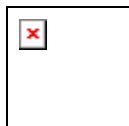


**ST. HELIER WATERFRONT LEISURE COMPLEX: LEASE TO CTP LIMITED - RESCINDMENT (P.156/99):
REPORT**

**Presented to the States on 30th November 1999
by the Policy and Resources Committee**



STATES OF JERSEY

STATES GREFFE

175

1999

P.156 Rpt.

Price code: B

REPORT

1. Introduction

1.1 The stated reason for bringing this rescindment motion is that -

“The States were not given wholly accurate or adequate information when they made their decision to approve the Policy and Resources Committee’s proposition P.92/99 on the 26th and 27th July 1999”.

1.2 This is a serious charge, and the Committee therefore invited the new Chief Executive of Policy and Resources, who had had no previous involvement at all in the matter, to investigate it as thoroughly as time allowed. His advice to the Committee, after a careful review of the papers relating to the case, was that the stated charge could not reasonably be sustained. He made the point that of course the test of what may be “wholly adequate” information is inevitably a subjective one and that views on it are bound to differ, depending no doubt on people’s overall view of the project. As for the charge of inaccuracy, he felt that, while it did seem possible to point to some inconsistencies in the precise language used at various times (by various people) to describe the project, in no way could they reasonably amount to “wholly [in]accurate information”. They seemed, rather, to be part and parcel of the normal cut and thrust of debate, around an issue whose parameters, importantly, were well-known and had a high public profile. Overall, it seemed clear to him that the States had plenty of information and advice upon which to form a considered judgment on the issue before it. The whole matter had, moreover, a high public profile, which would equally have helped inform States Members about all the pros and cons of the lease and financial arrangements they were being asked to approve.

1.3 The Committee has accepted this advice and this report sets out a range of considerations taken into account in reaching this view. It does not attempt to address every point of detail in the report accompanying the rescindment motion (“the Report”). If there was any perceived lack of clarity or inconsistency of language on aspects of the way the proposal was presented, then the Committee naturally regrets that. But it is entirely satisfied that overall the issues were presented fairly and squarely, with good information and with full propriety. The States made its decision in July on this important proposal by a very significant majority, and there was no complaint at the time that the information before the States was in any way wanting.

1.4 It is welcome that the Report firmly supports the provision of a leisure pool on the waterfront. But the thrust of its argument seems to be that the complex should be built by the States itself and retained in public ownership. This is not, however, the proposal which the Committee brought to the States and upon which the States were asked to vote. If retention in public ownership was the preferred option of some Members, then the proper course of action would have been to have proposed an amendment at the time. The use of rescindment to seek to block or overturn agreed propositions, especially where there is such a major commercial element, is inappropriate and causes the Policy and Resources Committee considerable concern from a wider perspective than just the case in question.

2. The Policy and Resources Committee’s response

2.1 The Report, along with giving support for a leisure pool, questions the need for the other commercial facilities. The Report claims that “we simply do not know” whether or not the proposal as a whole represents value for money. It is also claimed that the States took its decision without “full knowledge of the probable financial implications”.

These are not really very fair statements. As with all capital schemes, a judgment has to be made based on all the relevant factors, including, most importantly, achieving the overall objective - in this case, a leisure pool for the people of Jersey funded by the private not the public sector. The key point is that WEB was established by the States to take forward a commercial, private sector approach to the waterfront development. Its judgment was that the proposal it put forward was the best way of securing a viable leisure pool, its running costs covered by other commercial facilities. WEB’s proposal was well-researched and credible, and reflected extensive professional advice. The Finance and Economics Committee was unanimously content. The Policy and Resources Committee was also satisfied, after careful consideration, that WEB’s proposals would satisfactorily meet the stated objective and recommended them accordingly. In value for money terms, the Committee’s judgment was that it had been presented with a very reasonable deal. The financial implications of the proposed deal for the States were clear to see. Risk on the revenue funding of the pool had been substantially transferred to the private sector. The objective of private sector led development would be met. The appropriateness of the terms in relation to achieving the objective had been endorsed by expert professional advisers.

2.2 The Report sets out a variety of so-called “inaccurate information”. For example, the Committee is accused of “a failure to distinguish between the dual elements of the proposals”. This is untrue. In paragraph 3 of the Committee’s

Report (P.92/99) the scheme is described fully. It is made clear that “the scheme has two separate but architecturally linked buildings” and a description follows of the uses to which these buildings will be put. Moreover, the Report notes that P.57/96 set out the brief for the leisure pool as “flexible and for the private sector to suggest what mix of uses is commercially viable”. The Report also confirms that, when in 1997 the States agreed to grant an indemnity clause, it was for a “leisure pool complex, a scheme which at that time included leisure ice-skating, an eight-screen cinema and other facilities alongside a leisure pool”. The Report argues that it does not constitute “splitting hairs” to exploit the ‘difference’ between a leisure pool and a leisure complex. This is hardly a credible position. Given all the publicity around the waterfront development, there is no doubt that all States Members were fully aware last July that the issue they were voting on was the building of a leisure pool and associated commercial facilities whose profits would sustain the pool. It is perhaps a matter of opinion whether all these, taken together, are best described as a “complex” or not.

- 2.3 There are various other aspects of the Report that appear to be confused. For example, it accepts that the States knew that the route selected was a partnership with the private sector, but it appears to seek to deny that the reason behind such a partnership was to harness the expertise of the private sector in putting together a commercially sound mix of uses that would meet the States’ requirement for a leisure pool while minimising the risk to the public purse. The Report seems to be saying that it accepts the case for a private sector approach but nevertheless that the States should be able to dictate the commercial freedom of that partner.
- 2.4 The President of the States was entirely correct in July when he directed Members that the only matter under discussion was to approve the terms of the lease and the financial arrangements. The selection of commercial uses and tenants to support the financial package is entirely a matter for the private sector and it would be quite inappropriate for the States to second-guess this. The States was offered a package to meet the objective it had set which it had the choice to accept or reject. States Members agreed overwhelmingly to accept the package and, while the decision was not agreed by everyone, it was properly made. That is the key reason why a rescindment motion is wholly inappropriate and why it is a proper matter of concern that such an approach is being attempted in order to overturn an important, properly made decision.
- 2.5 The Report claims that there was misleading or selective use of consultants’ reports and over-reliance upon “expert advice”. A range of quotations from various reports are given in support of this assertion. But whatever quotation is chosen or not chosen, there is no doubt that the burden of all the expert advice was clearly in favour of proceeding. Experts advice properly raised all sorts of issues that needed attention and resolution - this is exactly what they are paid for - and those were taken forward accordingly. What mattered for the purposes of the States’ decision was that the advice from all quarters was positive. In particular, the Graham Wason report was favourable, while Healey & Baker concluded that “in the circumstances the profit margin agreed with the developer of 13% is reasonable”. This particular quotation is actually included in the Report.
- 2.6 The Report questions whether the tourism industry and the Chamber of Commerce supported the proposal. The facts are that tourism industry representatives unanimously approved the project at the meeting of the Tourism Investment Sub-Committee on 21st June 1999. The Chamber’s representative was a member of the Sub-Committee. The Report, moreover, states that Deputy Crowcroft had in his possession a copy of a letter from the President of the Chamber of Commerce to the President of the Policy and Resources Committee “giving their full and total support for the complex”. Full support from these quarters was not in doubt.
- 2.7 The Report claims several instances of incorrect financial information. One of these is in relation to the capital premium of £620,000. Nothing is incorrect here. The position was made entirely clear. The States can either spend the premium on other things or hold it against the possibility that the pool losses exceed all expectations. The choice is not one that needs to be made now. Another is that the claim that there would be a saving of £4.5m in not replacing Fort Regent Pool was untrue because of the additional £2.5m required for the competition pool to be added to the leisure pool. It is hard to comment on this; in no way was it “incorrect”. The Committee has absolutely no grounds for presuming that States Members did not understand the figures presented to them. The facts were presented to Members and they were well able to take them fully into account.
- 2.8 The Report criticises the level of information given to States Members about the lease. The Report seems to accept that it would be “impractical in most cases, and impossible in the case of commercially sensitive and highly complex leases” for Members to see “the full terms of the lease”. The Committee’s considered view is that there was sufficient information presented for Members to form a judgment about the proposal as a whole, and its merits or otherwise. One specific point has occurred in recent discussion. This is the inclusion in the lease of a provision giving the States the first option to buy the head lease from CTP Limited. WEB has indicated its contentment with this and the Committee’s judgment is that this would indeed be a sensible addition. Negotiations to this effect are in train.

- 2.9 The Report criticises the fact that the PricewaterhouseCoopers report was not available at the time of the States' decision. The Report also criticises what it sees as the inadequacy of the PricewaterhouseCoopers brief. The Committee does not agree with this interpretation. Members have had a copy of the auditors' report and the opportunity to question the auditors. The auditors' brief was to review and comment upon the Waterfront Leisure Complex proposal from the point of view of potential risks to the States and how any risks were to, or might, be mitigated. This was entirely appropriate to the circumstances of the case. It was not the auditors' task to second guess WEB's commercial judgment and such a task is a normal function of auditors at the point where such a project is reaching final decision point. What is quite clear, however, is that the auditors' report on the lease was very favourable and, furthermore, they made clear that delay in signing the agreement with the developers put the States at increasing risk of the possibility that one or more of the parties involved might pull out.
- 2.10 It is further claimed that members of the Finance and Economics Committee had insufficient time to examine the Quantity Surveyors' (Colin Smith & Partners) report. However, that Committee had the full report and the benefit of a lengthy discussion and a presentation. That Committee's vote in support of the project was unanimous. Questions of control over specifications are matters for WEB, which, as the States' agent, will manage the scheme on behalf of the States.
- 2.11 The Report is critical of the absence of a cost benefit and risk analysis and the Elizabeth Marina project is cited as a case in point. This is not a relevant comparison. The Elizabeth Marina was designed, built and paid for by the States. The States took all the risks and made all the decisions. In the instant case, the approach is quite different: partnership with the private sector, in which the States will not be responsible for content, design or construction.

In this connection the following points are worth iterating -

- The developers' profit is limited to a fixed percentage of the cost of construction after deduction of the amount of the States' grant.
 - The 150 years lease is in order to enable the developer to raise the funds required to build the commercial areas which underpin the financing of the pool.
 - WEB produced a joint report with CTP Ltd. to demonstrate that there was no lack of understanding between them. To imply, as the Report does, that WEB was not acting entirely on behalf of the States, is completely unacceptable. WEB is the States' appointed agent for dealing with the private sector on behalf of the public in respect of the waterfront. This is WEB's whole *raison d'être*. WEB's advice was backed up by that of independent advisers, Healey & Baker. The Treasury was also naturally involved as the discussions progressed. It was in effect the combined advice of WEB, the Treasury and a range of highly reputable independent advisers which persuaded the Tourism Investment Fund Sub-Committee and the Finance and Economics Committee to approve the project. They did so, unanimously.
 - As far as the involvement of the Property Services Department is concerned, the issue is simply whether it could have added any value to the work on the lease and the financial arrangements. This was a matter for WEB. WEB, as a private company, is not obliged to use the Department's services, a point made clear in P.156/95. On a number of occasions WEB have made use of the Property Services Department but chose not to on this occasion. The nature of the task made the use of Healey & Baker more appropriate.
- 2.12 The Report argues that there has been insufficient public consultation. The Committee disagrees. Rarely has there been so much public debate about a single issue as development of the waterfront and there is a strong consensus on the Island on the need for a leisure pool, which the Report itself endorses. WEB has in fact led the way in public consultation on schemes for which it is responsible for detailed design.
- 2.13 The Report's contention that "a gun was put to the head" of States Members belittles the integrity and intelligence of the House. The Rapporteur's summing-up was clear, articulate and passionate. He addressed the various points and concerns expressed by Members and that he did so successfully is shown by the scale of the vote in favour.
- 2.14 The Report argues in effect that the States should pay for, design, and construct the whole complex and, in that way, be able to control the price of admissions, quality of facility, rental value of the commercial units etc. As has been said, the way to have sought to achieve this would have been for an amendment to the Committee's proposal to have been proposed in the summer. Nothing was forthcoming then.

3. Conclusion

- 3.1 Since lodging his proposition the proposer of the rescindment motion has had meetings and discussions with the Chairman and the Managing Director of WEB, and with the President of the Policy and Resources Committee. There have been strenuous efforts made to bridge any gap in understanding. Despite this, the proposition has been maintained. That is the proposer's right. The Policy and Resources Committee's clear view is that the Report fails to substantiate the reasons given for seeking rescindment and that, on those grounds alone, the proposition should fail. The further point which well deserves further careful consideration, aside from this particular case, is that any opposition to the proposal should have been addressed by an amendment when the proposal was debated, not by an attempted rescindment four months later.
- 3.2 The Policy and Resources Committee therefore asks States Members to reject the proposition that the States should rescind their decision of 27th July 1999 to approve the lease of this land to CTP Limited.