

STATES OF JERSEY



ST. AUBIN'S HARBOUR, ST. BRELADE: LEASE OF AN AREA OF LAND TO ALCORA LIMITED (P.108/2004) – COMMENTS

**Presented to the States on 22nd June 2004
by the Harbours and Airport Committee**

STATES GREFFE

COMMENTS

The Report attached to the Proposition raises two issues only, namely –

- (a) there is little information available to States members;
- (b) the development would interfere with the proposed reclamation scheme to the East of the harbours.

On the first issue the lease has been approved through proper process and in accordance with States Standing Orders as approved by the States. The claim that there has been little information provided is refuted. Discussions have been ongoing since 2002, notices have been published in accordance with procedures in the Jersey Evening Post, there have been a significant number of media reports and public meetings have been held in the St. Brelade Parish Hall. In addition, the President, Members and officers of the Committee are always available to provide information to members.

There is no question of this development compromising the proposed reclamation scheme. In fact, exactly the opposite is true. The new building will be further away from the reclamation site with a new access road provided and funded by the developer.

The Harbours and Airport Committee and the Finance and Economics Committee have approved the proposed lease. Members should be aware of the risk that the interested party could opt to commence legal proceedings if the delegated authority is overridden. Notwithstanding the fact that a lease has not been executed, the prospective lessee could argue that correspondence to date may be construed as an agreement to enter into a lease. We do not express a view on the legal merits of any such claim, merely that such claim may be brought.

The above deals with the points raised in the report of the Deputy of St. John, but in order to reassure members the process which resulted in agreeing this lease is as follows.

Background

Battrick's Boatyard Limited entered into a lease with the Public, authorised by an Act of the States dated 17th February 1970. It was to be for 2 consecutive periods of 21 years ending on 25th March 2012. The object of the lease was to allow the company to use the land for the building of a boat shed for the repair of yachts and marine engineering. The lease does not expressly forbid additional or alternative use, but has been considered implicit.

In the spring of 2002 the company owner, Mr. Walter Battrick, approached the Harbours and Airport Committee with a request to demolish the boat shed and replace it with a restaurant and bar. He explained that he and his wife were past normal retirement age and that the marine trading business in the area had significantly declined as it was now centred in St. Helier Harbour following the creation of the Boat Park and Boat Hoist Dock, including the creation and construction of 4 new marine trader premises in the area on public land.

The Committee first deferred its decision until there was evidence for the need for marine trader premises on the site. Thus tentative enquiries were made and an advertisement was placed by Estate Agents for a 3-week period at the end of May 2002. This produced little or no marine trader interest. Thus the Harbours and Airport Committee, following further presentations from the company wishing to develop the restaurant, agreed to allow it to seek an indication from the Planning and Environment Committee, as to whether an alternative use of the area would be acceptable.

Since 2002 until April 2004, discussions and negotiations with Harbours and Planning regarding the change of use and acceptable building design have been undertaken at considerable time and expense.

The Harbours and Airport Committee have, after lengthy considerations, taken the view that, whilst it may be possible to re-establish a marine trader on the site, should the current company not agree to assign its lease or wait the termination until 2012, it would not overall help St. Aubin's Harbour to cover its general running costs, nor provide the opportunity to offset the Committee's considerable exposure to having to fund the repairs of the North Quay. It is estimated that these repairs are needed within the next 3 years. Already the pier is restricted for use by

the mobile crane and if repairs are not carried out will be unsafe for any form of parking in the near term future. The creation of the reclamation scheme will considerably strengthen the integrity of the quay.

There has been consideration given to the loss of on-pier boat parking and the opportunities it presented to marine traders in St. Aubin. The new development would mean a loss of about 10 boat spaces out of approximately 30 on the North Pier. However, except for 2, these were mainly organised by Battrick's. There will in future be only 2 active marine traders left in St. Aubin. Both have interests in St. Helier Harbour, having bought trade berths, one rents premises on the Victoria Pier and services customers in the La Collette Boat Park. This company is also recognised as next on the list for a self-funded unit in La Collette, in order to be closer to the hub of the marine leisure business.

The income from St. Aubin's Harbour barely covers the maintenance costs. The Harbour has to be dredged every 10 years. The last exercise cost £107,000 in 1998 and will need to be done again in 2008. The current boatyard lease relates to a rate of 71p per square foot and an annual income until 2012 of around £1,700 per year. Clearly a restaurant and bar which has the support of the Tourism Board is attractive to the industry and local people alike. Producing an income of £30,000 p.a. and subject to market reviews, will mean that the Harbour should no longer require subsidy from the Jersey Harbours' main income streams and can look forward to a sustainable future. Furthermore, as mentioned, new marine traders' premises have been created in St. Helier Harbour, including a £1 million boat dock paid for by the Public and a number of marine traders' premises are already recognised as being subsidised in their rental being 37% below open market values. The Committee therefore feels it is playing its part in encouraging and developing the Marine Leisure Industry.

The heads of terms of the lease are as follows –

LESSOR:	Harbours and Airport Committee on behalf of the Public of the Island.
LESSEE:	Alcora Limited.
DEMISED PREMISES:	5,500 square feet, subject to final survey as shown on the attached drawing.
TERM:	99 years commencing 1st July 2004.
OBJECT OF THE LEASE:	<p>The intention is to allow the surrender of the present lease and to grant the ground lease in order for the tenant to demolish the existing structures, make good and construct a restaurant/bar within one year of Planning approval and in any event, within 5 years of granting the Lease.</p> <p>The Development is to be a facility providing catering services to yachtsmen and the general public as agreed and in accordance with Planning Permit No. P/2003/2050.</p>
TERMINATION:	At the termination of the Lease howsoever caused, the tenant will give up possession of the demised premises including any additions thereto.
RENTAL AND REVIEW:	The guaranteed rental will be a rate of £1.00 per square foot at commencement, replaced by a guaranteed sum of £30,000 per year, commencing from the date of commission and subject to review in accordance with the open market after 8 years from commencement and thereafter at 7-year intervals in accordance with the

open market.

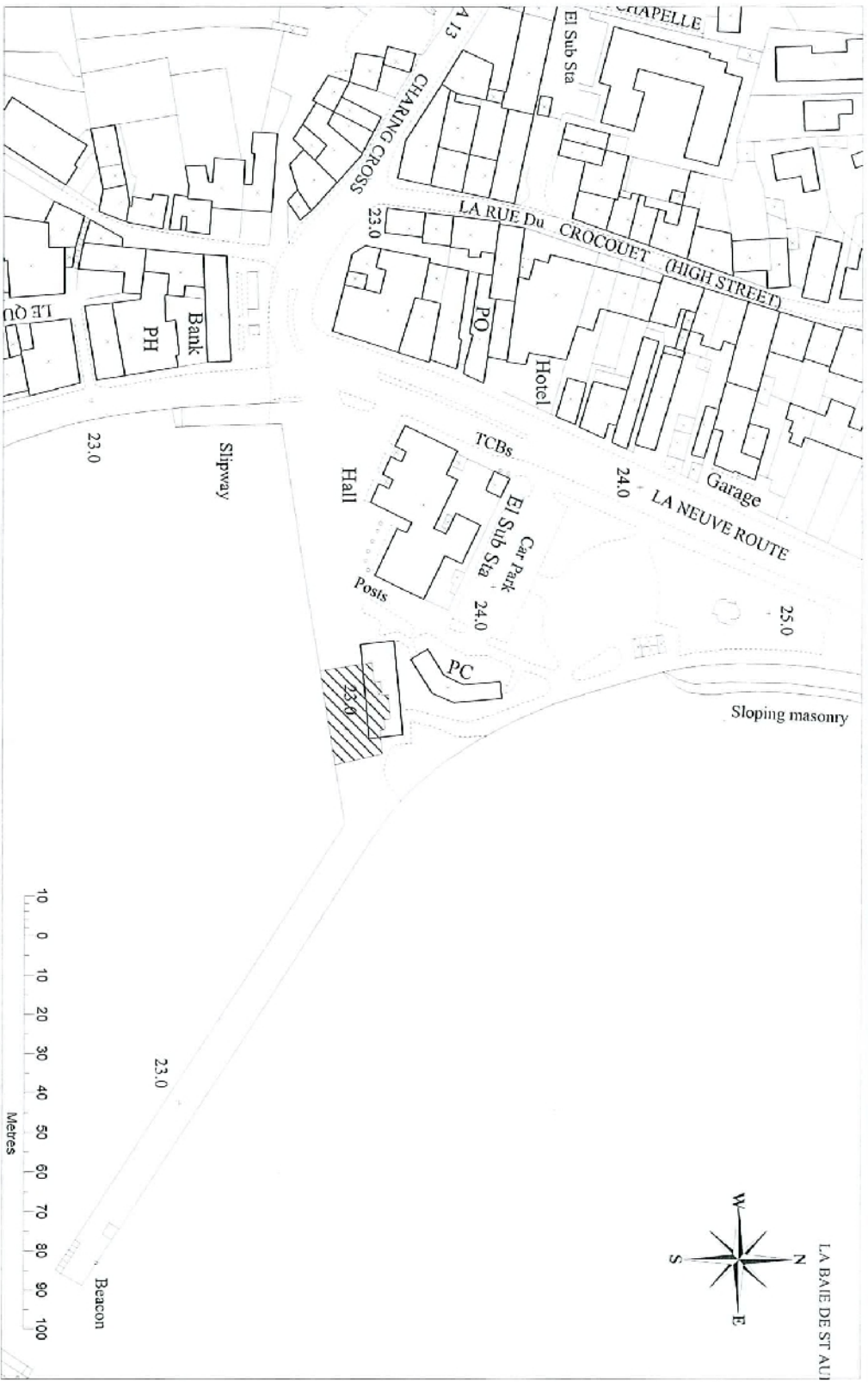
- USE:** To be used only for the construction of a restaurant and bar. Associated car parking as agreed by the Harbourmaster from time to time.
- COMPLIANCE:** Conditions of the Harbours (Administration) (Jersey) Law 1961 and all directions given by the Harbours and Airport Committee and/or the Harbourmaster, pursuant to the Law and all Regulations made under it.
- ALIENATION:** Assignment or sub-letting not to be unreasonably withheld but the assignee or sub-tenant to be of at least the same covenant strength as the guarantor.
- INSURANCE:** The tenant is to maintain in force a building insurance policy approved by the Lessor, to include full reinstatement of the demised premises and 2 years' loss of rental.
- The tenant shall also maintain in force a public liability policy of not less than £5 million in respect of any one occurrence or such other sum as the Lessors' insurance company from time to time reasonably requires.
- GUARANTOR:** In consideration of the granting of the Lease to the Lessee by the Lessor, the guarantor guarantees payments of all sums due and payable to the Lessor by virtue of the Lease.
- LEGAL COSTS:** The Lessee to pay all reasonable legal costs incurred by the Lessor in relation to the drafting and passing of this Lease.
- CONDITION OF WORKS:** The Lessee shall agree to either reimburse the Public for all the works associated with re-routing of the quay access road to its current capacity and in accordance with Planning permission or agrees to undertake the said works themselves, in agreement to the satisfaction of the relevant public authorities.
- The Lessee also indemnifies the Public in relation to all works carried out on the quay and will reinstate to the satisfaction of the Lessor, the Pier on which the development will take place.
- The Lessee acknowledges that the quay is subject to subsidence and will indemnify the Lessor from any claim in this connection and make the appropriate design and building provisions.

The lease also contains the "Public Interest" clause whereby the premises can be returned to the Public.

Recommendation

It is recommended that the States support the Harbours and Airport Committee, The Planning and Environment

Committee and the Finance and Economics Committee by rejecting this Proposition.



Drawing No:

166712

Alcora Limited Approximate position of new building

Boundary Information Supplied by the States of Jersey Planning Office, but no responsibility can be accepted for error.



**COPYRIGHT
PLANNING & ENVIRONMENT
COMMITTEE**