

4.8 Deputy J.A.N. Le Fondré of the Minister for Treasury and Resources regarding the provision of a BNP Paribas appraisal to the Corporate Services Scrutiny Panel:

Could I just say in asking the question that the position has improved since the question was lodged but it is still partially relevant but obviously because of the nature of things I have got to ask the question as lodged. The question as lodged was: why has the Minister not complied with his spoken undertaking to the States Assembly and his written undertaking to the Corporate Services Scrutiny Panel that the panel would receive an unredacted copy of the BNP Paribas appraisal under the confidentiality terms laid out in his letter of 28th April and to which the panel readily, and expeditiously, agreed? I would just note that essentially there is still an element of data that was previously requested that is still outstanding.

Senator A.J.H. Maclean (The Minister for Treasury and Resources):

The BNP Paribas report included a confidentiality clause that requires the specific permission of BNP Paribas for the report to be released. BNP agreed for the report to be released to the Corporate Services Scrutiny Panel provided the panel signed a non-disclosure agreement, an N.D.A. At a public hearing on 15th May 2015, I confirmed that I would release the report provided the panel signed this N.D.A. The States of Jersey Development Company provided an N.D.A. for the panel to sign which it refused to do so. The panel subsequently provided its own draft of an N.D.A. that was unenforceable. S.o.J.D.C. (States of Jersey Development Company) has met with the panel and had a second version of the N.D.A. that it hoped would be more acceptable. The panel unfortunately refused to read the revised version stating that as a parliamentary body it did not have to sign an N.D.A. I have made it clear that I would be happy to release this document, which is not our document, it is a document that was provided by S.o.J.D.C., commissioned by them, provided an N.D.A. was signed by the panel, specifically because of the involvement of a third party. However, I am, as the panel chairman has said, pleased to say that the panel signed the N.D.A. yesterday and the report was duly delivered and the panel now have it.

4.8.1 Deputy J.A.N. Le Fondré:

Two part question. Firstly, could the Minister clarify approximately when his department received the BNP appraisal in an unredacted form? Secondly, when will the Minister complete the outstanding element of the information that we have requested and can it be within the next 2 days?

Senator A.J.H. Maclean:

As far as I am aware the department received a copy of the report ... the Treasurer received a copy of the report in February of this year. I am not sure what additional information the chairman is referring to. Perhaps he could allude to that. I am obviously always very happy to co-operate as much as possible but I am not aware of what is outstanding.

4.8.2 Deputy J.A.N. Le Fondré:

If I can come in. We are just waiting for some assumptions that were requested which are associated with the report.

The Bailiff:

Are you able to answer?

Senator A.J.H. Maclean:

I will have a look at that and providing it is possible to supply those, I assume under a similar arrangement with an N.D.A., then they will be supplied. If there is any variation to that I will let the chairman know straightaway.

4.8.3 The Connétable of St. John:

As you received the unredacted report in February why was there such a delay in delivering it to the panel?

Senator A.J.H. Maclean:

For the reasons that I have already stated. There was an N.D.A. There was a requirement because of confidential data within the report for that to be signed. As I have pointed out, it is not actually our report. It is a report that was commissioned by the States of Jersey Development Company and involves a third party.

4.8.4 The Connétable of St. John:

The request for a non-disclosure document to be signed by members of the panel was advised against because it was setting a precedent for other panels. We were more than willing to sign and agree to the process that is laid down within this Assembly and within the Scrutiny process. We were being asked to be personally liable and go beyond what is accepted and the advice we received from the States Greffier was that we should not proceed on that basis. Can you confirm that ultimately what was provided was provided under the normal procedures that panels abide by?

Senator A.J.H. Maclean:

The Constable raises a very important point. Yes, the N.D.A. that was provided was a particularly tight, commercial N.D.A. to protect commercially sensitive information. The reason for that, it happens typically in the commercial world, is for the reasons stated: to ensure that that sensitive information does not get into the wrong hands and would therefore, if it had, disadvantaged significantly S.o.J.D.C., which is a company, as Members know, that the public of Jersey own. That was a very difficult balance that I had to strike. With regard to the revised version of the N.D.A., that was watered-down to try and accommodate some of the concerns about personal liability. I accept that that was probably a bridge too far. There have been N.D.A.s signed in the past. At the time the McKinsey work was carried out an N.D.A. was signed by the then Scrutiny Panel and the sensitivity with S.o.J.D.C. is that some of that sensitive information about our critically important financial services industry found its way into the public domain, and that is why there has been so much sensitivity. I am pleased to say that there is not ... although the panel have now signed the N.D.A. that they have it is not necessarily as watertight, certainly as I would like to see it, or indeed S.o.J.D.C. would like, for the protection of all parties and I think this is a matter that needs to be taken up. I would add - I realise this is a long answer - that there is a code between the Council of Minister and Scrutiny which is still yet to be signed and a matter such as dealing with confidential issues and N.D.A.s is something that absolutely must be clarified. We cannot go on like this. The time to deliver this was too long. I want to help Scrutiny. I will do everything I can but there are commercially sensitive issues here and we need to be able to manage this better.

4.8.5 Deputy M. Tadier:

I do not know if I am the only one outraged to hear even that it was suggested that parliamentarians who are doing a Scrutiny function, a job and a function of this Assembly in the public interest, were even asked to be made personally liable for their States work. It drives a horse and carriage through the long-founded democratic principles of parliamentary privilege. That in itself should be shocking to most Members and indeed the public. Does the Minister acknowledge that this is one of the problems about the States getting involved in speculation, which is normally done by the private sector, especially when there are tensions because Government is supposed to be accountable yet commercial sensitivity dictates the need for the opposite of that? Will the Minister perhaps answer whether he is comfortable, even with a quango being set up, which appears to be increasingly politically unaccountable to the Assembly and the public about the problems of this mechanism?

Senator A.J.H. Maclean:

As I think I have alluded to, there is clearly a concern around the passing of confidential data between third parties, external bodies that are owned by the States, and Scrutiny Panels or other areas of government for that matter that have a legitimate role to play. I would just pick up a point the Deputy made, and that was around speculation. This is not speculation. There is risk involved, as I have made clear with regard to the Jersey International Finance Centre. Of course any form of activity virtually has some form of risk but what this Assembly sought to do at the time that it set up S.o.J.D.C. was to mitigate that risk. I am sure later today we will go into a lot more around the ways in which that has been achieved. Risk has been mitigated but we do, as I said before, need to have an effective and clear mechanism between the Executive and Scrutiny as to how to deal with confidential measures. It is not appropriate that we are batting backwards and forwards trying to agree the appropriate and effective wording for protecting confidential data in this way.

4.8.6 Deputy M. Tadier:

But will the Minister acknowledge that there is a democratic deficit when we have instances like this where there are long delays with parliamentarians trying to do their job in Scrutiny and we also have an S.o.J.D.C., a States set-up body, which refuses to abide by undertakings given by former Ministers for Treasury and Resources in this Assembly when those policies have not been changed? We have a completely unaccountable S.o.J.D.C. and will he take them to task? If not, will he ultimately take political responsibility for these failing policies?

Senator A.J.H. Maclean:

I do not quite understand where Deputy Tadier draws his conclusions from? S.o.J.D.C. are not acting against the requests and directions of either the Minister for Treasury and Resources or this Assembly for that matter, which gave clear directions. I have dealt in the past, in recent times in fact, with the comments relating to 200,000 square feet of the International Finance Centre and comments made by my predecessor in that regard. I think unfortunately the Senator made a mistake when he made a comment. He was being heavily questioned at the time and he made a comment that was outdated and related to the Harcourt development some years before that. It has since been clarified indeed in this Assembly with the approval in 2010 of P.73 which made it absolutely clear there was a change and indeed a change to the phasing of the development itself, which was introduced by the Minister for Planning and Environment at the time in 2011.

[10:30]

This is now a phased approach and 200,000 square feet is historic. I regret, as I am sure my predecessor did, that unfortunately he made a comment in this Assembly which some have been grasping hold of. It was a mistake.

4.8.7 Deputy S.M. Brée of St. Clement:

Since receiving the BNP Paribas report in February has the Minister taken any appropriately qualified independent advice, other than that received from S.o.J.D.C., in order to have carried out due diligence in assessing the BNP Paribas appraisal upon which he has set so much store as to the returns to be generated by the Jersey International Finance Centre?

Senator A.J.H. Maclean:

First of all, I would say that I would not describe it as the fact that I have set out so much store on the value of the return based on the BNP report. The BNP report is a development appraisal. It was commissioned by S.o.J.D.C. at the direction of their board, who are highly experienced in property development, to look at the development, to look at the first phase. That is the 6 buildings on the car park. That appraisal came up with a very positive outcome. However it was done at the request of S.o.J.D.C. It is useful and the board certainly found it valuable. It is not for me to second guess as to whether it is right necessarily or wrong. It has been assessed internally. We have had a look internally at it and officers have advised. But I think the most important factor, certainly with regard to mitigating risk on the Jersey International Finance Centre development, it is

about the fact that it is a phased approach now, building 4 has been approved, as Members know, as well as a couple of other buildings through the planning process. Most importantly, a lease has now been signed - a legally binding lease - and in order for the funding ... S.o.J.D.C. are an independent company. They have to go for bank funding. There is absolutely no public money at risk here. If I can just emphasise that point: they have gone for bank funding and the bank are securing their loan on that particular building. I have to say they have been quite naturally doing their own due diligence. They have carried out their own independent valuation, which I understand is a Red Book valuation, which great store is held in, and that valuation has shown, even if no further tenants are found, this building is worth, when complete, in excess of the money being borrowed. I think that is a very sensible and good and strong position and that is exactly the type of position that this Assembly instructed the S.o.J.D.C., with the approval of P.73, to undertake and Treasury are managing that.

4.8.8 Deputy J.A.N. Le Fondré:

May I go for a point of clarification? I do have a supplementary question later. The Minister just made reference to the fact there was a Red Book evaluation done. Is that different to the BNP appraisal?

Senator A.J.H. Maclean:

Yes. I went on from the BNP appraisal to refer to the fact that before the lease could be signed and agreed obviously funding had to be put in place. Funding was agreed by a bank. S.o.J.D.C. have to go independently to get funding. They went to the bank and the bank, quite naturally, undertook its own due diligence. They had their own independent valuation in order to achieve that and that is what I was laterally referring to.

4.8.9 Deputy J.A.N. Le Fondré:

Picking up on an earlier comment - I thank the Minister for his most recent observation - can the Minister assure the Assembly that he and his officers, basically in the role of shareholder representative on our behalf, have examined the figures, I am going to say in the BNP appraisal, thoroughly and have full confidence that a return in the order of £50 million to £55 million will be made from the Jersey International Finance Centre?

Senator A.J.H. Maclean:

Officers and many others have looked at this BNP report. They have come up with assessments of what the return is going to be. The best return estimate at the current time is £50 million. That is based on what appears to be perfectly reasonable assumptions. Obviously time will pass. We will continue to keep an eye on this and review it as time goes by. The most important point is that for this development, which is fantastic for Jersey in supporting the Jersey economy and jobs in our finance industry, it is absolutely critical that the right office space is provided and that a phased approach is taken in order to de-risk the development, and that is exactly what is happening. So buildings will not start until legally binding leases are in place, and that is what is happening with building number 4. We should be celebrating the fact that **[Approbation]** UBS have the confidence in Jersey to sign this lease, to be the first. The most difficult thing of all in any new development is being the first. They have taken that decision and I think it should be celebrated and I think there will be little doubt there will be more to follow. I think that is really encouraging news for Jersey and the economy and it shows we are beginning to turn the corner, hopefully.