

STATES OF JERSEY



CHIEF MINISTER: VOTE OF CENSURE (P.100/2008) – COMMENTS

**Presented to the States on 1st July 2008
by the Chief Minister**

STATES GREFFE

COMMENTS

I hope members will reject this Proposition on the following grounds:

I have already apologised to the House for misleading them in this instance. In my 18 years as a Member of the States I have never knowingly misled the House and nor would I ever do so. In this instance I relied upon the information I had been given which, as it turned out, was inaccurate. I am acutely aware of the problems this has caused and the concerns it has led to, which I deeply regret, and for which I will again apologise to the Assembly when this Proposition is debated.

Deputy Southern's Proposition suggests that the case for me to answer centres on 3 issues—

- (1) Whether the PWC and Economic Advisor's reports contain information which is important to the proper consideration of the decision to proceed;
- (2) The extent of the Chief Minister's knowledge and understanding of the contents of these reports; and
- (3) His consequent actions and statements before and during the debate on P.60/2008.

Members will recall that Proposition P.60/2008 was divided into 2 parts for the debate. The first part was concerned with the design of the Waterfront project and was led by the Minister for Planning and Environment. The second part of the debate, which was led by me, focused on the following issues –

- (a) to approve the acquisition by the Public of the parcels of land and any interest therein comprising part of the Esplanade Quarter site currently vested in Waterfront Enterprise Board Limited or its subsidiaries and, in consideration therefore, to approve the leasing by the Public to Waterfront Enterprise Board Limited of the entire Esplanade Quarter site shown for identification purposes edged black on drawing number P.58/1997 by way of a lease for 150 years at a nominal rent;
- (b) to authorise the Minister for Treasury and Resources to agree the detailed terms of the acquisition and the lease referred to in sub-paragraph (2)(a) above with Waterfront Enterprise Board Limited and
- (c) to authorise the Attorney General and the Greffier of the States on behalf of the Public to pass any contracts which might be found necessary to pass in connection with the acquisition and the lease envisaged by this paragraph (2).

Importantly it did not ask the States to agree to a deal with Harcourt, and indeed it was made clear that no such deal could be completed until further due diligence and other reports on the company were received and until all guarantees were firmly in place.

I will deal with the Deputy's points one by one –

- (1) The PWC report was provided to WEB on a "commercial and in confidence basis" and should not have been released beyond the Board and officers of WEB.

I did not believe I could either distribute it or quote from it in a public arena.

A summary of the Economic Advisor's report was released to members and the public in March 2006. The full report has now been released to members. It clearly illustrates the economic benefit of the proposed development and would, if anything, have been of more value to the supporters of P.60/2008 than the opponents.

I believe that all the information required for the debate was available to Members.

- (2) As the Deputy Chief Minister confirmed in his answer to a question from the Deputy on 10th June 2008 I

had not seen the PwC financial capacity report until it was distributed after the debate on P.60/2008, nor do I believe it would have been appropriate for me to do so.

I now accept the comments I made upon it, and the other information called for by the Board of WEB, that “they came up A1 every time” were something of an overstatement. They were, however, based upon the information I had received and I made them in good faith.

With regard to my comment that Harcourt are a low gearing company, I would like to draw Members attention to page 15 of the PwC report which states that Harcourt has “modest gearing levels (in comparison to the level of reported gross assets)”. The PwC report also provides supplementary information in respect of the valuation of the Group’s gross and net assets which would promote the modest gearing level.

The following quotes have been extracted from PwC’s Financial Capacity Audit of Harcourt 2007, which was circulated to States Members after the debate –

- “One of Ireland’s largest privately owned property development companies.”
- “D&B statistics suggest that Harcourt demonstrates a lower risk of failure than the industry average.”
- Harcourt’s apparent low turnover levels do not fully reflect its activities in the development market.”
- “Information provided by Harcourt suggests that the reported gross and net asset values do not fully reflect the value of the Group’s property portfolio (and its capacity to deliver schemes).”
- “Debt only represents 58% of the value of the Group’s gross assets (with further potential value reflecting any uplifts in market values of investment properties and “marking to market” of hotel assets and development properties having the potential to reduce this gearing level further).”
- “Harcourt has demonstrated a significant track record at delivering (and financing) major development projects.”
- “Also suggests that in advancing funds such banks had confidence in the ability of Harcourt to deliver schemes and repay debt as it falls due.”
- “These confirmations are dated May 2007 and confirm that the Group have long standing relationships with the respective banks with no concerns noted on Harcourt’s track record in operating its accounts.”
- A range of historic evidence to support Harcourt’s claim that it will be able to secure and contribute the level of equity funding necessary to progress the proposed scheme.”
- “Less likely to fail than industry average.”

All reports had been provided to Scrutiny, in accordance with agreed best practice. Also I offered to disclose further commercial and financial information if the States agreed to go into camera but that was not taken up. The Deputy claims in his report that I subsequently refused his request to do so but does not mention that this was after I had concluded my summing up and sat down. He could of course have requested that the Assembly should do so at any time earlier in the debate.

- (3) After the conclusion of the debate I was approached by Deputy Baudains in the Members’ Room, who asserted to me in the strongest terms that there was a legal dispute involving Harcourt in Nevada. I was so taken by the certainty of his statement that I immediately accessed the Internet and the information on it seemed to verify the Deputy’s statement. I do not believe it should fall to me to check upon such

information personally and that it should have been provided to me in response to my enquiries prior to the debate.

I immediately contacted the Managing Director of WEB and consequently received a call from Mr. Pat Power of Harcourt. This conversation resulted in the letter I subsequently received from a Director of Harcourt which caused me to immediately return to the States and to issue my apology.

Harcourt have subsequently issued a statement in which they apologise to me and Members of the Assembly for any embarrassment they may have caused.

Subsequently, I have made it clear that I am deeply concerned that I misled the States and have made it clear that no Development Agreement will be signed with Harcourt until all answers relating to their financial position, their legal status and all guarantees have been received.

A chronology of events is attached for the convenience of Members.

I believe that my actions and comments do not justify a Vote of Censure and I hope Members will reject the Proposition.

Chronology of events: Harcourt/WEB

30th April 2008 – 10th June 2008

1.	30th April	Nevada lawsuit filed
2.	1st May	Harcourt aware of Nevada lawsuit, though no Harcourt entity served
3.	2nd May	Irish Times article published
4.	19th May	e-mail (“first e-mail”) Deputy Sean Power (“SP”) to Senator Frank Walker (“FW”), Senator Terry Le Sueur (“TLS”), Senator Philip Ozouf (“PO”), copied to Bill Ogley attaching copy of Irish Times article. Copy of article attached as Attachment 1.
5.	19th May	First e-mail forwarded from FW to WEB Managing Director Stephen Izatt (“SI”)
6.	19th May	First e-mail forwarded from SI to Pat Power (“PP”), Director, Harcourt Development
7.	19th May	First e-mail forwarded from PP to Bob Langdon (“BL”) of Harcourt
8.	20th May	e-mail (“second email”) sent from PP to FW. Copy attached as Attachment 2.
9.	20th May	Harcourt Nevada LLC served (Nevada time)
10.	22nd May	Harcourt aware of service in Nevada
11.	25th May	Service of Nevada lawsuit on Pat Doherty’s home address
12.	27th May	Second email: reply sent by FW to PP
13.	2nd June	Briefing of FW by SI. Questions asked and answered in relation to Nevada case. Copy attached as Attachment 3.
14.	5th June	States debate. FW denies existence of Nevada litigation.
15.	5th June	Attempts by FW’s office to contact PP/Harcourt
16.	5th June	States second sitting. FW clarification as to existence of Nevada litigation.
17.	5th June	Letter BL to FW. Copy attached as Attachment 4.
18.	5th June	Harcourt press release re: Irish and Nevada proceedings. Copy attached as Attachment 5.
19.	10th June	Harcourt press release re: Nevada litigation. Copy attached as Attachment 6.

Las Vegas developer sues Irish company over project

BARRY O'HALLORAN

A COMPANY backed by businessman Pat Doherty and former broadcaster Mike Murphy is facing a legal battle in the US over a €500 million Las Vegas property development.

Las Vegas developer Glen, Smith & Glen (GSG) and two linked companies are suing Harcourt Developments, its Nevada subsidiary, Mr Doherty himself and a number of others for breach of contract in a Nevada court.

GSG is Harcourt's local partner on its Sullivan Square project, a €550 million mixed apartment and commercial development that the pair are building in Las Vegas. GSG and its co-plaintiff, Sullivan Square Harcourt and GSG DSM Holdings, began proceedings in the court yesterday. According to documents filed with Clark County district court, GSG and Sullivan Square say that Harcourt Developments and Harcourt Nevada have defaulted several times on their obligations to fund the project.

This has resulted in contractors and consultants working on the development not being paid. They have taken two other lawsuits against the company. Also a number of them are claiming a share in Sullivan Square as compensation. GSG, run by businessmen Alan Glen and Kenneth Smith, owned Sullivan Square and began working on the project itself. An acquaintance introduced

them to Mr Doherty and Harcourt. In August 2006, the Irish company agreed to fund the development in return for a 60 per cent share. GSG's complaint states that last October, Harcourt Nevada defaulted on its obligation by "failing to timely provide sufficient funding for development and construction of the project, and failing to fund the overhead for GSG dedicated to the project".

The court papers say that in February, Mr Doherty personally assured GSG that Harcourt would meet its obligations in 24 hours, but failed to do this. Also during February, Harcourt approached GSG and asked it to change the agreement to give a third party a 20 per cent stake in Sullivan Square to secure funding.

GSG was to hand over 9 per cent. The plaintiff says that Harcourt subsequently admitted that there was no new third party and that it wanted 9 per cent as a condition for providing funding. GSG states that it reluctantly agreed to give Harcourt 9 per cent, cutting its share of the project to 31 per cent. The documents state that Harcourt cannot plead inability to pay as the plaintiffs are aware that the defendants "maintained lavish and extravagant lifestyles" during the period. Harcourt Developments principals include Mr Doherty, Mr Murphy, and English businessman, Andrew Parker Bowles, former husband of Camilla Parker Bowles.

ATTACHMENT 2

From: Pat Power [mailto:patpower@harcourthouse.com]
Sent: 20 May 2008 18:37
To: f.walker@gov.je
Cc: Stephen Izatt
Subject:

Dear Frank

I refer to your recent e-mail to Stephen Izatt in respect of a recent article in the press.

This is a mixed residential/commercial scheme, on the outskirts of Las Vegas that we were proposing to develop in conjunction with local partners. Harcourt have provided all the finance and the partners were to manage the scheme.

When over time it became apparent that the partners had very little experience of development, it was amicably agreed that Harcourt would take over the construction related aspects. From the summer of 2006 we have financed every aspect of the development at the same time expressing our concerns at the sheer scale of the marketing costs, in what was an increasingly difficult market. Our attempts to curtail marketing and overheads met with such stout resistance that ultimately realising that our partners' main concern was not the scheme. Their main focus was their overhead. In the light of the ever tightening of the US market, we called a halt to all further expenditure.

To our surprise, rather than discuss this with us, they made a series of defamatory and false press announcements. The complaint to date has not been served on our Nevada subsidiary and it cannot be served on Harcourt Developments Ltd or any other Irish entities as they are not parties to the agreement and are outside of the jurisdiction.

Other than excavation which was a no cost arrangement, no contract for construction has been placed. We now intend to mothball the scheme until market conditions dictate otherwise.

Our Nevada attorney has strongly advised against any press release or to putting any comment directly or indirectly into the public domain until he files his response and counter claim (assuming they file a motion). We would therefore request that you keep the above information confidential.

Should you require clarification on any particular aspect please let me know.

Regards

PAT

Patrick Power
Director
Harcourt Developments
18/19 Harcourt Street
Dublin 2.

ATTACHMENT 3

Question asked of the Managing Director of WEB by the Chief Executive of the Council of Ministers

Question 2: On the Monday evening briefing in preparation for the States debate Frank asked you whether there was a Nevada court action. You confirmed 3 times that there was not a legal action. What steps had you or anyone else in or on behalf of WEB taken between the 20th May to update your information and ensure that the Chief Minister had the correct information?

Answer: We provided, as part of a package of information which was used to support the Chief Minister during the debate, the following extract –

Harcourt Legal disputes

1. *Dublin Courts*

A claim has been filled in the Irish Courts by Ivor Fitzpatrick, Peter Crean & Andy Kenny claiming, inter alia, a financial interest in the Island Site (Liberty Wharf) scheme. This action is being contested vigorously by Harcourt who stress that none of the above made any financial investment in the development.

2. *Las Vegas*

There has been a report picked up in the Irish newspapers that partners in a development in Las Vegas are claiming against Harcourt. No action has been filed and Harcourt once again repeat that their partners have made no financial investment.

We relied on the information provided by Harcourt to the Chief Minister dated 20th May 2008.

ATTACHMENT 4

HARCOURT

DEVELOPMENTS

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Senator Walker
Chief Minister
States of Jersey

5th June 2008

Re: Sullivan Square, Las Vegas.

Dear Senator Walker,

Further to Pat Power's email of the 20th May where he said that the Complaint had not been served on our Nevada subsidiary, I can confirm that there was no correspondence to indicate otherwise by late that evening. We learnt on the 22nd May that it had been served on the 20th on our previous solicitor as agent for that subsidiary. He passed it onto the current solicitor who is dealing with the litigation on behalf of that subsidiary. As previously advised our solicitor confirms that this complaint cannot be served on Harcourt Developments Ltd or any other entity other than the Nevada subsidiary.

I apologise for any embarrassment caused.

If you require any further information please feel free to contact either Pat Power or myself.

Yours sincerely,



R M Langdon



Media Statement

5th June 2008

Certain comments about Harcourt were made, and rejected, in the States this morning, and for the sake of absolute clarity, we would like to make the following statement:

Harcourt Developments Ltd confirm that all of the companies involved in the Liberty Wharf and Esplanade Quarter projects are its wholly owned subsidiaries and that these projects are 100% financed by Harcourt.

Certain parties are claiming a partial interest in the share capital of these companies and this claim is being stoutly resisted by Harcourt in the Commercial Court in Dublin.

Separate allegations were also made this morning alleging ongoing legal action against Harcourt over a development in Nevada. Any formal proceedings will be vigorously defended by Harcourt's Nevada subsidiary as we maintain they are entirely without merit.

We would like to reassure Islanders that these disputes, such as they are, will have no bearing on what is achieved in Jersey. Harcourt is 100% committed to the delivery of a world-class waterfront development of which the Island can be proud.

We have many successful developments ongoing around the world at this time, and unfortunately, disputes such as these are not uncommon in our industry. **Ends.**

ATTACHMENT 6



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10th June 2008

MEDIA STATEMENT

Pat Power, Director of Harcourt Developments Limited, would like to make the following statement:

"I would like to clarify a number of issues which have recently been raised in the States, and subsequently, in the media.

Firstly, the Nevada civil action is against a Harcourt subsidiary, and does not involve anything like the figure which has been quoted in the media as variously \$800m and \$800bn. \$800m was the value of the proposed development, not the legal action, which will involve a massively smaller amount, if anything. Crucially, this action is being defended by our US lawyers in the strongest possible terms, and we believe it is entirely without merit.

We are currently working on more than a 100 projects in 11 different countries, and unfortunately this type of case does occur in the development industry. For the sake of absolute clarity it will have no effect on our work in Jersey, or our ability to finance that work whatsoever.

We are providing full financial guarantees to ensure that the Island is protected, and we have cooperated fully with all due diligence checks made to date, and will continue to do so.

In terms of the precise timings in the issue of the Nevada litigation, we can confirm the following:

20th May 2008 – I wrote to the Chief Minister (copied to WEB) to inform them that although a dispute with a former partner existed, no action in Nevada had actually been served on us. To be absolutely clear, the action may well have been filed in a Nevada Court before that date, but until it is actually served on us, we would not have been aware of it.

22nd May – I was informed by our Nevada attorney that a motion had now actually been served, and was being dealt with accordingly by our lawyers. We didn't see the need to update the information we had given previously for the following reasons:

- 1) It will have no impact whatsoever on the Jersey proposals, and so at that time, we just didn't see it as at all relevant.
- 2) We are robustly defending the action which we argue is entirely without merit.

We acted in good faith at all times, and have already apologised personally to the Chief Minister if he has been caused any embarrassment. There was never any intention to mislead; the Nevada action was simply not viewed as having any impact at all on our work in Jersey, and our position on that point remains entirely unchanged.

We believe our work in Jersey to date clearly illustrates our very strong commitment to the Island. We have already delivered several successful projects, such as Liberation Station which is well utilised by Islanders, the Apart Hotel operated by Bridge Street, and Liberation House let by Moore Management, CPA and Ernst and Young. Liberty Wharf is proceeding successfully with Deerglen.

We are delighted to be involved in the construction of a world class Esplanade Quarter for Jersey, and will

continue to work hard with both WEB and Planning to ensure that we deliver a waterfront of which Islanders can truly be proud. **[ends]**

Harcourt Developments Ltd.

Directors:

P.J. Doherty (Chairman), R.M. Langdon (UK) (Managing), C.V. Harvey, M.J. Murphy, P.J. Power, P.J. Tyas (UK),
A. Parker Bowles (UK) (Non-Executive), A.C. Reddington (Secretary).
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