

2015.06.23

**5.5 Deputy J.A.N. Le Fondré of St. Lawrence of the Minister for Treasury and Resources regarding information requested from the States of Jersey Development Company by the Corporate Services Scrutiny Panel:**

Would the Minister, as shareholder representative, advise whether he considers it to be acceptable that the States of Jersey Development Company has still not supplied all requested information to the Corporate Services Scrutiny Panel in order for it to complete its review and, if so, what action does he propose to take to resolve the situation?

**Senator A.J.H. Maclean (The Minister for Treasury and Resources):**

The States of Jersey Development Company has been established by the States of Jersey to operate as an arm's length commercial entity. The States set out operating protocols within the proposition on the establishment of S.o.J.D.C., P.73/2010, that provided oversight and approval by the Minister for Treasury and Resources with political direction being given by the Regeneration Steering Group. Some of the information that has been requested by the Corporate Services Scrutiny Panel is commercially sensitive and is subject to confidentiality clauses in the signed legal contracts which involve third parties. By disclosing the requested information to Corporate Services the directors of S.o.J.D.C. would personally be in breach of their contractual commitments. The States of Jersey Development Company has endeavoured to provide Corporate Services and its advisers with sufficient information to enable the panel to carry out its review without putting the directors of the company in breach of their legal duties, which is a difficult balance. In similar cases in the past, advisers to Scrutiny Panels have been prepared to sign non-disclosure agreements. In this case EY, the adviser appointed by the panel, were also prepared to sign such an agreement and would therefore have received all the requested commercially sensitive information. However, the panel did not feel it appropriate that the adviser sign such an N.D.A. (non-disclosure agreement) and instructed them not to do so. Notwithstanding that, all parties have worked hard to find a solution, progress is now being made and I am aware that discussions have taken place over the last week alone between S.o.J.D.C. and EY as an information flow has followed, which is being assessed by EY and will hopefully provide them with all the information that they require.

**5.5.1 Deputy J.A.N. Le Fondré:**

Can the Minister confirm that Treasury have themselves not had sight of the pre-let agreement with the tenant, the final lending agreement, or the contract with the contractor, which are the key documents being referred to and which are the ones that we are requesting.

**Senator A.J.H. Maclean:**

I can. Although there was an original agreement, I believe, in outline form received back in October before the last elections with regard to a previous agreement but apart from that the Deputy is correct.

**5.5.2 Deputy S.M. Brée:**

Can the Minister confirm that as neither he nor his department had sight of the legally binding contracts with the tenant, the lender or the contractor prior to signature by S.o.J.D.C., no form of due diligence or independent verification was undertaken by the Minister as shareholder representative to ensure that the pre-let conditions, as imposed upon S.o.J.D.C., contained within P.73/2010 and the memorandum of understanding, had been met, and that he merely relied upon an interpretation from S.o.J.D.C. that this was in fact the case?

**Senator A.J.H. Maclean:**

That is correct and it is as Members would, I suspect, expect. It is certainly a position that I find acceptable, after all we set up organisations and companies to be at arm's length, we resource them appropriately, we ensure that they have an effective board, the board has oversight and is therefore

accountable. Certainly, as far as I am concerned, that provides a suitable arrangement to ensure that the obligations of the company are undertaken and carried out.

### **5.5.3 Deputy G.P. Southern:**

Does the Minister accept that the fact that we are still going on about this particular topic is because when it was learnt that the Scrutiny Panel concerned wished to hold an inquiry into this topic the Minister or his predecessor decided to plough ahead with the whole project anyway and hence we have got these timing and information problems at this stage now. Should he have not been talking to the Scrutiny Panel way back in December to work out a proper way forward, with proper timescales to avoid what we have got now?

### **Senator A.J.H. Maclean:**

In fact the Deputy raises a very good point, and indeed when it was brought to my attention by the newly appointed panel, and indeed the chairman, that there was an intention to carry out a review, despite the previous Corporate Services Scrutiny Panel deciding over a year ago not to do so, and I spoke to the panel chairman and said that what was of critical importance was that the review was undertaken in a timely fashion. I made that point specifically because commitment had been given by S.o.J.D.C., tenants had signed heads of terms, and indeed were progressing towards legally binding agreements. I was given an assurance that the matter would progress quickly. What I can say is that the panel, as I understand it, appointed an expert in late November, early December, and I believe that particular expert reported in January. We have not seen that particular review and it was only since then that a further expert has been appointed by the panel and in part has resulted, I suspect, in the delays. Not the only reason. The other reasons are flow of information, which we have already discussed in this question earlier this morning.

### **5.5.4 Deputy K.C. Lewis of St. Saviour:**

Does the Minister not understand that because of both the stated importance of the project and the concerns identified during our review thus far we are asking for the data to do the due diligence that Treasury should have done and which they have confirmed in hearings to us that they have not?

### **Senator A.J.H. Maclean:**

No, the matters are unlinked. Treasury have undertaken their role and responsibility in an appropriate way in my view. The panel are undertaking their own review. They are looking at the viability of the whole development. It is an entirely different matter. I am sure the results of that will be a matter of great interest, not only to myself and Treasury, but to Members as a whole. We look forward to the result of the review when indeed it is eventually published and we will listen to the conclusions of that review in due course. What we have committed to and what this Assembly has committed to is to continue with the development of the first building, the first phase, that is phase 1A, because of the level of commitments that have already been undertaken.

### **5.5.5 Connétable C.H. Taylor of St. John:**

Both the Minister and the Chief Minister have responded that they await the report from Scrutiny. Will the Minister therefore undertake in this Assembly here and now that he will give a clear direction to the board of S.o.J.D.C. to release the information we request in confidence to the panel and its advisers, or does the Minister wish us to go down an expensive route of obtaining legal powers to obtain this information. The undertaking is will the Minister here and now undertake to the Assembly that he will get this information: yes or no?

### **Senator A.J.H. Maclean:**

It is not a yes or no answer that is appropriate.

### **The Connétable of St. John:**

Point of order ...

**Senator A.J.H. Maclean:**

What I have done ...

**The Deputy Bailiff:**

I beg your pardon. A point of order has been raised. This is a point in which you require a ruling from the Chair. Do you require a ruling from the Chair?

**The Connétable of St. John**

Yes, I asked for an answer, yes or no, will he direct S.o.J.D.C. to ...

**The Deputy Bailiff:**

You can ask whatever question reasonably you like, Connétable, but it is up to the Minister how he chooses to answer it.

**Senator A.J.H. Maclean:**

I met first of all with the Chief Minister and the panel last week. I had 2 further meetings last week so we had 3 meetings in 3 days in order to find a solution to this issue. As I pointed out in my earlier remarks, it is not unusual that Scrutiny Panels sign non-disclosure agreements. If indeed the Scrutiny Panel had agreed to allow their adviser to sign a non-disclosure agreement, as has happened in the past, then all the commercially sensitive data to which the Connétable is referring would have been passed some considerable time ago across to the adviser so they could undertake their work. The panel decided, for their own reasons, that it was not appropriate to do so, and therefore the impasse that Members have witnessed has occurred. However, I do believe now there is progress and data has been passed to EY from S.o.J.D.C. and EY are assessing that data to see if it meets their requirements so that they can undertake the review which they had been tasked by the panel to do. We will continue to monitor the situation and do everything we can, as I have emphasised before, both in this Assembly and to the panel themselves at a public hearing, I fully support the Scrutiny process. It is necessary to have the suitable data but equally there are fiduciary obligations on the directors of the company and it is a difficult balance that we need to strike. This is a far wider issue, I might point out, that needs a proper code to be put in place between the Executive and Scrutiny to resolve issues of commercial confidentiality in the future. It is not just about this issue and this panel and this Minister. It is across the whole of the States. There are issues here that must be resolved for the future.

**5.5.6 Deputy J.A.N. Le Fondré:**

I would just note in response to that last comment that we understand that the nature of any N.D.A. would prohibit us from discussing in any detail any findings by our advisers with us. That causes the problem.

[10:30]

The question is that directly at the Minister for Treasury and Resources in respect of his department to run the company, is given that some of our later requests of the department are now some weeks old could the Minister undertake that all documentation outstanding within his department will be supplied to us by the end of this week?

**Senator A.J.H. Maclean:**

If there is outstanding data not of a commercially sensitive nature, yes, of course. Otherwise I see no reason why the panel cannot have it. As far as I was aware there was nothing that was still outstanding other than what we have discussed this morning. As I said, we had 3 meetings in 3 days last week and the only items mentioned were the 3 the Deputy was referring to before of a commercially sensitive nature.

**Deputy J.A.N. Le Fondré:**

There are some outstanding issues within the department, for example, various minutes and other directions.