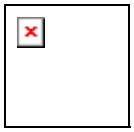
ST. HELIER WATERFRONT LEISURE COMPLEX: LEASE TO CTP LIMITED - RESCINDMENT

Lodged au Greffe on 12th October 1999
by Deputy A.S. Crowcroft of St. Helier



STATES OF JERSEY

STATES GREFFE

175 1999 P.156

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PROPOSITION

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

to rescind their Act dated 27th July 1999 in which they approved the lease by the public to CTP Ltd. of approximately eight vergées of land west of the Albert Pier, St. Helier (as shown on Drawing Nos. 1704/1 and 1704/2) for a period of 150 years at a nominal rent and in return for a capital premium of £620,000, the land to be used for the construction of a leisure complex.

DEPUTY A.S. CROWCROFT OF ST. HELIER

NOTE: As required by Standing Order 18B, the reason is given below and the following States Members signed the proposition -

Senator R.J. Shenton.
Senator S. Syvret.
Deputy R.C. Duhamel of St. Saviour.

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

Report

(All documents from which quotation has been made in the following report are listed at the end of the report together with information on accessing them. Permission to make quotations has been sought from the relevant parties and obtained where possible; where permission could not be obtained I have made the quotations because I believe it to be in the public interest to have done so.)

1. Introduction

There is perhaps nothing more damaging to the reputation of our Island government than the mishandling of capital projects. The Report on the Committee of Inquiry - Elizabeth Marina found that -

> "The Committee of Inquiry believes that, in general terms, the need for the States to make decisions in full knowledge of the probable financial implications, should override considerations of commercial confidentiality. The situation which obtained in the case of the marina - where relevant financial information was kept from the States, while 'favourable' information was inserted - is unacceptable." (7.3.2, p.122)

With the memory of this project fresh in the public mind, the States simply cannot ignore this recommendation - henceforward they must "make decisions in full knowledge of the probable financial implications"; they must insist on full and frank disclosure of information relating to capital projects, whether it is favourable or not. In my view, the States failed in this regard when it debated the leisure complex proposals. Neither in the report and proposition (P. 92/99), nor in the proceedings of the debate, were the States presented with full or wholly accurate information, and it follows that the States cannot claim with any degree of confidence that the 150-year lease of Waterfront land together with the capital payment to the developer of £10.9m represents value for money for the Jersey taxpayer. For this reason I am asking the States to rescind their decision on 27th July 1999 to approve the terms of lease of the leisure complex on the St. Helier Waterfront.

I realise that there will be individuals who will reject the criticisms that I will make below. There will be others who, while accepting that the States' decision on the leisure complex may have involved procedural errors, will argue that such deficiencies are insufficient reason to overturn the States decision, especially when there has already been much delay in making it. Am I not simply trying to find fault in the decision-making process on the leisure complex because the decision did not go my way?

I firmly support the provision of a leisure pool on the Waterfront. The benefits for the tourism industry of such an amenity have been well rehearsed. Its added value is, in my opinion, what it offers to the people of Jersey, the people who will, after all, be paying through their taxes for both the leisure centre and who have already paid for the reclaimed land upon which it is built. Young people of the Island, in particular, deserve to reap the benefits of such an amenity - though to be sure of that happening it would have been necessary to canvass their views about what facilities were provided - while families will be able to take part in the kind of water-based play and relaxation that is available privately and on a small scale at places such as the Merton Hotel.

Of course it is not surprising that there is general impatience to see such a facility developed, but with that impatience goes the expectation that what is provided will be of best quality and best value to the public. Many people have expressed doubts about whether the ancillary facilities agreed by the States - the multiplex cinema, night-club, pub, fast-food restaurants - will complement the proposed housing and hotel developments, or provide the sort of quality and "distinctively Jersey" waterfront of which we will be proud.

But of the two concerns, value for money is the key one: the argument that the Waterfront Enterprise Board should simply be allowed to "get on with the job" with the leisure complex would perhaps be understandable if the whole project had a shelf-life of 20 years or so. However, this is not the case: what has been agreed by the States, subject to a report by the States' auditors and the favourable opinion of the Solicitor General, is the following -

1. the States have agreed to meet the construction costs of nearly £11m to secure a leisure pool and competition pool, with some ancillary facilities (health club, gym and party room) on roughly half the eight-vergée site on the Waterfront;

2. the private sector will operate these facilities for the States and meet any revenue deficit (up to £143,000 p.a.) for 20 years;

3. recognising the need for commercial elements to cross-subsidise the leisure pool, the States have agreed to allow the private sector to use the other half of the site for the construction of a multiplex cinema, entertainment centre and nightclub, pub, and two fast food restaurants - or for related leisure/entertainment

uses, on a lease of 150 years - in return for a capital premium of £620,000;

4. as far as can be deduced from the information available, the States may take back the part of the site with the leisure pool after 20 years; the other half of the site with the commercial facilities will cease to cross-subsidise the leisure pool, although it will remain in the private sector for a further 130 years.

Does this represent value for money for the Jersey taxpayer? We simply do not know, nor did we know, when the States took their decision on 27th July 1999.

I believe that collectively the arguments put forward in this report make a clear case that unless the States rescinds its decision on the leisure complex, a decision made in haste and based on inaccurate and inadequate information, it will be guilty of a great dereliction of its duty of care to the public. The fact is that the States did not make their decision "in full knowledge of the probable financial implications" and for this reason alone it should rescind it, in order that the public may be assured that the leisure pool complex that is eventually built provides the best mix of facilities and the best financial deal for the Island.

2. Inaccurate information

2.1 Inaccurate information about the subject of the debate

Throughout P.92 and throughout the debate on 26th and 27th July, the proposals were inaccurately defined. Specifically, there was a failure to distinguish between the dual elements of the proposals: the leisure pool, on the one hand (with the addition of a competition pool), and the leisure complex on the other hand. While it is perfectly legitimate for the Policy and Resources Committee to claim that "The States have previously indicated their support for a leisure pool" (P.92, 1.1) it is positively misleading for them to begin their proposition with the following statement -

> "The construction of a leisure complex on land west of the Albert Pier ("west of Albert") is a major and much required investment in support of the tourism industry, from which the Island residents will also benefit greatly."(my emphasis)

This is not "splitting hairs" - by confusing the two projects - the leisure pool, and the leisure complex or leisure centre, which the addition of complementary facilities would create around a leisure pool, the Policy and Resources Committee were enabled, albeit unwittingly, to mislead the States into thinking that the principle of the leisure complex set out in P.92 had already been approved by the States.

The Policy and Resources Committee's rapporteur in the debate appeared to have used the terms interchangeably -

> "But, in fact, the need for a leisure centre, a leisure pool, complex, was identified long before 1995. It's been included in the Tourism committee's business plan each year since 1990 …"

The President of the Tourism Committee, who is also a member of the Policy and Resources Committee, went so far to tell the States -

> "I worked very hard on that first business plan - I'm going back to when I was last President - to 1990, and the whole industry was represented on it too and contributed to it. And number one on the list was this leisure pool. But not as a stand-alone facility..."

These statements are untrue and misleading: a leisure pool - at that time, a strongly supported addition to Fort Regent - and a municipal golf course at Beauport, were the fifth "Key Objective" in the 1990 Business Plan of the Tourism Committee; objectives 2,3 and 4 were heritage-related; number one on the list was -

> "To recognise that the Waterfront development is Jersey's greatest opportunity to provide an imaginative living area of excellence for year-round socialising, entertainment and shopping - including a hotel, pedestrian area, marina and shops - for visitors and local residents alike." (p.75)

Significantly, the Tourism Committee's 1990 Business Plan vision of the Waterfront comments that -

> "It should be emphasised that what we are proposing as additions to the Island's attractions are not foreign intrusions which have no intrinsic association with Jersey or its heritage, but complementary attractions and facilities which are derived from - and based on - the Island's history and culture." (p.74)

Throughout the proposing speech the Committee's rapporteur referred to three previous decisions by the States to construct a leisure complex.

> "We have approved the principle on no fewer than three occasions."

This was repeated in the middle of the speech -

> "So far as the funding is concerned and this really is the nub of the matter before us today because this is not a debate so much on the principle of the leisure pool as I've said we've approved that three times already, this is a debate on the arrangements relating to the leisure pool, the contracts, and of course not least the lease."

and towards the end -

> "Sir, may I remind the House, drawing to a conclusion, that we have approved the principle of the project on no fewer than three occasions already…"

The fact is that the States have done no such thing: it is the principle of a leisure pool which has been approved by the States and which has enjoyed support across the board since 1990. The occasions referred by the Policy and Resources Committee were the setting up of the Tourism Investment Fund in 1995; St Helier Waterfront Plan: Leisure pool, P. 57/96; and P.59/98 Strategic Reserve: Allocation of funds. None of these States' decisions can be interpreted as committing the States to the project that was before the States on 26th July 1999.

It is true that it has been recognised for some time that such a facility would be more successful if it were not "stand-alone" but were to benefit from synergy with other facilities. P.57/96, in particular, in setting out the brief, includes "catering and secondary uses", and points out that -

> "The brief will be flexible and it will be for the private sector to suggest what mix of uses is commercially viable." (13, p.4)

It is also true that the raison d'être of the Waterfront Enterprise Board is to attract private sector investment thereby reducing the call on the General Reserve in the development of the Waterfront. Indeed, in 1997 the States agreed to grant an indemnity clause in respect of the Les Pas Holdings claim to the proposed developer of "a leisure pool complex", a scheme which at the time included leisure ice skating, an eight-screen cinema and other facilities alongside a leisure pool. (P.52/97)

However, the States have never decided in principle of what that mix of facilities should be - including the potential negative impacts on the Waterfront (and of St. Helier as a whole) of such facilities as multiplex cinema, fast-food restaurants, night-club, and so on. Nor have the States decided in principle whether, in the particular case of the leisure pool, a private sector partnership which surrenders the choice of and control over the ancillary facilities which cross-subsidise the pool, is the best way to secure a project of best value and best quality for Jersey. To say otherwise is to mislead the States.

States members were further discouraged from having this vital debate on 26th and 27th July 1999 when the President of the States directed the Members -

> "Before I open the proposition to Members I would remind them that the only matter under discussion is to approve the terms of the lease and the financial arrangements."

2.2 Misleading use of consultants' reports and "expert advice"

2.2.1 The Wason Report

P.92 states in paragraph 2.5 -

> "In December 1998, the Tourism Committee instituted a review of the project (the Graham Wason Report) which came out in favour of proceeding with the proposal." (my emphasis)

This is inaccurate: the Wason Report resulted from an investigation into the business case for the leisure pool. Mr Wason was not asked for an opinion on the rest of the proposals except in 3.16 where he comments on the relationship between the pool and the other Waterfront projects which he lists as cinema, health club, catering facilities and the hotel. The Policy and Resources Committee's error was compounded in the States -

> Deputy Gerard Baudains: "You mentioned earlier that in the Graham Wason report that he conclusion

recommended the leisure pools. Did the conclusions also recommend the other items on page 2?"

Rapporteur: "They do. The conclusions address the entire project, yes they do."

It is impossible to say to what extent waverers in the Assembly were influenced by such reassurances, but there can be no doubt that in this regard the States were misled.

2.2.2 The Deloitte and Touche Report and Antler Properties' projections

Financial projections and sensitivity analyses made by consultants, Deloitte & Touche, in 1996 were quoted in P.92 -

> "The two main attractions are the ten-screen cinema that is expected to have 500,000 customers per annum, and the leisure pool complex that will attract 250,000 to 300,000 customers per annum. For comparison purposes it should be noted that the Deloitte & Touche Consulting Group predicted a throughput of around 326,000 customers to the leisure pool and Antler predicted about 300,000 customers per annum." (3.1, p.5)

The projected financial performance predicted by the developer, Antler Properties, with whom a deal was nearly struck in 1997, was for a different scheme: the multiplex cinema still featured, though only eight screens, and the leisure pool was complemented by a leisure ice-skating rink. In any case, Antler Properties should hardly have been referred to in the debate as providing further authoritative evidence that the proposals in P.92 were to be supported.

The differences between the type of scheme appraised by Deloitte & Touche and the proposals which were put to the States are so significant as to make any reference to the Deloitte & Touche report materially misleading. The consultants saw the commercial elements of the complex as a "cash cow" to cross subsidise the "wet-side" which would probably run at a loss -

> "Most leisure pools in the UK are under the remit of the local authority and increasingly the management of the operation is being put out to tender. However, councils are placing increasing emphasis on balancing capital outlay against the revenue opportunities and on-going operational costs." (2.2.2, p.6)

A key element would be retail and catering rentals which would gross £500,000 and £240,000 per annum respectively, and this enabled them to predict -

> "an operational surplus available for debt service and tax in the order of £300,000" (5.4, p.28)

However, under the proposals agreed by the States, the "cash cow" of the commercial rentals has effectively been handed over to the developer (CTP). Cannons, the pool operator chosen by the Waterfront Enterprise Board, who predicted a revenue deficit of around £93,000, will receive this from the developer plus a management fee of around £103,000 per annum. It is a completely different arrangement, not least in respect of the catering rental, which according to Deloitte & Touche -

> "will be important in helping 'anchor' the whole development and thereby creating more of a destination, rather than just a leisure centre. Its concept and design will be critical to the overall success of both the specific catering outlet(s) and the whole development, in terms of appealing to the target market sectors." (4.3.6, p.20)

but which in P.92 is the subject of separate leases between the developer and McDonalds and Kentucky Fried Chicken, (or fast-food outlets of that ilk as was learnt later).

The Policy and Resources Committee did point out, in passing, in P.92, (5.6) that the Deloitte & Touche and Antler Properties' financial projections which indicated that "a substantial trading surplus may be achieved", were actually "for a different scheme", but at no time during the debate did they make the distinction clear. On the contrary, they made frequent references to the Deloitte & Touche report and Antler Properties -

> "Cannons estimates a loss of £93,000, now that is a questionable figure because it is interesting that Deloitte & Touche who were commissioned by WEB initially to review the operating status of this project (sic) forecast a profit of about £400,000 (sic). Antler forecast a profit of £350,000 but this project has been put together on a very, very conservative basis …"

> "And I mentioned earlier the projections of profit of the pool by Deloitte & Touche and Antler themselves, a projection of profit, that the pool is expected to make …"

> "And, Sir, I have already reported twice on the profits that have been forecast on their leisure pool from two highly respected sources …"

" the doomsday scenario, and that is what, we did, we do not and I repeat and repeat again, we do not expect that to happen and earlier projections prepared by Deloitte & Touche and backed by Antler suggested that the pool would operate at a significant surplus, those are their projections not ours, but …the worst case scenario was our duty we felt to put before the House …"

At the very least, members of the States should have been informed - on every occasion when the Deloitte & Touche report and Antler Properties were cited - that they were not comparing like with like.

2.2.3 Other expert advice

Overall, great reliance was placed by the Policy and Resources Committee on the supposed backing the project enjoyed from a range "experts". Summing up the debate, the Committee's rapporteur said the following -

"If we say no to this proposal this afternoon, we will be effectively disputing the advice of all the experts that I have referred to and it is a lengthy list, I won't go through it again, Sir, we will be rejecting, in effect, that advice, rejecting their views that this is a sound project in which it makes sense for the States of Jersey to invest, and Sir, I don't know how much more expert independent advice WEB and P&R and F&E could have sought, I just don't know how much more. I can't think of any purpose in seeking to get yet more independent advice other than - I will go through the list, Healey and Baker, the Royal Bank of Scotland, Deloitte and Touche, Graham Wason, Bailhache Labesse and Dun and Bradstreet. Now where else could anyone sensibly go for advice in this sort of situation? I really don't know, I really really don't know. And if we say no we will in effect be dismissing that advice."

This sounds very favourable indeed. However, only one of the bodies listed by the rapporteur could be said to have said that the set of proposals for a leisure complex that were actually before the States represented 'a sound project in which it makes sense for the States of Jersey to invest', namely Healey and Baker, whose advice is discussed below. (2.3.4)

As for the other "experts" listed above, their advice had been sought but it was not on the issue of whether P.92 represented "a sound project in which it makes sense for the States of Jersey to invest" - it was on a variety of matters ranging from the financial soundness of CTP Limited to the legality of the States taking back "the wet-side" in the event of the operator's defaulting. And it was not made clear whether any of these experts had been briefed to ask the type of searching questions of the proposals to which States members clearly wanted answers. The missing "expert advice" was, of course, that of the States auditors, PriceWaterhouseCoopers, whose advice is discussed below. (3.2)

2.3 Selective quotation

2.3.1 The Wason Report

P.92 states in paragraph 4.1 -

"In his report to the Tourism Committee, consultant Graham Wason said, "in my view, Cannons are probably the best operators to maximise the prospects for the Jersey leisure pool." (end of paragraph).

What Mr Wason actually said was this -

"In my view, Vardon are probably the best operators to maximise the prospects for the Jersey leisure pool, provided they are willing to regard the facilities in Jersey as special and unique and suited to a high 'pampering/well-being' component, which might not conform to their emerging brands." (end of paragraph 3.11).

(N.B. Vardon plc are the owners of Cannon Sports & Leisure Ltd.)

It is clear that Mr Wason's recommendation has a caveat, omitted by the Policy and Resources Committee. The same selective quotation occurs in the report presented to the Finance and Economics Committee on 28th June 1999 (section 5, p.3) when they scrutinised the proposals. Such selective quotation is misleading. Indeed, the Wason report, while arriving at a "favourable" conclusion, is equivocal for much of its length. Significantly, its positive Conclusions include the proviso that States approval of the leisure pool -

"should be dependent on the States being satisfied with the following aspects of the proposal:

- confirmation, preferably by market testing, of resident demand;

- detailed financial projections, reviewed and endorsed by independent experts …"

Neither of these provisos, to which no reference was made in the States' debate - had been satisfied when the States took their decision.

2.3.2 Healey and Baker

The supportive remarks of Healey and Baker, Real Estate Consultants, were quoted by the Rapporteur -

> "From our understanding of the deal currently proposed we believe that this is an advantageous balance for the States of Jersey and in the circumstances the profit margin agreed with the developer of 13% is reasonable."

However, given the concerns that were being expressed by States' members over the 150-year lease and the questions raised about the value of the land being passed over to the private sector for such a long period, should not the Policy and Resources Committee have also quoted the following advice?

> "There, are, however, a number of issues relating to the structuring of the head lease, the underlease to be taken by the States of Jersey, the occupational leases, the development agreement and the car parking which will need to be resolved as the negotiations evolve in order to ensure that the capital value of the investment is underpinned in a manner currently envisaged." (13.5, p.9)

2.3.3 References to the support of the tourism industry

The support of the tourism industry has already been referred to - it has always been principally directed towards the leisure pool itself, and my own recent discussions with the Jersey Hotel and Guest House Association have indicated to me that the industry's chief objective, though the support is not unanimous, is a first-class leisure pool on a vibrant Waterfront.

During the debate, even if we allow for an element of exaggeration which is expected in the debating chamber, the Policy and Resources Committee, in my view, misled the States not only over the nature of the tourism industry's support, and also over the dire consequences of not approving the proposition -

> "To say 'no' to this project would send out a clear message, a clear message to the tourism industry, a clear message to potential investors, a clear message to all interested in tourism that we do not wish to protect and nurture the future of that industry, and, Sir, that's a message in my view we cannot afford to send out today or indeed at any time in the future. It would be a body blow to tourism …"

> "If we're going to have a diverse economy we have to invest in tourism. Tourism will remain the second arm of the economy for as long as we foresee into the future. I.T. or no I.T., tourism will be the second arm of the economy. Now do we want that or do we not? Do we want, as Senator Rothwell suggested, do we want, do we want to kill the tourism industry?"

> "Do we want the industry to die? This is the position we're in . Our competitors are investing and investing and investing. We have not had the same foresight so far. Here is our opportunity if we want to protect the future of the industry. And if we do not the message we send out to the tourism industry and to investors is one of gloom and no future."

Representatives of the tourism industry who have been involved in discussions about the leisure pool would appear to have been more cautious than the Policy and Resources Committee have led the States to believe. In particular, they have made their support for the project contingent upon a financial appraisal of the scheme.

> "The industry representatives confirmed their view that the project should be given top priority but were concerned that as a financial appraisal had not been received they could not comment on whether the project would represent value for money." (my emphasis)
> (Act of Tourism Committee 9th April 1998.)

It is worth noting that during the Tourism Committee meeting referred to above, it was pointed out to industry representatives that -

> "The Waterfront Enterprise Board had commissioned Deloitte and Touche to produce a financial appraisal of the development's proposals which would be assessed by the Finance and Economics Committee. The Committee noted that Deloittes had reported favourably for 1996 and had recently been asked to update their report." (Act of Tourism

Committee, 9th April 1998)."

However, the update of the Deloitte and Touche Report, which Graham Wason described as "based on limited research" (p.7), focuses entirely on market-trends in relation to the scheme put forward by Antler Properties. It does not provide a financial appraisal, and on the title page advises that it is "to be read in conjunction with the original report." The inappropriateness of relying on the 1996 financial appraisal has already been commented upon in 2.2.2 above.

2.3.4 The Chamber of Commerce letters

According to the Wason Report (p.7), Chamber's support as expressed in a letter of 3rd April 1998 was subject to a review of financial projections. Chamber repeated their support in a letter dated 24th July 1999 -

> " … it is important that we confirm our long standing support for the principle of developing a first rate leisure pool for Jersey.
>
> Chamber have been continuous in our support of this leisure pool infrastructure development which we hope, if the development is well managed, will build confidence and will aid development in the tourism industry in its widest form.
>
> Whilst we have been supportive of the scheme through our representation on the Tourism Investment Fund sub-committee, ultimately for Chamber it goes without saying that the States members themselves will have to be satisfied with the scheme proposed and there are no guarantees on the financial performance of the scheme. We have placed our own confidence in WEB due to the stated confidentiality of the papers presented to me for the 21st June 1999 Tourism Investment Fund meeting and the very limited number of days given for me to consider our final support of the project.
>
> Finally, the leisure pool facility will be an obvious amenity for locals as well as tourists. The States will have to make the ultimate decision and I hope States members have taken time to assess the information …"

It is clear that the Chamber of Commerce's support does not prevent them expressing concerns about a lack of time available for deliberation, while the lack of access to information has meant they have taken certain matters on trust. These facts were not communicated to States members in the debate -

> "I've also received a copy of a letter to Senator Horsfall from the President of the Chamber of Commerce also giving their full and total support for the complex" (my emphasis)

2.4 Incorrect financial information

2.4.1 The capital premium of £620,000

Heading the list in P.92 of "Direct benefits" of the proposed scheme, is the capital premium of £620,000. (6.2.a, p.9). There is no mention here of the fact that, according to the financial model, the "capital premium" is likely to be used to fund some of the revenue deficit that may arise from the pool's operation. In other words it may not be returned to the General Reserve for twenty years. This proposed use of the capital premium is mentioned earlier in P.92, (5.5, p.7) so that, although the Policy and Resources Committee clearly contradict themselves, they cannot be accused of concealing the self-contradictory nature of this "benefit" from the States. Yet it remains a misleading statement; we cannot have our cake and eat it: clearly the capital premium is of little direct benefit to the public - at least for the next 20 years - if it cannot be spent.

The same self-contradictions occurred in the presentation of the proposals to the States -

> "And within the overall cost of this project is the provision for a capital premium which will be paid to the States of £620,000. So we not only get a leisure centre, a leisure pool for the benefit of visitors and locals, we also get a £620,000 capital contribution from the developer, so there's a good financial deal for the States, as well as the other advantages, there's a good financial deal for the States as well …"

Yet soon after the States are informed that -

> "… All we've got is a wonderful facility and £620,000 in the bank. There's no financial involvement other than that. However, if there was a loss than £143,000 then that would have to be addressed by this House. Now, it wouldn't necessarily have to be borne by the States, though that's one of the options, there are four options which again I'll come to in a second, but if we take the capital premium into account of £620, 000 which we're getting

from the operator, from the developer, that would provide for an additional payment of £31,000 per annum for the full 20 year period. So what we're actually got is the situation where without using any of our own money we can cover a loss of up to £175,000 per annum. That's without any further financial support from the States at all."

The Policy and Resources Committee's summing up is equally self-contradictory -

> "As far as financing is concerned it was suggested that the £620,000 that we're to receive is just going to be used to step in to cover additional losses. But, Sir, can I make the point that is entirely our choice. We do what we like with the £620,000. We can invest it and of course we would get approximately £31,000 a year if we did, or if the pool did operate very badly indeed and made a loss above £143,000 which is totally guaranteed by the private sector, it involves us not at all, then we could step in and use that money or the funds raised on it the interest earned to cover ourselves up to £175,000 which is still then actually not costing us any money at all from where we are today …"

The Rapporteur does not mention that "where we are today" is in possession of the capital value of the land involved in the leisure complex. When the land is leased to CTP for 150 years, is the States receiving a £620,000 capital premium or not? If the £620,000 is applied to cover the pool's revenue deficit up to £175,000 then it is costing the States money in lost revenue; it is simply wrong to state that this "is still then actually not costing us any money at all from where we are today". If capital premium is not so applied, then the pool's revenue deficit is only covered by the private sector up to £143,000 - but that is a less encouraging scenario to present to the States.

The overall impression on this matter as conveyed in P.92 and in the debate was at best, confusing and at worst, inaccurate: the States would receive a £620,000 capital premium in respect of the land, and the revenue losses of the pool would be covered up to £175,000 without States involvement.

2.4.2 Saving of £4.5m in not replacing Fort Regent Pool

Both in P.92 and in the debate, the Policy and Resources Committee claimed that the States would save £4.5m in not replacing Fort Regent Pool -

> "Direct benefits include -
>
> (e) saving of up to 4.5m in not replacing Fort Regent pool" (6.2, p.9)

> "It also saves us £4.5m at the Fort and a £200,000 year deficit at the Fort and that's got to be set against the project in our minds when we assess, whether or not, when the House assesses whether or not to support this proposal."

This rather elementary error was detected by one speaker in the debate, and it prompted the following reply early in the Committee's summing up -

> "He did for example say that he found the figures presented vis à vis Fort Regent were completely and wholly untrue. Well, Sir, I hope he's had time to reflect on that because the figures that were presented in relation to Fort Regent are 100% correct and there're the figures provided by the Sport Leisure and Recreation Committee. And whichever way we look at it, if we're putting £2.5m into a competition pool which is what we're talking about and we're saving £4.5m by not building a new pool at Fort Regent, there is a financial saving. I don't know how else to address or approach or look at those figures. There's a saving, a net saving of £2m which is exactly, exactly what we put forward."

Later in the summing up, however, in the benefits of the scheme, the States are told -

> "… and we save 4.5m in not replacing the pool at the Fort …"

2.4.3 Saving of up to £200,000 per annum from avoiding deficit at Fort Regent Pool

The Policy and Resources Committee claimed in the proposition, P.92 that one of the "many benefits" to the States of the proposals would be the -

> "saving of around £200,000 per annum from avoiding deficit at Fort Regent Pool." (6.2e, p.9)

and during the debate -

> "It also saves us £4.5m at the Fort and a £200,000 year deficit at the Fort and that's got to be set against the project

in our minds when we assess, whether or not, when the House assesses whether or not to support this proposal."

These claims are simply untrue: it is clear from 5.5 of P.92 that the States will still be liable for revenue costs of the leisure pool in excess of £143,000. This ceiling is raised to £175,000 if we are to accept that the capital premium is not paid to the States after all but is applied to fund potential revenue losses (see 2.4.1 above), but there is still a real risk that the States will have to step in to top up revenue losses because in comparing the leisure pool to Fort Regent the Committee is not comparing like with like: Fort Regent pool does not include flumes, wave pool, spas, outdoor loop or lazy river - the running, maintenance and replacement costs of which are bound to exceed those of conventional pools.

The Wason Report acknowledges this in Section 3.15 -

> "In practice, leisure pools tend to enjoy their best financial performance soon after opening, when their newness creates a surge of interest. Over time this novelty wears off and visitor numbers decline. At the same time, leisure pool facilities tend to wear quickly, and heavy maintenance costs are typical after two or three years of operations - this 'double whammy' of declining attendance and rising costs can turn early operating surpluses quickly into escalating net costs.
>
> I am surprised that the leisure pool trends section of the Deloitte & Touche update report of 1998 does not refer to the high profile disasters of some of the commercially funded leisure pool projects in the UK. Nor is any mention made of the tendency for pools to start well but then to suffer declining fortunes. the section refers to the increasing sophistication of offering and the latest in ride designs, and mentions that the escalating cost of producing 'state-of-the-art' facilities has slowed down the development of new centres. But where a decline in visitor numbers has been reported, this has been attributed only to the opening of competitive facilities. I question whether this analysis is providing a full picture.
>
> There is, in my view, a danger that things will not work out as planned, and that the States will ultimately be asked to step in. However, this risk is relatively low, due to the sensible mix of facilities and the involvement of (Cannons), provided they are sufficiently tied in to the project. Further, I understand that it is hoped that the States' funding will be sufficient to create a sinking fund, to help meet any future deficits or refurbishment needs."

Clearly, the conclusion to this Section of the Wason Report is positive, but should not Wason's concerns about running costs and patterns of leisure pool patronage have been communicated to the States at the time of the debate? And, in the light of the above, was it not misleading for the Policy and Resources Committee to claim during the debate that "effectively all the risk" of the scheme would be borne by the developer, and further "So there's very little downside risk in this project".

Such a cavalier attitude to financial risk is hardly what the public expects of the States nowadays.

2.5 Incorrect statements were made in the debate about other States' leases

In response to concerns expressed during the debate by some States members about the length of the lease on Waterfront land being offered to the United Kingdom developer, the Policy and Resources Committee's rapporteur said -

> "… it is not the first time we have entered into leases of this of similar length. There is Morier House, there was the airport, and most recently there was Maritime House. Now, Sir, the leases for none of those came anywhere near this House nor am I aware of a single solitary Member who asked to see them So, Sir, why I would ask when Members were obviously happy for the legal experts and for the financial experts to draw up those leases without Members having sight of them, why in this case all of a sudden are Members criticising P&R and WEB indirectly for not putting the full terms of the lease before them?"

These comments are extremely misleading, as a comparison of P.92/99 with two of the other leasing arrangements reveals. The leasehold financing arrangements for Morier House, set out in P.58/96 (2 to 10 Halkett Place and 21/23 Hill Street, St. Helier), were used as a model when the Waterfront Enterprise Board were requested to procure the development of States offices known as Maritime House (P.37/98). Both of these developments, which involved SG Hambros and RBSI respectively, will secure the ownership of the developments concerned for the States at the end of a 21 year lease term, even though the States in both cases granted head leases of 125 years over the land involved to the banks concerned.

In fact, in the case of Morier House, it is not true to say that "Members were obviously happy for the legal experts and for the financial experts to draw up those leases without Members having sight of them", for the Proposition was referred back in order that States Members' various concerns about the development could be addressed through an appraisal by the States' auditors, PriceWaterhouse.

Finally, it is disingenuous for the Policy and Resources Committee's rapporteur to claim that Members wished to see "the full terms of the lease", which would be impractical in most cases, and impossible in the case of the commercially-sensitive and highly complex leases which may be required in the development of the Waterfront. Members certainly wanted more information about the leasing arrangements than was contained in P.92, and the States of the day were given much more information when the propositions relating to the other developments mentioned by the Rapporteur were brought to the House. There is surely a balance to be struck between giving the States far too much information and far too little - a briefing session for States members would seem to be a minimum requirement.

3. Inadequate information

3.1 Inadequate financial information

Even if they accept some of the points made in section 2 of this report, The Policy and Resources Committee will doubtless claim that the information put before States members for the leisure pool debate was not materially flawed. After all, their Rapporteur argued in the debate -

> "All, and I say all the salient facts relating to the financing of the project, all the salient facts relating to the safeguards of the project, the risk, everything which is of relevance to this House in taking its decision is contained within the Report and Proposition which members of course have had for quite some time And, Sir, I give an absolute, an absolute assurance that that is the case …"

In fact, States members had only had P.92 for three weeks. Indeed, this confident assertion by the Policy and Resources Committee does not stand up to any serious examination at all. Several Members of the States made it clear that there was insufficient information in P.92 on which to base a decision of such importance. This section of the Report will argue that not only was this true of the States themselves, but it was also true of the members of the Finance and Economics Committee; it will further demonstrate that the source of much of the inaccuracy and selective quotation identified in the preceding sections of this Report, is the Joint Report by CTP Ltd & WEB Ltd.

3.2 PriceWaterhouseCoopers's Report

Policy and Resources Committee's Note on page 3 of P.92 includes the following statement -

> "the proposals are currently being examined by the States' Auditors (PriceWaterhouseCoopers). Therefore, having thoroughly considered the proposals, this Committee supports the granting of a lease to CTP Limited (CTP) …"

This is clearly self-contradictory. The Policy and Resources Committee appear to have believed that they had "thoroughly considered" the proposals in advance of receiving PriceWaterhouseCoopers's Report. Surely the States should have been presented with a professional, rigorous and up-to-date financial appraisal of the proposals for the leisure complex before being asked to make a decision on granting the lease? Given the responsibility of the elected representatives of the people to scrutinise proposals for capital expenditure, they should have been offered nothing less than this.

During the debate, the Policy and Resources Committee appeared to view the forthcoming appraisal by PriceWaterhouseCoopers, along with the statutory inspection of States' leases by the Law Officers, as a safety net for States members who felt that they might be making the wrong decision, or making one prematurely -

> "The lease will only be signed, a commitment will only be entered into not only when the Solicitor General has given her absolute approval from a legal point of view but also only after PriceWaterhouse, our auditors, have given their absolute approval from a financial point of view. Without those two approvals the lease will not be signed.

> "Can I come to the biggest safeguard of all, and it is the biggest safeguard of all. No lease will be signed and I've said this a number of times but it bears repeating, no lease will be signed unless the Solicitor General advises the Finance and Economics Committee, or the Policy and Resources Committee, I beg your pardon, that such a lease is legally correct for the States and the assurance I gave the House about being able to take the wet side back in the event of an unlikely doomsday scenario is in place and guaranteed. Similarly no lease will be signed until and unless PriceWaterhouse, our auditors, say that from a financial point of view it is correct and good sense and good financial management for us to sign it."

Earlier in the debate, the Rapporteur gave as an example of the Finance and Economics Committee's reliability, in respect of interpreting such advice, the decision by the Committee not to proceed with taking a short-term lease of office space in Sutton House for the Financial Services Commission. Notwithstanding the marked differences between the transactions concerned, especially the length of lease and the extent of the property arrangements, it does not seem correct to me that the States should have been asked effectively to delegate their decision-making to the Finance and Economics Committee in respect of P.92. The whole point of bringing important property contracts to the States - together with the financial appraisals of them - rather than their being approved by Order is that it allows the States to carry out its necessary role of scrutiny.

Similarly, the several references to the Solicitor General's role in the "absolute approval from a legal point of view" of the Proposition before the House may have given comfort to States' members but it must have caused the Law Officers' Department a degree of discomfort: their statutory role is to check States' leases in terms of accuracy and so on, no more. Such a state of affairs is clearly an unsatisfactory way of approving large capital projects.

If the scrutiny of the proposals by PriceWaterhouseCoopers was to carry any weight at all, it would have to be carried out to an exacting brief. The sort of questions which I believe the public would wish answered are as follows -

- What is the basis of the projected cost of the development?
- Is the projected cost of the development consistent with its nature and proposed use?
- Are the proposed financing arrangements for the project appropriate?
- How does the financing arrangement compare against alternative means of funding the development?
- Does the project in general terms provide value for money?

These questions are, in fact, derived from the terms of the brief to the States auditors, then PriceWaterhouse, following the Reference Back of the Morier House financing arrangements, P.58/96. So how does this brief compare with the one relating to P.92?

The PriceWaterhouseCoopers brief for its appraisal of P.92 is dated 17th August 1999, but I was assured by the Treasury that

the necessary arrangements had been made prior to the States' debate by exchange of letters with the auditors. Although the President of the Finance and Economics committee has declined to show me the correspondence involved, and although the Minutes of the meeting at which P.92 was approved by the Committee make no mention of the PriceWaterhouseCoopers appraisal, the President has assured me that the States auditors were at work on the proposals at the time of the debate in July, as stated in P.92, and he was good enough to provide me with a copy of the brief. The scope of the review includes the following -

> "1. We will review and comment upon the Waterfront Leisure Complex proposal document dated June 1999 ('the proposal document') prepared by the Waterfront Enterprise Board (WEB) and CTP Limited, as well as on the content of the letter from Healey and Baker addressed to Mr J Scally of WEB, dated 13 July 1999. We would expect our comments to address the potential risks being taken on by the States of Jersey ('the States') and how those risks may be mitigated. Our comments will also address the anticipated operating position of the leisure pool complex and the effect on the potential risk to the States.
>
> 2. … We will review and comment upon the assumptions and basic methodology underlying the financial information, but will not reperform any financial appraisal of the project. Our role in performing the work is to assist the Committee in identifying any significant issues relating to the project which do not appear to have been addressed in the proposal document; to identify errors or material inconsistencies in the terms of the proposal; and to assist the Committee in identifying any issues which have not been addressed in the existing document and will need to be addressed in the preparation of the legal documentation at a later stage. In discussion with the directors of WEB, we will obtain their assurance that these matters are being addressed." (my emphasis)

It is clear from the above that the States auditors' were not required to carry out an independent financial appraisal of the project.

An important distinction between the two briefs, especially given States' members concerns about the property transaction, the length of lease, and the potential land values, is the opportunity for independent verification of the property deal: this was part of the Morier House brief -

> "In addition we may consider it necessary to request assistance from other property advisers not involved in the 2 - 10 Halkett Place development …" (Appendix 1)

but no mention is made of the independent verification of the property deal in the leisure pool brief.

3.3 Colin Smith & Partners' Report

During the debate in July members of the States were reassured by the rapporteur that Colin Smith & Partners had approved the developer's cost plan for the leisure complex. However, they were not given any other information from the Report.

It is disturbing to learn that the full report by Colin Smith & Partners was not circulated to members in advance of the Finance and Economics meeting of 28th June 1999, but only handed out at the meeting and withdrawn afterwards with other relevant documents concerning the lease in "the proposal document". Under such circumstances, it is highly likely that the members of the Finance and Economics Committee relied upon the following section in their Support Papers (Item 4, page 7) for what they would expect to be a balanced and accurate summary of the Colin Smith & Partners' report -

> "To be financially viable, the project relies on robust and reliable revenue and capital cost estimation. It is, therefore, reassuring to note that the Cost Plan produced by Gleeds (Appendix 5) has been checked by Colin Smith & Partners (Appendix 6) and that CTP's Financial Appraisal has been checked by Healey & Baker (Appendix 8): … Whilst Colin Smith & Partners' report indicates that the developer's costs '*fall just below the lower end of the cost range…*' it confirms that, in their opinion, '*… the overall budget is achievable..*'"

The paragraph in Colin Smith & Partners' report from which the above quotations are taken is shorter than the relevant paragraph in the Support Papers prepared by Treasury, perhaps because there is no need for a favourable "spin" -

> "In overall terms the Developer's Costs fall just below the lower end of the cost range and whilst we feel some functional unit costs such as the Health Club, Entertainment Centre, Night Club and External Works/Infrastructure are very low, the overall budget is achievable (subject to unknowns such as ground conditions, planning requirements etc.)"
>
> (Parts of quotation omitted by Treasury shown underlined)

The implications of the above comparison are uncompromisingly clear: Treasury officers selectively quoted from the Colin Smith & Partners Report when they prepared the Support Papers for the Finance and Economics Committee. Further, the selective quotations were prefaced with positive remarks that would appear to have been contrived to secure the committee's approval, as per the officer recommendation -

> "To be financially viable, the project relies on robust and reliable revenue and capital cost estimation. It is, therefore, reassuring to note …"

As far as the actual comments are concerned - "low but achievable" - Colin Smith & Partners do recognise in their specific comments on the Health Club and Gym element that "the overlap of service installations with the leisure pool may have had an impact on their costings". It may also be argued that if the developer has underestimated the costs, this is of no importance given that the States' capital outlay in the scheme is limited to £10.9m. However, is this not likely to lead to cost-cutting on the part of the developer which would compromise the quality of the facilities? It should be noted that Deloitte & Touche's list of the 'Critical Success Factors' in the development of a leisure pool is headed up by -

> "the need for quality facilities, finishes, and equipment. This will be essential to provide the appropriate market positioning to capture the demand potential from both tourist and resident opportunities"; (4.4)

If there were any danger of quality being compromised due to the structuring of the proposals, the full picture should have been given to States members, particularly given the assurances given in the debate that we would be producing a first-class facility. However, this "full picture" could hardly be given to the States by the Finance and Economics Committee; in the absence of the opportunity to study "the proposal document" properly, the Committee would have had to rely on the summary prepared by their officers, which was as has been shown, woefully inadequate.

3.4 Absence of cost benefit and risk analysis

An significant oversight in the Committee's presentation of P.92 was the failure to provide the States with some cost-benefit analysis of the proposals - particularly so, given that the rapporteur is also the President of the Finance and Economics Committee, and given that the President of the Policy and Resources Committee was also the President of the Committee of Enquiry - Elizabeth Marina. One of its key findings bears constant repetition -

> "The Committee of Enquiry believes that, in general terms, the need for the States to make decisions in full knowledge of the probable financial implications, should override considerations of commercial confidentiality. The situation which obtained in the case of the marina - where relevant financial information was kept from the States, while 'favourable' information was inserted - is unacceptable." (7.3.2, p.122)

What was P.92 if not an attempt to present the favourable side of the proposals alone? Section 6 of the Report lists an array of benefits, both direct and indirect, several of which are of unknown or uncertain value, and section 7 contains "Additional Safeguards" - is it not unacceptable that the costs and risks to the public should have been omitted?

- At no point in P.92 or in the debate were the potential disbenefits of the scheme mentioned, such as the value of the land; the potential impact of the new undertakings on existing businesses, especially cinemas and night-clubs; the costs to the Island involved in the construction and staffing of the facilities.

- At no point in the first part of the debate, proposing the scheme, was reference made to the disposal of the land on a 150-year lease.

- At no point was consideration given to the relative merits of alternative methods for procuring a leisure pool for the States; on the contrary, as far as alternatives are concerned, the States were told -

  > "Do you want a leisure centre, if so, do you want it done in conjunction with the private sector on very advantageous terms or if so do you want to take the money out of the capital funds to the disadvantage of hospitals, housing, and education, everything else and run it ourselves and continue to make it a loss?"

There was clearly not going to be any risk of an overspend on the Leisure Pool project, given that the States' capital contribution was capped at £10.9m. However, for this figure to be balanced, it should have been stated both in P.92 and the debate on the proposals that the States have already reclaimed the land and supplied it with infrastructure. Instead of doing so, the Committee stressed the capping of the States' contribution -

> "The total States' contribution is capped at £10.9m. There is no question of building overruns, there is no question of any other additional contribution. That is the cap. If the building does overrun, if there's any additional cost, that

has to be funded by the developer, and it is entirely at the developer's risk, not the risk of this House. So £10.9m is what we're being asked to put in and £10.9m is the absolute maximum, the absolute ceiling that we will put into this project should we agree."

> "But whichever way you look at it the major funding for this project and effectively all the risk and I'll come to that later is borne by CTP and the operators, in other words, by the private sector."

"…everyone who has studied it in detail is convinced it represents an excellent deal for the Island. And it gives us the opportunity to have a leisure complex at a cost of over £25m at a cost to the States of £10.9m, and it gives us the opportunity to share in the operating profits of that facility as well."

This last statement -

> "And it gives us the opportunity to have a leisure complex at a cost of over £25m at a cost to the States of £10.9m "

is misleading precisely because it has not been subjected to cost-benefit analysis, or any kind of analysis at all. A quotation from the CTP/WEB Joint Report is pertinent here: when the States take back the 'wet side' of the development - either on the expiry of the 20-year sub-lease or sooner if the facilities performance is so poor that unacceptable revenue losses accrue -

> "… the States will retain the assets which they have largely paid for through the grant, i.e. the leisure water facility and the competition pool." (p.3)

In other words, the States are meeting most of the capital cost of the leisure pool themselves - as well as making a significant investment in the commercial part of the site which it would appear they will not recover for at 130 years.

The risk of revenue losses to the States was put to the Finance and Economics committee (Support Papers, item 4, p.4) in the following terms -

> "Fort Regent pool currently operates at a trading deficit of up to £200,000 per annum. Assuming that the private sector can operate the facility more efficiently and that the complementary facilities will attract additional income, any loss should be contained within £174,000 per annum."

It is hard to believe that the Finance and Economics committee could have been satisfied by such a line of reasoning from the Treasury. Firstly, the statement "any loss should be contained within £174,000 per annum" is completely unsubstantiated. Secondly, the only "complementary facilities" of relevance in the proposals are in "the wet-side", i.e. the Health Club/Gym and Party room, as these are the only other facilities that will be operated by Cannons; for the Treasury to "assume" that these facilities "will attract additional income", without any evidence of market testing, or investigation of likely competing health club facilities on the Island, is hardly prudent.

At the same meeting the Committee were asked to approve the draft Report and Proposition (P.92) which tackles the subject of a risk to the States of the leisure pool's running at a revenue deficit -

> "The States carry some small risk if the water facilities do much worse than anticipated but this risk is regarded as minimal. On the other hand, if the water facilities do better than anticipated, initially part and eventually all of that betterment is returned to the States. Again, the details are commercially confidential but have the support of the Finance and Economics Committee." (2.6)

It is doubtful that the proposals would have been acceptable to the States while the reference to the possible revenue losses remained as drafted. Members would have demanded to know -

- Exactly how small is the risk?
- Who regards it as minimal?
- How much is minimal?

Understandably, the section had to be re-drafted, and it became sections 5.4 to 5.7 inclusive in P.92. There is no mention of "risk" at all in the final draft; on the contrary, greater revenue losses than £175,000 per annum are described as "unlikely circumstances". Consideration of these are followed by a whole new section (5.6) -

> "It is, however, just as likely, or perhaps more likely, given Cannon's obligation to fund excess trading deficits of

£50,000 per annum (index linked) that the actual losses might be less than anticipated. It might be that, as Deloitte & Touche and Antler both predicted, albeit for different schemes, a substantial trading surplus may be achieved. Deloitte & Touche predicted a surplus of £320,000 per annum on their scheme and Antler a surplus of around £400,000 on theirs. In his report this year to the Tourism Committee and the TIF Sub-Committee, Graham Wason says, 'given Cannons pre-eminent position amongst operators of such facilities, and their corporate decision to focus on health and fitness which has shown stronger financial returns than their other leisure interests, it might be expected that they could significantly outperform the Deloitte & Touche Consulting Group's illustration."

(The selective quotation from the Wason Report has already been mentioned in 2.3.1.)

The whole of this section, like most of P.92, including the substance of the Proposition itself, and the whole of section 6 ('Benefits') are copied almost verbatim from the CTP and WEB Joint Report: under the circumstances, States members would have been better served by a set of proposals that were the work of the scrutinising committee and their officers, rather than ones written by the developer in conjunction with WEB Ltd.

3.5 The Finance and Economics Committee failed to scrutinise the proposals

The Finance and Economics Committee's Note to P.92 states that the Committee -

> "has studied these proposals with great care. Officers of the Treasury, in conjunction with Waterfront Enterprise Board (WEB), have analysed the financial details and the proposals are currently being examined by the States' Auditors (PriceWaterhouseCoopers). Therefore, having thoroughly considered the proposals, this Committee supports the granting of a lease to CTP Limited (CTP) …"(p.3)

A slightly different account is found at the end of the Report:

> "the whole proposal has been negotiated by WEB, on behalf of the States; it has been checked as to legality, costs and values by WEB's independent professional advisers. It has been scrutinised by the Treasury and approved by the TIF Sub-committee, the Finance and Economics Committee and the Policy and Resources Committee …" (5.9, p.8)

Did the Finance and Economics Committee "study the proposals with great care", or did they "approve" them, leaving the scrutiny to the Treasury? Statements on this subject were made in the debate by the Policy and Resources Committee's rapporteur, who is also President of the Finance and Economics Committee -

> "Now I know those figures sound complex and I know they sound slightly strange but believe you me they have been gone into in great great depth by the Treasury, by Finance and Economics, by WEB and by the Tourism Investment Fund and they are absolutely as I have mentioned …"

> "And if we say no we will in effect be dismissing that advice. We will also be seriously questioning the ability of WEB, the Treasury, the Tourism Investment Fund members who are widely representative of the industry, the Finance and Economics Committee and the Policy and Resources Committee, all of whom, all of whom have thoroughly investigated this project."

The claim being made here, that the proposals were "thoroughly investigated" and "gone into in great, great depth" by all of the parties concerned is a complete exaggeration, and there is documentary evidence to prove this. The Finance Committee themselves were told when they considered the proposals on 28th June, that -

> "Although the Policy and Resources Committee is the sponsoring committee of WEB, as the subject matter is of a financial nature, it is considered appropriate for this Committee to agree the contents of a Report and Proposition to be taken to the States." (Support papers, para.1, p.1)

It must be repeated that this was the Committee's first sight of the Joint Report by CTP Ltd and WEB Ltd., for, as the Committee were informed -

> "The joint report prepared by CTP and WEB has not been issued with these papers as it contains information of a highly confidential nature, but will be distributed and collected at the Committee meeting of 28th June 1999. This covering report will address the salient information contained within the full report…"
> (Support papers, para.3, p.1)

In passing, it must be suggested that it is well nigh impossible for any member of the States serving on a Committee to

discharge his or her duty and obligation to the public under such circumstances, especially a member of the Finance and Economics Committee.

Could it not at least be said, as P.92 reassured the States, that the proposals had been "scrutinised by the Treasury" (5.9, p.8)? No, for Treasury officers admitted in the Support Papers for the meeting of 28th June -

> "The joint CTP and WEB report is a very comprehensive document. The above summary is an attempt to address the issues raised by the proposed development and provide the Committee with an understanding of those issues, on which an informed decision may be taken. As the States' agent, WEB have undertaken negotiations with the developer to produce a joint report. Whilst the Treasury have been kept abreast of the progress on all developments at the Waterfront, WEB have detailed knowledge of the negotiations that have produced this agreement. In the time available, Treasury staff have assessed the information and liaised with the Managing Director of WEB to obtain an understanding of the proposals, but this understanding cannot be as comprehensive as that of WEB."

I have to question whether the financial implications of the leisure complex proposals were thoroughly scrutinised by anyone in a position to provide the States with independent and accountable verification that the proposals represented best value for the public.

3.4 The failure to seek the opinion of the Property Services Department

Not only were States members required to make a decision on a property transaction of great complexity without the benefit of the opinion of the States auditors, but they were also denied the advice of the States Property Services Department which was set up on the recommendation of Policy and Resources themselves, in P.43/91, paragraph 12 of which states -

> "The Property Management Office would be involved in all property acquisition and disposal." (The Policy and Resources Committee's emphasis.)

The Policy and Resources Committee may argue that there was no need for Property Services to be involved when it came to the development of the Waterfront, for it had been made clear in the reports and propositions leading to the establishment of the Waterfront Enterprise Board, that one of the main purposes of setting up a development agency was to provide a one-stop shop that could enter into negotiations with the private sector without the delays and red-tape that are perceived to be involved in States-led transactions. The Waterfront Enterprise Board's Report and Recommendations (P.160/93) spells out the need for an expeditious process, as well as the likelihood that long leaseholds will be necessary to attract private sector investment in their developments. At the same time it makes the following statement -

> "WEB recognises that many of the proposals in this report require the transfer of administrative control and resources to the Board from States' Committees. WEB does not recommend these changes lightly, but considers they are essential if the Waterfront is to be developed successfully. However, the Board notes that the States retain ultimate control over all these matters, and that there a number of checks and balances to ensure the public accountability of WEB. These are set out in detail in the report, but are summarised below to illustrate that the Board is fully accountable and the States have all the necessary safeguards.
>
> (i) Legal ownership of all assets remains with the States - WEB adopts only administrative control, i.e. the same as States' committees.
>
> (ii) All ongoing operational and management duties remain with the appropriate States' Committee.
>
> (iii) All planning powers remain with the Island Development Committee.
>
> (iv) All property transactions remain to be approved by the Property Management Office and the Finance and Economics Committee." (9, p.30)

Safeguards were part of "the overall framework" subsequently referred to in P.156/95, within which The Waterfront Enterprise Board was established. When the States transferred administrative control to and approved the incorporation of The Waterfront Enterprise Board in 1995 (P.156), the Policy and Resources Committee described the following procedure for the property transactions involved -

> "If the development were approved by the Planning and Environment committee, the Board would progress the development with any consequential property transactions being presented to the States with the approval of the Finance and Economics Committee in accordance with the present States procedures for land transactions." (2.4.v, p.8)

It will be noted that the role of the Property Services Department is not mentioned specifically. The Report continues -

> "In proposing this procedure in respect of particular development proposals the Board have re-emphasised that there are a number of safeguards for the States, which were set out in Appendix 2 (sic) of P.160/93, as follows -
>
> (i) Legal ownership of all assets remains with the States.
>
> (ii) All ongoing operational and management duties remain with the appropriate States' Committees.
>
> (iii) All planning powers remain with the Planning and Environment Committee.
>
> (iv) All property transactions remain to be approved by the Finance and Economics Committee and the States." (P.156/95, pp.8-9)

Comparison with the full set of safeguards that were set out in P.160 (above) reveals that the Policy and Resources Committee have removed the reference to the Property Management Office (now termed the Property Services Department).

Incidentally, I find it surprising and disturbing that in 1995 the Committee should have quoted from a previous proposition, on which a decision of the States was made, without making explicit the fact that they were making a material change to the material quoted, in this case, the safeguards offered to the public with regard to the disposal of land.

However, The Waterfront Enterprise Board were not entitled to dispense with the prior States' decision that the Property Services Department, should be consulted, a safeguard which was agreed both in 1993 and 1991 in P.160/93 and P43/91 respectively. This assumption is made explicit in a letter written to the Director of the Property Services Office by the Chief Adviser in November 1995 -

> "What will occur in practice is that the Finance and Economics Committee on receiving requests for the approval of property transactions undertaken by the Waterfront Enterprise Board will give the Property Management Office an opportunity to comment before passing the matter to the States for final approval. Thus while P156/95 does not make any specific reference to the Property Management Office, its advice will be sought by the Finance and Economics Committee to ensure that the overall interests of the States are protected and precedents are avoided which, if taken advantage of by other property owners in their negotiations of property transactions with the States, could be of disadvantage to the taxpayer."

It would appear from the above that the Finance and Economics Committee failed in their statutory duty to have arranged for Property Services to appraise the leasing arrangements for the leisure pool lease. Can the Committee really claim that the advice of Healey and Baker, who were commissioned by the Waterfront Enterprise Limited to an unknown brief, provides the public of Jersey with an independent verification that this is the best deal that could have been made on their behalf, or a sufficient degree of independent scrutiny of such an important and complex property deal?

3.1 Inadequate information about the views of the public of Jersey

As the Audit Commission has recently reminded us in "The Proper Conduct of Government: Principles and Practice of Corporate Governance for the States of Jersey"-

> "Openness is required to ensure that stakeholders can have confidence in the decision-making processes and actions of public service bodies, in the management of their activities, and in the individuals within them. Being open through meaningful consultation with stakeholders and communication of full, accurate and clear information leads to effective and timely action and lends itself to necessary scrutiny." (3.11, p.7)

In the case of the Waterfront, the "stakeholders" are the public - the importance of meaningful consultation with the public such has been taking place in the development of the Millennium Town Park Project cannot be overstated. Before debating the Leisure Pool Complex proposals, States members should also have been given assurances that the proposals matched the current needs and expectations of the public in terms of the facilities offered; such as a full public consultation exercise would have established.

The Policy and Resources Committee appeared to have believed that adequate information had been obtained from the public about their expectations from the proposed leisure centre. Answering a question from Deputy Gerard Baudains on 27th July 1999 about the extent to which public consultation had taken place with regard the public's views of the Waterfront hotel, the President of Policy and Resources said -

> "I would also point out that the proposals for the development of the Waterfront have been the subject of widespread public consultation in the past."

It is a fact that widespread public consultation has taken place in the past - at workshops run by The Waterfront Enterprise Board a few years ago. And it is worth noting that the specific proposals which were put to the public on that occasion resulted in feedback that influenced the design of Les Jardins de la Mer and contributed to their popularity with the public for whom they were provided. But there has not been any widespread public consultation on the leisure pool proposals, and no recent public consultation about the Waterfront whatsoever.

This is not just an missed opportunity to reduce the sense to which Islanders feel "no-one is listening"; to reduce the perceived "democratic deficit" in Jersey: it goes completely against the principles of public participation in decision-making or "Agenda 21" agreed as part of the Rio Convention in 1992, to which Jersey is a signatory. In the United Kingdom, the Local Government Management Board has set out steps to achieving a Local Agenda 21, which include -

> "Consult and involve the general public through a range of traditional and more innovative consultation processes, including focus groups and 'Planning for Real' exercises; pay particular attention to feedback mechanisms." (LGMB, 1995)

In the 1995 annual survey of United Kingdom local authorities engaged in LA21, it was reported that the process has become -

> "a part of the everyday business for the majority of UK local authorities." (ICLEI, 1997:7)

Meanwhile, the surveys carried out in Jersey in 1997 by the Environment and Society Research Unit of University College, London, indicated that the public do not feel involved. As a group of technical college students put it in a focus group -

> "A: The States don't listen to us. They're not bothered with us. They just sit there in the States and make up their own minds without even asking us.
>
> B: That's right. When was the last time the States asked us about anything? There's nothing to do here and no-one seems to care about it.
>
> C: We're not saying that we want everything our own way, but at the moment we don't even get asked." (ESRU Report p.66)

Given the fact that the proposed leisure complex is aimed at meeting the leisure needs of the young, in particular, I find it incredible that the Waterfront Enterprise Board did not think it essential to find out from the young people of the Island themselves what sort of leisure complex they wanted before the Board went to secure private sector interest. Towards the end of his presentation of the proposals, The Policy and Resources Committee's rapporteur said of the leisure complex -

> "It's supported by the tourism industry, by the Tourism Committee, by the Chamber of Commerce, by the Tourism Investment Fund, by WEB, and not least, by the Finance and Economics Committee and the Policy and Resources Committee."

Was it supported by the people of Jersey? We were not given that information.

4. "The gun to the head"

It is only natural that politicians should avail themselves of rhetorical devices to make their case in debates. During debates on capital projects, however, such attempts at persuasion should be viewed with scepticism, and should not, I believe, have any place in the speeches from the Finance and Economics Committee. That committee's role is to present a balanced financial case to the States, to put the pros and cons of a particular project, in as comprehensive and as neutral a way as possible. They should function as the States' accountant, not their salesperson. In the debate on P.92, they should have been able to provide States members with evidence of detailed, objective and balanced scrutiny of the proposals, in order that public assets - £10.9m and a 150-year lease on prime waterfront land, reclaimed and supplied with infrastructure at the taxpayer's expense - might be disposed of prudently and cautiously.

What happened in the debate is that States members who queried or criticised the proposals were themselves criticised by the Committee for not having consulted the Waterfront Enterprise Board on an individual basis prior to the debate. They were labelled anti-tourism, anti-private sector partnerships, anti-swimming pools. Perfectly legitimate concerns, especially about

the 150-year lease of land to the developer (which was not mentioned by the rapporteur in his proposing speech,) and an effort by Senator Le Maistre to have P.92 referred back as it would have been under normal circumstances, were rubbished in a succession of sweeping statements and exaggerations -

> "And Sir, do we really, if we're interested in working with the private sector, can I ask what on earth it is that members want more than they have got today. If we're not interested in working with the private sector, if we don't trust the private sector at all then let us say so, let us ignore any possibility of working with the private sector in future and let us say we are going to fund every single penny of development that goes in this Island in the future. Because Sir that is the position we are faced with. We could not get a better deal than we have got here …"

> "If we seek to defer this proposition until September it is probably the same thing as saying no to the entire project and saying no, probably, to any future possible project, joint project with the private sector in tourism or in anything else. That is the choice the House faces. Do you want a leisure centre for Jersey if so do you want it partially the great part of it funded by the private sector on very advantageous terms to Jersey. The alternative is that we stump up all the money ourselves and continue to make an operating deficit which we've done at Fort Regent. That's the stark choice facing the House. Do you want a leisure centre if so do you want it done in conjunction with the private sector on very advantageous terms or if so do you want to take the money out of the capital funds to the disadvantage of hospitals, housing, and education, everything else and run it ourselves and continue to make it a loss. It's that stark, Sir, it's that basic."

> "Is the House saying it knows better the terms of a lease than the Solicitor General, because that's the effect of what - - is saying. What utter arrogant nonsense. Sir, this is the basic decision that we have to take. There could be no more safeguards, we either want this project or we want to kick it into touch and grass the whole land over and say goodbye effectively any further investment in tourism."

> "I have no doubt that the developers, there is a very very strong possibility that the developers will walk away. The implication of that is that we won't have a leisure pool, a leisure pool that everyone has been promoting for years and years and years, we won't have. The implication of that is that we cannot conveniently add the 6-lane training pool that SLR want because it won't be there to add it to. The implication of that is that we will have to seek to find 4.5m from the capital programme and it's not in the capital programme at least until 2003, is the first it could ever be in order to refurbish Fort Regent pool or as we've been told when we were told why we had to do this thing down at the Waterfront, we will have to close Fort Regent pool. And the effect of that would be catastrophic on the swimming clubs, and Jersey is such a forward swimming community now I think that would be absolutely dreadful. That is the implication I think…"

> "Do we want to have a leisure pool at all, because the chances are if we say no this afternoon then we will not get one at all."

5. Alternative methods of procuring a leisure pool

It is untrue to claim, as the Policy and Resources Committee did in the debate on P.92 that the particular deal negotiated by the Waterfront Enterprise Board Ltd with CTP Ltd is the only way the Island will ever procure a leisure pool. It should be noted that Deloitte and Touche's specifications and financial projections were based on the assumption -

> "that the complex is developed by the local authorities and managed by an efficient operator"

and this is clearly a route that is open to the States. The chosen leisure pool operator , Cannons, operate most of their facilities for the public sector, and could run the facility for the States, or for WEB, the States' agent. The States, who would bear the revenue deficit as they currently bear the losses for the Fort Regent pool, could offset those losses, as Deloitte and Touche predicted, by the rental of catering and leisure spaces. The States are already supplying nearly half of the capital cost of the development, and all of the infrastructure costs. The proposed developer is actually borrowing most of the funding from RBSI, and securing the borrowing against the value of the head lease.

A States-owned but WEB-managed development would also retain control of such key issues as the quality of the facilities, the pricing of admission, the rental value of the sub-leases, and the choice of the other commercial elements in the scheme. The States would also, though it hardly needs stating, not be parting with the leasehold of over half of the site in question for 150 years.

Surely a thorough scrutiny of the proposals put forward by WEB would have included an investigation into whether other means of procuring a leisure pool for Jersey were more or less favourable?

6. Good government

Ironically, the proposer of this rescindment motion has been publicly described as “bringing the government into disrepute” and “undemocratic” and “unworthy of his office”. The argument runs that given the fact that the States approved the leisure complex lease with a sizeable majority, notwithstanding the concerns raised by the proposer of this motion and other Members, the rescindment motion is nothing more than a device to attempt to sabotage the whole project. Nothing could be further from the truth. I have made no secret of my personal commitment to a leisure pool complex of best value and best quality, such as the Deloitte and Touche report envisaged in 1996. If the Waterfront Enterprise Board had consulted the public fully over the proposals; if the Policy and Resources Committee had awaited the PriceWaterhouseCoopers report before putting the proposals to the House; if the Finance and Economics Committee had done their job properly; if the States had benefited from the full and frank disclosure of the expert information in which they were urged by the rapporteur to place their trust - then this proposition would have been unnecessary, whatever the outcome of the debate on 27th July.

Scrutiny is one of the duties of elected members of government: as the recently published Members Handbook reminds us -

> “(The States member) has a responsibility to the States as a whole to scrutinise the actions of other Committees and members in policy and spending issues.” (p.6)

If any Committee of the States wishes to avoid the problems involved a rescindment motion, or the threat of one, then they must do their homework properly, they must anticipate the scrutiny of States members, they must make all the information available and do all the public consultation that are necessary; they must not make sweeping statements, or attempt to rush and cajole the assembly of elected representatives into a favourable decision. It is untrue to say that the States cannot make decisions, or work with the private sector on capital projects, and there is ample evidence in the recent past that we have “turned the corner”, with successful projects like Morier House, Maritime House, the refurbished bathing pool, and so on. What we must not do as a democratic government is evade our responsibilities to the people of Jersey, and to ensuing generations, by allowing a leisure complex of unknown value and quality to be built on eight vergées of our precious Island.

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