

2. Urgent Oral Questions

2.1 Deputy G.P. Southern of the Chief Minister regarding a PricewaterhouseCoopers report on the Waterfront development

10th June 2008

(a) Were the Chief Minister and the 3 States Directors of the Waterfront Enterprise Board Limited aware of the results contained in section 2.2 of the PricewaterhouseCoopers report, "Harcourt Developments Limited Financial Capacity Assessment", and if so when did they become aware, and if they were not aware, why not?

Senator T.A. Le Sueur (Deputy Chief Minister):

The Financial Capacity Assessment on Harcourt Developments Limited was commissioned by Waterfront Enterprise Board Limited as part of its continuing due diligence exercise in relation to the proposed development of the Esplanade Quarter. Harcourt had previously been selected as preferred developer of Esplanade Square. W.E.B. then entered into heads of terms for the development of the Esplanade Quarter with Harcourt in July 2007. These heads of terms provide, among other things, for the delivery by Harcourt of financial guarantees issued to W.E.B. by an acceptable bank or insurance company in the aggregate sum of £95 million. The financial guarantees will set out an obligation by the bank or insurance company to make payments to W.E.B. in the event that Harcourt fails to complete the road works or fails to make planned payments. The Directors of the Waterfront Enterprise Board, including the 3 States Directors, would have been aware of the results of the Financial Capacity Assessment report in October last year. This was a confidential internal report and I do not believe that the Chief Minister would have been made aware of the content. The report was intended as a confidential report to the board of W.E.B. and there is a clear disclaimer from the author of the report, PricewaterhouseCoopers, on the front cover. Accordingly, the reports did not receive wide circulation and were simply one of several papers to assist the board in its decision making. The Deputy selectively quotes one section of the report. I suggest that Members should do as the board did, and take the report as a whole setting this paragraph into context. Although this report is part of a package of information regarding the capacity of Harcourt to undertake the Waterfront development, the board of W.E.B. regard the provision of copper-bottomed bank guarantees as far more important, indeed of paramount importance, in the financial protection provided to W.E.B. and to the public of Jersey. For that reason the developers are required to have guarantees in place, and while these are referred to in the report they will be updated once the contractual arrangements to get underway and before signing any leases. I can give Members the absolute reassurance that no contract will be signed with Harcourt or, indeed, anybody else until those up-to-date guarantees in the sum of £95 million are in place and have been thoroughly and independently verified.

2.1.1. Deputy G.P. Southern:

In referring to the Chief Minister, the Deputy Chief Minister says that the report was for internal consumption only. Can he indicate when the Chief Minister became aware of the contents of this report, if at all?

Senator T.A. Le Sueur:

I believe, Sir, that the likelihood is that the Chief Minister became aware of it, as most of us did, last week.

2.1.2 Deputy G.P. Southern:

When last week because we did debate last week.

Senator T.A. Le Sueur:

I cannot speak for him, Sir, but I do not believe he was aware of the contents of the report until after the conclusion of the debate last week.

2.1.3 Deputy P.V.F. Le Claire:

As a contingent liability, will the States, and thereby the public, be required to indemnify the developer and the underwriting of this deal with the banks in the event that it is unable to commit to its obligations?

Senator T.A. Le Sueur:

Although I do not fully understand the question, Sir, I believe the answer is no.

2.1.4 Connétable D.J. Murphy of Grouville:

I refer to the statement issued by Harcourt, and in paragraph 2 it states that Harcourt own 100 per cent of the subsidiaries doing the work on the Waterfront. However, in paragraph 3 certain parties are claiming a partial interest in the share capital of these companies. Now what happens if these parties are successful, does that mean that the share capital of these companies changes so that in fact Harcourt are not then in control, and what do we do about checking out the people who are allegedly looking for a piece of the action on this deal? That is the first part, Sir. Can I just go on to a second part there? I note that the guarantees from the banks extend to £95 million, which is the amount due to the States of Jersey; will there be any guarantees on completion of the project, i.e. that the banks are satisfied there is enough money there to complete the project, not just to buy the land in?

Senator T.A. Le Sueur:

It is not really for me to comment on the statement made by Harcourt Developments, but if the company were to change its shareholding structure that does not necessarily change the contractual arrangements. The important thing is that we are dealing with ... the States has to deal with a contractor of repute and if we are not satisfied that Harcourt is a contractor of repute then we would not contract with them. As to the extent of the guarantees and the time period, the contract is by no means finalised yet and at this stage those are matters for negotiation. But the intention is that there would be a limited period for development and if the contractor failed to deliver within the required timescale then the guarantees could be brought into place. But, as I say, at this stage, Sir, that is speculation until the contract is nearer a drafting stage. Whether it be with Harcourt or anybody else.

2.1.5 The Connétable of Grouville:

Surely, Sir, Harcourt are only a contractor of repute while they have reputable members on the board. These may be changed if the partial shareholding is moved.

Senator T.A. Le Sueur:

That is, at this stage, speculation. I have no indication of whether the claim referred to in Harcourt's comments is justified, will be settled, but I repeat, that if Harcourt is not at the time of contracting held to be a company of repute then we would not conclude the arrangements with them.

2.1.6 Deputy G.P. Southern:

In the light of the statement the Deputy Chief Minister has just made that the Chief Minister was unaware of the content of this report until after the debate; can the Deputy Chief Minister justify ...

The Bailiff:

That is not what the Deputy Chief Minister said. The Deputy Chief Minister said that to the best of his knowledge, that he could not answer for the Chief Minister, that was his belief.

Deputy G.P. Southern:

That he believes that ... thank you, Sir. That his belief is that he was unaware of the content of this report; can he justify then the statement made by the Chief Minister which says: "The ruler has been run over Harcourt thoroughly and they have come up A1 every time" with the statement that Harcourt scored 1.4 on a test of ability to do the job - 1.4 out of 5 - and the words of the result in the table were "fail". Is that A1 every time and is that statement justified?

Senator T.A. Le Sueur:

I think it is difficult for me to speak for the Chief Minister and his interpretation of a report that he has not seen, but I suggest that the Deputy refers to my answer when I said that he quoted selectively one section of the report. Taking the report as a whole the board came to a view, and that view, I think, was communicated to the Chief Minister.

2.1.7 Deputy R.G. Le Hérissier:

Would the Deputy Chief Minister confirm, following on from that reply, that the interpretation placed upon the findings of the report by the States Directors who spoke were correct interpretations?

Senator T.A. Le Sueur:

The Board of Directors of W.E.B. came to a conclusion which, in the light of the report, I believe was a reasonable conclusion.

Deputy R.G. Le Hérissier:

Were they correct, not reasonable?

Senator T.A. Le Sueur:

I do not know, Sir, if I can justify correctness or incorrectness because I do not see an absolute yardstick. One makes a judgment on these matters. This was, I believe, a reasonable judgment, made in light of full information provided by an independent person.

2.1.8 Deputy P.V.F. Le Claire:

I asked a question of the Deputy Chief Minister who said that he did not understand the question and yet responded “no”.

Senator T.A. Le Sueur:

Maybe I was a little bit short there, Sir, because I do not believe that the States has any contingent liability in this respect. Nor do I believe that it has any obligation to indemnify the developer; were that to be the case then there is not much point having the bank guarantees in the first place.

Deputy P.V.F. Le Claire:

Could I seek clarification please, Sir, from Her Majesty’s Attorney General on this issue? Although it is a part of the consideration it is the end of the thesis that this is not going to be completed okay. Is it practice, could I ask Her Majesty’s Attorney General, for the States to indemnify in land that is its own anyway, it is going to revert to the public in 150 years’ time, any such negotiations, leases, contracts, *et cetera*; is it not practice that the States indemnifies these sorts of deals? Is it therefore not practice that the public ...

The Bailiff:

Deputy, I make it clear that it is not open for you to question the Attorney General, but you are asking for clarification from the A.G. (Attorney General) of the Deputy Chief Minister’s response?

Deputy P.V.F. Le Claire:

It has arisen out of the fact that the Deputy Chief Minister has not answered my question satisfactorily in my view, Sir.

Mr. W.J. Bailhache Q.C. H.M. Attorney General:

I apologise, Sir, that I am not sure I am able to give a very convincing response to that question. It seems to me that there is ... what underlies it is a question of the commercial realities that affect particular transactions which the States do from time to time, and there is a very wide variety of such transactions. I am not sure I can help the Assembly much more than that.

2.1.9. Connétable T.J. du Feu of St. Peter:

In the Deputy Chief Minister’s answer to Deputy Southern, Sir, is the Deputy Chief Minister implying that W.E.B. through its directors or its Chief Executive chose to withhold this report from the States until after the decision had been reached?

Senator T.A. Le Sueur:

No, I do not believe there is any intention to withhold the report from Members. This was an internal report to the directors of W.E.B. which was not felt to be relevant at this stage, and I emphasise “at this stage” to the proposition. The report simply was one part of a large number of pieces of information that the board considered in deciding whether Harcourt was suitable to be maintained as preferred developer but was not relevant specifically to this debate. The fact that it has chosen to be released subsequently is a matter for the person concerned.

2.1.10. Senator P.F. Routier:

Does the Deputy Chief Minister accept that the questioner could have been even more selective and chosen a section which would indicate that it was appropriate to proceed with the transaction but to monitor it carefully, and does the Deputy Chief Minister agree that the questioner is missing the point and the priority to the States is that a bank or insurance company are prepared to guarantee the position of the States?

Senator T.A. Le Sueur:

Yes, Sir, I believe I made it clear that one should never quote selectively from the report but looked at it as a whole, and as Senator Routier, who is one of the Directors of the Waterfront Enterprise Board, clearly indicates, the board did look at the report as a whole and came to the conclusions with which ... I agree with his conclusions.

2.1.11 Deputy G.P. Southern:

Does the Deputy Chief Minister consider that it would have been wiser to have released this report in its entirety before we had done the debate in the interests of having informed proper debates?

The Bailiff:

Deputy, if you want to put that question shall we move on to (b)?

2.2 Deputy G.P. Southern

(b) Why did they choose not to reveal this important information to Members in advance of the debate on the Esplanade Quarter Masterplan, P.60/2008?

Senator T.A. Le Sueur (Deputy Chief Minister):

The proposition which Members debated, proposition P.60, was a proposition in 2 parts. The first part dealt with the endorsement of the intention of the Minister for Planning and Environment to adopt the Masterplan for the Esplanade Quarter as an agreed development framework for the Esplanade Quarter. This part of the report is independent of who ultimately develops the scheme. Part (2) of the proposition deals with the land transfers necessary to allow W.E.B. to contract with a developer to undertake the scheme. It did not specifically refer to any one particular developer although Harcourt had been identified already as the preferred developer. For that reason, and in order to provide Members with a summary of the financial terms of the proposed development of the Esplanade Quarter, the provisions of Appendix D were included in the report and proposition for information. But Members were not asked to approve the entering into of a development agreement with Harcourt. It was, and is, considered that the key financial security is, or will be, the provision of independent financial guarantees by a bank or insurance company.

2.2.1 Deputy J.A. Martin:

As all presentations to States Members as developer with architecture have so far been Harcourt, after we have agreed the principle in 2 parts, was there then a provision to go out to tender to other developers. Was this the intention of the Council of Ministers?

Senator T.A. Le Sueur:

No, Sir, as I indicated, Harcourt have been for 12 months now the preferred developer and, as preferred developer, they have expended considerable sums in working up the proposition which would enable them to provide this sort of activity and cost out how much it would be worthwhile. So, I do not think that at this stage there would be any reason to go out to tender when the board has already indicated that Harcourt is the preferred developer. If in further negotiations it is found that Harcourt are unsuitable as developers then it may well be that the board at that stage would go out to tender. But that is speculation of the future. At the moment Harcourt remains the preferred developer subject to being able to deliver appropriate satisfaction to the board and to the Chief Minister.

2.2.2 Deputy J.A. Martin:

So 12 months ago, before Harcourt were the preferred developer, we went out to tender to all other developers and interested parties. Can the Deputy Chief Minister please confirm that?

Senator T.A. Le Sueur:

I believe, Sir, that probably in 2006 discussions were held to going out to tender, as a result of which a number of potential developers were identified, narrowed down to a very small shortlist out of which Harcourt became the preferred developer. But that activity was carried out by the Waterfront Enterprise Board as part of their duties, and I think they came to a conclusion which, on the face of all the information provided to them, was a reasonable one.

2.2.3 The Connétable of St. Peter:

Given the major project that we were considering, did no-one on the Council of Ministers, when it came before them, feel that they ought to establish and find out a lot and more greater detail that clearly had been done and the background that had been carried out by the Council of Ministers? Because I think it is a case, Sir, we have been badly let down by the Council of Ministers.

Senator T.A. Le Sueur:

No, Sir, I have to make it clear that the process in this having identified a developer is to then bring the plan to the States, as the Council of Ministers did last week. Once the Masterplan is agreed then one goes into detailed negotiations with the developer. That will require up-to-date due diligence being carried out on that preferred developer. If that due diligence is not to our requirements then the contract would not proceed. But one does not do due diligence at an earlier stage prior to knowing what the plan is and then having to repeat it subsequently nearer to the event. At the time that the board chose Harcourt as its preferred developer they had all the information that they required, including letters of comfort from the banks to enable them to go forward as a preliminary stage that Harcourt should be the preferred developer.

2.2.4 Deputy P.V.F. Le Claire:

This issue of due diligence is an interesting one and the terminology “up-to-date due diligence” is specifically interesting. When Scrutiny examined the proposals for the moving of the tourism buildings we conducted a Scrutiny review with the then chairman,

Mr. Margason and I put it to Mr. Margason at the time that as a report had surfaced in the local media about certain directors associated with this company, Harcourt, were W.E.B. satisfied with the due diligence in this company? His response was: “Yes, the due diligence had occurred and it was fine, everything was okay. All the boxes has been ticked.” That is a matter of record. Could the Deputy Chief Minister then explain to us what aspect of the up-to-date due diligence is he referring to? Is he referring to the money or is he referring to the company or is he referring to the directors?

Senator T.A. Le Sueur:

Having ascertained that Harcourt was competent to carry out this development negotiations continued with them as a preferred developer. The detailed due diligence on any contract will be done at the stage that the contract is in the process of finalisation. One does the most up-to-date due diligence one can do, and I apologise if the Deputy is confused about the words “up-to-date”. What I am saying is that due diligence carried out a year or 2 ago would not be suitable as a current verification of the ability of any contractor to do this work. Hence, having determined that Harcourt are likely to be the contractor, when we come to the final detailed negotiations on the contract we will do due diligence at that time.

2.2.5 Senator F.E. Cohen:

Would the Deputy Chief Minister please confirm that Harcourt was selected as the preferred developer for Esplanade Square long before I began the process of crafting the new Masterplan? **[Laughter]**

Senator T.A. Le Sueur:

The Senator has a better memory than I have. I said 2006 or so, it was clearly earlier than that but I am happy to be corrected by the Senator.

2.2.6 The Connétable of Grouville:

Would the Minister not agree that the proposed investigation by Carey Olsen into the Nevada situation would simply be an attempt to try to prejudge the court case that is already going on there, and if it turns out to be vexatious, in fact, loading the onus onto people who perhaps have absolutely no way at all of knowing what the possible outcome of that case will be?

Senator T.A. Le Sueur:

At the moment Carey Olsen are investigating the nature of litigation, or supposed litigation, because I believe that this did raise concern in Members’ minds. I cannot, at this stage, judge what the outcome of that investigation will be but certainly no lawyer would be in a position to prejudge or second guess the outcome of that litigation. I think what Members and W.E.B. need to know is whether that litigation is germane to the appointment of Harcourt as developers, and if anything came out of that investigation which suggested that they might not be, the States should be fully informed of that.

2.2.7 Deputy A. Breckon of St. Saviour:

If I can come back to question (b) and the question you are asked in there about revealing this important information, and I would like to ask the Deputy Chief Minister if he agrees

that access to emails between all Ministers on the Waterfront, on W.E.B., on Esplanade Square are made publicly available and that will prove what they knew and when?

Senator T.A. Le Sueur:

I do not think that Ministers or States Members discuss things exclusively by email, and while that may give some indication of some people's thinking it would not, by any means, produce a complete picture. I cannot see any point in going down that sort of level of activity unless the Deputy is after a witch hunt. I think it is far more important that we concentrate our efforts on seeing whether Harcourt is, indeed, a suitable developer for the waterfront scheme.

2.2.8 Senator J.L. Perchard:

Is the Deputy Chief Minister aware of the Corporate Services Scrutiny Panel's report 2008 review of the proposed Waterfront development, Esplanade Square, Les Jardins de la Mer and Route de la Liberation's conclusion, which is one paragraph, Sir, and it says: "From my examination of the process as described herein I am satisfied that the arrangements with the preferred developer have been carried out professionally and with regard to obtaining value for money within the confines of the Hopkins proposals. There are of course wide-ranging demands placed upon this scheme both social and economic, and the proposals have to satisfy many criteria. Given its complexity and subject to the necessary safeguards built in I can see no reason why the scheme should not proceed in this manner." Is the Deputy Chief Minister aware of the conclusion in the Corporate Services Scrutiny Panel's report?

Senator T.A. Le Sueur:

Yes, Sir, I am grateful to the Senator for reminding me [**Laughter**] of the content of that report which does indeed show that all the activities to date have justified the action that the board of W.E.B. and the Council of Ministers have taken. Clearly that report in February - it goes up to February - up to that date everything had been done in accordance with what would be expected. All I am saying now is we will continue along the same lines, using the same policies, before finally signing a contract with the preferred developer.

2.2.9 Deputy G.P. Southern:

If I may remind the Minister, this is not about a wish, this is about accountability, and does he consider that in the interests of an open and informed debate it would have been better to have released the full contents of the PwC report, including the reservations expressed in 2.2, along with the overall glowing recommendation as recorded by our Director, Senator Perchard: "We decided to do a second due diligence and we got PwC to do that. Their report of Harcourt was a glowing one. They recommended them as suitable." I see nothing in appendix D that recommends them as suitable. It simply goes through a set of facts. The Members could not necessarily have the skills to interpret appendix D, would it not have been better to have had the full report so that we could have an informed debate?

Senator T.A. Le Sueur:

I believe that Members are quite capable of interpreting appendix D which was written in clear language and was put into the report for information. It was there as an adjunct to the main proposition which was to approve the Waterfront Masterplan and to arrange a land swap. So I do not believe it would be necessary to add anything further to appendix D by way of clarification, it is perfectly clear.

2.3 Deputy G.P. Southern

(c) Having failed to release this data earlier why, when pressure was applied over information relating to the financial deal, was it not revealed during the debate so that Members could consider it properly before coming to a vote?

Senator T.A. Le Sueur (Deputy Chief Minister):

I believe we probably dealt with that question in the last half hour; but the Chief Minister provided information about the guarantees that are required in order to secure the financial standing of the deal. That is the key issue that was necessary to consider. However, W.E.B. have agreed that they will undertake another due diligence report into Harcourt's financial standing. This will be shared with the Chief Minister and Treasury Minister and I hereby undertake to provide a report on the financial standing, and the nature and security of the independent financial guarantees to all States Members before any legally binding development agreement is signed. This will allow all of us to be satisfied with the security of the deal and to ensure that the public interests are properly safeguarded.

2.3.1 Deputy G.P. Southern:

I thank the Deputy Chief Minister for that commitment but I wish to return to the conduct of the debate on P.60 and ask him again whether he considers that the conduct of the Chief Minister and our representatives on the W.E.B. board on that day was appropriate in order to have a fully informed proper debate on that decision?

Senator T.A. Le Sueur:

Yes, Sir, I do believe it was proper and I do remind the Deputy just what the proposition said, and the words of the proposition, I think, are quite important in this, the proposition on part (b) was to do with the land arrangements, not to do with the appointment of a developer.

2.3.2 Deputy R.G. Le Hérissier:

Would the Deputy Chief Minister confirm that this episode illustrated that the role of the States Members on W.E.B. was working perfectly well and, indeed, it was an excellent example of how it was working. Would he confirm that in his view that is the case?

Senator T.A. Le Sueur:

I have confidence in the entire board of the Waterfront Enterprise Board, States Members and non States Members. They are doing a sterling job in helping to provide us with a Waterfront which I believe all of us in due course can be proud.

2.3.3 Deputy J.A. Martin:

When States Members and this report does just presume that we cannot get the 100 per cent guarantee we are looking for, could the Deputy Chief Minister inform the House how long it will take us to get back to this position with a new developer?

Senator T.A. Le Sueur:

No, I am not in a position at this stage, Sir, to give any indication of that. Clearly the preferred developers have put a lot of time and effort into this and if they were to be unsuitable as developers then any new developer coming in would have quite a lot of learning and catch up to do, and I cannot at this stage say whether that would take them days, weeks or months. So it would be foolish for me to put any timescale on that activity simply to say that there would be a further delay.

Deputy G.P. Southern:

Point of clarification, Sir, if I may. The Minister referred to a new examination of the financial situation and a report back, he did not say when, could he do so?

Senator T.A. Le Sueur:

I said in my reply, Sir, that I undertook to provide that report before the legally binding development agreement is signed, so I cannot say how long it will take to produce that legally binding development agreement. All I can say is that even if the development agreement was available, unless the financial standing had been ascertained the development agreement could not be signed and would not be signed.