

STATES OF JERSEY



WATERFRONT ENTERPRISE BOARD LIMITED: DISSOLUTION (P.33/2003) – COMMENTS

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

STATES GREFFE

COMMENTS

1. The States established the Waterfront Enterprise Board (WEB) Limited in February 1996, as a separate legal entity to act as a development agency of the States, for an initial 10-year period. In so doing, the States agreed [inter-alia] that *in the exercise of their powers of management of the Company, the Directors would have regard to the objectives for which the Company was established, namely –*
 - *To promote, co-ordinate and implement a comprehensive strategy for the development of the St. Helier Waterfront area (as defined by figure 1 shown in Projet P.123/92 of the Island Development Committee lodged au Greffe on 18th August 1992 (the “Waterfront”) – but as since superseded).*
 - *To exercise administrative control over the use of the land and the adjacent shore and water areas in the Waterfront and to liaise and consult with all relevant committees of the States of Jersey and other governmental and regulatory authorities in relation to investment in infrastructure projects in and development of the Waterfront.*
2. Since February 1996 successive Boards have strived continually to meet these objectives. Setting aside that some individual Directors have not completed their terms of office, there have to date been 2 successive Boards covering the period from 1996 to 2000 and 2000 to 2003. In all that time the States has considered and appointed States members and non-States members as Directors and, in taking its duty seriously and acting in a most responsible manner, has appointed people of considerable integrity, expertise and experience.
3. The Committee sees Projet P.33/2003 as an attempt to try to exert totally inappropriate influence over the progress of WEB – an independent company wholly owned by the States, overseen by 2 of the most senior States Committees and which is, of course, subject to all laws and normal planning and licensing constraints.
4. The alternative arrangement proposed by Senator Syvret is not defined – nor is it even outlined. Nor are any of the potentially large costs to the Public, of taking the actions proposed, quantified or commented upon.
5. From the foregoing it will be clear that the Committee opposes what is proposed in P.33/2003 and the following paragraphs explain why it recommends to the States that it should reject the proposition.

The Report

6. Senator Syvret cites 3 main aims, but referred to as ‘reasons’, in his report in support of his proposition being brought forward now.

The termination of the Waterfront Enterprise Board

7. In support of this ‘aim’ the Senator uses emotive sentences which are unsubstantiated by any clear evidence and upon which the Committee comments as follows –

‘When this QUANGO was established a number of fears were expressed that it would not produce a balanced, cohesive development that met the needs of the community. So it has come to pass.’
8. The Committee acknowledges that a number of such fears were expressed in 1995. However, it also remains clear that such concerns were voiced by comparatively few and the States agreed to establish WEB by a large majority of 42 votes to 8.
9. The Policy and Resources Committee maintains that, in reality and despite many challenges and setbacks over the years, WEB has done exactly what it was directed to do by the States. Despite the views of those

who would suggest it has been a failure, it is clearly a success story. If this was not so, why would so many Islanders young and old enjoy on a daily basis the many indoor and outdoor facilities which now exist?

10. In April this year it was confirmed that the 2 fast-food restaurants were serving approximately 11,000 customers per week, the Health Club membership stood at 2,100, the Chicago Rock Café which holds 550 persons and ‘The Bar’ were trading to capacity on busy nights – with the Chicago Rock Café enjoying the best food sales of any of their 70 U.K. outlets and, Cine-U.K. were reporting that their new Cineworld cinema was enjoying steady growth and the highest spend per head among all their 30 cinemas. WEB has recently reported that as the tourist season has commenced, The Waterfront Centre has been successful in adding to its extensive customer base and has provided facilities for a significant numbers of visitors to the Island with the result that trade in all venues is significantly up on that reported in April. Further increases in popularity and trade in all venues are expected to result from the soon to be opened ‘AquaSplash’ leisure pool.

11. To date, WEB has delivered around £10 million of engineering infrastructure works which has turned the St. Helier Waterfront (West of Albert) from an exhausted waste disposal site into many hectares of highly valuable, developable land which will re-connect the town with its Waterfront; a key, long-held community and tourism objective for the Island. All of these directly controlled works once started have been completed on time and to budget.

- Maritime House, the new Harbours and Airport Committee headquarters;
- Le Frégate seafront restaurant;
- Les Jardins de la Mer public gardens;
- La Collette boat hoist facility.

For a total public investment of around £20 million, land and assets of approximately £25 million have been created. The net asset gain as a result of WEB’s activities so far is therefore around £5.0 million. To this must be added the potential that now exists for the States to save a further £20 million or so in land and other costs, required to deliver States’ public buildings and items of social infrastructure on the St. Helier Waterfront site, such as the Transportation Centre and Police H.Q. etc, for which sites would otherwise have to be purchased on the open market.

12. This has been delivered by a WEB executive team of 2 with one full-time administrative assistant, and by any measurable standards, this indicates an efficient and effective organisation.

13. *‘The WEB experiment has proven to be a failure. The time has come to replace WEB with a more community-oriented means of determining the future of the rest of the area.’*

14. The notion that the setting up of WEB has in some way been an ‘experiment’ is refuted by the Committee. It is true that its establishment was a new departure for Jersey and that it was set up initially only for a period of 10 years. In 1996 it was indeed a ‘prototype’ which has now developed into being a fully-fledged company with statutory responsibilities and powers and it is charged with bringing – and is delivering – a major community project to fruition.

15. The use of an arms-length limited company, wholly owned by the public, but without planning powers, created to ring-fence risk, enable borrowing, minimise public sector administrative hurdles and attract professional staff capable of engaging the public in commercial partnerships and co-investment with the private sector, is a well recognised approach to the delivery of urban regeneration and the development of public assets in the U.K. and elsewhere. In fact it is the ‘norm’.

16. Senator Syvret does not define what he means by *‘a more community-oriented means of determining the future of the rest of the area’*. The Committee maintains that the establishment of WEB was agreed by the

States in 1995, following very wide consultation at the time and a with a resounding majority vote in favour. WEB was established *to promote, co-ordinate and implement a comprehensive strategy for the development of the St. Helier Waterfront area... and to consult with all relevant committees of the States of Jersey and other governmental and regulatory authorities in relation to investment in infrastructure projects in and development of the Waterfront.* The Committee acknowledges that the word ‘community’ could have been inserted after the word ‘governmental’ but believes that, in reality, such an insertion was not an issue at the time and that it would have made no difference at all to the end result as WEB have consistently and repeatedly consulted with and included many of the wishes of relevant community bodies throughout its existence.

17. Senator Syvret suggests that *‘The waterfront developments are in the main, an aesthetic nightmare’*. This is a personal view to which the Senator is entitled. Until very recently, WEB’s work has been largely infrastructure and only in the last 18 months have any substantial buildings been occupied. At present, the main buildings which are completed or are nearing completion are relatively plain functional buildings serving quite specific purposes. They are buildings which will eventually form part of a much larger whole, where these functional structures will blend in with more ‘iconic’ structures, landmark features and open spaces.
18. The leisure building is the only substantial building delivered so far without a design competition. Maritime house and the Albert Pier housing scheme were both the result of a full, public design competitions. Some say that the cinema element of the leisure scheme is too functional in appearance and this comment is being considered by WEB as it determines the next developer selection process. Advice in managing the developer led design process is being taken by WEB from The Commission for Architecture and the Built Environment (CABE) in the U.K. These issues are taken seriously by WEB and will continue to be discussed with Planning.
19. The Committee therefore holds to the expectation that the whole will be better than the sum of the individual parts and commends this longer term view to others.

Saving the Island Site

20. *‘The Island site represents one of the last significant development opportunities in the waterfront zone. This is our last chance to save it from the same fate that has befallen most of the rest of the areas under the control of WEB. Steam clocks, pubs, fast food joints, and buildings that may as well be in Basingstoke.’*
21. The Committee agrees that the Island Site is indeed one of the last significant development opportunities in the ‘waterfront zone’. However, the Committee is confident that Senator Syvret’s implication that WEB will just be able to do anything its wants to the Island Site will be seen as incorrect.
 - A large part of the site is already protected from inappropriate development by being registered as a Site of Special Interest.
 - The States has decided that the new transport centre will be based there.
 - WEB is continuing to liaise with relevant authorities and groups and remains fully alive to the need to consider including community facilities where appropriate.
 - WEB are only at the stage of selecting a development partner and a scheme has yet to be developed.
 - Any scheme has to comply with the States approved policies contained within the Island Plan.
 - Any proposals for licensed premises will have to be approved by the relevant licensing authorities.

- Any scheme proposals will have to be made public for consultation purposes.
 - The Environment and Public Services Committee has, in planning terms, to approve in detail how the development proceeds and what eventually goes on the site.
 - The Finance and Economics Committee has to approve whatever financial arrangements are entered into, not only between WEB and any developer but between WEB and any ultimate lessee or concessionaire.
22. It should, of course be noted that All developments undertaken by WEB involve the combined scrutiny of –
- the WEB Board of 7 people; which consists of 3 State's Directors, 3 nonStates Directors - all of whom are appointed by the States, plus the Managing Director;
 - the Environment and Public Services Committee;
 - the Public and relevant community and other organisations;
 - the Finance and Economics Committee;
 - the Parish of St. Helier Licensing Authorities.
23. *'It is a virtually unmitigated disaster. Do we want the same approach to ruin the Island site? The public certainly do not.'*
24. At this point the Committee takes serious issue with the assertion that Senator Syvret talks for *'the public'* on this matter. He quite clearly has his own agenda on the Waterfront Developments and has tried to delay and frustrate them both inside this Assembly and outside.

Corporate Governance

25. As Senator Syvret lodged these proposals before he had been provided with the thoroughly detailed answers to the questions he asked of the President of the Policy and Resources Committee, his report is not complete and sums up his own thoughts and understandings at that time. However, the Committee is confident that, upon reading the answers to those questions, the correct picture of events has become clear and that members will agree that –
- no impropriety has taken place with regard to the selection of a preferred developer for the Island Site, and
 - the Committee has identified some areas of the process adopted by WEB to appoint its preferred developer for the Island Site which it considers could have been improved and are working with WEB to ensure that its partner selection processes are developed and improved for future projects.

The need for urgency

26. Senator Syvret states that he acted swiftly *'to pre-empt the signing of contracts and commencement of deals before the issue of corporate governance has been resolved to the satisfaction of the States and public'* and *'to prevent the present proposals from becoming a 'done deal''*
27. As to the 'corporate governance' issues, the Committee has thoroughly investigated WEB's actions in relation to the selection of a development partner for the Island site. However, it is clear that from his statement *'In any event, even if completely satisfactory answers were forthcoming to the questions*

concerning corporate governance, the days of WEB must be over' that Senator Syvret had already made up his mind on the evidence he had available in March and whatever answers the Committee had produced he was going to pursue this proposition.

28. The proposition demonstrates a lack of understanding of the process which was being and has been undertaken by WEB in relation to the Island Site. WEB was identifying a development partner – not a scheme – with whom it could work to develop a scheme for the site. This arrangement is in place for 6 months only, and gives both parties sufficient time to establish whether they can work together and whether they can evolve a viable and an acceptable scheme. Any longer term commitment proposals will only be considered, and only if appropriate entered into, once this work is done.
29. The Committee is most concerned that this proposition seeks to create an atmosphere in which any potential developer might shy away from investing in the future of the Island.

The Proposition

30. Part (b) of the proposition asks the States *'to agree that all non-States Directors of the Waterfront Enterprise Board Limited should be removed from office within one month of the approval of this proposition, in accordance with the provisions of Article 30(b) of the Company's Articles of Association, and to request the Policy and Resources Committee to bring forward to the States for approval, within one month of the approval of this proposition, nominations for replacement Directors to serve for a term of office not exceeding the period required to wind up the company's affairs;*
31. The Committee has not discovered any evidence of impropriety. The Committee therefore sees no reason why this proposal should be supported.
32. It is a difficult enough task at times, to identify 3 appropriate individuals who are prepared to volunteer to be WEB Directors for a full 3-year term of office. What person – of any stature – would agree to be appointed to WEB, for what can only be an indefinite period (see below) and then only to oversee its winding up?
33. Part (c) of the proposition asks the States *'to agree that it is the view of the Assembly that the present proposals chosen by the Waterfront Enterprise Board Limited for the development of the Island Site should be abandoned and to request the Policy and Resources Committee to direct the Directors, in accordance with the provisions of Article 22(a) of the Articles of Association of the Company, to abandon those plans'*.
34. It should be made clear that WEB has not selected a scheme, but has selected a development partner. No firm proposals have yet been chosen by WEB. Given that no such scheme yet exists, it is not possible for States members to judge whether such 'plans' can be abandoned.
35. Part (d) of the proposition asks the States *'to agree that the development of the Island Site should be reconsidered by all relevant Committees of the States and that public consultation should take place, to ensure that the project meets the best needs of the community before revised proposals are brought forward to the States for approval by the relevant sponsoring committee.*
36. The Committee agrees with this proposition in so far as it remains of the view that the normal processes of developing, consulting on and gaining approvals for an Island Site scheme will, of course, be followed. There has never been any question that any scheme should not be considered *'... by all relevant Committees of the States and that public consultation should take place, to ensure that the project meets the best needs of the community.*
37. However the Committee does not agree that *proposals should be brought forward to the States for approval by the relevant sponsoring Committee*, which in this case would be the Policy and Resources Committee. WEB was established, as a separate and independent legal entity, to act as a development agency of the States. The purpose of the States in doing so was to create a private sector body capable of

- attracting and working with private sector developers and other parties and, most importantly, acting within all relevant laws and States' policies but acting also outside of the States organisation and its cumbersome and bureaucratic control mechanisms. To reinforce this situation, the States has, since 1996, taken active steps to move WEB even further away from direct States' influence and has agreed that the areas of land on the Waterfront will be sold or leased to WEB and that the Finance and Economics Committee be empowered to consider and approve all of WEB's financial deals with other parties.
38. The Policy and Resources Committee therefore strongly recommends that this part of the proposition be rejected so that, within the very strict controls (planning and financial) already applied by the States, WEB can continue to operate as an independent development agency of the States and complete the development of the Waterfront in line with already agreed plans.
 39. Thus this brings the Committee to consideration of Part (a) of the proposition which asks the States to *'agree, in principle, that the Waterfront Enterprise Board Limited should be wound up as soon as practicable, and that revised arrangements for dealing with the management and development of the areas currently under the administration of the Company, that better meet the needs of the community, be put in place, following a public consultation process and consultation between all relevant Committees of the States.*
 40. The Committee recommends that this proposal should be rejected. Not only is it not precise, in that it says that WEB should be wound up 'as soon as practicable', but it also suggests that certain undefined *'revised arrangements ... be put in place, following a public consultation process and consultation between all Committees of the States'*. These proposals lack clarity and it has been left open as to what it is intended should happen. No case has been made for change. The WEB model and its potential alternatives have been extensively tried and tested elsewhere in the U.K. It has been found to be the best delivery vehicle for regeneration, as it encourages the private sector to co-invest but retains significant public control through the public's ownership of the company, through political representation on the Board and through the retention by the Public of all planning powers. WEB has not failed, it has met the objectives set by the States and it will, of course, continue to consult widely. What certainty is there that replacement proposals would be any better?
 41. In addition, the company has many existing complex commercial leases and contracts in place with third party companies, and it would take a considerable period of time to change those arrangements. In some cases, that may not be possible as those third parties, while content to work with an independent WEB, may not choose to work with government, or whatever other government controlled organisation is established. The cost of resolving these issues might not be insubstantial and should any of the existing arrangements fail, then the costs to the Public could escalate considerably.
 42. WEB has ongoing contracts of employment with its staff. Those contracts would need either to be honoured, by gaining agreement on transfer of the posts and post holders to any new entity imposed or, failing such agreement, the Public would be required to fund any costs associated with terminating such contracts. Given that the new, very experienced and highly regarded, Managing Director has only just begun a new 5-year contract, the costs of resolving this issue might be considerable.
 43. Given the critical stage that WEB has reached in its negotiations in connection with developments of the Hotel, the Harbour Reach and other sites, the Committee is of the view that should the States decide to support Senator Syvret's proposal to wind WEB up, then not only would those developments be put at very serious risk of not proceeding but the States might also find itself under threat of litigation with third parties who, in all good faith, have expended considerable time and money bringing their development plans near to fruition and now find those plans delayed or frustrated. To introduce such uncertainty now – for no good reason – would, in the Committee's view, be extremely imprudent and might destroy any future hope of attracting private finance into such developments.
 44. Under *Financial/manpower implications* the report states that *'It is too early to assess whether there would be any financial or manpower implications for the States arising from this proposition. However, it is likely that if there were any such costs arising from it, these could easily be met by the current budget*

provision of the Waterfront Enterprise Board Limited. The Committee cannot agree with this view given the aforementioned potential difficulties in seeking to wind up WEB. The costs of agreeing these proposals are difficult to ascertain in the abstract, but could be very high indeed. Such costs could, the Committee suggests, very easily become a major factor in the next few years as the States, and in particular the Finance and Economics Committee, wrestle with trying to achieve and maintain balanced budgets.

45. Finally the Committee is concerned that although the States could choose to reject part (b) of the proposition as being unachievable and, even if it were, as being of no real purpose, and parts (c) and (d) because they are founded on a misunderstanding of the actual position in relation to the existence of a 'scheme', States members could be persuaded to consider supporting part (a) of the proposition because it is an 'in principle' decision only. However, the Committee recommends, in the strongest possible terms, that this is not an option which States members should contemplate. The damage to the existing arrangements, the nearly completed negotiations on the Hotel and other sites, and on proposed future schemes, including the Island Site, would be incalculable. Everything would be put into limbo, developments would slow down or stop entirely and the States' credibility with the private sector would be diminished for a long time, if not destroyed forever. There is no evidence whatsoever that any other model would have produced more valuable results in the past, or that it would do so in the future.
46. The Committee therefore sees no merit in this set of proposals and recommends the States to reject them.