6]

23. During the hearing with the Minister for Treasury and Resources the Panel explored how risk would be managed by all entities including the SoJDC, lenders and Minister for Treasury and Resources. Discussion revolved around changes to the approval process for development projects under the SoJDC. The Panel noted that as per conditions set out in P.73, developments required an elevated level of pre-sales or pre-lets before proceeding. However, the proposed changes to the wording in P.73 would shift the decision-making power primarily to the Board and lenders, adopting a more commercial approach that prioritises efficiency and reduces delays, but nonetheless reduces financial security.

24. The Panel raised concern about the potential risks to taxpayers, as the previous criteria were put in place to prevent financial liabilities for the States of Jersey.

Deputy J. Renouf:

> *My recollection is that when that was put in place, it was because of fears that investments by S.o.J.D.C., if they went wrong, could cause problems for the States as the owner of last resort, that you could end up with liabilities on the taxpayer. It is a very demanding set of criteria that are put in place before development is allowed to go ahead. This effectively is a relaxation. Are you at all concerned about the effects that that might have on the risk that the taxpayer is taking on board?*[7]

25. The Minister for Treasury and Resources acknowledged the shift in risk profile but argued that the new approach would allow quicker development while still ensuring that loans are backed by assets.

The Minister for Treasury and Resources:

> *We still need to look at what the development is as a whole, what they will be borrowing, what the terms are for the borrowing, and then for*

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[5] Letter – CSP to CM
[6] Letter – MTR to CSP
[7] Transcript – Minster for Treasury and Resources Pg. 4

the build. I mean if you are borrowing, having something sat for a long time, you may be paying fees just for having the facility available, and if you are paying fees to not draw down a facility, there could be also ... there will be a change in risk, but do we want houses built quickly for people and apartments? That is what the public really want.[8]

26. The Panel highlighted that the new financing model relied on third-party bank finance covering two-thirds of the development value. That would mean that while banks secured their loans against the assets, there would be a different risk dynamic that could have implications for both the States of Jersey and taxpayers. The Panel wanted to be assured of the measures for balancing development efficiency with financial risk management.

Deputy J. Renouf:

... Have you assessed the risk that the taxpayer is taking on? You have accepted that it is a different risk profile. Have you assessed that risk?

The Minister for Treasury and Resources:

It will be a different risk profile. It is a risk and it will be a different level of risk but I think it is appropriate. They are not going to borrow a massive sum of money and then suddenly find they have got a huge debt with nothing to sell against it. The way property development debt works ... I am sure there will be drawdown periods and it will be sold. If they are borrowing to build they will have an asset that then could be sold to pay the loan or let to pay the loan. [9]

Deputy A.F. Curtis:

That is an interesting kind of view on it, which is about who is at risk and who is going to lose out because what we understand from P.88 is that S.o.J.D.C. are looking to use third-party bank finance to two-thirds of the total development value, but that means that the bank's appetite might be well ... the value of this estate could fall by one third and I can reclaim a set of securities, which is the asset, and be left in a fine position. I guess what we are trying to ask, and I think Deputy Renouf was touching on, this is inherently a different approach to development risk and there is a risk associated both on the risk that a bank may or may not have in saying: "Well we are securing our finances against an asset" but also the board having decisions…[10]

27. The Minister for Treasury and Resources clarified that the draft Proposition would not result in development decisions sitting entirely with the SoJDC Board. She confirmed that any lending by the SoJDC would be required to come back to the Treasury for approval. The Minister emphasised that due to the shareholder relationship, the draft Proposition would not provide the Board with carte blanche for the decision making.

[8] Transcript – Minster for Treasury and Resources Pg. 5
[9] Transcript – Minster for Treasury and Resources Pg. 5
[10] Transcript – Minster for Treasury and Resources Pg. 5

28. From the Panel's meeting with the SoJDC, the Panel was assured that the SoJDC (both the executive and non-executive functions) undertake thorough internal analysis of projects and that the Board would be in a position to halt projects where the risk was seen as too high from the company's perspective.

29. Primarily, the concerns considered and expressed in this section led to the Panel's conclusion that an amendment to the draft Proposition to provide States Members and the public with further assurance of how risk would be managed was appropriate, which would be brought through the Amendment to the draft Proposition.

Risk of current market conditions

30. The Panel was also mindful of the risk in respect of the current market conditions, where development units were remaining unsold for longer periods. The Panel was cognisant of the fact that in order to mitigate the risk, a balancing act between accelerating development to meet housing needs and ensuring financial prudence to avoid unsold properties becoming a financial burden, was required.

31. The Panel explored the risks of approving developments with lower pre-sale commitments under the current market conditions, which the draft Proposition would enable at 'sufficient levels'. The Panel raised concern about the possibility of units remaining unsold, similar to what private developers were currently experiencing and questioned whether moving forward with construction without sufficient market demand could lead to financial risks for the States of Jersey.

Deputy A.F. Curtis:

> *…it was that tension you are describing between the wait for pre-lets and the impact on construction costs. But by changing this model, we are seeing an interesting housing market where there are a lot of units sitting around for an awfully long time. Do you see any risk or perceive any risk that approving a development with perhaps far less certainty that the units are desirable to the market to purchase is a risk? In essence, if you start building when you only know 10 per cent of them are allocated we could sit around, like some private developers are, with a large book of properties. How do you assess that risk? Because you mentioned almost a political comment, we want more housing. But the market shows us there is an awful lot of it.*

32. The Minister for Treasury and Resources acknowledged those concerns but differentiated between private developers and the SoJDC, emphasising that the SoJDC has different commercial imperatives. It was argued that while private developers may build without pre-sales and later face difficulties, the SoJDC has affordability obligations and structured products aimed at first-time buyers and "right-sizers."

The Minister for Treasury and Resources:

> *... S.o.J.D.C. have worked very hard in terms of structuring products and means of helping people on to the housing ladder. I think because they will not be charging they have different commercial imperatives. Yes, they have to get the money in to pay off the debt but they do not necessarily have ... they are not operating the same as a private sector.*[11]

33. The Panel inquired further, asking whether the States of Jersey might face financial concerns in the future if market conditions shifted. The Minister responded by suggesting that if units remained unsold, they could be let out by the SoJDC or even taken over by Andium Homes, the government-backed housing provider, indicating flexibility in managing potential oversupply.

34. It is the Panel's understanding that the SoJDC has no intention for speculative development and that sufficient levels of pre-sales would be targeted at a 25% minimum level prior to construction commencing for any project.

Governance process

35. The Panel sought to understand how governance would be appropriately managed by all stakeholders involved. Particularly on the part of the Minister for Treasury and Resources as shareholder representative of the SoJDC. The Panel wanted to understand the quality assurance process through the Minister's oversight function to obtain assurance as to how the appropriate balance would be achieved between financial oversight and development progress, ensuring that public funds are used wisely while advancing housing projects.

36. The Panel sought to understand the governance mechanisms in place to assess and manage risks in development projects, particularly when intervention from the Minister, Treasurer, or shareholder Officer is required. The Treasurer of the States explained that quality assurance involves expert reviews of each project, assessing key risk factors such as market demand, affordability and cost projections. Furthermore, that the Treasury works closely with the Minister for Housing and other experts to ensure that affordability targets are met and that financial assessments are accurate.

Deputy A.F. Curtis:

> *our question is back to the quality assurance and within your oversight function what is that quality assurance process for each development project related to risk for S.o.J.D.C.? When do you, as Minister or the Treasurer or shareholder officer intervene and what does that quality assurance process look like for each development?*

Treasurer of the States, Treasury and Exchequer:

> *The quality assurance is engagement and expert review of the individual project to see where, for example, some of those aspects that*

[11] Transcript – Minster for Treasury and Resources Pg. 7

you are concerned about with regard the risks of whether their demand will be there for them and it will include that, probably add to that of course. We are closely connected with our colleagues who report to the Minister for Housing. As the Minister will say, we looked at the affordability ... the number of affordable units that have to be put into any individual. One of these transactions will obviously be fed in by the Housing team, the longer-term projections in terms of housing demand obviously within that team as well. So we have access into that team. Then we also access experts in the review of those projects to understand whether we have the costs right, looking at the cost calculations for that project and also looking at the likely sales.[12]

Treasurer of the States, Treasury and Exchequer:

It might be worthwhile adding that as and when these individual projects are brought forward, once we get to the point where they are reasonably assured of the price of construction and procurement, the case comes back to, having gone through the board, the Treasury, and we commission our own review of the individual projects. That will push out whether that project is particularly risky, where there are aspects of risk that we might want to follow up with the board. [13]

37. The Panel raised a critical question about whether the oversight function would remain objective, particularly when significant public funds have already been spent, noting that there was already £4 million in expenditure for the South Hill development. The Panel questioned whether the Treasury would still make an unbiased decision to halt a project, if necessary, where substantial expenditure had already occurred.[14]

38. The Minister for Treasury and Resources confirmed that, as part of the quality assurance process, the review and reporting by an independent third-party is expected to provide objective oversight. The Treasurer also highlighted that there had been past instances, not necessarily with SoJDC, where the Treasury had issued significant challenges to project boards, which demonstrated that the review process is rigorous.

Scope of the proposals and viability

39. The Panel explored the broader impact of the draft Proposition on future developments by the SoJDC, with a particular emphasis on the South Hill project. The Panel questioned whether consideration had been given to reducing the scope of the draft Proposition to the South Hill project only, as opposed to applying it to all future SoJDC developments. It was clarified by the Minister for Treasury and Resources that while the proposed changes will initially affect the South Hill project, it was intended to improve overall development speed to reduce delays on future projects. With reference to the College Gardens development, the Minister highlighted that the length of time taken to meet the pre-sales targets under the existing model of P.73 (which was 15 months),

[12] Transcript – Minster for Treasury and Resources Pgs. 8-9
[13] Transcript – Minster for Treasury and Resources Pg. 6
[14] Transcript – Minster for Treasury and Resources Pg. 9

resulted in delays that were problematic and, should those delays be experienced in a high interest environment, it could lead to financial uncertainty and slow housing delivery.

40. The Panel questioned whether the viability of the South Hill project under the current economic climate had been assessed. The Minister emphasised that work was ongoing in that regard, however, that the SoJDC had experts to handle such evaluations.

Other Considerations

Improving measures in P.73

41. The Panel was informed that there has been a long-held view that particular measures within P.73 are, in part, poorly designed with regard to commercial developments (office accommodation), in that P.73 assigns no value to units that were not pre-let, however, clearly have a value. The draft Proposition proposes that unlet space will also deliver toward the end value of the completed building.[15]

42. The Panel understands that clarification of this element is beneficial as units which are not pre-let would have value through an ability to help service a loan through renting out those units, should such a need transpire.

Review of the Memorandum of Understanding

43. The Panel notes that the Memorandum of Understanding (MOU) between the SoJDC and the Minister for Treasury and Resources plays an integral part in setting out the governance arrangements and risk mitigation measures, which should be robust. The Panel is aware that the MOUs for all SOEs are currently under review by the Minister for Treasury and Resources with the reviews due to be completed by the end of May 2025. The Panel wishes to highlight that it has raised with the Minister for Treasury and Resources during a public hearing and in correspondence its requisite to be provided with the opportunity, in a timely manner, to scrutinise and feedback in relation to the revised MOUs of the SOEs' (including that of the SoJDC). The Panel wrote to the Minister for Treasury and Resources to further clarify its intentions on 29th January 2025[16] and received confirmation of its request[17]. The Panel wrote a further letter to the Minister on 14th February 2025[18] and at the time of presenting its Comments, the Panel was awaiting a response to that letter which was due by 21st February 2025.

Amendment

44. The Panel is supportive of the Amendment lodged by the Council of Ministers. The Amendment is a result of the Panel's scrutiny of the proposals. As a result of the evidence gathered when reviewing the draft Proposition, the Panel

[15] Transcript – Minister for Treasury and Resources – Pg.6
[16] Letter – CSP to MTR
[17] Letter – MTR to CSP
[18] Letter – CSP to MTR

received confirmation that there was no intention for speculative development by the SoJDC and that the pre-sales level would not go below the 25% level at any time. In addition, that lenders would likely expect that level of pre-sales. Therefore, the Panel understood that a 25% level of pre-sales of the gross development value would be required by both the SoJDC Board and its lenders. As such, it was the view of the Panel that a '25% minimum' legally binding pre-sales level should be stipulated within the revised wording as opposed to the wording of the draft Proposition which remained silent on the prescribed level – only referencing a 'sufficient level' and requested that the Minister for Treasury and Resources take the change forward to enhance the draft Proposition and to provide a level of assurance to the States Assembly and the public in that regard.

45. The Panel also requested that, for further transparency and to aid the States Assembly and the public in their understanding of the revisions to the wording of P.73, the comparative wording should be clearly shown within the report to the draft Proposition. The Panel is grateful that this request has also been taken forward within the Amendment, where the comparative wording can now be seen - the existing wording of P.73, the wording as revised by the draft Proposition, and as amended by the Amendment.

Conclusion

46. The Panel is grateful to the Minister for Treasury and Resources, Officers and the SoJDC for their engagement on the draft Proposition, which has assisted in informing its review of the draft Proposition and outcomes including the proposed Amendment lodged by the Council of Ministers and the Panel's Comments.

47. The Panel is mindful of the reasoning for the draft Proposition under the current economic conditions and of the potential impact should the status quo be maintained, which could potentially impact growth, material costs, labour and lead in times associated with developments by the SoJDC. Hence the rationale for establishing measures which support a model where development costs can be affirmed sooner rather than later and to help support the delivery of more viable schemes.

48. In light of the above and having carefully considered the evidence gathered in line with the draft Proposition, the Panel has concluded its support for P.88/2024 as amended by the Council of Ministers' Amendment. Moreover, it is satisfied that the proposed draft Proposition, as amended, would assist in providing a degree of assurance regarding the changing risk profile.