

**WRITTEN QUESTION TO THE CHIEF MINISTER FOR BY
DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT**

ANSWER TO BE TABLED ON TUESDAY 17th JUNE 2008

Question

- (1) Would the Chief Minister confirm the following regarding the documents released by WEB to members at the States sitting on Thursday 5th June:-

Answer

The debate on the Masterplan was just that. It was not a debate intended to validate the current deal that is in course of negotiation with Harcourt. The reason the terms were explained to Members was to assure them that the Masterplan produced a commercially viable scheme which would actually increase the return and benefit to the public.

There appears to be some misperception that once the states had agreed the Masterplan and the land transfers WEB would immediately proceed to conclude the development agreement with Harcourt. That is not the case, it was always intended that prior to finalising the legal agreement there would be an updated series of due diligence which would include a final financial appraisal, the conclusion of bank guarantees and a legal appraisal of any outstanding issues, which includes any court cases.

Once the States agreed the proposition these actions were initiated by WEB. In order to respond appropriately to the rescindment motion it is intended that these actions will be completed before 1st July. The outcome will be shared with States Members. I now turn to the detailed questions.

Question

- (a) When were the documents presented to the Directors of WEB for consideration?

Answer

2nd October 2007

Question

- (b) Which WEB Directors were present at the meeting when the documents were discussed?

Answer

F.G. Voisin
Senator P. Routier
Senator Perchard
Deputy J. Huet
Jurat J. Tibbo
S. Izatt

Question

- (c) Were they discussed at more than one Directors' meeting?

Answer

No

Question

(d) What was the outcome of the Directors' deliberations?

Answer

To quote from the minutes of the WEB Board Meeting on 2nd October 2007:

“The Board discussed the PwC Financial Capacity Audit which was circulated with the Board papers. It was agreed that this was a satisfactory report and was carried out as a due diligence exercise to give comfort to the Board of the financial standing of Harcourt”.

Question

(e) Will he release the relevant minutes to States Members?

Answer

Extract provided above

Question

(f) How did the Directors of WEB propose to mitigate the risks outlined in those documents?

Answer

The heads of terms entered into with Harcourt Developments Limited on 19th July 2007 in respect of the proposed transaction provide for the Developer to procure a bank/insurance guarantee in respect of its obligations under the Development Agreement as follows:

“The Developer will be required to procure the giving to WEB of a guarantee in respect of the Developer's obligations under the Development Agreement to make the payments referred to in paragraphs 8.2, 8.3 and 8.4 [which total £50 million] together with £45 million in respect of the cost of establishing the Road System, the Guarantee to be given by a bank or by an insurance company which is acceptable to WEB and to be in terms acceptable to WEB.”

The Directors were of the view that the provision of a bank/insurance company guarantee was the most appropriate and secure way to mitigate any risk posed by the financial standing of Harcourt Developments Limited.

Question

(g) Did the Directors instruct the extra work suggested by PwC? If so can he release those reports or documents to States Members?

Answer

No. WEB did not know when the Development Agreement would be available for completion and will, prior to signing the Development Agreement with Harcourt, be seeking a due diligence update to be undertaken by PwC.

Currently the Development Agreement is in draft form and negotiations continue between lawyers acting for the parties.

Question

(h) Were the documents presented to the Council of Ministers? If so when? If not why not?

Answer

Both documents were produced on a confidential basis and were provided solely for the private use and benefit of WEB. These documents were not presented to the Council of Ministers.

Question

(i) If so, what was the conclusion of the Council of Ministers deliberations? Which Ministers were present at that particular meeting?

Answer

N/A

Question

(j) When were the documents presented to the Chief Minister and the Minister for Treasury and Resources?

Answer

These documents were not prior to 5th June 2008 presented to the Chief Minister and/or the Treasury and Resources Minister.

(2) Would the Chief Minister further advise:

(i) when, and by whom, he was first made aware of disagreements between Harcourt and its partner in Las Vegas;

Answer

Deputy Sean Power on 19th May 2008

Question

(ii) when, and by whom, he was first made aware that a lawsuit had been filed against Harcourt in Las Vegas;

Answer

Pat Power on the afternoon of 5th June 2008. Prior to the afternoon of 5th June 2008, Pat Power had confirmed by email on 20th May as follows:-

From: Pat Power [mailto:patpower@harcourthouse.com]

Sent: 20 May 2008 18:37

To: f.walker@gov.je

Cc: Stephen Izatt

Subject:

Dear Frank

I refer to your recent e-mail to Stephen Izatt in respect of a recent article in the press.

This is a mixed residential/commercial scheme, on the outskirts of Las Vegas that we were proposing to develop in conjunction with local partners. Harcourt have provided all the finance and the partners were to manage the scheme.

When over time it became apparent that the partners had very little experience of development, it was amicably agreed that Harcourt would take over the construction related aspects. From the summer of 2006 we have financed every aspect of the development at the same time expressing our concerns at the sheer scale of the marketing costs, in what was an increasingly difficult market. Our attempts to curtail marketing and overheads met with such stout resistance that ultimately realising that our partners' main concern was not the scheme. Their main focus was their overhead. In the light of the ever tightening of the US market, we called a halt to all further expenditure.

To our surprise, rather than discuss this with us, they made a series of defamatory and false press announcements.

The complaint to date has not been served on our Nevada subsidiary and it cannot be served on Harcourt Developments Ltd or any other Irish entities as they are not parties to the agreement and are outside of the jurisdiction.

Other than excavation which was a no cost arrangement, no contract for construction has been placed. We now intend to mothball the scheme until market conditions dictate otherwise.

Our Nevada attorney has strongly advised against any press release or to putting any comment directly or indirectly into the public domain until he files his response and counter claim (assuming they file a motion). We would therefore request that you keep the above information confidential.

Should you require clarification on any particular aspect please let me know.

Regards

PAT

*Patrick Power
Director
Harcourt Developments
18/19 Harcourt Street
Dublin 2.*

Pat Power did not update WEB or the Chief Minister following this email.

Question

- (iii) who was responsible for monitoring the situation once it was known a disagreement existed between Harcourt and its partner;

Answer

It was envisaged that the detailed terms of any outstanding litigation would be ascertained as part of the updated due diligence exercise previously referred to. In addition it should be noted that the signed Heads of Terms with Harcourt Developments Limited for the Esplanade Quarter provide at paragraph 7.18 that:

“the Developer will be obliged to keep WEB informed of all material matters relating to the Development and such other matters as WEB may require..”.

WEB therefore retains the right to require the Developer to keep WEB updated of such matters.

Question

- (iv) whether he can assure members that no further action towards an agreement with Harcourt will be made until up-to-date information regarding the company is made available to members;

Answer

I can assure Members that no development agreement will be entered into with Harcourt until an up-to-date due diligence confirms the company is in a financial position to deliver the Esplanade Quarter development project. Furthermore, no lease will be entered into until guarantees from an independent bank or insurance company are in place. It has always been intended to set up such guarantees, and it remains the intention. I will ensure that States members will be kept informed of the results of the due diligence.

Question

(v) whether, in view of the seriousness of the situation, he will now bring the matter back before the States for further debate?

Answer

The Council of Ministers is investigating the questions raised about the Waterfront Enterprise Board, and a full report on this and all related matters will be presented to the States to allow them to judge the merit of the propositions on the board of WEB and the rescindment of the Masterplan. The Council of Ministers need answers to these questions just as do States members and the general public.