



# Corporate Services Scrutiny Panel



## Review into the Proposed Establishment of the Jersey Enterprise Board

Presented to the States on 12<sup>th</sup> June 2008

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## **1. Terms of reference**

1. To examine the proposed establishment of the Jersey Enterprise Board.
2. To examine the proposed remit and terms of reference of the Jersey Enterprise Board.
3. To examine the proposed interaction between the Jersey Enterprise Board; the States Property Holdings Department; the Regeneration Task Force; and the Waterfront Enterprise Board.
4. To consider any further issues related to the proposed establishment of the Jersey Enterprise Board which may arise in the course of the Scrutiny review that the Panel considers relevant.

## **2. Panel Membership**

The Corporate Services Panel is constituted as follows –

Deputy P.J.D. Ryan, Chairman

Deputy C.H. Egré, Vice-Chairman

Connétable J. Le Sueur Gallichan

Connétable D. J. Murphy

Deputy R.G. Le Hérissier

Officer support: Mr M. Haden and Miss S. Power

For the purposes of this review the Panel formed a Sub-Panel, which was constituted as follows –

Deputy C.H. Egré, Chairman

Connétable D. J. Murphy, Vice-Chairman

Connétable J. Le Sueur Gallichan

Deputy J.G. Reed

## **3. Independent Adviser**

The Panel engaged the following adviser to assist it with this review –

Mr. Richard Law, FRICS FAAV IAM, Senior Partner for Bruton Knowles Property Consultants.

## 4. Executive Summary

### 4.1 Summary

4.1.1. The Proposition under scrutiny introduces changes to the way surplus States property will be dealt with in the future in part through the creation of a separate limited liability company, the Jersey Enterprise Board (JEB), charged to deal with surplus property assets for the benefit of the people of Jersey and in accordance with objectives set out by the States.

The Sub-Panel strongly supports the need for effective use of surplus property assets currently held by Property Holdings to deliver financial receipts and regeneration providing community benefits coupled with sustainable economic benefits to support the States Property Plan, as contained within the Annual Business Plan. The Sub-Panel recognises the ambitious nature of the approach set out in the proposition.

However, in scrutinising this proposition and having received evidence both written and in Public Hearings, the Sub-Panel and the adviser, having specific regard to the terms of reference (TOR), have considered the following questions:

- Are the objectives of JEB clearly set out?
- Is JEB an appropriate vehicle to meet the objectives set and to ensure effective regeneration?
- Is the mechanism being used to establish this vehicle appropriate and correct?
- Are the remit and terms of reference relevant to the objectives?
- Are both the remit and terms of reference explicit and properly understood?
- Is the role of JEB an appropriate one for the States to pursue?
- Do any constraints exist, whether internal or external, which may preclude the success of the proposal?
- Is there a demonstrable benefit from the proposition?

### **4.2 Key Findings**

#### **4.2.1 Are the objectives of JEB clearly set out?**

Whilst the objectives are set out in the report accompanying the proposition<sup>1</sup> these are undermined by the general lack of clarity around JEB's involvement in the development process and the potential confusion between the various bodies involved in this approach. Consequently the Sub-Panel could not conclude that the objectives were clearly set out.

#### **4.2.2 Is JEB an appropriate vehicle to meet the objectives set and to ensure effective regeneration?**

The Sub-Panel were unable to conclude that JEB will be an appropriate vehicle to meet the objectives set and to ensure effective regeneration. In particular, the rationale for the establishment of JEB appears to be heavily predicated on the failings of other, alternative approaches referred to in the original proposition. These appear to be overstated and little attention has been paid in the proposition to the perceived failings of WEB, which is a very similar model.

The Sub-Panel encountered particular difficulties over the lack of clarity over both the objectives and the remit and terms of reference which appear to offer considerable potential for confusion between the various inter-related bodies referred to in the proposition. These issues are explored in greater detail below.

Further, notwithstanding the explanation given in the proposition and in evidence, the precise nature of JEB remains uncertain; it is to be a company limited by guarantee but is it to operate essentially on private sector principles, as implied in the report supporting the proposition, or with a public sector ethos, as suggested in evidence to the Public Hearing?

#### **4.2.3 Is the mechanism being used to establish this vehicle appropriate and correct?**

Whilst being unable to offer unequivocal support for the creation of JEB, the Sub-Panel still considered whether the mechanism proposed, the creation of a new company which would adopt at least in part the role, resources and contractual liabilities of its subsidiary, WEB, was appropriate. In evidence at the Public Hearing it was explained that the apparently more expedient route, simply changing the name and articles of association of WEB, would

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<sup>1</sup> Jersey Enterprise Board Limited: Proposed Establishment P.194/2007

in fact be far more laborious and expensive as it would involve the assignment, or transfer by other means, of WEB's contractual liabilities.

There remains, however, a need for a more explicit cost/benefit appraisal of the above mechanisms.

#### **4.2.4 Are the remit and terms of reference relevant to the objectives?**

The Sub-Panel faced some difficulty in approaching this question given that there was, as reported above, a lack of clarity over the objectives of JEB. This undermines the relationship between the remit and objectives. However, subject to these constraints, the remit and terms of reference (sections 8.1 and 8.2) do support the objectives in general.

#### **4.2.5 Are both the remit and terms of reference explicit and properly understood?**

The Sub-Panel encountered particular difficulty in this area most notably as a consequence of the apparent lack of clarity over what was meant by terms such as *development company* and *developer*, whereas part of the role would appear to be providing consultancy services.

The Sub-Panel has considered the breadth of activity covered by these definitions when used in a generic and unclear context and further commentary is offered in the main body of this report (section 7.7). In this instance there is an apparent lack of clarity at a strategic level. It may be that further amplification of this point could resolve this issue; however, it would also be the case that, if this explanation clarified the role of JEB as being involved in development beyond the initial strategic and promotional stages, this may give further cause for concern at the exposure to risk that JEB and vicariously the States will face, an issue explored further in 4.2.6 below.

The Sub-Panel also had concerns over the rationale for and mechanism by which property would be transferred from Property Holdings to JEB and what conditions should be attached to any transfers. It was apparent from evidence submitted to the Sub-Panel that those promoting the proposition were aware of the potential pitfalls around the transfer of property, particularly in terms of timing. However it was less apparent that the question in principle of whether there was a need for property to be transferred to JEB as part of the proposed approach to development had been properly tested.

### **4.2.6 Is the role of JEB an appropriate one for the States to pursue?**

Clearly the States has a responsibility to ensure that property identified as surplus by Property Holdings and under the present proposal sanctioned for transfer to JEB is disposed of or developed in the most effective fashion. The proposition rightly identifies the opportunity to capture a share of any future profits from development through appropriate reservations and claw-backs; however, the proposition suggests that an alternative route to optimising return may involve JEB being directly involved in the development process to an extent where it would be taking a risk:

- In contributing funding
- In contributing the value of the assets
- In taking responsibility for delivering a completed project

This is not a common position for public sector property owners who are generally more inclined to secure return through an outright disposal together with a share in any profits, or for example making a ring-fenced contribution to a project achieving defined benefits without being exposed to the same level of risk as a commercial developer. Whilst clearly transactions will be judged on an individual basis, in general this approach is far more entrepreneurial and consequently has a far greater exposure to risk than most public sector arrangements. This is particularly the case in the current market where the outcome of speculative developments is far less secure than has previously been the case.

To this extent, the Sub-Panel were concerned that JEB might be involved in a far greater degree of risk than is generally the case for public sector property owners. It is fundamental that the States should have a full appreciation of all the risks surrounding any project before making a decision. Such a decision should then be made based on an acceptable level of risk.

### **4.2.7 Do any constraints exist, whether internal or external, which may preclude the success of the proposal?**

The success of any proposition can be undermined by unforeseen or ill addressed constraints whether external or internal. The proposition argues that there are intrinsic constraints for private sector developers operating with public sector partners, hence the proposal for JEB itself. However the Sub-Panel consider that there are a number of other constraints to the successful establishment and operation of JEB or a similar development function within the States of Jersey.

In particular there are potential constraints:

- In the apparent overlap and uncertainty between the roles of JEB, WEB, the Regeneration Task Force and States Property Holdings;
- In the policy vacuum in which JEB is likely to operate until the Strategic Property Plan and the Island Plan Review are completed.
- In the structure for facilitating development which will require transfers from Property Holdings to JEB and then potentially to individual development vehicles which could be more straightforwardly and cost effectively achieved by a straightforward transfer from Property Holdings to the ultimate developer.

### **4.2.8 Is there a demonstrable net benefit from the proposition?**

Whilst there are some benefits to the proposal, notably the introduction of a new name (JEB), which may be considered to effectively re-brand WEB, the Sub-Panel was firmly of the view that the proposition, as currently tabled, was insufficiently progressed and consequently lacked the degree of certainty necessary not only to demonstrate there would be a net benefit from JEB but even to identify what that benefit might be.

## **4.3 Recommendations**

4.3.1 Whilst the Sub-Panel recognises the importance of establishing a clear structure for the development of surplus States property, it is not able to support the proposition as currently made.

4.3.2 In the Sub-Panel's opinion, the rationale behind the basic proposition is unproven; the proposal appears unduly rushed, lacks clarity in a number of areas, has not taken account of a changing market place since the original proposition and has the potential to expose the States to far greater risk than other approaches.

**4.3.3 To that end the Sub-Panel recommends that the sponsors of this proposition should:**

**a) Revisit the analysis of options contained in the December 2007 Report supporting the proposition and the conclusions reached therein as to the best vehicle seeking, in particular, evidence of other approaches to public/private partnerships.**

- b) As part of the analysis in (a) consider, in particular, the benefits of transfer of legal interests in property between Property Holdings and JEB as the Sub-Panel does not consider this case has been properly made or indeed considered.
- c) Reconsider the roles of the various organisations proposed, testing, in particular, the rationale for and value for money of the Regeneration Task Force, the specific role and remit of which needs defining but which appears to overlap with both the Planning Department and JEB with the consequential risk of frustrating progress.
- d) Identify specifically the benefits which arise from the formation of JEB rather than any other model and how the risks identified in 4.2.5 and 4.2.6 above can be mitigated.
- e) Ensure that any proposals set a framework which provides sufficient flexibility for the States to respond to development opportunities in a way which is both fit for purpose and enables clear quantification of risks involved in each project.
- f) Review the effectiveness of the Waterfront Enterprise Board to date in achieving its objectives.

## 5. Introduction

### 5.1 *The proposition P.194/2007*

5.1.1 The proposition to establish Jersey Enterprise Board Limited (JEB) was lodged *au Greffe* by the Council of Ministers on the 19<sup>th</sup> December 2007.<sup>2</sup> The proposition asks the States:

*“...to decide whether they are of the opinion –*

*To refer to their Act dated 12<sup>th</sup> December 1995 in which they approved the establishment of the Waterfront Enterprise Board Limited, and –*

- (a) to agree to the establishment of a new development agency as a company, to be known as the Jersey Enterprise Board Limited, in accordance with the Memorandum and Articles of Association set out in Appendix 2 of the report of the Council of Ministers dated 19<sup>th</sup> December 2007;*
- (b) to agree that the Waterfront Enterprise Board Limited should become a subsidiary of the Jersey Enterprise Board Limited, and that appropriate amendments be made to its Memorandum and Articles of Association as set out in paragraph 8.2 of the said report.*

5.1.2 It is proposed for JEB to be a limited liability company which would act primarily as the developer of surplus property assets belonging to the public. In addition, JEB would take on the activities of the Waterfront Enterprise Board Limited in developing the St Helier Waterfront and play a key role in implementing the St Helier regeneration strategy.<sup>3</sup>

### 5.2 *The Sub-Panel’s Review*

5.2.1 This proposal would involve transferring States property assets out of the direct control of the States and into the ownership of the new company, which would be a third party within direct ownership of the States. As this would require a major change in policy, the Corporate Services Scrutiny Panel therefore agreed it wished to form a Sub-Panel to thoroughly review this issue, before the proposition was debated by the States of Jersey.

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<sup>2</sup> Jersey Enterprise Board Limited: Proposed Establishment P.194/2007

<sup>3</sup> Jersey Enterprise Board Limited: Proposed Establishment P.194/2007 – Paragraph 1.1

## **6. Background Information**

6.1 This section of the Sub-Panel's report will provide the background to the establishment of the Property Holdings Department, and the Waterfront Enterprise Board (WEB).

### **6.2 *The Property Holdings Department***

6.2.1 On the 7<sup>th</sup> June 2005 the States approved P.93/2005<sup>4</sup>, which proposed the creation of a new department to be known as 'States of Jersey Property Holdings' (Property Holdings) under the Finance and Economics Committee and its successor, in order to develop a modern, innovative approach to the management of property. This proposition proposed the transfer of the administration of all States property assets, with the exception of those under the administration of Trading Committees and Social Housing, to the States of Jersey Property Holdings Department.

6.2.2 Property Holdings was subsequently formed in January 2006, under the remit of the Minister for Treasury and Resources, and charged with the responsibility of managing States property that has been conservatively valued at an estimated £1.6 billion as at December 1999.

6.2.3 The Property Holdings Department consists of the following three sections:

- Design and Maintenance
- Property Management
- Finance and Strategy

6.2.4 The Department has responsibility for managing and maintaining more than 900 States owned properties.

### **6.3 *Property Holdings Mandate***

6.3.1 When the States approved P.93/2005, the following principles for the future administration and management of States property by the Property Holdings Department were approved:

- (i) the creation of a new department to be known as 'States of Jersey Property Holdings' under the Finance and Economics Committee and its successor

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<sup>4</sup> States of Jersey Property Holdings: Establishment P.93/2005

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Ministry, in order to develop a modern, innovative approach to the management of property and deliver the aims as set out in section 3 of the 2005 report;

- (ii) the transfer of administration of all States property assets, with the exception of those assets under the administration of Trading Committees and Social Housing currently administered by the Housing Committee, to States of Jersey Property Holdings;
- (iii) the transfer of existing staff with property responsibility to States of Jersey Property Holdings;
- (iv) the development of a States Property Plan, which would include all States property, to be agreed by the States as part of the States Strategic Plan;
- (v) the development of a States of Jersey Property Holdings Business Plan in accordance with the agreed States Property Plan and approved by the States as part of the Annual States Business Plan, which would authorise the department to develop, sell, buy, re-allocate or otherwise manage the property or interests in property as identified within the plan;
- (vi) the development of a fully integrated landlord and tenant system of property provision and maintenance between States of Jersey Property Holdings and States Departments, regulated through Service Level Agreements;
- (vii) the introduction of a charging mechanism for all property assets to reflect the true cost of occupation.

### **6.4 The States Property Plan**

6.4.1 The States Property Plan was approved as an Annex to the States Strategic Plan 2006-2011 during the States Debate on the 27<sup>th</sup> June 2006. The States Property Plan outlines the Property Holdings Department's objective to deliver revenue savings of £1.5 million a year from 2008 and capital savings of £4 million a year from 2009.

6.4.2 On the 25<sup>th</sup> September 2007, the States approved the States Property Plan 2008, which outlined the schedule of properties for disposal in 2008. It was planned that the Minister for Treasury and Resources would bring forward in early 2008 a fully

developed Strategic Property Plan, with a view to developing a comprehensive property strategy for the States.

6.4.3 During the States Debate on the Property Plan, the Minister for Treasury and Resources explained that having just appointed a new Chief Officer, the Property Holdings Department was currently going through a reorganisation exercise. The focus of the department had therefore been on the production of the property strategy, which was the reason why it was only planned to dispose of 5 properties in 2008.

### **6.5 The Waterfront Enterprise Board**

6.5.1 On the 30<sup>th</sup> March 1993, the States approved the establishment of a Waterfront Enterprise Board to be responsible for the implementation of the St Helier Waterfront Plan, as outlined in the report of the Island Development Committee dated 21<sup>st</sup> January 1993, and approved the way forward for the constitution of the Waterfront Enterprise Board.<sup>5</sup>

6.5.2 Following this decision and the Report of the Waterfront Enterprise Board dated 22<sup>nd</sup> September 1993, on the 9<sup>th</sup> November 1993 the States approved in principle that the Waterfront Enterprise Board, established by Act of the States dated 30<sup>th</sup> March 1993, should, subject to relevant legislation and States procedures –

- (i) be confirmed as a development agency for the States for an initial ten year period (which expired on 11<sup>th</sup> December 2005);
- (ii) be given full responsibility for the co-ordination and promotion of development in the St Helier Waterfront Area;
- (iii) In addition the States approved the membership and terms of office of Board members.

6.5.3 On the 12<sup>th</sup> December 1995, the States approved the establishment of the Waterfront Enterprise Board as a separate legal entity, and agreed to appoint the Waterfront Enterprise Board Limited as a development agency of the States for an initial ten year period. Additionally, the States approved the areas of land that would be transferred to the administration of the Waterfront Enterprise Board Limited.<sup>6</sup>

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<sup>5</sup> P.16/1993 Waterfront Enterprise Board

<sup>6</sup> P.156/1995 St Helier Waterfront Development

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6.5.4 On the 14<sup>th</sup> September 2005, the States approved the extension of the Waterfront Enterprise Board's initial ten year appointment as a development agency for a further period of ten years from 12<sup>th</sup> December 2005.<sup>7</sup>

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<sup>7</sup> P.114/2005 Waterfront Enterprise Board: renewal of ten-year working limit

## 7. The proposed establishment of the Jersey Enterprise Board

7.1 It is proposed that JEB would be a limited liability company acting primarily as the developer of surplus public sector assets. The proposition identifies four potential options for dealing with States assets that are no longer required, namely:

- i) To create a division within Property Holdings to deal with the development of surplus assets (paragraphs 2.4 & 2.5 of the proposition)
- ii) To employ consultants to act with Property Holdings in developing surplus assets (paragraph 2.6 of the proposition)
- iii) To set up joint ventures on a case by case basis (paragraph 2.7 of the proposition)
- iv) To establish a limited liability company for the purposes of property development, this being the favoured and proposed option (paragraph 2.8)

7.2 In supporting and proposing the fourth option of establishing a limited liability company, the proposition identifies a number of constraints within the other potential approaches, as outlined below.

7.3 The Sub-Panel observed that a fifth potential option, namely the use of WEB albeit renamed with an amended remit, did not appear to have been fully considered.

### 7.4 Option 1: Creating a division within Property Holdings

7.4.1 The proposition acknowledges that the first option of creating a division within Property Holdings to deal with the development of surplus assets would have the virtue of simplicity; however, two major drawbacks are identified<sup>8</sup>:

- i) Reluctance from the private sector to deal with the public sector in the area of property development.
- i) A public sector arrangement not providing the financial flexibility that is needed for successful development projects.

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<sup>8</sup> P.194/2007: Paragraph 2.5

7.4.2 The Sub-Panel did not recognise the concerns expressed in the proposition to the same degree. Whilst there may have been difficulties in some areas over public/private collaboration, plainly including Jersey, we do not believe these are as universal as the text suggests. Whilst historically some private sector companies may have been reticent to deal with the public sector, this is no longer the case. Indeed, there has been healthy competition amongst private sector companies to become involved in regeneration projects promoted, led by or facilitated by the public sector.

Similarly, elsewhere there are public/private development arrangements which offer full flexibility for the private sector partner to procure the necessary finance and for the development to carry full costs (including consultancy) whilst still maintaining the transparency required and defined returns and benefits to public sector partners.

### **7.5 Option 2: Employing consultants to work with Property Holdings**

7.5.1 The proposition argues that the employment of consultants is likely to be expensive and would not provide the advantages of a limited liability company.<sup>9</sup>

7.5.2 The Sub-Panel acknowledged that there are skill deficits in development, planning and regeneration generally and particularly in the public sector and the States are by no means immune from this difficulty. Consequently it is likely that consultant time will be required to a greater or lesser extent in all of the options considered. Competitive procurement of consultants can enable the public sector to secure additional skills without bearing full employment and overhead costs and it is entirely feasible to recover some of these costs through other structures within the development process in any event.

### **7.6 Option 3: Setting up joint ventures on a case by case basis**

7.6.1 The proposition argues that the joint venture approach could lead to piecemeal identification and development of land, without a clear long-term strategy in place. In addition, it is stated that joint ventures can limit the range of commercial partners and developers, as they often lack clear objectives and structures.<sup>10</sup>

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<sup>9</sup> P.194/2007: Paragraph 2.6

<sup>10</sup> P.194/2007: Paragraph 2.7

7.6.2 The Sub-Panel could see no reason why the States through the Island Plan, together with Property Holdings, supported by the Planning Department, cannot set the long-term strategy for development, one of the roles advocated for JEB. Turning to the second argument in this paragraph, adequate evidence was not adduced to support the contention that joint ventures lack flexibility or clear objectives. Further, it is likely that JEB will wish to retain the flexibility to pursue joint ventures themselves as indicated in the written response from the Chief Minister<sup>11</sup>. In such circumstances it is essential that clear objectives and structures are stated at the outset.

### 7.7 Option 4: Establishing a limited liability company for the purposes of property development (JEB)

7.7.1 The Sub-Panel asked the Chief Minister to explain the evidence base used to reach the conclusion that the establishment of a limited liability company was the preferred of the four options presented. The following response was received:

*“Experience across the UK and elsewhere demonstrates that extensive regeneration projects are best managed by organisations which are under the overall control of a political authority, but are at ‘arms length’ from that organisations day to day activity. However, most of the URCs have the responsibility for regenerating areas that would not be developed due to demand and value issues by the private sector alone or cohesively without public intervention by way of funding or policies.*

*It is essential that the delivery body is properly constituted, with a sense of permanency necessary to both manage its own financial affairs and provide continuity throughout the extensive strategic planning and development phases.*

*The public sector property function is resourced to undertake the core functions of managing, maintaining and developing the operational estate. It does not have sufficient resources (either skills or capacity) to manage the complex commercial relationships required to ensure that the best deal is achieved for the Public of the Island.”<sup>12</sup>*

7.7.2 One issue which concerned the Sub-Panel during the course of its review was the lack of clarity in the proposition in terms of what was meant by the terms “developer” and “development”.

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<sup>11</sup> Written response from the Chief Minister, see para. 8.3.2 below

<sup>12</sup> Written response from the Chief Minister, Question No.6

7.7.3 The development process is typically a succession of inter-related activities with perhaps six main phases:

**Strategic** – developing a masterplan for the redevelopment/regeneration of the site

**Promotion** - promoting the site through the planning process to secure relevant development permissions at least at outline stage

**Commissioning** – procuring either a development partner or a disposal of the site to a developer able to finance and implement the development

**Financing** – providing risk finance to procure the implementation of the development

**Implementation** – procuring and managing the construction of the development

**Exploitation** – marketing and securing occupiers for the completed development and the overall investment interest where appropriate

7.7.4 In each case but specifically in the context of joint public/private projects it is essential at each stage to identify which of the parties will be responsible for delivery and where and how the associated risks are to be dealt with.

7.7.5 Generally risk increases progressively through the development process and for this reason typically public sector vendors or partners might involve themselves in the strategic and sometimes the promotional stages of development but they are less likely to go beyond those stages without a joint development partner at least. In this instance it would appear that JEB may be involved to a significant extent throughout the process thus increasing their exposure to potential risk. The fact that JEB would be involved to this extent in the development process was highlighted by David Flowers during his attendance at a Public Hearing:

**Mr D. Flowers:**

*“I think you have to look upon J.E.B. as you would look upon a third party developer.”<sup>13</sup>*

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<sup>13</sup> Transcript of Public Hearing, 22<sup>nd</sup> April 2008, p.21

### 7.8 How would JEB work?

#### 7.8.1 Purchasing of non-States property assets

7.8.2 The report accompanying the proposition states that one of the proposed activities of JEB would be to purchase and develop non-States property assets that are required to achieve the Regeneration Strategies of the Regeneration Task Force.<sup>14</sup>

7.8.3 When the Chief Minister was asked why the provision for purchasing third party assets had been included it was explained that larger areas of regeneration may require the purchase of non-States property in order to assemble sites so that a comprehensive and co-ordinated redevelopment of these areas can be achieved.<sup>15</sup>

#### 7.8.4 When would assets be transferred to JEB?

7.8.5 In terms of when assets would be transferred from the Property Holdings Department to JEB, the Chief Minister explained that no assets would be transferred until such time as the transfer of at least current market site value and guarantees of future benefit proceeds are provided by JEB.<sup>16</sup>

7.8.6 There are, however, contradictions within the report supporting the proposition particularly over the extent of JEB's involvement in all surplus property. Further, the report does not provide sufficient clarity over issues surrounding the timing of property transfers, the assessment and treatment of value and any conditions attached to those transfers.

7.8.7 Evidence given to the Sub-Panel<sup>17</sup> appears to support a stronger role for Property Holdings than was apparent from the initial report but further clarity is once again required over the extent and role of the separate bodies involved

7.8.8 This was an issue that was discussed with the Minister for Treasury and Resources during his attendance at a Public Hearing, where he explained the following:

**Senator T.A. Le Sueur:**

*"I think we have a presumption there that Jersey Enterprise Board are going to go out and suddenly develop properties here, there and everywhere around the Island. I do not see that at all. It may well be, although I think it is unlikely, that you would*

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<sup>14</sup> P.194/2007: Paragraph 1.1

<sup>15</sup> Written response from the Chief Minister, Question No.1

<sup>16</sup> Written response from the Chief Minister, Question No.4

<sup>17</sup> Transcript of Public Hearing 22d April 2008 p.3 -4

*have Jersey Enterprise Board set up and for a year or 2 be doing virtually nothing until opportunity headed its way. It is not to me a question of trying to look at all the States properties and see where they can make a fast buck here and changes there, this is far longer strategic activity.*<sup>18</sup>

### 7.8.9 Who would have overall control of JEB?

7.8.10 The report accompanying the proposition explains that JEB would work within a policy framework determined by the Regeneration Task Force.<sup>19</sup> The company would have two shares which would be held by the Chief Minister and the Minister for Treasury and Resources.<sup>20</sup>

7.8.11 In terms of staffing, it is proposed that the staff in WEB would be transferred to the new company, with the Managing Director of WEB becoming JEB's Managing Director, with the Chairman and members of JEB being the same as those of WEB.<sup>21</sup>

7.8.12 One of the reasons behind the Sub-Panel's review was the concern that the establishment of JEB would involve the States relinquishing a great deal of responsibility for its property assets. The Sub-Panel therefore asked the Chief Minister who would have overall control of JEB:

*"It is the States which has overall final control of JEB. The overall regeneration strategy will be agreed by the States and will act as the guiding blueprint for the regeneration of St Helier. The Chief Minister, on behalf of the States and the Regeneration Task Force will ensure that JEB delivers to these plans. All major developments must also fit in with the Island Plan which is agreed by the States. The role of the Minister for Planning and Environment sitting on the Regeneration Task Force will ensure that JEB complies with the Island Plan and any supplementary plans."*<sup>22</sup>

7.8.13 However, the issue of control was still of concern to the Sub-Panel, as the reporting of WEB's activities appears to have been such that the current situation would not have enabled the States to take action to prevent the apparent failures of WEB to produce appropriate phases of development at the waterfront.

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<sup>18</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.15

<sup>19</sup> P.194/2007: Paragraph 3.7

<sup>20</sup> P.194/2007: Paragraph 3.1

<sup>21</sup> P.194/2007: Paragraphs 3.4 and 3.5

<sup>22</sup> Written response from the Chief Minister, Question No.7

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7.8.14 It is anticipated that JEB will be subject to regulatory control and normal audit control and, in addition, it would operate under a performance management regime with clear key performance targets and indicators.

7.8.15 The States' ability to influence and control issues may be further eroded in the context of the individual subsidiaries of JEB, the Special Purpose Companies, referred to in the report supporting the proposition.

7.8.16 In terms of the amount of control that the States would be able to exert over the proposed company, Mr Ogley made the following statement:

**Mr. B. Ogley:**

*"... if a States asset is to be transferred, then the States, through the annual property plan and Regeneration Task Force, would place on that asset expectations about what will be delivered and the nature of the delivery. To that extent, although you have a company which mirrors to a large extent the current WEB structure, it will be working on new assets and those assets on transfer or sale to JEB will carry requirements with them. So, the States will be exerting more control over JEB than it has done heretofore over WEB. That was one of the functions of the Regeneration Task Force."<sup>23</sup>*

7.8.17 The proposition anticipates that the Board of JEB would comprise one individual who is a Minister or Assistant Minister, in addition to a second States member. There is a risk of potential conflicts of interest over issues such as planning and resource use which may be exacerbated were one of the Ministers most closely involved with planning or property issues to be on the Board of JEB.

7.8.18 The proposition proposes for the composition of the board for the Waterfront Enterprise Board to be the same as that of JEB, with the appointments for the chairperson and the independent members being made by the Chief Minister rather than by the States.<sup>24</sup>

### **7.9 Why establish the Jersey Enterprise Board?**

7.9.1 As the States has only recently established the Property Holdings Department and the Waterfront Enterprise Board has had its remit as a development agency extended until 2015, one of the issues that concerned the Sub-Panel was what benefits would be derived by establishing the Jersey Enterprise Board, which

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<sup>23</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.6

<sup>24</sup> P.194/2007: Paragraph 5.4

## Proposed Establishment of the Jersey Enterprise Board

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couldn't already be provided by the existing structures, save for the geographical constraint on WEB?

7.9.2 The proposition outlines three advantages in establishing JEB:<sup>25</sup>

- (i) *the Jersey Enterprise Board Limited can be given a clear, long-term mandate with responsibility and accountability;*
- (ii) *clear direction can be given as to the objectives under which the development of sites will take place; and*
- (iii) *it will signal a clear intent of purpose that the States wishes to develop land on a commercial basis with appropriate safeguards under existing planning rules, whilst having regard to the socio-economic strategies of the States of Jersey and the interests of the Public.*

7.9.3 Whilst JEB may offer these benefits, it is difficult to see why they cannot be provided through existing structures and hosted in policies set out in the Strategic Property Plan.

7.9.4 The Chief Minister was asked to outline the benefits involved in forming JEB, and explained that JEB would provide the opportunity to give clear focus to major complex development projects separate from the pressures of day to day property issues in the existing estate. It was further explained that:

*"In forming JEB, the States will have its own property development company that could undertake the redevelopment of redundant States property assets. This will ensure that the States retain control of these surplus assets in terms of what the sites are used for and how they are developed and further it will ensure that the States receive back not only the base land value of the site but also the development profits that will be generated from the property's redevelopment and onward sale."<sup>26</sup>*

7.9.5 This envisages full involvement in the development process and consequently a greater exposure to risk than that commonly envisaged by the public sector. The more usual role for public sector owners would be that of facilitator or a development partner through an SPV carrying a clearly defined and limited exposure to risk.

7.9.6 The Minister for Treasury and Resources similarly explained that with the current States system there is still a fair degree of direct involvement with States Members

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<sup>25</sup> P.194/2007: Paragraph 3.6

<sup>26</sup> Written response from the Chief Minister, Question No.2

on a day-to-day basis, and there was concern that this is not always the best way to run a commercial organisation. The Minister went on to say:"

**Senator T.A. Le Sueur:**

*"Having set out a clear strategy within that Regeneration Task Force, and the States having determined its potential enhancement of its assets by that policy, we should then let the people with the more commercial focus get on with realising that enhancement."*<sup>27</sup>

7.9.7 It would appear that one of the main drivers for establishing JEB is the effect this change would have for the Waterfront Enterprise Board. WEB's remit is currently confined to the areas defined by its memorandum and articles of association, namely the West of Albert area and the Weighbridge.<sup>28</sup> If JEB was to be established it would provide WEB with the opportunity to develop the waterfront area as a whole.

7.9.8 This was an issue raised with WEB during the Public Hearing, where the following comments were made:

**Mr. S. Izatt:**

*"The great advantage is that we should have the ability to implement and co-ordinate the development of the whole of the St Helier Waterfront, including the Harbour areas and La Collette... So it actually marries up the requirements for the area. Presently we are only dealing with West of Albert. And then it takes control of areas that are outside presently WEB's geographical remit, namely those assets that are not needed for its future requirements."*<sup>29</sup>

7.9.9 This was elaborated upon by the Chief Minister during the Public Hearing:

**Senator F.H. Walker:**

*"If we do not form JEB we are going to miss out on one opportunity or another and primarily we will almost certainly miss out on some outstanding opportunities East of Albert which are possibly even greater for the public good than West of Albert and, for example, the unfulfilled commercial land around the airport. There is a real opportunity here which does not in any way dilute States control... I really cannot see*

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<sup>27</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.10

<sup>28</sup> See section 13 of this report for the land disposal plan that was attached to P45/2002

<sup>29</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.10

*the downside currently to what is being proposed. I can see an awful lot of upside in terms of public opportunity.*<sup>30</sup>

7.9.10 However, it would appear that there is still a lack of clarity regarding the objectives behind the establishment of JEB, as can be seen from the following quote from the Minister for Treasury and Resources:

**Senator T.A. Le Sueur:**

*“What I think my objective would be would be to get a greater understanding of what objectives we are trying to achieve here and once those objectives are clearer then people will feel perhaps a little more relaxed about how JEB would operate.”*<sup>31</sup>

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<sup>30</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.13

<sup>31</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.25

## **8. The proposed remit and terms of reference of the Jersey Enterprise Board**

### **8.1 *The role of the Jersey Enterprise Board***

8.1.1 The proposition states that JEB would have the following three major roles:

- i) Acting as the developer of property assets currently belonging to the public that have been authorised for development;*
- ii) Implementing and coordinating the development for the whole of the St Helier Waterfront, including the greater harbour area and La Collette, in accordance with approved development plans and other relevant guidance prepared by the Minister for Planning and Environment;*
- iii) Playing a key role in the implementation of the St Helier regeneration strategy.*

### **8.2 *The Terms of Reference of the Jersey Enterprise Board***

8.2.1 The proposition sets out the following terms of reference for the Jersey Enterprise Board:

- (a) To work within the general policy framework determined by the Regeneration Task Force in progressing the implementation of a regeneration strategy for St Helier and in this connection -*
  - (i) to give particular attention to undertaking and coordinating the development for the whole of the St Helier Waterfront area, including the sites known as West of Albert, East of Albert and St Helier Harbours, marrying up the various requirements for the area; and*
  - (ii) to manage the development and improvement of major publicly owned sites in accordance with the regeneration strategies;*
- (b) To consider sites referred to it by Property Holdings and authorised by the Minister for Treasury for possible development, whether in St Helier or in other parts of the Island, having regard to the socio-economic strategies of the States of Jersey and the interests of the public;*

(c) *To identify potential uses, and to maximise opportunities to make the best use of these sites.*

8.2.2 The need to have clear terms of reference was an issue that was also covered in a submission from Mr C. Spears, President, the Jersey Chamber of Commerce:

*“There is no States defined investment policy to take account of what elected government want. In the absence of this we will see purist behaviour that is open to contentious public debate. The body needs a carefully defined investment policy and Terms of Reference with a fully transparent memorandum of understanding to govern operations between government and JEB. None of these vital governance procedures are evident in proposals.”*

8.2.3 This comment highlights the fundamental requirement, beyond the role of JEB, to ensure that proper strategies are in place in terms of property, planning and economic development against which delivery vehicles, whether JEB or otherwise can operate.

### **8.3 *How much involvement would JEB have in the development process?***

8.3.1 The degree of involvement JEB would have in the development process, in terms of whether the company would directly be involved in developing assets, or simply act as a facilitator, was an area of particular interest to the Sub-Panel, based on concern that the company may become directly involved as a commercial developer.

8.3.2 In a written response to the Sub-Panel, the Chief Minister provided the following three methods by which it is proposed that JEB would redevelop property. It was explained that the intention would be to maximise the return to the public whilst minimising the risk, with the decision on which method to follow depending upon a full analysis of the risk profile and/or market exposure:

- i) *JEB to undertake the redevelopment of property itself (using a third party contractor) and on completion to sell or rent out the property (i.e. performing the role of “developer”) or*
- ii) *form a joint venture arrangement with a third party developer with JEB putting in the land and the Developer paying for the development costs and sharing*

*out the profits on the basis of value input by each party (JEB the land and the Developer the construction expense), or*

- iii) a property could be sold on to a third party developer with full planning and development approvals in place.*

8.3.3 The Sub-Panel had some concerns regarding the amount of risk this would involve the States entering into with public assets. Embarking on the course identified in the first example would expose the States to the highest degree of risk. When this issue was raised at the Public Hearing with the Chief Minister the following response was received:

**Senator F.H. Walker:**

*“But what the actual controls that the States wish to exercise over JEB would be the States’ decision. There will possibly be times when the board of JEB will feel that it is in the public interest to take a risk on a particular site in order to gain a much higher return, but that is a decision that can be basically taken at the time on a particular site.”<sup>32</sup>*

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<sup>32</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.4

## **9. The proposed interaction between the Jersey Enterprise Board and other Bodies**

### **9.1 *The States Property Holdings Department***

9.1.1 During the course of its review, the Sub-Panel was concerned that as the Property Holdings Department had only been established in January 2006, and had only recently appointed a new Director, the proposed establishment of JEB might be premature or even unnecessary. Property Holdings is still in the process of developing its Strategic Property Plan, and the Sub-Panel questioned how appropriate it was to establish JEB, without this document being available to identify the proposed way forward for the States property portfolio.

9.1.2 The formation of the Strategic Property Plan was discussed with the Minister for Treasury and Resources during his attendance at a Public Hearing, where the following exchange took place:

***The Deputy of St. Peter:***

*“That is a very important foundation to the structure we are looking at.”*

***Senator T.A. Le Sueur:***

*“It is, and if you saw last year’s Business Plan I was not going to bring forward much in the way of property disposal until we had a clear strategic plan, and I think I have made that clear at the time. It may be even be that in this year’s Business Plan, unless we have a strategic plan in front of us, I am not going to suggest other major disposals.”<sup>33</sup>*

9.1.3 This was further discussed with the Director of Property Holdings at a Public Hearing:

***The Deputy of St. Peter:***

*“How important do you think that plan is as a foundation to the development of the Jersey Enterprise Board?”*

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<sup>33</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.21

**Mr. D. Flowers:**

*"I think it is important. It is not of primary importance. I think that there are probably 3 key property issues facing States of Jersey. One is the regeneration of the waterfront and any associated redevelopment of St. Helier that is linked to that. That is undoubtedly the primary focus of W.E.B. and J.E.B. It is a major infrastructure project. The second is the one which I have described, which is to ensure we have an estate which we can afford to maintain going forward. The third is to release property for additional housing. I think the focus really is for W.E.B. and J.E.B. on the major infrastructure redevelopment, for Property Holdings on the first category and out of what I do hopefully there will be properties which can go to J.E.B. for them to enhance the value or can go straight into the housing market."<sup>34</sup>*

- 9.1.4 Mr Ogley also made reference to the establishment of JEB without the availability of the Strategic Property Plan:

**Mr. B. Ogley:**

*"I think you are right in the sense that the Property Holdings strategic plan looked at the whole of the States property portfolio and will be identifying the changes that can be made; either development for States use or redundant and disposable sites. And it is those redundant and to be disposed of sites that once that is agreed could be transferred to J.E.B. for development. So, to that extent it is important but I think as the Chief Minister said it is not the only important issue."<sup>35</sup>*

**9.1.5 Why separate the development function of States assets from the Property Holdings Department?**

- 9.1.6 In a written response to the Sub-Panel, the Chief Minister explained that it is not intended to separate all development functions from Property Holdings. As the owner and manager of States Property, it was explained that Property Holdings will be developing land and buildings for States use. However, it was further explained that property development of sites surplus to the States needs is a commercial activity which can only operate in a limited company.<sup>36</sup>

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<sup>34</sup> Transcript of Public Hearing, 22<sup>nd</sup> April 2008, p.8

<sup>35</sup> Transcript of Public Hearing, 22<sup>nd</sup> April 2008, p.16

<sup>36</sup> Written response from the Chief Minister, Question No.5

9.1.7 The Sub-Panel had some concern that if JEB were to be established confusion may arise in terms of the interaction between Property Holdings and JEB, and the role that both functions would play. The proposed interaction between the two functions was explained by the Chief Minister:

*“Property Holdings would continue to hold and administer property on behalf of the States and ensure that the Public achieves full value for its assets upon disposal. In this respect JEB would be viewed by Property Holdings as a third party (preferred) developer and the transfer of Public assets by Property Holdings to JEB would require that the Public receives the full development benefit through a combination of a guaranteed sum and a share of future proceeds over and above an agreed target figure. It is proposed that the Director of Property Holdings sit on the board of JEB to ensure complete transparency and co-ordination between the two organisations.”<sup>37</sup>*

### **9.2 The Regeneration Task Force**

9.2.1 The proposals are for JEB to work within a policy framework determined by a body called the Regeneration Task Force.

#### **9.2.2 Remit and terms of reference of the Regeneration Task Force**

9.2.3 Throughout the Sub-Panel’s review there was confusion surrounding the role, remit and terms of reference of the Regeneration Task Force. The report accompanying the proposition explains how the Regeneration Task Force would be constituted; however, no mention is made of what the task force’s terms of reference would be. This issue was raised during the Public Hearing with the Minister for Planning Environment:

***The Deputy of St. Peter:***

*“Is there a terms of reference for the Regeneration Task Force?”*

***Senator F.E. Cohen:***

*“Not at the present that I am aware of. Not a specific terms of reference that will cover the areas that will be of concern to all.”*

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<sup>37</sup> Written response from the Chief Minister, Question No.18

**Mr. P. Thorne:**

*“Yes, I would go along with the view there, there probably needs to be something a little bit more explicit, certainly as far as decision making is concerned vis-à-vis the separate departmental responsibilities.”*

### 9.2.4 Establishment of the Regeneration Task Force

9.2.5 There is similarly uncertainty in terms of how and when the Regeneration Task Force would be established. There is no mention of the Task Force in the JEB proposition, which simply states:

*The States are asked to decide whether they are of opinion –*

*To refer to their Act dated 12<sup>th</sup> December 1995 in which they approved the establishment of the Waterfront Enterprise Board Limited, and –*

- (a) to agree to the establishment of a new development agency as a company, to be known as the Jersey Enterprise Board Limited, in accordance with the Memorandum and Articles of Association set out in Appendix 2 of the report of the Council of Ministers dated 19<sup>th</sup> December 2007;*
- (b) to agree that the Waterfront Enterprise Board Limited should become a subsidiary of the Jersey Enterprise Board Limited, and that appropriate amendments be made to its Memorandum and Articles of Association as set out in paragraph 8.2 of the said report.*

### 9.2.6 Accountability of the Regeneration Task Force

9.2.7 The Regeneration Task Force would report directly to the Council of Ministers.<sup>38</sup> This was an issue that was elaborated upon by the Chief Minister during his attendance at a Public Hearing, where he was asked who the Regeneration Task Force would be answerable to:

**Senator F.H. Walker:**

*“The States via the Council of Ministers but my own view is that the Chief Minister of the day, the Council of Ministers, call it what you will, should be reporting to the*

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<sup>38</sup> P.194/2007: Paragraph 4.2

*States at least twice annually on the workings of the Regeneration Task Force and through that give the States an update on J.E.B.'s latest movements; latest developments.*<sup>39</sup>

### 9.2.8 Make-up of the Regeneration Task Force

9.2.9 The Sub-Panel was concerned that it is proposed for the Regeneration Task Force to report directly to the Council of Ministers; however the Regeneration Task Force would consist of five out of the ten Ministers that make up the Council of Ministers. The Sub-Panel believed that it would not be appropriate for the membership of the Regeneration Task Force to contain half of the membership of the Council of Ministers.

## 9.3 The Waterfront Enterprise Board

### 9.3.1 How WEB would interact with JEB

9.3.2 The proposition explains that JEB would take on the activities of WEB, which would remain in existence and would become a subsidiary of JEB. This would therefore ensure that the transactions entered into by WEB since 1995 would remain in force.<sup>40</sup>

9.3.3 This was elaborated upon by Mr Voisin during his attendance at a Public Hearing:

**Mr G. Voisin:**

*“They would transfer in the sense that all of the staff would be moved into JEB and would undertake the activities through JEB they are currently undertaking in WEB and that the boards of both would act together, albeit that obviously because WEB is a wholly owned subsidiary of JEB any board of WEB would take its instructions from the board of JEB, although it is intended the 2 would be the same.”<sup>41</sup>*

9.3.4 The Sub-Panel questioned the reasons behind not transferring WEB's assets directly into JEB, as a way of avoiding having the two legal entities, which would be the case if JEB were formed. However, it became clear that this would prove to be extremely costly:

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<sup>39</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.7

<sup>40</sup> P.194/2007: Paragraph 3.4

<sup>41</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.3

**Mr B. Ogle:**

*“The reason you do not just retain WEB is you would have to move a heck of a lot of contracts; there would be a huge overhead in costs; you would have to go through corporate and finance restructuring because of all the deals that exist with developers and the way the money flow is happening.”<sup>42</sup>*

### 9.3.5 Lessons learnt

9.3.6 The Sub-Panel was concerned that, as a result of past dissatisfaction with work that has been undertaken by WEB, the expansion of WEB’s remit by the creation of JEB might cause even greater concern for the general public.

9.3.7 This was an issue that was raised in submissions to the Sub-Panel, with the following comments being made:

*“Before a new quango (quasi-non-governmental organisations) is created careful consideration should be given to the success of WEB. I think most islanders would regard what we have ended up with at the waterfront has not been what they hoped for. How much of this is down to the organisational model?”<sup>43</sup>*

*“I believe that WEB has been a disaster for Jersey. In my mind it is an example of development gone horribly wrong, with an ugly mess of inappropriate buildings. The huge potential that the site had has probably now been lost forever, to the regret of generations of islanders to come. Are we going the same way elsewhere with the creation of JEB?”<sup>44</sup>*

9.3.8 This was an issue that was discussed with WEB during their attendance at a Public Hearing, where it was made clear that lessons had been learnt from past experiences. It was explained that one of the focal points for WEB in the future will be to ensure maintenance of the commitment of any development that is being worked with.

**Mr S. Izatt:**

*“We know with a lot of these public/private partnerships that there is a significant change over the period of the development either as the economy changes or as the developer decides he wants a higher return out of that development, and one of the*

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<sup>42</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.15

<sup>43</sup> Submission to the Sub-Panel from Mr K. Keen

<sup>44</sup> Submission to the Sub-Panel from Mr A. Macleod

*roles that WEB particularly has learnt and I think would take forward is to make sure that we have the ability to deliver that quality throughout the development.*<sup>45</sup>

- 9.3.9 WEB also explained to the Sub-Panel that they have learnt the need to work more closely with various States departments, such as Planning and Environment; Transport and Technical Services; Economic Development and Property Holdings.<sup>46</sup> It was further explained that WEB had begun to significantly tighten their development agreements, in terms of the scope that a developer has to change the finish of a particular building.<sup>47</sup>

**Mr S. Izatt:**

*“What we are doing is making sure that within the development agreements we have such things as design codes that make sure these things are delivered and those are delivered under that contractual relationship. We will monitor those and have step-in rights if they are not actually provided by the developer.”*<sup>48</sup>

- 9.3.10 The Sub-Panel believes it would be extremely beneficial for WEB’s effectiveness to date to be reviewed in terms of whether it has been achieving its objectives.

## **9.4 The Planning and Environment Department**

### **9.4.1 How the Planning Department would interact with JEB**

- 9.4.2 The Sub-Panel was keen to establish how the Planning Department would interact with the proposed Jersey Enterprise Board. This was a question asked of the Chief Minister, and the following response was received:

*“Any company that is responsible for undertaking property development needs to have a good working relationship with the Planning Authority and at present WEB has a very good relationship with Planning with regular meetings with the Minister and officers. This interaction will continue to operate on any development JEB is involved in.”*<sup>49</sup>

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<sup>45</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.12

<sup>46</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.12

<sup>47</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.14

<sup>48</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.15

<sup>49</sup> Written response from the Chief Minister, Question No.18

9.4.3 Despite this response, the Sub-Panel was concerned that, as it was proposed for the Minister for Planning to be a member of the Regeneration Task Force, there might therefore be potential conflict when JEB applies for planning permission for a potential development. This was raised with the Minister for Planning during his attendance at the Public Hearing:

**Senator F.E. Cohen:**

*“Well, I suppose that if you end up in a position where the Planning Minister’s obligation to master plan in the interests of the Island is compromised by the other members, then yes, but it is up to the structures to make sure that the Planning Minister does not get watered down and that the Planning Minister’s view on master planning prevails.”<sup>50</sup>*

9.4.4 This practical answer illustrates a wider problem over potential conflicts between the Planning Department, and indeed other related departments, if the Minister concerned were also a Director of JEB, a possibility perhaps not envisaged in the report supporting the proposition.

### **9.4.5 The Planning Department’s ability to enforce design codes**

9.4.6 During the course of the Sub-Panel’s review it became apparent that there was concern in terms of the ability for the Planning Department to enforce and control design codes. This was highlighted during the Public Hearing with WEB, where differences between Jersey’s and the UK’s planning laws were identified:

**Mr S. Izatt:**

*“You do have to look at the differences of Jersey planning law and the way contracts work here to the UK. You are quite right, the design codes should be agreed with the Planning Department and can be adopted by the Planning Department as supplementary planning guidances. Their ability to enforce vests very much under that planning law. We do not have section 106s<sup>51</sup> or section 54 agreements in this Island.”<sup>52</sup>*

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<sup>50</sup> Transcript of Public Hearing, 22<sup>nd</sup> April 2008, p.16

<sup>51</sup> Planning Gains or Planning Obligations

<sup>52</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.16

9.4.7 This issue was discussed with the Minister for Planning and Environment, who explained that the Island does have planning obligation agreements, however they have only been in place for 5 or 6 years, meaning that the process is not as mature as it is in the UK.<sup>53</sup>

9.4.8 The Minister for Planning and Environment went on to explain that:

**Senator F.E. Cohen:**

*"I am a great believer in good people and that is why on some planning applications I have required as a condition – and I know they do not work very well in the UK but I believe they will work well in Jersey – as a condition the retention of the architect, the commissioned architect, and that the work is completed to the satisfaction of that architect, in addition to all the requirements of the department."<sup>54</sup>*

9.4.9 The design and supervision of planning obligations requires adequate experienced resources. However the combination of master-planning agreements and detailed planning consents together with planning obligation agreements and necessary design codes provides the regulatory framework for the planning department to ensure appropriate development.

### **9.5 The interaction between these parties**

9.5.1 Having discussed the interaction between the various parties with our adviser, the Sub-Panel has three concerns regarding the proposed interaction:

- The extent to which there may be confusion between roles particularly in the areas of regeneration strategy and property management
- The risk of longer-term value being lost to the States
- The risk of failures to implement development as a consequence of the potential confusion of roles

9.5.2 A number of different bodies have an interest in the longer-term strategy for development and regeneration, including the Regeneration Task Force, JEB, WEB and Property Holdings. Whilst the proposed structure identifies this role as being

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<sup>53</sup> Transcript of Public Hearing, 22<sup>nd</sup> April 2008, p.7

<sup>54</sup> Transcript of Public Hearing, 22<sup>nd</sup> April 2008, p.8

one for JEB, the illustration contained within Appendix 1 of the Proposition<sup>55</sup> (please see section 12 of this report) illustrates the Task Force carrying this responsibility and indeed it is difficult to see how this body can operate without overlapping with the activities of JEB, Property Holdings and the Planning and Environment Department.

- 9.5.3 Similarly, whilst the proposal is to transfer all surplus States properties with development potential to JEB, there is a risk of confusion between the role of JEB and Property Holdings. Properties will not all become surplus at the same time and indeed one of the elements of effective development and regeneration is that opportunities should be identified as soon as possible. This could mean, for example, that operational properties are identified as potentially surplus whilst they are still being used for public service. In such circumstances, it is important that there is a very clear understanding of Property Holdings requirements and the objectives for these properties.
- 9.5.4 Whilst the role of JEB is to maximise value, we fear there may be some circumstances where the pressure to secure and accelerate developments may promote shorter rather than longer-term interests. This is an issue which needs to be addressed at the various points of transfer whether from Property Holdings to JEB or JEB to a Special Purpose Company to ensure that the latent value released by a subsequent conversion, for example, from commercial to residential use is captured by appropriate reservations on any transaction.
- 9.5.5 Finally, the apparent overlap between the various bodies, whilst potentially leading to confusion and duplication (paragraph 9.5.2 above), also risks failures in implementation if the roles are unclear. Thus there may be occasions where, for example, JEB may be anticipating that Property Holdings will address an issue and vice versa. Again, the particular risk is around points of transfer but there may be problems with interim management as set out in paragraph 9.5.3 above.
- 9.5.6 These difficulties can and do arise in other situations. However, the particular risk here is that JEB adds a further layer of activity between Property Holdings and the delivery of commercial development. This, coupled with the difficulty over the extent to which JEB might act as a commercial developer, gives rise to concern over the risks involved.

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<sup>55</sup> P.194/2007

## 10. Further issues related to the proposed establishment of the Jersey Enterprise Board

### 10.1 Urgency in establishing JEB

10.1.1 Throughout the Sub-Panel's review, the Sub-Panel was unable to understand the need for JEB to be established so urgently, without first allowing time for Property Holdings to complete its Strategic Property Plan, and for the Island Plan Review supported by appropriate Master Plans to be completed.

10.1.2 This was an issue that was discussed with WEB during their attendance at the Public Hearing, as the Sub-Panel was keen to ascertain whether there was any urgency for JEB to be formed from WEB's behalf:

**Mr G. Voisin:**

*"WEB and JEB will do what the States want of them, and we will receive properties that the States decide to transfer to us. There is no urgency on WEB's behalf to do this."<sup>56</sup>*

10.1.3 This was similarly discussed with the Minister for Treasury and Resources, where it was indicated that the main benefit in establishing JEB sooner rather than later, was to help to clarify the way forward for all those involved:

**Senator T.A. Le Sueur:**

*"If you do not have that link in the chain then maybe my strategic plan for Property Holdings does not get some of the external follow-up delivered in the best possible way. So I might have to say to myself, should I dispose of this asset at this stage or should I wait until J.E.B. is there? So I would far sooner have it sitting there effectively marking time than not have it there at all and then find you need it in a hurry. Even with no property to develop, there is still the ongoing activities of W.E.B. So if what is still the same infrastructure to deal with W.E.B. as it currently has, the idea is to build on that and say, as it grows, then the skills and resources of W.E.B. may need to be extended."<sup>57</sup>*

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<sup>56</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.18

<sup>57</sup> Transcript of Public Hearing, 15<sup>th</sup> April 2008, p.25

## 11. Methodology and evidence considered

### 13.1 Public Hearings

The Sub-Panel held the following Public Hearings for its review:

**15<sup>th</sup> April 2008:** Waterfront Enterprise Board - Mr G. Voisin, Chairman  
Mr S. Izatt, Managing Director  
Mr L. Henry, Finance Director

Senator T.A. Le Sueur, Minister for Treasury and Resources

Senator F.H. Walker, Chief Minister and Mr B. Ogley, Chief Executive

**22<sup>nd</sup> April 2008:** Senator F.E. Cohen, Minister for Planning and Environment and Mr P. Thorne, Director of Planning

Senator T.A. Le Sueur, Minister for Treasury and Resources and Mr D. Flowers, Director, Property Holdings

### 13.2 Written Submissions

The following written submissions were received and considered during the course of the Sub-Panel's review, and copies are available on the Scrutiny website:

Barrie Cooper

Kevin Keen

C Blampied

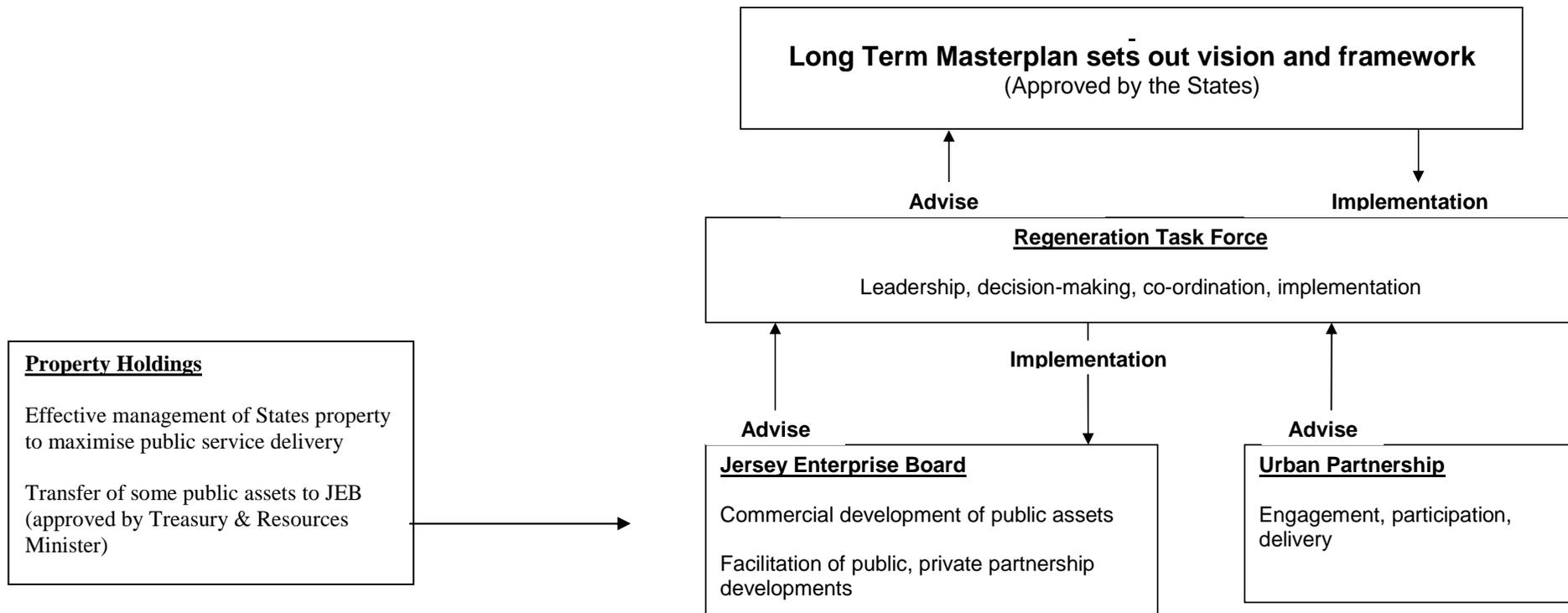
Extract from email correspondence between Clive Spears (Chamber of Commerce) and Deputy Ferguson

Falles Holdings Limited

A Macleod

Chamber of Commerce

## 12. Appendix: Diagram of proposed structure for JEB



### Membership of Regeneration Task Force

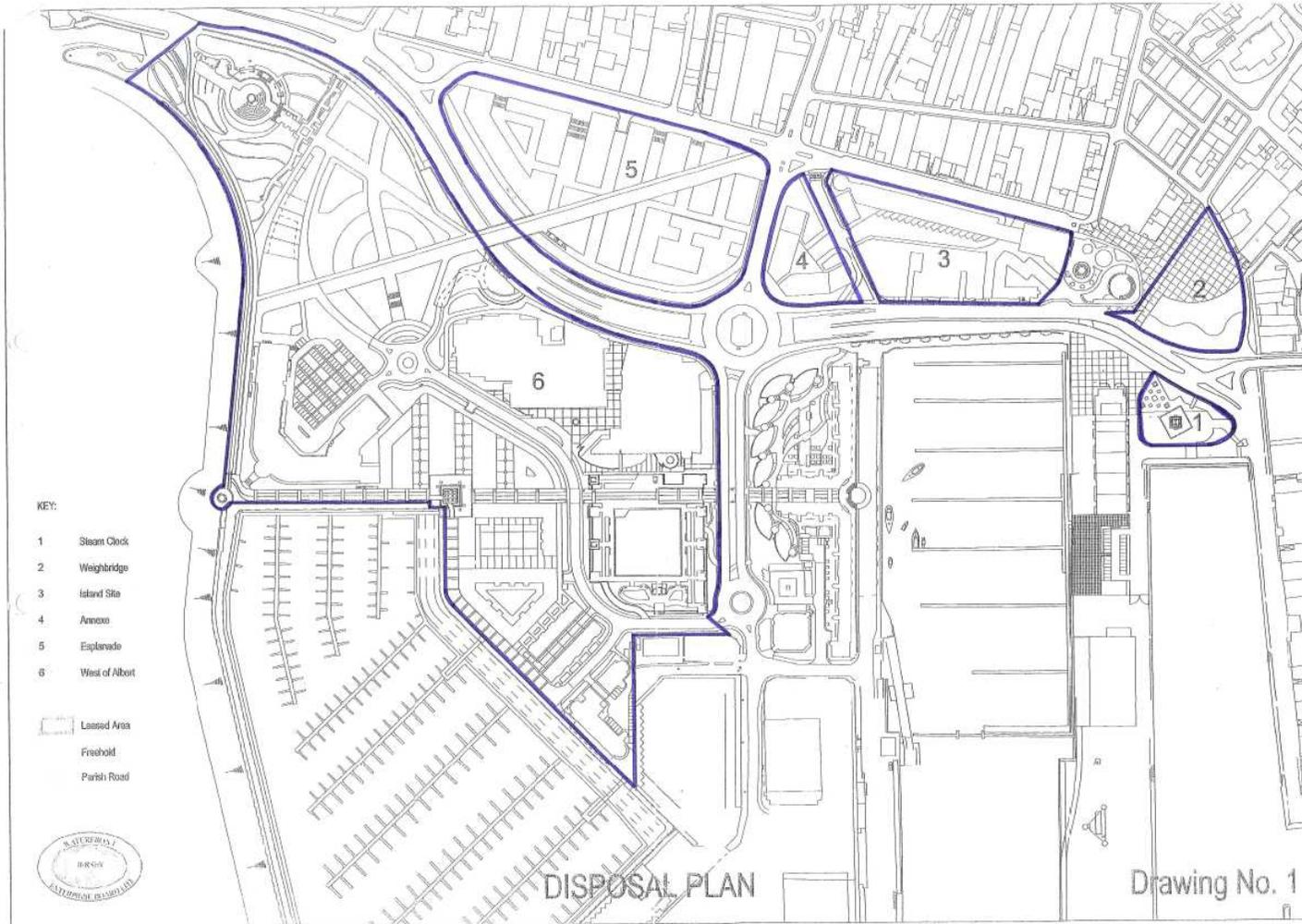
- The following Ministers or their delegated Assistant Ministers: Chief Minister (President), Minister of Treasury and Resources, Minister for Planning and Environment, Minister for Transport and Technical Services, Minister for Economic Development
- In addition, the Connétable of St. Helier will be a member of the Task Force.

### Membership of Jersey Enterprise Board

- One Minister or Assistant Minister; One other States Member; The Director of Property Holdings (occasional); a full-time employee as Managing Director; 3 other independent members (non-States Members)

Source: Chief Minister's letter to Deputy Egré dated 2<sup>nd</sup> April 2008

### 13. Appendix: Waterfront Land Disposal Plan



Source: P.45/2002