

STATES OF JERSEY

Corporate Services Scrutiny Panel Jersey Development Company Sub Panel Hearing with The Chief Minister and Chief Executive

WEDNESDAY, 18th AUGUST 2010

Panel:

Deputy C.H. Egré of St. Peter (Chairman)
Deputy D.J. De Sousa of St. Helier (Vice Chairman)
Senator S.C. Ferguson (Chairman)
Mr. R. Law (Panel Adviser)

Witnesses:

Senator T.A. Le Sueur (The Chief Minister)
The Chief Executive Officer

In attendance:

Ms. K. Boydens (Scrutiny Officer)

[15:00]

Deputy C.H. Egré of St. Peter (Chairman):

Chief Minister, Chief Executive, welcome to yet another hearing on the S.O.J.D.C. (States of Jersey Development Company). For the sake of the usual clarity for the microphones, could we please go around the table, starting with the Chief Minister saying who we are and what we are doing.

The Chief Minister:

Senator Terry Le Sueur, the Chief Minister, author of this document Mark 3 or whatever it is.

The Chief Executive:

Chief Executive to the Chief Minister.

Deputy D.J. De Sousa of St. Helier (Vice Chairman):

Deputy Debbie De Sousa, member of the sub panel and vice chair.

Ms. K. Boydens (Scrutiny Officer):

Kellie Boydens, Scrutiny Officer.

The Deputy of St. Peter:

Deputy Collin Egré, Chair.

Mr. R. Law (Panel Adviser)

Richard Law, Adviser.

Senator S.C. Ferguson:

Senator Sarah Ferguson.

The Deputy of St. Peter:

Again, just as a point of process just point out the paper work in front which I am sure you are aware of and are happy to follow that remit.

The Chief Minister:

Yes.

The Deputy of St. Peter:

Right, gentlemen, I understand that you have already had a copy of the question guide so if we can start, as I know there is a bit of a time constraint this afternoon, by covering the first element which is that we understand that the Managing Director of W.E.B. (Waterfront Enterprise Board) attends project board meeting with regard to the airport development and the East of Albert project. Is this within the Managing Director's remit? The reason why I ask this is because at our last hearing it was clearly stated by the Deputy Chief Executive that W.E.B. were involved.

The Chief Minister:

Yes, indeed they are. They are 2 separate animals. East of Albert is technically within the geographical compass of W.E.B.'s remit although I think it is not expected that that would form the main focus of their activities at the current time. Nonetheless my predecessor did ask or instructed W.E.B. to carry out some work or to help in formulating some policies for the development of East of Albert back in, I suppose, 2007, thereabouts, certainly before my time. So that was done on clear instructions. W.E.B. were asked to do the work and they have been helping to do that. Whether it is strictly within W.E.B.'s remit or not, W.E.B.'s remit, as we know, has extended over the years maybe wider than desirable but certainly it is the sort of thing which W.E.B. had some expertise and capacity to do so they were asked to do it. The airport is something which I know rather less about, other than that I believe there is a steering group there initiated, as I understand it, by the Airport Director, chaired by the Deputy Chief Executive and for which the Managing Director certainly of W.E.B., if not W.E.B. as a whole, have been asked to provide some technical advice and expertise.

The Deputy of St. Peter:

This appears on the surface to be operating way outside the States understanding of the remit of W.E.B. How do you think this has come about?

The Chief Minister:

I think probably because there is capacity available at the current time within the management structure of W.E.B. and it seems a shame not to use that management expertise and it can be tapped into free of charge effectively, if not free of charge at least ...

The Deputy of St. Peter:

Yes, I understand the attempt at recovery.

The Chief Minister:

... within the family sort of thing.

The Chief Executive:

It may be worth stating that this is not W.E.B. doing it in W.E.B.'s own right, this is W.E.B. doing it as an agent of the Chief Minister. Indeed in terms of the East of Albert, as an agent of the Council of Ministers.

The Deputy of St. Peter:

But it would appear from what the Chief Minister has just said that he had little awareness of what was happening with regard to the W.E.B. involvement in the airport.

The Chief Minister:

At the airport, certainly, yes. Other than I was aware that a project group was set up, I was aware that they were looking at the scope of what could be done at the airport, I was not aware that W.E.B. had been specifically commissioned ... I am now and I have been for some weeks but I was not initially aware of the extent to which they were involved.

The Deputy of St. Peter:

You mentioned the fact that the Airport Director may have been involved in that commissioning.

The Chief Minister:

I believe so, yes.

The Deputy of St. Peter:

What background knowledge do you have on that, if any?

The Chief Minister:

Nothing first hand. I have not seen any minutes of any meeting or anything. I have just been told that is the situation.

Mr. R. Law:

To just be clear then, it is not a W.E.B. appointment, it is a personal appointment? You mentioned using the expertise, I take it that is, for example, planning expertise, to give direction on that by the individual?

The Chief Minister:

That I could not say. I do not think it would specifically planning expertise because planning is a matter for the Minister for Planning and Environment and the Planning Department, and if that expertise is required it should be available from that department. I would have thought it was more in terms of development opportunities, site assembly, commercial assessments.

Mr. R. Law:

In other words, what would be most appropriate for whatever the aspirations of the company, the airport's company need?

The Chief Minister:

Yes.

The Deputy of St. Peter:

The concern of the panel, as I believe it to be, is that it would appear that W.E.B.'s remit has expanded beyond its normal function as understood by the States, moreover it would appear to be taking on role which we would have thought the new company, S.O.J.D.C. as is proposed, would have been taking on board. So it would appear to have been an advance work, if you like, with an anticipation of that work being continued by W.E.B.

The Chief Minister:

No, I do not think so. I do not think so for 2 reasons. Firstly, I think if the new structure were in place then the work we are talking about certainly at East of Albert would be done more by the regeneration steering group than by an individual contractor or operator or whatever. Secondly, that I am sure in 2007 when the former Chief Minister asked W.E.B. to undertake this work the present proposition was no more than a gleam in someone's eye at that stage. I do not think there can be any suggestion of that was the way that W.E.B. might go. Finally, I see the future role of S.O.J.D.C. as far more of a developer and not involved to the same extent in what I might call regeneration policy matters. It would be far more of an operation development company.

Deputy D.J. De Sousa:

While I can understand that you cannot see why the East of Albert would be going beyond their remit, you touched on the airport, that is further away from their remit so can you not see where there may be a perception that they have already been asked to undertake a job that would become a job of work under the S.O.J.D.C.?

The Chief Minister:

No, I think it is the other way around. I think that at the moment they are doing the sort of work which their remit has expanded into but I am saying if S.O.J.D.C. were around in the future it would not be appropriate for them to be doing that work for the Airport Director, any more than it would be appropriate for - I will say - Charles Le Quesne Limited to name a developer who is well known in the Island, because it is a different animal. I think it is because S.O.J.D.C. is not an extension of W.E.B. that it is inappropriate for a new S.O.J.D.C. to be doing the sort of work which at the present time has been commissioned from W.E.B.

Senator S.C. Ferguson:

I am a little confused by this, Chief Minister. I am just a simple politician.

The Deputy of St. Peter:

We will not quote you on that.

Senator S.C. Ferguson:

You have talked before of W.E.B. acting as an agent of the Chief Minister.

The Chief Minister:

That is probably a little ... on the instructions of the Chief Minister.

Senator S.C. Ferguson:

Yes. Now, if you were not aware that the airport work was being done and we are led to believe that it was at the instigation of the Economic Development Department, do things not seem to be going a little out of control?

The Chief Minister:

I could understand that if there was any conflict of interest between that of the Chief Minister's Department and that of the Minister for Economic Development. I do not see any difference in ...

Senator S.C. Ferguson:

But you have just said that you felt that perhaps for a developer to be consulting on a project before it has been analysed by Property Holdings, it could be seen as a conflict of interest. So are we not instigating a conflict of interest by the way we have been organising things?

The Chief Minister:

No, I do not think so. I think we are danger here of almost, as I see it, trying to review the duties of W.E.B. rather than review activities for the future to invest in S.O.J.D.C. What we are saying ... what I hope I have been trying to say for the last 12 months is that we want to get away from the present concept of W.E.B. into something rather different.

The Deputy of St. Peter:

Chief Minister, if I could just allude to that because you will be aware, as will the Chief Officer, that when I attended a meeting on your behest with my officer, that the proposition that we had in front of us at the time, which was P.79, stated clearly in the proposition that W.E.B. would have its name changed to S.O.J.D.C. and as a result of the intervention on that day that proposition was changed to P.73 of 2010, with the main proposition ... that had been taken out but the actual body of the report being very similar. How does that fit in with what you have just said with regard to separating W.E.B. from the setting up of S.O.J.D.C. which is one of our recommendations, bearing in mind that this occurred literally only 2 months ago?

The Chief Minister:

Firstly, if it were simply a change of name of W.E.B. to S.O.J.D.C. that would not be achieving the objectives.

The Deputy of St. Peter:

Bearing in mind that was what ... we all are reminded when we read propositions, that is what was stated in the proposition.

The Chief Minister:

That was said in the proposition quite rightly, because part of the activity requires the name of W.E.B. ... the name of the company to be changed to S.O.J.D.C. But the important part of the proposition is that the Articles of Association of the company are replaced ... the Articles of Association of W.E.B. are replaced in their totality by a new set of Articles of Association so it is, in effect, a new company. Now this is, if you like, a legal quibble and there are 2 options available to us. One was to start from scratch with a new company, new Articles of Association, a new name and simply let Waterfront Enterprise Board Limited wither on the vine or become absorbed into that company. Probably the latter. That was one method. The alternative method is to use the existing company, change the

Articles of Association, change its name and that is the route that we chose. The effect is the same either way. You have the same company name, you have the same Articles of Association of the company, whichever route of those 2 you take, what you do do is save some of the bureaucracy of having to reregister all property titles, leases and so on from one company to another.

[15:15]

The Deputy of St. Peter:

We have been talking an awful lot over the last 3 visits to this subject about public perception. Now the public perception of a name change, although you have described very clearly what you see as occurring, the recommendation that was put forward to you and accepted was that there should be a total disassociation between the movement from W.E.B. to S.O.J.D.C. Now obviously in the terms that were written in the proposition, and I assume that is the reason why they were changed, is that that would have been or appear to have been unacceptable.

The Chief Minister:

No. What has clearly happened is that, as I say, the Articles of Association have changed so the nature of W.E.B. has changed, its proposed activities will change from what the current activities are, its name will have changed, its composition in terms of directors will have changed radically and so I think there are so many different changes, for example, its remit will ...

The Deputy of St. Peter:

But without wishing to labour the point, Chief Minister, if I can just bring you back to the crux of this one, was the fact that having had that issue highlighted on P.79, which was the proposition that was going to go before the States, that that was changed in less than 24 hours to be something else.

The Chief Minister:

Not to be something else I think but to make it quite clear what we were trying to achieve, which was a change of name and a change of the Articles of Association. I accept that in terms of perception were I to start again from scratch I would start with a new company and a theme break and absorb the extra hassle of moving the properties and leases from the old company to the new one. I took a decision at the time which I thought was the simpler more effective and efficient one believing that the perception ... that people understood what the proposition said which was it was not just a change of name but a change of the Articles of Association and a change to the fundamental remit as well all to achieve the same objective. It clearly is a matter of communication where the message has not entirely got through yet.

Senator S.C. Ferguson:

But there is a third alternative which you do not seem to have considered, Chief Minister. You set up a new company, S.O.J.D.C. and W.E.B. remains as a subsidiary.

The Chief Minister:

True, that is ...

Senator S.C. Ferguson:

Then it just withers on the vine. So that you would not have the expense of all the changes and you could be sure that the remit of S.O.J.D.C. was different.

The Chief Minister:

It takes a long time to wither on the vine with 125 year leases.

The Deputy of St. Peter:

We are in danger of concentrating our efforts here purely on where we are. I think we need to move forward. But, Chief Officer, you would like to add something?

The Chief Executive:

If I could just address Deputy Ferguson's point. That was the original proposition under the Jersey Enterprise Board structure which at that point the Scrutiny Committee found to be not an acceptable way forward, which was why it was withdrawn and this alternative proposition was brought forward. So we did address that.

The Deputy of St. Peter:

But with respect, and it is an awful thing to say, that was a recommendation that was accepted by the Chief Minister so obviously it had some relevance.

The Chief Executive:

Absolutely, yes.

The Deputy of St. Peter:

It was not just from the Scrutiny.

The Chief Minister:

I generally try to pay attention to what my Scrutiny Panel say.

The Deputy of St. Peter:

I appreciate that, Chief Minister. There have been some concerns between the interaction between Property Holdings and that of W.E.B. What do you think the remit of Property Holdings should be?

The Chief Minister:

To own, maintain and, where surplus to requirements, dispose of States property assets, and in certain circumstances to develop those assets to get the maximum benefit for the States out of the used assets. There is, I agree, a dividing line between what development might be done by Property Holdings as a body and an external commercial organisation like S.O.J.D.C. So if we had, for example, the refurbishment of Cyril Le Marquand House, I would not expect S.O.J.D.C. to get involved with that necessarily, that is a straightforward internal Property Holdings redevelopment matter. Where you have got a more complex assembly possibly of sites, both within and requiring purchases externally and much more commercial focus on the activities, I think those activities, particularly if they involve significant funding operations, are outside the current expertise of Jersey Property Holdings. I have given some thought, as you might have expected, to whether Property Holdings could in fact subsume the work of S.O.J.D.C. or whether S.O.J.D.C. could subsume the activities of Jersey Property Holdings and I came to the conclusion that they were such dissimilar activities that you would get no real synergy, no real benefit of trying to create a one company fits all. But I do take the point that there are certain differences in

terms of the word “development”. What there has to be absolute clarity about because in terms of value where properties move across from one side to the other, where a States Property Holdings owned asset gets transferred to S.O.J.D.C. there has to be clear evidence of the value and the cost of that transfer. Similarly at the end of the day when S.O.J.D.C. has finished developing the project the sale back to Property Holdings, where appropriate, also needs to be similarly independently valued and assessed, and the whole commercial transaction then needs to be looked at in an arm’s length way.

Mr. R. Law:

Who would initiate the process that you have just outlined? Because that is very clearly set out in your ...

The Chief Minister:

If we have got ...

Mr. R. Law:

Who will be the driver? Who would be the initiator and driver of it?

The Chief Minister:

If we are talking about Property Holdings transferring an asset to S.O.J.D.C. I would probably expect them to come up with an initial assessment of whatever surpluses were. I believe there ought to then be a healthy dialogue between them and the directors of S.O.J.D.C. as to its real value and it may well be you need an independent valuation. At the end of the day the Minister for Treasury and Resources has the ultimate accountability, if you like, of achieving a fair price for Property Holdings in terms of the disposal of that property and I accept that there could a tension there that he is also a shareholder in terms of the company but I think it is sufficiently clear that his duties in terms of Property Holdings are to ensure that Property Holdings gets a fair price.

Mr. R. Law:

Sorry, I was going one step before that, because one can say is this surplus? Should this even be contemplated for the exercise of transfer because that seems to me to be the first decision rather than saying: “Well, if it is worth so much we will sell it and if it is not we will not.” That is where I was coming from.

The Chief Minister:

Okay, but I think there are various stages in the process from ... I suppose the initial stage would be in terms of the Island Plan, what might be envisaged for a particular site or particular area, from which would move to the Regeneration Steering Group seeing how that area might be developed for social economic or various purposes from a conceptual point of view. If there are assets within States ownership in that picture then at that stage Property Holdings would no doubt come into the discussions. So I am not sure which bit of that process your question relates to.

Mr. R. Law:

It is the bit where Property Holdings come in. That is to say that they would be advising their Minister of their view as to whether that ... whether it is in a regeneration zone or not, it may well be that the States in its own right considers that site should be held within the portfolio as it is at that point in time, irrespective of whether it is a regeneration site which is

ripe for the opportunity that J.D.C. (Jersey Development Company) is envisaged for. That is the point I am getting to. In other words, it is whether it is driven by J.D.C. or not.

The Chief Minister:

You just said what S.O.J.D.C. had envisaged. I do not think S.O.J.D.C. should be envisaging.

Mr. R. Law:

All right, that is the point I want to be totally clear on. I was not clear on that point of who is driving what.

The Chief Minister:

Right. In my view S.O.J.D.C. should not be envisaging, they should be delivering what they are asked to or what they are told to deliver.

The Chief Executive:

Chairman, if I can, I think that is very clearly set out in section 9 of the report, where the driver is Jersey Property Holdings, the decision whether to develop and how the States receives value from that development is on Property Holdings advice and a Minister for Treasury and Resources decision.

The Deputy of St. Peter:

One of the problems, and I will allude to it now, and I regret that I have to, is that on the floor of Assembly, so it is public domain, the Minister for Treasury and Resources said that he did not have faith in the operation of the Property Services. He stated that he did was not happy at all with the way Property Services was operating. Whether he meant to say it in that way but he did, it sent a message to us as a panel and to other States Members that there is a fundamental issue here when it comes to carrying out the function that you have described in an equitable and honest manner.

The Chief Minister:

No, I think quite rightly the Minister for Treasury and Resources, as should all Ministers, is seeking continually to raise standards and demand higher quality of service and standard of delivery. I think he believes ... just as Property Holdings which he may have spoken publicly about on the floor of the States Assembly, he will also have views that the States Treasury is capable of further enhancements, that the Income Tax Department or the Tax Office is capable of further enhancement and that other aspects under his remit are capable of improvement and enhancement in the same way as I could say - I like to choose my words a bit more carefully - that the Chief Minister's Department is capable of improvement and enhancement. **[Laughter]** But that is not saying they are not fit for purpose but to say that there is always scope to do better.

The Deputy of St. Peter:

But the difficult is, and you alluded to political sensitivity, at a point of sensitivity in this particular element of setting up the S.O.J.D.C. versus the role of W.E.B. that that sent a message which caused concern.

The Chief Minister:

Well, it should not because it suggests, when you say S.O.J.D.C. versus W.E.B. that they are - or S.O.J.D.C. versus Property Holdings ...

The Deputy of St. Peter:

It was more alluding to Property Holdings versus W.E.B.

The Chief Minister:

Sorry, Property Holdings versus W.E.B., that there is a conflict there. Now, if there is there should not be because ...

The Deputy of St. Peter:

The message that has clearly been delivered to me and to members of the panel is that it would appear to be a conflict in that very direction, which is detrimental to what we are trying to achieve.

The Chief Minister:

I think that may be because the role of W.E.B. at the current time is not as clear and robust as it should be and that is one of the reasons why I wanted to see S.O.J.D.C. with a clear robust and separate role that S.O.J.D.C. and Property Holdings should not be in conflict but should be different parts of a total picture.

The Deputy of St. Peter:

We would see that as a very positive move as well, as I said.

The Chief Executive:

May I just say, and I am speaking from an officer perspective here, there is no conflict between Jersey Property Holdings and W.E.B., between the officers or the executive of W.E.B. and there is no misunderstanding of the role. I am happy to state that and I have satisfied myself in discussion with both the Deputy Chief Executive and the Director of Property Holdings and the Managing Director of W.E.B. as to that point.

[15:30]

Now I am speaking at an officer level here, I am not speaking to anybody else's thoughts but I am very clear of that position. There is no conflict and there is no Property Holdings versus W.E.B.

Deputy D.J. De Sousa:

Can I just follow on? The Chief Minister just said that there is a very clear and separate role, would it therefore not have been ideal to have come forward with a complete separation with W.E.B. by not incorporating any member from W.E.B. and putting S.O.J.D.C. out, and opening up for people to come forward for position of director of S.O.J.D.C. and possibly be appointed by the Appointments Commission so that there would have been a clear inception of the new company?

The Chief Minister:

In the majority of cases that is happening because, as the proposition indicates, the composition of the board of S.O.J.D.C. is significantly different than the composition of the current board, Waterfront Enterprise Board, and it may even be that the roles are sufficiently differently that all members of the board would need to reapply for any position that they might want to hold. But clearly what we have got here is a situation where the composition of the board of S.O.J.D.C. is clearly set out in the new draft Articles of

Association. If I can lay my hands on that and identify if I can immediately ... yes, page 16 of the proposition. The proposal of the board of S.O.J.D.C. should in the future comprise an independent chairman - that is not necessarily the same chairman as it currently has, it is a new independent chairman - a managing director, a finance director, a non-executive director appointed by the Minister of Treasury and Resources, 3 non-executive directors with relevant financial, banking, commercial and property expertise. In other words we have got a rather different structure from the current situation which is ...

The Deputy of St. Peter:

But drilling down to the nub of the problem, it would appear that the majority of concerns lay in the area of the Managing Director and the immediate staff because it would appear that, whether it is rumour or conjecture or whatever, the view is that the current Managing Director of W.E.B. and his staff would be subsumed within that board. Now, there is an area there of great concern.

The Chief Minister:

There is an area of potential concern there and that will be, I think, one of the first issues which the new board of S.O.J.D.C. will need to consider. Whether in the new structure any or all of the current staff, including the managing director, are appropriate in the new organisation.

The Deputy of St. Peter:

But one of the concerns that is again put forward is that it is post event so that "the new board of S.O.J.D.C. as established" will be making that decision at that point. The concerns that are reflected are that decision should be made before that point and a managing director should be appointed via the Appointments Commission when the board is put together at the start of the setting up of S.O.J.D.C.

The Chief Minister:

I do not know that the articles exclude that as a possibility.

The Deputy of St. Peter:

It does not indicate that that is going to happen.

The Chief Minister:

It does not indicate it is going to happen but it does not stop it from happening. I may well be we need to clarify the procedure and it may well be that ...

The Deputy of St. Peter:

What is the Chief Minister's view in that respect?

The Chief Minister:

My view in that respect is that if you are to terminate and reappoint you have got employment law issues to raise, which you need to consider, and it is right that the board of the new company should make that consideration. Now, I accept that it is a matter for debate whether that decision should in fact be taken out of their hands by the States Members saying: "We want to be sure that we have started from scratch and therefore we will dismantle the whole employment structure of the current Waterfront Enterprise Board." I suspect that is a course of action which you would only want to take if you were of the

view that the entire workforce was not fit for purpose. So what I am saying is you tread carefully on employment law matters here.

The Deputy of St. Peter:

Sorry, on employment matters?

The Chief Minister:

Yes.

The Deputy of St. Peter:

Yes.

Mr. R. Law:

Chief Minister, there has been a welcome reference earlier and in the various documents to transparency. When I say earlier I mean the hearing that took place, the first hearing on this particular round. Transparency ...

The Chief Minister:

I am not sure what the first hearing was, I have not kept ...

Mr. R. Law:

The first hearing was the gathering of the Property Holdings with the Deputy Chief Executive, and transparency and the need for openness. You have, if I may say so, correctly identified clarity at this point in saying: "Look, we say that W.E.B. may well be retained as a company because it will have purpose" however if we look at the proposition in terms of the new terms of reference of what I will call Newco, it is quite clear that there is guidance given as to the appointment of senior persons within that organisation. In a normal commercial situation, and within the public sector, the attention to detail of dealing with people is paramount. But the practice, as I understand it, is that it is perfectly open to, for example in many instances, chief executives or executives do not wish to transfer. So one market tests the opportunity in the usual way by advert and ensuring one looks at what is perhaps a wider opportunity for people to look for such appointments in the current climate, and then selects the most appropriate person. So if that is my understanding of what you are saying it seems to me that if that is clearly set out and if that is what it means, then that will be helpful, as I see it, to dealing with what is a whole line of questioning that we have been having.

The Chief Minister:

Yes, I do not think I can necessarily give the same level of clarity because I do not think you can compare this necessarily with a commercial operation in ... I will not say in the real world but in the commercial world where a decision as to whether you are going to make this change or not will have already effectively been taken. It is a not a matter for debate as to whether we will ... from Waterfront Enterprise Board to S.O.J.D.C. it will have been decided we are going to create S.O.J.D.C. full stop. As a result of creating Newco we then decide on some of the subsidiary matters. In a political world like that you do not have the same certainty of decision.

Mr. R. Law:

I did mention both the commercial world, if I may just reflect on what you have just said, which is in corporate circumstances, nothing to do with the public sector but I also

mentioned the public sector where it is a similar practice and in fact my understanding is that the public sector currently are being particularly careful on this very matter because when there is a change in structures, which is happening at the present time, it is dealt with in a very open fashion; transparent fashion.

The Chief Minister:

Once the decision has been made. I suspect ... I can see where this line of questioning could lead and I think there is a danger here that I have to be quite circumspect in terms of a public meeting.

The Deputy of St. Peter:

That is accepted. But one has to understand that it is pivotal because generally speaking, as we have said before in our reports, we accept the necessity - and the sooner it happens the better - for the setting up of an S.O.J.D.C. What has concerned us is the functions that have sat around, that have blurred the edges of where we want to go. Again, we will be going into private session some time later because there are certain assets we want to discuss which will be commercially in confidence. But we will take that break in about 10 minutes, I would think.

The Chief Minister:

Okay.

The Chief Executive:

Can I also suggest there are certain matters relating to employment law consequences which need to be dealt with in exactly that same confidential way?

The Deputy of St. Peter:

That is the point I am making. For the reason it is commercial and employment law. But while are still in public session there is one area that I do want to tackle, you will be aware of one of the recommendations put forward which was that a full independent report be carried out by DTZ, the company to carry out that report. You will also be aware that at the meeting, again that you called when we were discussing why there had been a delay in moving forward, that you indicated some disputes between DTZ, the producers of that report, and W.E.B. We, as a group, as a result of that, having been given a copy of the final report, asked to see the initial draft. It was quite clear in the documentation that the initial draft was to be sent to W.E.B., as all these things normally are, for checking of facts. It is very clear from the comparisons that we have done between the initial report and the final published report that it went way beyond dealing with the facts. We have got the document here, the areas outlined in blue are the areas which have changed and there was huge areas in change of tone and of content, not fact. What is your view on how this has come about because obviously it is of concern when a draft report appears to have been changed and used in the media by a company to say: "We are doing not as badly as people perceive"?

The Chief Minister:

I make no comment about comments in the media ...

The Deputy of St. Peter:

The only reason why I allude to that is because there were comments made by the Director of W.E.B. by him factually, not reported by the media but made by the individual.

The Chief Minister:

That may be but I am more interested in making sure that the DTZ is an objective report.

The Deputy of St. Peter:

So are we.

The Chief Minister:

In that context I made inquiries as well to satisfy myself that DTZ, to put it crudely, had not been lent upon. I am satisfied from DTZ's reply to me, which says: "To conclude, I do not accept" and this is the chap from DTZ: "that DTZ's independence was compromised by issuing any draft report to W.E.B. for comment and consider it is a routine and sensible approach to have adopted." In other words what DTZ had done was to produce a report for W.E.B. for checking. Yes, primarily for factual accuracy and also in terms of commercially confidentiality. That is another important aspect. But then having said that, there are facts which can be interpreted in different ways and would not take it amiss if W.E.B. were to say: "Yes, this is a fact which you have interpreted in one way which we interpret in a different way."

[15:45]

It would not surprise me - and I have not made the comparisons you have made - if they say: "Have you also thought that these facts could be interpreted in a different way?" What I am concerned with is that DTZ's final published report should be an honest appraisal of DTZ's findings and I am satisfied that that is an honest appraisal of DTZ's findings. So while there may well be differences between the initial report and the final report, to me it is very much the final report and the fact that DTZ are satisfied that their independence has not been compromised which reassures me that whatever changes there may have been have been in the interests of improving the quality and the output of the report which we are relying on.

The Deputy of St. Peter:

What briefing, if any, have you had with regard to the changes that were made between the 2 drafts?

The Chief Minister:

I have had no detailed briefing because, in effect, the first draft is to be a working document between DTZ and the board of the Waterfront Enterprise Board. It is not a draft which I necessarily have to take any particular cognisance. I am interested to see what the final report says.

The Deputy of St. Peter:

But the concern I had initially, which was raised by yourself at the early meeting was that the reason why there had been a delay was because there had been disputes between - I think that is the word you used - W.E.B. and DTZ. Now disputes is an interesting word.

The Chief Minister:

It may have been a word used carelessly because I do not think it was so much disputes as to differences of opinion as to what were the true facts behind the matter, what the true interpretation of those facts. Now, you can call that a dispute or a disagreement but I think

you may be reading more into the word “dispute” than certainly I believe there was. If W.E.B. say there are areas where the report is not accurate in this way or the other way then I would say they are disputing the accuracy or they are challenging the accuracy and I do not regard it as a dispute in terms of: “That wall is green.” “No, it is not, it is yellow.” “It is green.” When quite clearly the facts speak for themselves. There will be other occasions where I think there will be disputes: “Is that pale cream or dark cream?” You tell me. Now, if that is a dispute because I say it is pale cream and you say it is dark cream, that may be but I am not going to get too hung up ...

The Deputy of St. Peter:

I thank you for the analogy but we are not dealing with people talking about paint colour, we are talking about DTZ that is a well-respected company who are used to carrying out these reviews and it seems odd that there should have been a 2 month delay while these variances of colour were discussed.

The Chief Minister:

If it were as simple as that I am sure it would be. I think ... I expected DTZ to do a thorough piece of work, they are a professional firm and I believe that if there are areas where their reputation might be at risk if they say something which is alleged to be misleading or in dispute, if you want to use that word, then they are anxious to get it right just as a professional board of a company should be anxious to ensure that they get it right. But I think without going to specific items, I am not sure that I can really add anything to do, maybe the Chief Executive wants to.

The Chief Executive:

May I add and just explain that of course the report was issued not just to W.E.B. but to everybody that had been interviewed by DTZ and had a view, including officers in the Chief Minister’s Department, and I was one of those, officers in Property Holdings ... I cannot remember exactly who else, but what I can inform you is a significant element of the delay of the final provision of the report was not as a result of discussion between W.E.B. and DTZ, it was as a result of internal discussions. Because you have seen in the first draft of the report that made it very clear that we needed to be clear about the asset transfer arrangements, in particular the asset pricing arrangements on transfer. That is ...

The Deputy of St. Peter:

Chief Officer, I hear what you are saying and I respect what you are saying but the only difficulty that I had was that when I sat at the meeting with the Chief Minister his first words to me were that he apologised for the delay in not taking this forward because there had been disputes between W.E.B. and DTZ over the report. That is what I took on board as being an honest approach when we first started that meeting.

The Chief Minister:

That may have been a careless use of words on my part but I was aware that W.E.B. had expressed some concerns, having received a copy of the DTZ report, although I am aware that other parties also received a copy of that report I was not aware of the same level of concern because matters about Property Holdings would have been related to the Minister for Treasury and Resources rather than myself. Matters dealing with other aspects would not have fallen directly under my nose.

The Chief Executive:

If I may just finish explaining the reason for that delay. The basis of the valuation and transfer pricing, it is very complicated to get the right balance. We had original proposals, DTZ said they needed to be improved and made more precise and a significant amount of internal work within the States between Jersey Property Holdings and the Treasury was involved to get that right. If I am very honest the time at which that work was done was a time of considerable upheaval within the Treasury and getting the ability to resolve that internally took us more time than perhaps it should have done. I think that explains the delay.

The Chief Minister:

It may well be that in using W.E.B. I have made W.E.B. a scapegoat for the delay which is not entirely ...

The Deputy of St. Peter:

Never let it be said to you, Minister. [Laughter]

Mr. R. Law:

I see the telepathy of the Chief Officer clearly anticipating my question, which was who else has been involved in the process. But you have identified very real and practical issues that you have used to illustrate the point. I would like to ask one question in terms of the issues that arose in gathering the information, how was a different view of one party making a representation as compared with another party dealt with? I am deliberating not naming parties but you understand the point I am raising. In other words, if for example you asked, say, W.E.B. and then asked another, we will say, Property Holdings, to comment and we talk about it on the basis of matters of fact, as one knows in the real world what are common in understanding as a matter of fact between one party does not in the real world happen to be the same in the eyes of another. Hence our friends, if you like, engaged in settling disputes are very successful. I raise that point. The other is an observation that quite rightly a lot of time was spent in arriving at what is the appropriate figure and how do we arrive at it. What I find interesting about that is that it has quite clearly required an enormous amount of potential and detailed work but then one can say: "Why should that be necessary because in the real world they are not going to all fall out to be a common problem" because scale and timing, without us going into detail, are very different. In the economic climate we are operating in currently one is having to be, if you like, very fleet of foot and ensure that a particular contract is designed specifically for the particular purpose. So I am making that as an observation which shows that there must have been tension between, if you like, buyer and seller, in simple language.

The Chief Minister:

Yes, I think we can talk a bit more about the detail of it but certainly I have already alluded to a tension which ought to be there and a healthy tension between buyer and seller. I think it is also a question of principles of valuation and I cast my mind back now to my accounting requirements and accounting standards and what needs to be done from an accounting point of view, which sometimes cuts across in the real commercial world acknowledging that this is almost a transfer from one property to another, not quite. But nonetheless it is, I think, appropriate that we set up a new company that have good standards, proper standards of accountability, proper proceedings in terms of valuation for asset transfer and so on, and that the buyer and seller are going to have different views on the appropriateness of that, particularly if there is a situation where some of the consideration may not be in real pound notes - pellets of paper ones - but in that sort of ...

The Deputy of St. Peter:

In public good.

The Chief Minister:

Yes. So I think that is where you will get some difference of opinion but in terms of the detail of that I will hand back to the Chief Executive.

The Chief Executive:

To address both questions, in terms of any resolution of different views, that was for DTZ to decide. We appointed them as the independent reviewer to bring their expertise to bear, they reviewed the facts, they talked to the people, they received information and comments and that was for them to determine. I can honestly say to you I am not aware that there were any differences like that, that was handled by DTZ. In terms of the issue about the transfer valuation, again I make it clear I am not passing responsibility back to the Scrutiny committee, but the first draft we had of our first report and proposition made it clear that the structure would depend upon individual deals and would be determined on the basis of individual deals. The Scrutiny Panel, as one of their recommendations, said: "Before J.D.C. begins operation the Minister for Treasury and Resources should set out clear protocols for the transfer of assets" and it went on to say clear risk management protocols. That was one of the things we asked DTZ to comment upon. When we received the first draft of their report quite clearly that was an element where they were advising us and we need to work that through. Part of the reason it became so complicated was that we are introducing a whole new accounting standard, the G.A.A.P. (Generally Accepted Accounting Practices) standard and had to understand how the transfer and the consolidation through the accounting system would properly be handled, as well as the commercial transaction, and that is why we spent the time and attention on getting it right. It is not a strait jacket but it is clear on the principles on the basis, the commercial basis, the valuation and the accounting valuation. So we have tied up that loose end very directly. Yes, it took us longer than perhaps it should have done and apologies for that.

Mr. R. Law:

Just for the record, I have not trespassed beyond the field of my knowledge into accounting standards but I do understand the difficulty of reconciling the 2.

The Chief Executive:

Particularly on consolidation when you are 100 per cent owner in the consolidation and we had not ...

Deputy D.J. De Sousa:

Can I just briefly ask, before we leave this subject, in delay was there any further costs incurred to the department for producing the report?

The Chief Minister:

No, it was a fixed price deal.

The Deputy of St. Peter:

Just before we leave DTZ in its entirety, you will appreciate that today, while driving around the Bel Royale, I received a copy of some documentation which obviously, as a panel, we have not been able to absorb.

The Chief Minister:

My apologies, I received it last night.

The Deputy of St. Peter:

I thank you for getting it to us that quickly but regretfully there seemed some indication that you might want to discuss it today.

The Chief Minister:

No, had I given it to you the day after our meeting and not mentioned it, you would have been equally unsighted.

The Deputy of St. Peter:

We would have been. I thank you for delivering it but we will deliberate on it and we may have to come back to you to discuss it.

The Chief Minister:

Understood. I equally think that it may well be that the panel would be interested in receiving a representation from DTZ.

The Deputy of St. Peter:

We are contemplating doing that, Chief Minister.

The Chief Minister:

But that is a matter for the panel to decide.

The Deputy of St. Peter:

Panel, before we move into closed session is there anything we would like to take from our current question list. The only area which I would see is basically the last one, has any further work been undertaken to assess the potential risk of the operation. I think you have already alluded to that by the DTZ report.

The Chief Minister:

Yes.

Senator S.C. Ferguson:

Yes, because the original DTZ report talked about the risk management process which we have supplied you with and that disappeared from the second one.

[16:00]

The Chief Minister:

Yes, the second report was a specific report for specific areas. I do not think the second report was meant to overrule the first report but just to amplify certain aspects which had not been sufficiently addressed. The need for proper risk analysis clearly remains. The risks may well have changed over the period and will continue to change between now and when the next development may take place.

The Deputy of St. Peter:

That is appreciated.

Mr. R. Law:

In fact you are right to anticipate they are changing.

The Deputy of St. Peter:

All right, any further questions from the current paper? Right. Ladies and gentlemen, if I could ask you to leave the public gallery because we are now going into closed session.

Member of the Public:

Just for the record, will any part of the closed part be published at all?

The Deputy of St. Peter:

A lot depends on what comes out in the closed session. Obviously if there is anything that can be openly discussed we will do that but we cannot commit ourselves at this stage.

(In camera session)

[16:01]