

JERSEY HARBOURS: PROGRESS TOWARDS THE TRUST PORT

**Lodged au Greffe on 23rd July 2002
by the Harbours and Airport Committee**



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PROPOSITION

THE STATES are asked to decide whether they are of opinion -

- (a) to agree, in principle, that *Jersey Harbours* should be established as a Trust Port to administer the harbours and territorial waters of the Island; and
- (b) to charge the Harbours and Airport Committee, working closely with the Industries Committee and in consultation with the Policy and Resources and Finance and Economics Committees, to bring forward for approval by the States in 2003 detailed proposals and the necessary draft legislation to give effect to the changes including proposals, prepared in consultation with the Human Resources Committee, on the terms and conditions under which the then staff might transfer to the new body.

HARBOURS AND AIRPORT COMMITTEE

REPORT

Purpose

The purpose of this Report and Proposition is twofold -

- (a) to ensure States members are fully informed of all that *Jersey Harbours* has already achieved in its Strategy for a Sustainable Future;
- (b) to ask members to give support to further progress.

Background

The need to take the Trading Committees of the States into a more autonomous and flexible arena is well established. The States have already made decisions and major progress regarding Jersey Post and Jersey Telecom.

The prime objective of *Jersey Harbours* is to provide a framework in which its vital trading and strategic functions can be fulfilled in a financially sustainable way in the long term. This means that the organisation must be capable of funding its activities independently of the States yet in such a competitive and efficient way as to offer a genuinely affordable service to the economy and people of Jersey. Commercial and professional maritime matters must be seen to be administered and decided upon by a Harbours Board that is free from day-to-day political influence. At the same time there has to be a link with the States concerning matters of strategic importance to the Island or where new legislation is required for the safe passage of ships in Jersey waters.

A Strategic Service Review of *Jersey Harbours* was commissioned in 1998 by the Policy and Resources Committee. The findings of the review were presented to the Policy and Resources Committee and delegations from the Finance and Economics, Human Resources and Harbours and Airport Committees on 23rd March 1999. Central to the findings was the statement that "*Jersey Harbours* could be made much more efficient if it was placed within a more effective institutional framework." A key recommendation of the Service Review was that a 20 Year Port Master Plan should be drawn up and a Demand Study carried out. This has now been done and the future viability of *Jersey Harbours* depends to a considerable degree on the vision being achieved through the creation of a strong and commercially focussed independent organisation. Failure to do this raises the real prospect of the administration of the sea ports and territorial waters being quite unable to cope with the expectations of a future vibrant Jersey economy.

Much has been achieved since March 1999 to implement internal changes recommended by the Review. Regarding external institutional change, research and consultation has been carried out to refine the best model to meet the needs of the Island and *Jersey Harbours* itself. So far the States have not been asked to agree to any specific approach.

In the United Kingdom a Review of Trust Ports commenced in 1998 at what was then known as the Department of the Environment, Transport and the Regions (DETR). Prior to this a number of ports had been privatised but within the new United Kingdom government there was unease that continuing privatisation may not be appropriate. Out of this Review came a detailed plan for modernising trust ports in order that they should continue to serve their community and the nation at large as effectively as possible. This modernised trust port concept has been a very useful guide in the search for the best option available to the Island.

Trust Port Concept

The Trust port concept is a typical British invention, which can be readily adapted to Jersey's requirements. Trust ports are independent statutory bodies and have independent boards of trustees charged with acting in the interests of all stakeholders. (In Jersey's case the stakeholders would be the public of the Island, their institutions and organisations.) Any surpluses are ploughed back into improving facilities or reducing charges. They hold the land and assets in trust for the public they serve. They are clearly in the public domain and cannot be sold, in whole or in part. The government approves their duties and how the board is constituted.

Some Trust ports came into existence a long time ago. The Dover Board was established in 1605. However, many were the product of nineteenth century pragmatism. By creating a Trust Port, with very clear responsibilities to the community, a port can be prevented from either falling into decay or profiteering and losing sight of its primary purpose. Where a port is vital to the local region, its maintenance is deemed paramount and trust port status provides effective protection. Some trust ports, like Lerwick and Stornaway are in effect monopoly ports for their island communities and the need for accountability is strong.

To ensure Trust Port survival and to provide a realistic alternative to privatisation, new standards of openness, accountability and fitness for purpose have been introduced in the United Kingdom. These are recognised as providing a robust and viable way of managing a port. Modified to suit our local need, these can be applied in Jersey.

In looking for the best approach for the future, the Trust Port stakeholder concept has been preferred because of its emphasis on public duties and the commitment to re-investment whilst maintaining a commercial focus.

Statutory Duties of *Jersey Harbours*

The Board would have specific, legally binding duties. These will be for the States to agree but essentially it is expected that they would be very similar to the current principle functions of the Harbours and Airport Committee, with regard to *Jersey Harbours*. However, no equivalent list has ever had the force of Law. The duties broadly fall into three overlapping areas - economic, regulatory and community. Where applicable they encompass Jersey's 850 square miles of territorial waters.

An important aspect of the Service Review was to highlight the need for a separation of the functions of Chief Executive and Harbour Master. This separation is now in place and allows for there to be one officer in overall administrative control of the organisation (the Chief Executive) who is quite distinct from the professional expert whose duty it is to provide for the safety of vessels and passengers in accordance with international and local legislation (the Harbour Master). The States recently endorsed this view in amending the Harbours (Administration) (Jersey) Law 1961 in projet 71/2002 to emphasise the maritime safety role of the Harbour Master at the same time as removing his duty to administer the business as a whole. Any future Trust Port would maintain the statutory authority of the Harbour Master as well as introducing a framework in which the Chief Executive can be clearly accountable for the successful management of the organisation as a whole.

Role of the States

The intention is that the States set out through statute the clearly defined responsibilities, duties and powers of *Jersey Harbours*. Such a statute would invest in the new body the duty to act in the interests of all stakeholders in a way that does not occur in a traditional shareholder company. The States would retain authority through a number of mechanisms. In the most extreme case, the States can repeal the Law creating the new body or somewhat less draconian, amend that Law to adjust the terms and extent of its responsibilities. Secondly, a Minister under the new machinery of government arrangements should be able to direct the Board on issues of overriding strategic importance. Thirdly, it is envisaged that there would be a clear role for an Auditor General that the States may appoint in the future. Fourthly, with regard to the various maritime Laws pertaining to a safe port, safe navigation and registration of ships, Orders will continue to be laid before the States and States Regulations will continue to be debated by the States Assembly.

The States interest is to ensure that a future Harbours Board does not take decisions in an arbitrary and unaccountable way. However, neither the States nor its departments would be directly involved in the Board's legitimate commercial decisions or activities. The Committee or Minister of Economic Development will maintain a watching brief and together with the JCRA and the Auditor General will ensure accountability and transparency.

Machinery of Government Reforms

The Clothier Report sketched out a relationship whereby a future Industries department could hold a remit for overseeing a future Harbours Trust. The Policy and Resources Committee's Report and Proposition lodged au Greffe on 30th April (P.70/2002) envisages policy oversight for the Harbours being carried out by a new department of Economic Development. The projet also notes that "progress is being made towards more independent status" for *Jersey Harbours* and that "whatever arrangements are put in place, for the foreseeable future the Harbour Master will retain responsibility for the safe and efficient movement of vessels in Jersey waters and will need to advise the minister on maritime safety and regulatory matters."

The Harbours and Airport Committee fully endorse this approach. Government reform and the creation of a new harbour authority need to be implemented in parallel if *Jersey Harbours* is not to be left directionless.

Financial and audit oversight

The new body will not be dependent on States funding. However, it will still be expected to abide by modern best practice regarding management of its finances. Annual accounts will be presented to the States. There should be a clear role for the proposed new Auditor General, and Public Accounts Committee.

It may be that from time to time the States wish to support specific projects, where it is in the Island's strategic interests to pursue these. It is in such cases that the use of States funding will need to be closely monitored to ensure value for money.

The Auditor General will be able to provide the States with an independent assurance of the satisfactory management of these public funds.

Whilst it will of course be for the new Board to set its own financial targets, Treasury guidance will be given in the first instance. Such targets will be based on the need to carry out *Jersey Harbours'* duties as efficiently as possible, using surpluses to maintain the long-term viability of the port, improve services or reduce charges.

Regarding future investments, this will be in line with best practice and Treasury guidance - the United Kingdom's 'Green Book' (Appraisal and Evaluation in Central Government) indicates a rate of return of between 6% and 8%.

Role of the JCRA

It is not envisaged at this stage that the JCRA would serve any purpose in having a licensing function regarding *Jersey Harbours* statutory duties. In effect the license to carry out such functions will come from the Law to be presented to the States. This is in recognition of the fact that such duties as the operation of the commercial port, administration of the territorial waters or the management of sea rescue are by their nature monopoly functions. It would be grossly inefficient and probably ineffective to try and licence these to several different organisations.

Simultaneously with this projet, the Committee is lodging an important Proposition to repeal the Harbour and Light Dues (Jersey) Law 1947 in order to ensure Dues do not in future constitute a charge having equivalent effect to customs duties and thereby conflict with our European commitments. That Proposition will enable progress to be made on establishing competitive commercial charging, free of political considerations.

The Jersey Competition Regulatory Authority will in future have an important and statutory role in maintaining fair and reasonable port charges. The groundwork has already been done here in the passing of the Competition Regulatory Authority (Jersey) Law 2000. Most importantly, the JCRA is working on a generic Competition Law and proposals have already been put forward in their Report to the States R.C.1/2002. It is envisaged that the JCRA will have the power to prevent anti-competitive behaviour and the abuse of a dominant market position.

Public oversight

In order to achieve genuine public accountability the new body will have a duty to consult with and take into account the needs of all stakeholders, whether a shipping company, a member of the travelling public or a local boat-owner. *Jersey Harbours* should not be able to be owned by any other institution or company and will thus remain in the public domain.

Matters of concern will be raised directly with the executive or Board in the first instance and if not satisfied there will be a due process of appeal. Additionally, a Public Advisory Body will be formed. The annual general meetings will be open to the public. In these ways there can be confidence that this is a public body accountable to the people of Jersey.

Corporate governance

The new body will be expected to follow the combined Cadbury/Greenbury Code, published in 1999, with proper account being taken of the need for its standards regarding board members and board structure, audit, remuneration and accountability.

Board Members

The Board will need to be made up of members who are independent and fit for purpose rather than representative of particular interests. The intention is to open up the process to allow *Jersey Harbours* to range widely to locate the expertise (whether gained through professional or life experience) that it needs to function effectively. The Boards should contain an appropriate balance of skills, competencies and experience to control *Jersey Harbours* effectively and provide it with leadership, motivation and strategic direction.

People appointed to the Board will be selected in an open and accountable manner. It is intended that appointments will be according to the well-established Nolan Rules.

In much the same way as the Secretary of State for Transport in the United Kingdom approves the appointment of the Chairman of Dover Harbour Commissioners, because it is seen as a strategically important port, it is thought appropriate for the States or the relevant Minister, to approve the *Jersey Harbours* Chairman.

Approval of the Proposition will allow the Committee to form a shadow or consultative Board that can begin to lead the

project. Without such a Board, a smooth transition is impossible.

Staff

Harbours and Human Resources officers have worked and will continue to work closely, to develop detailed proposals to ensure terms no less favourable than present for employees. A working party with representatives from all sections at *Jersey Harbours* has met on a number of occasions to discuss issues.

Staff are naturally concerned about their links to their existing associations and the way in which current core terms and conditions might be maintained. Meaningful progress to agree core terms under which the present permanent staff could be automatically transferred to the new organisation is now urgently required. Staff cannot make an informed choice unless the details are spelled out. The approval of this Proposition will trigger such progress.

A major issue is to ensure that the future of the Public Employees Contributory Retirement Scheme (PECRS) is not put in jeopardy. The Committee understands this and similar pension arrangements may well be appropriate as have already been agreed for Jersey Telecom and Jersey Post. Very positive officer level discussion with the Committee of Management of the scheme has already taken place and it has been agreed to identify the past service pension liability that might be applicable to *Jersey Harbours*. This work should now be carried out so that the commercial accounts can properly reflect the liability.

An important aspect of the Strategic Service Review was a recommendation that “if the States truly wish for *Jersey Harbours* to become efficient, it must empower management on all personnel matters.” The need for a single career spine and multi-skilling were highlighted. There is no doubt that an independent commercial organisation will be much better able to offer modern, flexible and attractive packages for the future.

Law Drafting

Legal advice has been taken on the form that the new Trust would take and this would have some similarity with the way in which the Jersey Financial Services Commission was created. The advice is that a bespoke Law enshrining the duties and powers of the new body is needed and that neither the Trusts (Jersey) Law 1984 nor the Companies (Jersey) Law 1991, as amended, really fit the concept. Typically, U.K. Trust Ports have had their own Act of Parliament to bring them into existence, with changes brought in by statute using what is known as Harbour Revision Orders under the Harbours Act 1964. A similar system, designed to fit Jersey, is proposed.

The Law would ensure that public assets and the core maritime safety duties of *Jersey Harbours* were safeguarded.

The States Resource Plan 2001 (projet 124/2001) made provision for Law drafting time and the Harbours and Airport Committee has requested this to be carried over. Law Drafting instructions are being developed but to begin Law drafting itself is meaningless unless the States endorse the principle of further progress.

Long Term Viability

It has already been stated that the new organisation would be self-financing, though this is dependent on it not having to make an annual return to the States. It would have a duty to re-invest its annual surpluses for the long-term good of the Trust. Independence confers a number of vital advantages that aid long-term viability, such as opening up the possibility of entering into partnerships with private enterprise and being able to borrow money on the open market based on a robust business case.

Jersey Harbours carries out certain Community, Custodial and Heritage functions. For instance, these include its Sea Rescue duties, the maintenance of St Catherine’s breakwater, the administration of the Fort Regent Signal Station and the small outlying harbours. It is anticipated that the cost of these can continue to be met from within *Jersey Harbours* resources for the time being, though this is dependent on the organisation having the freedom to make best use of its assets.

There will always remain the possibility that an unforeseen disaster could occur, such as the collapse of a major structure. Insurance cover will be essential but no cast iron guarantees can be given. It may therefore be that the States would wish to fund such a major undertaking that would be vital to the Island but outside the resources of *Jersey Harbours*. Similarly, the States may for strategic reasons want to create new assets, such as a new commercial or leisure harbour facility. Expenditure of this magnitude would almost certainly be beyond the available resources of *Jersey Harbours* and any major funding would either have to be sought centrally and prioritised appropriately through the States procedures or funded through some other mechanism such as a Private Finance Initiative (PFI).

The 20 Year Port Master Plan provides the blue print for the port of St. Helier. The Plan has helped identify the Capital requirements to maintain a sustainable port and serves to emphasise the need for a properly commercial organisation to

achieve this.

Financial projections have been undertaken and validated externally. These indicate that the Trust really does have long-term viability. The knowledge that the Trust must be self-funding with Board members being held liable for failure provides an important sharpening of focus and no doubt some tough decisions will have to be made about projects that are desirable but which may not be essential or commercially viable.

Consultation Process

Since the Service Review was presented to the Policy and Resources Committee in March 1999, Policy and Resources, Treasury, Human Resources, Industries and Harbours staff have been involved and consulted, as have port users, business partners and boat-owners.

A one-day seminar was held in November 2000 to which a broad cross-section of people was invited. These included commercial port users, local yacht and boat owners, politicians, Union representatives and civil servants. A detailed draft document "The Future Governance of the *Jersey Harbours Trust*" has been in circulation for discussion since October 2000.

Presentations to Harbours staff have taken place and the Personnel Working Party has been a useful conduit for addressing issues. Regular Newsletters and a leaflet have been produced. The President of the Harbours and Airport Committee recently held one-to-one consultation directly with individual staff.

The Maritime and Coastguard Agency (MCA) and the Department of Transport, Local Government and the Regions (DTLR) have both been consulted and indeed their officers have been very supportive. This is essential, given that Jersey ship registration policy and maritime legislation need their sanction for the Island to continue to operate as a port of British registry. Advice has been sought from major U.K. ports. Valued guidance has come from those involved in the setting up and development of other bodies with a very clear public focus, such as the Jersey Heritage Trust.

Presentation to the Policy and Resources Committee occurred in February 2001, with further meetings taking place at officer level. Refinement of the strategy has been ongoing ever since. The Harbours and Airport Committee had hoped to see a Report and Proposition lodged in September 2001 but in the event, progress for *Jersey Harbours* has perhaps inevitably been overshadowed by bigger Island issues. The Committee has kept as many people informed as possible and it received support from a number of other Committee presidents earlier in the year to continue its step-by-step approach.

If the Assembly approve this Proposition, it is intended to broaden this consultation process and establish a Public Advisory Group without undue delay.

Timing

Matters are difficult to progress whilst the future financial arrangements remain unclear. The move to commercial accounting cannot be completed without further purposeful agreements being reached with Treasury and the Committee of Management of PECRS. *Jersey Harbours* has a number of quite pressing port development projects that need to commence. Internal restructuring and the development of a single career spine are linked to this project. Likewise, new and robust harbour dues must be put in place.

It is already three years since the Strategic Service Review presented its findings to the Policy and Resources Committee. Since then both the Harbours and Airport Committee and the Policy and Resources Committee have encouraged a step-by-step approach and much has been achieved. However, further crucial incremental steps are needed as detailed in this Report.

Given that there are elections to the Assembly due this autumn, it will aid progress if at the very least a political commitment is made now. This will give clear direction to the staff at *Jersey Harbours* to stop treading water and accelerate their preparatory work. It must be stated that the last year has been difficult for staff at *Jersey Harbours* who at times have been unable to determine whether the declared strategy was really in place or not. This is unsettling.

The plan for the machinery of government reform includes the continuation of the Harbours and Airport Committee after the elections and this provides a window of opportunity for the new Committee to steer through the current strategy and continue to report directly to the States on progress.

Conclusions

It is the view of the Committee that work on this project has now reached the point when it is confident that there is a genuinely viable way forward for *Jersey Harbours* to operate as an independent organisation. The proposals offer the chance

for a vital part of Jersey's economy to operate in a properly commercial environment without losing sight of its public responsibilities.

It is right and proper that such an organisation should manage itself. The Committee is of the opinion that it is the role of the politician to provide broad policy direction and leadership for the Island whilst allowing those with the professional experience, training and time to focus their energy on running commercial businesses.

Jersey Harbours is at present constrained in ways which prevent it from being as effective and efficient as the Island deserves. The organisation must be a modern port entity and as such, it must be safe, sustainable and successful. This Proposition allows that vision to be realised.

Members will have the chance to make further contributions to this important development during the coming months and in particular when detailed proposals and a draft Law is returned to the Assembly for approval.

Financial implications

In the short term, there will be a loss of annual revenue in that *Jersey Harbours* will no longer make a return to the Treasury. This return was £300,800 in 2001 and is forecast to be £112,700 this year. As is made explicit in the Report and Proposition, "*Jersey Harbours: Harbour Dues*" dues cannot in future be expected to provide a return for the States without leading back into conflict with E.C. Law.

More importantly, the new organisation will be re-investing all annual surpluses in maintaining and improving the service or reducing charges. This will be of direct benefit to the Island economy. In addition the Treasury will not be expected to fund future projects except in the particular cases cited above.

Human Resource implications

There will be a reduction of ninety-eight permanent and up to fifty seasonal staff in the head count of States employed personnel if at an agreed future date, staff are transferred to the new Trust Port organisation. The net effect to the Island's workforce is, however, nil.