# STATES OF JERSEY

# PROPERTY AND INFRASTRUCTURE REGENERATION: THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED

**Lodged au Greffe on 7th June 2010**
**by the Council of Ministers**

**STATES GREFFE**

# PROPOSITION

**THE STATES are asked to decide whether they are of opinion –**

(a) to approve the proposals and structure of the new Property and Infrastructure Regeneration process as set out in paragraphs 3–12 of the Report of the Council of Ministers dated 7th June 2010;

(b) to approve the new Memorandum and Articles of Association of The States of Jersey Development Company Limited as set out in Appendix 2 to the said Report which fundamentally reforms the role and remit of the Waterfront Enterprise Board Limited in accordance with the arrangements set out in the said Report; and

(c) to authorise the Greffier of the States for and on behalf of the States of Jersey to pass, together with the Treasurer of the States, one or more special resolutions of the Company to adopt such Memorandum and Articles of Association.

COUNCIL OF MINISTERS

## REPORT

### 1. Introduction

The purpose of this Report and Proposition is to present new proposals for structuring the planning, development and implementation of major property and associated infrastructure regeneration projects in Jersey, with particular reference to St. Helier.

The report also responds to recommendations from a number of reviews undertaken since revised proposals were first made in December 2008 –

(a) The Corporate Services Scrutiny Sub-Panel's Report '*Review into the proposed establishment of the Jersey Enterprise Board'* (S.R.9/2008), dated 12th June 2008.

(b) The Comptroller and Auditor General's Report '*Waterfront Enterprise Board: Review of Corporate Governance'* (R.122/2008), dated 24th November 2008.

(c) The Corporate Services Scrutiny Sub-Panel's Report on the revised Memorandum and Articles of Association for Waterfront Enterprise Board Limited (S.R.1/2009), dated 18th March 2009.

(d) The Corporate Services Scrutiny Sub-Panel's Report *'Property and Infrastructure Regeneration: The States of Jersey Development Company'* (S.R.9/2009), dated 2nd October 2009.

Since its inception the Waterfront Enterprise Board Limited (WEB) has performed dual roles, perhaps due to a lack of clarity in its remit. It has been responsible for creating the necessary Masterplans for the St. Helier Waterfront and also for promoting and delivering the developments thereon. These roles have created conflicts. The proposed structure of The States of Jersey Development Company is designed to separate these functions. Master planning will be the sole responsibility of the Minister for Planning and Environment and his department. Translating masterplans into workable and economically viable development plans will require co-ordination and political guidance, which will be the responsibility of the Regeneration Steering Group. Through this activity, the Regeneration Steering Group provides a guiding framework for the activities of the States of Jersey Development Company in delivering a particular Development Plan.

### 2. This revised Report and Proposition

On 3rd November 2009, the States Assembly agreed that the Council of Ministers' Report and Proposition (P.79/2009), which proposed The States of Jersey Development Company, should be referred back for further information.

This referral back was largely based on the recommendation of the Corporate Services Scrutiny Sub-Panel within its report S.R.9/2009 that reviews of various aspects of WEB should be undertaken before the company becomes operational. It was also clear from the debate that there are a number of perceptions amongst members about the performance of WEB which should also be assessed.

Whilst the work undertaken by the Sub-Panel demonstrates that the central features of the proposition remain robust, it is clear that its efforts have been highly beneficial in highlighting areas where the Proposition should be strengthened and clarified.

In accepting all the recommendations of the Sub-Panel, the Council of Ministers commissioned a second review from the external company DTZ which aims to address the main concerns of both the Panel and States Members generally. On 22nd December 2009, the Chief Minister published the Terms of Reference for this review to States Members (R.C.143/2009).

DTZ's second review has been published separately as a Report to the States (R.67/2010). Whilst this Report very much stands alone in terms of its analysis of the performance and benefits of WEB, it also identifies a number of issues the Council of Ministers believes should be included within a revised Report and Proposition.

The Council of Ministers believes that as a result of the work undertaken by the Corporate Services Scrutiny Panel, the recommendations of which have been addressed by the second DTZ review, and issues raised by States Members during the debate of P.79/2009, the Proposition has been strengthened and clarified.

The Council of Ministers has therefore lodged a revised Report and Proposition in the hope that this will bring greater clarity to the debate. It must be stressed that the changes proposed do not alter the central features of P.79/2009. All the amendments agreed at the time of debate have been retained and other changes are designed to simply add to or clarify the original Proposition to respond to various recommendations and issues raised.

The Council Ministers believes that, in the interest of clarity, lodging a revised Report and Proposition is the most appropriate way to incorporate the required changes. The main changes from P.79/2009 are set out below.

<u>The Role of the Regeneration Steering Group</u>

S.R.9/2009 identified the need to clarify the role of the Regeneration Steering Group in relation to both the company and the Minister for Treasury and Resources. Whilst not strictly part of the Terms of Reference, this is mentioned as part of the DTZ review. It is clear that there have been some misconceptions and/or a lack of clarity about the nature of the proposed Regeneration Steering Group, including –

(a) that the Regeneration Steering Group could be seen as a shadow Board of Directors overseeing the operation of the company;

(b) confusion over the role of the group in relation to that of the Minister for Treasury and Resources, who would be politically accountable for The States of Jersey Development Company.

In response to (a), section 7 of this Report makes it clearer that the Regeneration Steering Group is primarily concerned with translating masterplans developed by the Minister for Planning and Environment into workable and economically viable Development Plans (as set out in section 10). The Regeneration Steering Group therefore provides a guiding framework for the activities of The States of Jersey Development Company and, apart from receiving regular updates and agreeing

changes to approved plans, has no direct role in operational matters, which is firmly for the Board of Directors.

In response to (b), and in common with other States-owned companies, it is the Minister for Treasury and Resources who is politically accountable for the operation of the States of Jersey Development Company as identified in section 12 of this Report. In order to assist this process, the Minister for Treasury and Resources will appoint a non-executive Director to represent his interests on the Board.

The Minister for Treasury and Resources has recently commissioned separate work to implement a best practice shareholder model for wholly-owned States of Jersey companies. This work will lead to a stronger, more clearly defined and proactive relationship between the Treasury and States owned companies in the future, in particular with regard to oversight of their boards, strategies and objectives. This work will also lead to consistent arrangements being put in place across all such companies, including The States of Jersey Development Company.

As part of these new arrangements, it is proposed that the remuneration of all directors of the States of Jersey Development Company is specifically voted on by the Shareholder at the company's Annual General Meeting (AGM). This is regarded as best practice and is consistent with arrangements within other wholly-owned States of Jersey companies (e.g. Jersey Telecoms). In practice, the annual report of the Remuneration Committee will be specifically voted on at the AGM by the shareholder. In addition, changes to levels of non-executive Director's remuneration and material changes to the level of remuneration of executive directors will be approved by the Minister in advance. This change has been included within the proposed MoU at **Appendix 1** and the Memorandum and Articles of Association at **Appendix 2.**

In summary, the changes made within section 7 seek to make clear that the RSG guides the company solely in the context an agreed a Development Plan, whereas the Minister for Treasury and Resources is accountable for the operation of the company in the context of its actions in the implementation of agreed plans and developments.

<u>The activities of the States of Jersey Development Company</u>

S.R.9/2009 identified a need for greater clarity with regard to the activities of SoJDC and recommended a review of current activities WEB and confirmation of those activities that would be undertaken by SoJDC. Section 7 of the DTZ report clearly identifies the main activities to be undertaken by SoJDC and these are now included within section 8 of this Report and Proposition.

<u>Assets held by SoJDC</u>

S.R.9/2009 identified the need to be clear about the intention that SoJDC would not hold onto assets unnecessarily and recommended that a review of the assets currently held could be beneficial in establishing the intentions of the new company in this area.

DTZ has reviewed the assets currently held by WEB and has proposed a set of principles to guide the treatment of such assets. On the basis of these principles, DTZ has recommended those assets that should be retained and those that should be divested by SoJDC. These recommendations are included in section 8 of this Report.

Risk Management Regime and Project Risk Plans

S.R.9/2009 identified the importance of risk management being active and transparent and recommended that a detailed risk management regime should be developed, which included individual risk management plans. Section 10 of the DTZ review covers this area and identifies that the key principles set out in P.79/2009 are supported by good practices and more detailed processes within WEB.

In addition, the DTZ review identifies that WEB has collated these processes into a risk assessment and management plan. In support of this, DTZ has also included a draft policy standard which the SoJDC Board will consider further as a basis of its risk management policy. This has been referred to within section 8 of this Report.

Asset Transfer Protocol

S.R.9/2009 identified the need for clear protocols for the transfer of assets between Jersey Property Holdings and the Company. Revised protocols have been produced in conjunction with the States Treasury and have been reviewed by DTZ as part of its report. DTZ has concluded that these protocols provide an effective platform for transfer arrangements relating to specific schemes and assets in the future. These protocols have been referred to in section 9.

Ability to Purchase Private Property

S.R.9/2009 identified the need for protocols for the purchase of privately-owned assets by the States of Jersey Development Company. These have been identified by DTZ and are included within section 8 of this Report.

Financial and Manpower Implications

As part of the Chief Minister's response to S.R.9/2009 the departmental resource implications of this proposal were clarified. These are included as part of section 20 of this Report.

## 3. Proposals for Property and Infrastructure Regeneration – Objectives for the States of Jersey

The Council of Ministers believes that in terms of a desired regeneration strategy there are 6 primary objectives for the States of Jersey. These are –

- To ensure the primacy of the States of Jersey in the governance of regeneration policy in Jersey and any associated property development agency.

- To ensure the effective participation of the appropriate Scrutiny Panel in effective oversight of such governance.

- To enable a consistent and co-ordinated Island-wide approach to regeneration which aligns with the current and future requirements of the Island

- To deliver a structure which is able to work with the private sector whilst protecting the States of Jersey's interests.

- To ensure a clear division of responsibilities between strategic planning, policy, project management and delivery.

- To ensure that the Parish within which regeneration occurs is fully involved in the planning of the project.

## 4. Regeneration Zones

A Regeneration Zone is an area which will be subject to an area-wide strategy and includes a collection of development sites. By virtue of having an area-wide strategy, it will have a Masterplan and a design framework or code.

A Masterplan is a comprehensive document that sets out an overall development strategy for a defined area which includes both present property uses as well as future land development plans.

A Development Brief is a document to provide information on the type of development, the design thereof and layout constraints relating to a particular site.

Each of the development sites within a Regeneration Zone will have a Development Brief which complies with the Masterplan and design framework.

A Regeneration Zone is characterised as an area of land where physical intervention by States controlled bodies is required to bring about long term physical, social and economic benefits from change. Such areas are defined as those that require significant initial expenditure to provide essential infrastructure. They will typically include the provision of areas of public realm, will usually be in multiple ownership thereby requiring site assembly and result in multi-use occupancy.

The Island Plan, as approved by the States of Jersey, will indicate Regeneration Zones. The initial Regeneration Zones will include the East of Albert Areas, the Esplanade Quarter, the Airport and other St. Helier Regeneration Areas. The Island Plan will also include a mechanism to designate future Regeneration Zones where it is felt appropriate.

The Masterplans providing the details of each Regeneration Zone will be approved by the Minister for Planning and Environment, following consultation with the Regeneration Steering Group, as set out in the diagram overleaf.

There will be ongoing maintenance costs associated with the new areas of public realm created as part of the Regeneration Zones. The States of Jersey Development Company Limited, described below, will establish a funding mechanism to meet any ongoing obligation when completed public realm is transferred to Property Holdings.

## 5. Structure

The structure proposed to satisfy the primary objects of the States of Jersey is designed to –

- Ensure that the regeneration strategy is set by the Minister for Planning and Environment and Regeneration Zones are adopted by the States of Jersey via the Island Plan process, in consultation with the relevant Parish(es).

- Maintain the independence of the Minister for Planning and Environment and his Department from property development.

- Enable the Regeneration Steering Group (a sub-group of the Council of Ministers accountable to the States of Jersey) to provide a political steer and/or guidance to the development of economically viable Development Plans for regeneration.

- Ensure the activities of The States of Jersey Development Company Limited are reviewed and reported on regularly to the Minister for Treasury and Resources, who is politically accountable for the operation of the company.

- Integrate the strategic planning and development of States' property assets with Island-wide regeneration projects.

- Minimise development and delivery risks.

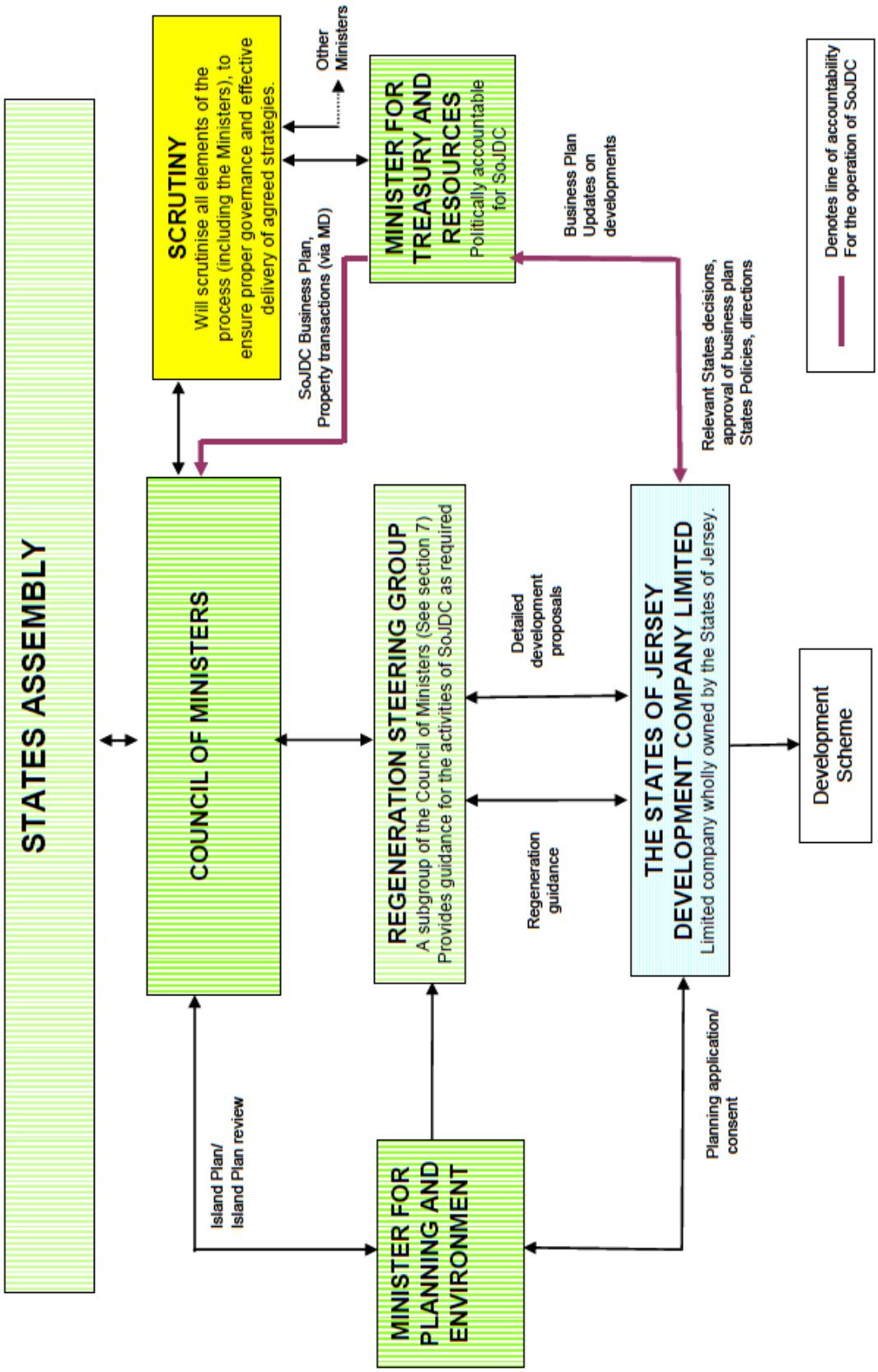
A chart outlining the proposed structure and the relationships is set out overleaf: It is important to understand that this is a composite chart summarising a number of different relationships which will occur either contemporaneously or successively.

It is important to note that all bodies involved in the proposed regeneration process will also be open to scrutiny by –

- The Public Accounts Committee

- The Corporate Services Scrutiny Panel.

All scrutinising authorities will remain independent of the Regeneration Steering Group and The States of Jersey Development Company Limited in order that their respective positions will not be compromised.


STATES ASSEMBLY
SCRUTINY
Will scrutinise all elements of the process (including the Ministers), to ensure proper governance and effective delivery of agreed strategies.
Other Ministers
MINISTER FOR TREASURY AND RESOURCES
Politically accountable for SoJDC
SoJDC Business Plan, Property transactions (via MD)
Business Plan Updates on developments
Relevant States decisions, approval of business plan States Policies, directions
Denotes line of accountability For the operation of SoJDC
COUNCIL OF MINISTERS
REGENERATION STEERING GROUP
A subgroup of the Council of Ministers (See section 7) Provides guidance for the activities of SoJDC as required
Detailed development proposals
Regeneration guidance
THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED
Limited company wholly owned by the States of Jersey.
Development Scheme
Island Plan/ Island Plan review
MINISTER FOR PLANNING AND ENVIRONMENT
Planning application/ consent

## 6. The Role of the States Assembly

The role of the States Assembly, *inter alia*, is to –

- Determine the Island Plan and any amendments thereto on the recommendation of the Minister for Planning and Environment – this sets the framework for the regeneration strategy and designates the initial Regeneration Zones.

- Appoint the non-executive directors of The States of Jersey Development Company Limited.

- Hold the Ministers to account for the delivery of effective regeneration in line with the States' agreed strategy.

- Ensure that all elements of the process are open and responsive to scrutiny.

## 7. Regeneration Steering Group (RSG)

The prime purpose of the Regeneration Steering Group is to provide a political steer and/or guidance in order to inform policy guidelines for all major Public property and infrastructure regeneration projects in Jersey.

The overriding objective of the Regeneration Steering Group is to ensure that future major Public property and infrastructure projects –

- Contribute to the future economic wealth of the Island

- Enhance the quality of the Island's built environment

- Improve transportation links to, from and within the Island

- Provide the necessary infrastructure to support public and private activities

- Encourage sustainable, green development

- Meet the objectives of the States Strategic Plan

- Enhance the individual characteristics of the Parishes and the individual settlements within them.

As identified within section 11 of this Report, the Regeneration Steering Group's responsibility is within the Development Planning of regeneration projects. Translating Masterplans and Development Briefs proposed by the Minister for Planning and Environment into workable and economically viable Development Plans will require a contribution from a range of States of Jersey Departments in addition to advice from the States of Jersey Development Company itself. Taking into account the above objectives, the Regeneration Steering Group provides political guidance and co-ordination to the process of establishing Development Plans for Regeneration Zones.

Having approved a Development Plan for a Regeneration Zone, this will be passed to the States of Jersey Development Company who will take responsibility for its implementation. Through this activity, the Regeneration Steering Group provides a guiding framework for the activities of The States of Jersey Development Company in delivering a particular Development Plan.

Other than receiving regular progress updates and approving any changes to agreed Plans, the Regeneration Steering Group has no direct responsibility for operational matters relating to the States of Jersey Development Company. Political accountability for the operation of the States of Jersey Development Company rests solely with the Minister for Treasury and Resources as set out in section 12.

**Accountability**

The Regeneration Steering Group will be accountable to the Council of Ministers for its activities.

**Composition**

The Group will comprise –

- The Chief Minister – who will chair the Regeneration Steering Group
- The Minister for Treasury and Resources
- The Minister for Economic Development
- The Minister for Transport and Technical Services
- The Connétable of St. Helier
- A co-opted Connétable for a Parish in which a major regeneration scheme is taking place.

**Relationships**

The Regeneration Steering Group will take input from –

- The Minister for Planning and Environment.

- States of Jersey Departments, including the Economic Development Department for Socio-Economic issues and the Transport and Technical Services Department for infrastructure and transport issues.

- Jersey Property Holdings through the States Property Plan.

- The States of Jersey Development Company Limited.

- Stakeholder groups including Parish Roads Committees, other commercial associations and planning bodies as appropriate.

**Scope of activities**

The Regeneration Steering Group will –

- Co-ordinate the activities of a number of strategic planning groups in both the public and private sectors.

Currently there are a number of strategic planning initiatives across the States of Jersey which have a bearing on the regeneration of property and infrastructure on the Island. These include –

- The States Strategic Plan
- The Island Plan
- Input from the Economic Development Department on Socio-Economic issues
- The States Property Plan
- The Energy Policy
- Planned Infrastructure Investment
- Airport Operational Plan
- Harbours Plan
- Integrated Transport Plan
- Housing Needs Survey.

In order to avoid conflicting and counter-productive activity, it is essential that these activities, in so much as they relate specifically to property and infrastructure, should be drawn together in an overarching delivery strategy.

- Ensure the interests of the Public are protected throughout the promotion, commissioning, and implementation stages of each project as it steers The States of Jersey Development Company Limited and receives regular progress updates from the company in respect of specific schemes.

- Direct the activities of Jersey Property Holdings in terms of the release of public sites for regeneration projects through Strategic Plans and Business Plans.

By means of the Regeneration Steering Group, the Public retains an interest in each regeneration project throughout delivery.

## 8. The States of Jersey Development Company Limited

Building on the corporate structure already in existence in respect of Waterfront Enterprise Board Limited, the Council of Ministers wishes to propose that a restructured company, to be known as "The States of Jersey Development Company Limited", in conjunction with the private sector acts as the developer of property assets currently belonging to the Public where the asset is not otherwise required to meet States needs or where such properties are integral to the delivery of a Regeneration Zone. The restructured company will, in accordance with the arrangements set out in this Report, continue the activities of Waterfront Enterprise Board Limited in developing the St. Helier Waterfront but will also purchase and develop property assets that are required to achieve the regeneration strategies of the Regeneration Steering Group.

In addition to its continuing responsibilities on the Waterfront which will be discharged in accordance with arrangements set out in this Report, the restructured company would have the following new roles –

(1) Acting as the developer of property assets, in conjunction with the private sector, currently belonging to the Public that are located within designated Regeneration Zones and purchasing or entering into joint ventures in respect of third party properties where appropriate and necessary to achieve a cohesive regeneration strategy; and

(2) Implementing and coordinating the development within Regeneration Zones in accordance with approved Masterplans, Development Briefs and other relevant guidance prepared by the Minister for Planning and Environment.

The prime purpose of The States of Jersey Development Company Limited is to act as the delivery vehicle for property development for the States of Jersey and is charged with undertaking the following –

- Developing detailed development proposals for specific projects of major regeneration of property and infrastructure within Regeneration Zones in accordance with Development Plans approved by the Regeneration Steering Group.

- Providing forward funding for preparing the detailed development proposals.

- Procuring the services of appropriate design and development consultants.

- Managing and developing detailed designs for specific sites.

- Submitting detailed planning applications to the Minister for Planning and Environment.

- Procuring and managing project implementation, either via a joint venture with a third party developer or direct.

- Providing quarterly progress reports to the Regeneration Steering Group in respect of development taking place as part of an agreed Development Plan.

**Managing Risk**

The objective of the States of Jersey Development Company ("SoJDC") is to deliver projects in the most beneficial and risk averse manner. The assessment and management of specific risks to development will be included within a Memorandum of Understanding (MoU) between the States of Jersey Development Company and the Minister for Treasury and Resources.

The States of Jersey ("SoJ") own prime real estate principally in St. Helier, on behalf of the Public of the Island. Unlike regeneration areas in the UK, SoJ does not need to address market failures; however it needs to provide for the socio-economic needs of the Island. There are a limited number of sites within Jersey capable of development unless there is further impingement into the countryside. These Regeneration Zones will be nominated in the Island Plan. SoJ controls much land capable of development. This significantly limits competitive risk.

To date, the States of Jersey has commissioned and procured all of its public infrastructure directly rather than in conjunction with the private sector and given the

importance of the infrastructure concerned, and the risk/public costs associated with any delays or defects, these infrastructure works should be commissioned and procured by the States of Jersey directly via SoJDC. The costs and risks of delivery remain with the SoJ but the value of the associated land is enhanced by the delivery of infrastructure and public realm provision.

There are a limited number of on-Island developers with the capabilities of undertaking this large scale of regeneration. Experience to date suggests that the barriers to entry make Jersey a difficult place to attract large developers from outside of the Island along with concerns about external developers' commitment to Jersey.

It would be possible for SoJDC to manage a single joint venture or consortium of developers/contractors for large developments so long as this is delivered through a transparent open tender process.

There may however be specific circumstances where it would prove financially and strategically beneficial for the SoJDC to undertake a development directly in order to fully control what is delivered and to take full advantage of the profits generated thereon provided the risk is minimal.

SoJDC will use advanced financial and risk modelling techniques to enable the risk profile of projects to be identified. The development model that delivers the most appropriate risk profile and return will be followed.

There are a number of risk management and risk mitigation measures that will be introduced and adhered to ensure that the States of Jersey is protected. These will be set out in detail in the Memorandum of Understanding between SoJDC and the Minister for Treasury and Resources which set the parameters within which SoJDC operates. Such measures include –

**Planning** – before any land transfer takes place between Property Holdings and SoJDC, the Minister for Planning and Environment must have adopted the Regeneration Zone within which the assets are located and approved the Masterplan for that particular Regeneration Zone. This will partly remove the planning risk of the regeneration proposals and will enable a detailed planning application to be worked up within the parameters of the adopted Masterplan and Development Brief according to the agreed Development Plan set with the RSG.

**Infrastructure Works –** no infrastructure works will be procured until detailed planning permission has been received on vacated development sites and detailed financial appraisals support the development of the scheme.

SoJDC will commission and procure the provision of the infrastructure in accordance with SoJ capital project procurement and delivery procedures.

**Sales** – If it is proposed that a specific development is undertaken directly by SoJDC, before committing to construction costs SoJDC will have to secure a sufficient level of legally binding pre-sales or pre-lets to fund the costs of constructing the first phase of a scheme. This will remove part of the sales risk of a particular development project and will ensure that there will be no financial liabilities relative to a particular development's construction costs.

**Pre-development Costs –** all detailed design costs and fees will be funded directly by SoJDC out of equity.

**Development –** SoJDC will procure development schemes in conjunction with the private sector unless there are specific reasons for direct development. All development proposals will be subject to a transparent open tender process**.**

**Phasing –** SoJDC will phase large development schemes if practically feasible to do so.

**Design and Specification** – SoJDC will ensure that every development proposal is fully designed and fully specified with bills of quantity. These documents will be put out to the construction market for tendering the build.

**Construction –** SoJDC will follow the SoJ guidelines and best practice in the procurement of construction works. All construction works will be open tendered. All tenders must price the bills of quantity provided by SoJDC and must be a fixed price. SoJDC will only enter into fixed price, fixed delivery construction contracts with third party main contractors with good market and financial credibility.

During the construction process a Project Manager employed by SoJDC will monitor the construction works. Monthly design team meetings for each construction project will be held between SoJDC, the Project Manager, the Contractor, the Architect and the Quantity Surveyor in the same way as States of Jersey capital projects are monitored and costs controlled.

**Assessment of Risk Management**

The second DTZ review has identified that, in adhering to the above risk management techniques, WEB already has a strong risk management framework in place which includes market demand assessments, the application of sophisticated financial risk modelling tools in assessing project feasibility, and risk management matrices that are used to manage non financial risks through the project lifecycle. These processes have already recently been collated by WEB into a risk assessment and management plan which includes –

(a) A high level rating of the reputational, political, financial, human resource and industry relationship risks encountered at the feasibility, pre construction, construction and post construction phases of projects

(b) A more detailed two stage approach to analysing financial risk at project feasibility stage which references specific industry standard risk management tools and methodologies including @Risk software, the Hurwitz approach to optimism bias and SWOT analysis.

(c) A sample risk register to serve as a risk management tool through all project stages beyond feasibility.

In addition to the above, DTZ has suggested an overarching policy standard, which will be considered by the SoJDC Board once the new company has been formed. This is set out at **Appendix 6.**

**Accountability**

Political accountability for The States of Jersey Development Company Limited, as with other wholly owned States companies, rests solely with the Minister for Treasury and Resources.

The States of Jersey Development Company Limited will enter into a Memorandum of Understanding with the Minister for Treasury and Resources to ensure that the States of Jersey Development Company Limited minimises risks to the Public and activities are conducted in accordance with States of Jersey policies. The proposed Memorandum of Understanding (see **Appendix 1**) will take similar form to those with other States-owned companies and will be finalised and agreed between the Minister for Treasury and Resources and the company.

The States of Jersey Development Company Limited will report progress on developments on a quarterly basis to the Regeneration Steering Group.

**Structure**

It is recommended that The States of Jersey Development Company Limited is established by restructuring the existing company Waterfront Enterprise Board Limited whereby –

- the name of the existing company is changed to The States of Jersey Development Company Limited;

- the current board of Waterfront Enterprise Board Limited initially becomes the new board of The States of Jersey Development Company Limited, subject to the substitution of non-executive directors for the current States Directors in accordance with the recommendations of the Comptroller and Auditor General;

- the current Memorandum and Articles of Association of Waterfront Enterprise Board Limited are replaced with those set out in **Appendix 2.**

**Composition**

It is proposed that the Board of The States of Jersey Development Company Limited shall in the future comprise –

- An independent Chairman
- A Managing Director
- A Finance Director
- A non-executive director appointed by the Minister for Treasury and Resources
- Three non-executive directors with relevant financial, banking, commercial and/or property expertise.

**Scope of Activities**

It is proposed that the scope of activities of The States of Jersey Development Company Limited should include the following –

- A remit for both public and private major property development implementation in conjunction with the private sector.

- A requirement for all consultant and contracting services to be openly competitively tendered.

- The ability to engage in the utilisation of property to be retained by the Public for the purpose of investment / income generation.

The States of Jersey Development Company Limited will continue the existing activities of Waterfront Enterprise Board Limited in accordance with the arrangements set out in this Report.

The DTZ report has provided a more detailed summary of the future activities of the company and this is provided at **Appendix 4** to this Report.

**Assets Held by The States of Jersey Development Company**

The DTZ review has identified that efforts should be made to rectify a number of anomalies with regards to the assets it holds which will allow SoJDC to focus on its main purpose as a development delivery vehicle. As recommended by DTZ, The following principles will be used to guide policy on holding assets in the future:

- There should be a clear exit strategy for all assets.

- In the future, the identification of costs for maintaining public realm etc should be identified as early as possible within the original scheme (i.e. at planning stage).

- New infrastructure that would normally be capable of adoption should be transferred to the Parish and funded out of rates. For other areas of public realm within defined development curtileges, with higher than usual maintenance costs or carrying a contingent liability, provisions should be made to capture contributions through estate service charges arrangements or a commuted sum payable from WEB out of land receipts.

- Completed assets should only be retained by SoJDC where it is necessary to maintain management control in order to support the marketing and sale of new developments in the vicinity (in some cases this may mean retention by SoJDC for a number of years).

- Once developments have been completed, they should be sold in the open market or if there a strategic reason for long-term ownership by the States, transferred to SoJ at market value.

- Where assets are sold into the market, they should be subject to an independent valuation to ensure best value is being achieved.

**Appendix 5** sets out the main recommendations for current assets held by WEB in terms of sale, retention by SoJDC or transfer back to JPH. These recommendations will be progressed by the company.

**Ability to Purchase Private Assets**

The States of Jersey Development Company has the ability to purchase and develop property assets that are required to achieve regeneration strategies. Such purchases will be subject to the following principles and protocols –

(a) All acquisitions of private, third party assets should be undertaken in the context of a need to rationalise land ownerships as part of a clear regeneration strategy rather than as ad hoc opportunistic purchases.

(b) They should not be pursued in preference to the acquisition or transfer into SoJDC of State owned assets that would satisfy the same strategic objectives.

(c) Proposed purchases should be subject to a business case approved by the Minister for Treasury and Resources which sets out the strategic and commercial rationale.

(d) Acquisitions should be undertaken on a transparent arms length basis.

(e) They should be negotiated on the basis of Open Market Value and underwritten by a third party valuer.

(f) Individual property transactions will be approved by the Minister for Treasury and Resources and be subject to a published Ministerial Decision

(g) Compulsory Purchase should only be pursued as a last resort where acquisition by negotiation is unlikely to succeed.

(h) Where compulsory purchase powers are required, the Minister for Planning and Environment will be the acquiring authority and States Assembly approval will be required. Once acquired through CPO, the assets can then be transferred to SoJDC on the basis of the protocols identified in section 9, below.

**Governance**

The States of Jersey Development Company Limited would continue to have all the normal powers of a company including the power to buy and sell land and the power to borrow money. The States of Jersey Development Company Limited would continue to be exempt from paying income tax in the same way as Waterfront Enterprise Board Limited on the basis that all profits will be expended wholly and exclusively to improve and extend public infrastructure and works for the good of the Public of the Island.

## 9. Jersey Property Holdings

Jersey Property Holdings ("JPH") acts on behalf of the Minister for Treasury and Resources as the holding body and corporate estates management function in respect of all Public property. In that context JPH is actively engaged in developing strategic plans for the more effective utilisation of public property assets to support the delivery of improved public services in financially sustainable accommodation.

It is essential that these activities are fully integrated with the proposed Island-wide regeneration, planning and development.

JPH will seek to co-ordinate its inward investment in public assets used by States of Jersey departments with that of The States of Jersey Development Company Limited by releasing assets where the property or the value of the asset is surplus to States of Jersey requirements and which fall within designated Regeneration Zones to The States of Jersey Development Company Limited to enable regeneration projects and, where appropriate, acquiring private property assets needed for regeneration schemes.

Assets will be transferred at open market value subject to recognising the cost of providing significant upfront infrastructure costs and public realm. In this case the Minister for Treasury and Resources may agree to the transfer of assets from JPH to The States of Jersey Development Company at less than open market value or on a deferred payment basis.

Once a Regeneration Zone has been approved by the States Assembly via the Island Plan process and the Masterplan for such Regeneration Zone has been approved by the Minister for Planning and Environment, any States' properties within that particular Regeneration Zone, where the property, or the value thereof, is not required by the States, or the property is needed to be developed to deliver the socio-economic needs of the Island, will be transferred by JPH to The States of Jersey Development Company Limited.

A protocol has been developed which will be used to guide the transfer of property and this can be found at **Appendix 7** of this Report.

## 10. The Minister for Planning and Environment and his Department

The key planning roles for the Minister for Planning and Environment in the regeneration process are –

- to propose areas that will be designated as Regeneration Zones within the Island Plan process;
- to prepare and approve Masterplans and Development Briefs for sites within Regeneration Zones;
- to consult with the Regeneration Steering Group in the preparation of Masterplans and Development Briefs;
- to determine planning applications submitted in respect of development proposals.

This process is described in greater detail in **Appendix 3** which outlines the protocol for the role of the Minister for Planning and Environment. Under the Planning and Building (Jersey) Law 2002, the Minister for Planning and Environment with advice from officers, has the duty to prepare longer term plans for the development of land on the Island. As a result of this duty, the Minister will prepare a Masterplan and Development Briefs for each designated Regeneration Zone and sites within a Regeneration Zone.

Once approved, these Masterplans together with Development Briefs for the Regeneration Zones will be used to progress detailed development schemes.

The Minister for Planning and Environment also has a duty under the Planning and Building (Jersey) Law 2002 to determine applications for development proposals. The schemes which emanate from the work of The States of Jersey Development Company Limited will need to go via this route and planning permission sought.

Once planning permission has been sought for specific development proposals, there will be no further involvement in the planning process by the Regeneration Steering Group or other political members as this will be the sole responsibility for the Minister for Planning and Environment.

## 11. The Regeneration Process

The proposed regeneration process is fundamentally identical to a typical property development process with the addition of the need to establish overarching policy guidelines and master-plans within which site-specific plans may be developed. This leads to a succession of inter-related activities with the following phases –

Responsibility of the States Assembly:

- **Approving the Island Plan** – which identifies Regeneration Zones.

Responsibility of the Minister for Planning and Environment:

- **Strategic master-planning** – developing the major environmental and socio-economic planning objectives in order to establish clear policies and political direction for property and infrastructure regeneration. This leads to a Masterplan for a defined area.

- **Master-planning** – developing an overall development strategy for a defined area which includes both present property uses as well as future land development plans.

- **Development Briefs** – developing a brief which provides information on the type of development, the design thereof and layout constraints relating to a particular site.

Responsibility of the Regeneration Steering Group:

- **Development Planning –** the development of economically viable Development Plans to meet the objectives of the Masterplans and Development Briefs.

Responsibility of the States of Jersey Development Company:

- **Design development –** the development of detailed design proposals for the redevelopment/regeneration of specific sites.

- **Promotion –** the promotion of specific site proposals through the planning process to secure relevant development permissions.

- **Commissioning –** the entering into of a construction contract with an independent contractor, the procurement of a development partner or the disposal of a site to a developer able to finance and implement the development.

- **Financing –** the provision of risk finance to procure the implementation of the development.

- **Implementation –** procurement and management of the construction of the development.

- **Utilisation –** marketing and securing occupiers for the completed development and the overall investment interest where appropriate.

## 12. Role of the Minister for Treasury and Resources

In parallel with the adoption of new Memorandum and Articles of Association for The States of Jersey Development Company Limited ("SoJDC"), the Council of Ministers recognises that it is appropriate to have political commitments for the Minister for Treasury and Resources, who would be politically accountable for SoJDC under the proposed arrangements.

In overview, the role of the Minister for Treasury and Resources is to maximise the long-term value of the States' interest in SoJDC and to ensure that SoJDC operates in accordance with the agreed policies of the States of Jersey.

In order to promote accountability, transparency and awareness the commitments of the Minister for Treasury and Resources are as follows –

- To bring relevant States' decisions to the attention of SoJDC directors.

- To approve the key elements of SoJDC Business Plan (including consolidated accounts, whilst observing commercial confidentiality) and ensure that they are presented to the States annually and also reflected within the Treasury and Resources Business Plan.

- To establish appropriate arrangements for oversight of SoJDC and, through these arrangements, keep under review the actions of the company, ensuring that they are in accordance with States policies and decisions.

- To keep abreast of the latest developments at SoJDC, ensuring that the Minister is able to respond in an informed manner to questions by States Members.

- To publish Ministerial Decisions relating to property transactions, or in the event of the issuing of a Direction pursuant to Article 22 of the proposed Articles of Association of SoJDC, or in relation to any other matters on which it is necessary for the Minister to take decisions.

- To ensure that Ministerial Decisions relating to SoJDC are subject to a fifteen day 'grace' period in order to allow for sufficient transparency and scrutiny.

The Minister for Treasury and Resources will appoint a non-executive director to the board of SoJDC, who may be a States Member, to represent his interests on the board.

## 13. Review of Corporate Governance of Waterfront Enterprise Board Limited

Members will recall that following debate by the States Assembly on the Esplanade Quarter in July 2008 the Comptroller and Auditor General was requested to review the Corporate Governance of Waterfront Enterprise Board Limited ("WEB").

The aim of the review was to examine how WEB reached its decisions concerning the proposed development of the Esplanade Quarter. The Comptroller and Auditor General wanted to establish whether the proper rules of corporate governance had been established and applied by WEB in this instance. He also wanted to ascertain whether WEB had the required arrangements in place to recognise any potential conflicts of interest. The final aspect of the review was to ensure that the board of WEB had gathered all commercial evidence and advice that was available to the board and that the board's decisions had been based upon this.

The Comptroller and Auditor General completed his review which was published on 24th November 2008.

**Summary of Findings**

In summary, the Comptroller made the following findings and recommendations –

- That WEB is in compliance with normal corporate governance practice

- That WEB should recruit a professional company secretary

- That WEB should be accountable to a single Minister

- That –

(1) the position of States Director currently enshrined in WEB's Memorandum and Articles of Association should be discontinued;

(2) States Members should not ordinarily be members of WEB's Board unless they serve as representatives of the Sponsoring Minister.

- That accountability arrangements should at least include the following –

(1) the Sponsoring Minister should be accountable to the States for the oversight of WEB's activities;

(2) where appropriate, the Sponsoring Minister's decisions in respect of WEB (for example, approving proposed transactions) should be recorded in the form of Ministerial Decisions. Decisions would therefore be in the public domain so that States Members would be able to subject them to such scrutiny as they think appropriate;

(3) the Sponsoring Minister should be responsible for laying WEB's annual report and accounts before the States formally when received. Members of the States would therefore be notified of the results of WEB's activities and thus have another opportunity to subject them to scrutiny.

- That WEB's Memorandum and Articles of Association should be reviewed and then revised thoroughly.

Members have had concerns about the need to ensure that there is appropriate political accountability for the activities of WEB and that WEB has an awareness of the political will which ought to, and does, govern the development and use of designated Regeneration Zones which are so significant for the Island.

The structure which is put in place for The States of Jersey Development Company Limited must provide a practical basis on which persons outside of the States of Jersey will be prepared to serve as non-Executive Directors of the company.

## 14. The withdrawn proposals for the Jersey Enterprise Board (P.194/2007)

Members will recall that on 19th December 2007 a Report and Proposition was lodged au Greffe which recommended the establishment of a new property development company called the Jersey Enterprise Board ("JEB"). The proposals recommended the establishment of a Regeneration Task Force which would report directly to the Council of Ministers and provide the political leadership and direction needed for the regeneration of St. Helier.

Subsequently, the Corporate Services Scrutiny Panel reviewed these proposals and published its Report on 12th June 2008.

Following the publication of this Report, and in light of the comments and recommendations made by the Scrutiny Panel, the Council of Ministers withdrew its proposals for the establishment of the Jersey Enterprise Board in order to undertake further research and to provide greater clarity in presenting proposals for directing the

planning, development and implementation of major property and associated infrastructure regeneration projects in Jersey.

In developing revised proposals for a new property development company the considerations of the Corporate Services Scrutiny Panel with regard to JEB have been taken into account, together with the recommendations of the Comptroller and Auditor General in his report "Waterfront Enterprise Board Limited: Review of Corporate Governance".

The proposals were also subject subject to a first independent external review by property funding experts DTZ, principally from its knowledge of structures in the UK, and their first report is attached at **Appendix 8**. The report reviews the proposals, evaluates the proposed structure against alternative structures in the marketplace, provides a critique of the benefits identified and comments on the original observations of the Corporate Services Scrutiny Panel.

As part of its first report, DTZ has identified and discussed issues where it was thought the proposals required clarification or amendment. The report identifies these issues, along with an explanation as to how they are addressed by this proposal.

In overview, the Report is supportive of both the proposed structure and the benefits identified as part of the proposal. One of the key issues raised and discussed has been that of exposure to risk. DTZ has identified that the proposals provide the option of SoJDC accepting more risk than might typically be accepted in the UK context. This particularly relates to circumstances when SoJDC may undertake direct development. Having reviewed this in the Jersey context and with regard to the risk mitigation processes which form part of the proposal, including section 8 and the MoU with the Minister for Treasury and Resources, DTZ have concluded that there is a case for SoJDC retaining more risk than would be typical in the UK. It should be noted, however that the proposals within this proposition are designed to ensure that no significant risks are taken by SoJDC and that in all instances risks are controlled and mitigated.

## 15. The revision to proposals for The States of Jersey Development Company (P.79/2009)

As identified in section 2 of this Report, on 3rd November 2009, P.79/2009 was referred back for further information, largely on the basis of the recommendation of the Corporate Services Scrutiny Sub-Panel and perceptions amongst members about the performance of WEB.

Whilst the work undertaken by the Sub-Panel demonstrated that the central features of the proposition remained robust, it was that there were areas where the proposition required strengthening and clarification.

In accepting all the recommendations of the Sub-Panel's report, the Council of Ministers commissioned a second report from DTZ to review WEB and make recommendations. This work has identified a number of issues that, in the interests of clarity, should be incorporated into the Report and Proposition.

Whilst the proposed changes simply add to or provide greater clarity to the proposal, the Council of Ministers believes that amending the original proposition (which itself is 'as amended') would have been unwieldy and difficult to follow. The Council of Ministers has therefore produced this revised Report and Proposition, which it is hoped will be clearer to Members.

## 16. Responding to the Corporate Services Scrutiny Panel

### The proposed Establishment of the Jersey Enterprise Board

In January 2008, a Sub-Panel of the Corporate Services Scrutiny Panel was formed to examine the proposed establishment of the Jersey Enterprise Board, its remit and terms of reference, the proposed interaction with the States Property Holdings Department; the Regeneration Task Force; and Waterfront Enterprise Board Limited and to consider any further related issues that the Panel considered relevant.

The Sub-Panel identified the following issues –

- *Are the objectives of JEB clearly set out?*
- *Is JEB an appropriate vehicle to meet the objectives set and to ensure effective regeneration?*
- *Is the mechanism being used to establish this vehicle appropriate and correct?*
- *Are the remit and terms of reference relevant to the objectives?*
- *Are both the remit and terms of reference explicit and properly understood?*
- *Is the role of JEB an appropriate one for the States to pursue?*
- *Do any constraints exist, whether internal or external, which may preclude the success of the proposal?*

The Scrutiny Sub-Panel Report included the following observations and recommendations (the Council of Ministers responses follow each recommendation and are shown in bold below) –

*"Whilst the Sub-Panel recognises the importance of establishing a clear structure for the development of surplus States property it is not able to support the proposition as currently made.*

*In the Sub-Panel's opinion the rationale behind the basic proposition is unproven; the proposal appears unduly rushed, lacks clarity in a number of areas and has the potential to expose the States to far greater risk than other approaches.*

*To that end the Sub-Panel recommends that the sponsors of this proposition should:*

*a. Revisit the analysis of options contained in the December 2007 Report supporting the proposition and the conclusions reached therein as to the best*

*vehicle seeking in particular evidence of other approaches to public/private partnerships.*

**The options contained within the December 2007 report have been re-analysed. It is still considered that the States can obtain best value by controlling all elements of the regeneration and redevelopment process. Paragraphs 3–12 of this Report set out the proposed revised structure detailing how this is to be achieved and how the States retain control and approval of the regeneration and property development process.**

*b.* *As part of the analysis in (a) consider, in particular, the benefits of transfer of legal interests in property between Property Holdings and JEB as the Sub-Panel does not consider this case has been properly made or indeed considered.*

**Given that most regeneration projects require upfront infrastructure works and/or remediation before a site can be developed, it may be necessary to transfer the legal title of the property at the outset in order that external funding can be obtained for the aforementioned works. Before any commitment is entered into in this regard the States of Jersey must have considered and approved the proposals of the particular regeneration project.**

*c.* *Reconsider the roles of the various organisations proposed, testing, in particular, the rationale for and value for money of the Regeneration Task Force, the specific role of which needs defining, but which appears to overlap with both the Planning Department and JEB with the consequential risk of frustrating progress.*

**Under the revised proposals there is no overlap and roles and accountability are much clearer.**

*d.* *Identify specifically the benefits which arise from the formation of JEB rather than any other model and how the risks identified in 4.2.5 and 4.2.6 above can be mitigated.*

**Under any other structure the States of Jersey would still be exposed to the residual risk of non completion of a project. There are a number of ways to reduce the risks identified in the Scrutiny report. These include inter alia –**

- **regular monitoring of local market data on prices/rents, demand, supply and government policy;**
- **regular monitoring of UK, EU and global market trends;**
- **performing full development financial appraisals to assess the profitability of a particular development;**
- **undertaking scenario analysis on development appraisals – in particular the costs and values to assess whether a development is financially viable under the worse case scenario;**

- **entering into pre-sale/pre-let agreements before committing to a scheme;**

- **entering into fixed price construction contracts;**

- **requiring the contractor to provide full latent defects cover;**

- **requiring the contractor to provide adequate performance bonds;**

- **requiring adequate retentions from the contractor; and**

- **selling units "off-plan" during construction.**

**These risk mitigation measures will form part of a comprehensive Memorandum of Understanding between The States of Jersey Development Company Limited and the Minister for Treasury and Resources.**

*e.* *Ensure that any proposals set a framework which provides sufficient flexibility for the States to respond to development opportunities in a way which is both fit for purpose and enables clear quantification of risks involved in each project.*

**The revised proposals as set out in this Report provide clear lines of accountability, reporting, approvals and direction from the States of Jersey as a whole and the Regeneration Steering Group as the responsible political reporting body**.

*f.* *Review the effectiveness of the Waterfront Enterprise Board to date in achieving its objectives."*

**WEB produces annual Business Plans which set out the Company's objectives and against which its performance is monitored. WEB also produces 5 year revolving objectives on an annual basis**.

**Waterfront Enterprise Board: Revised Memorandum and Articles of Association**

The Council of Ministers lodged *"Waterfront Enterprise Board: Revised Memorandum and Articles of Association"* (P.12/2009) earlier in 2009. The purpose of this proposition was to amend the composition of the Board of Directors of WEB and, in particular, would remove States Directors (i.e. States Members) from the board in line with the recommendations of the Comptroller and Auditor General.

The Corporate Services (WEB) Scrutiny Sub-Panel subsequently reviewed P.12/2009 and published its report on 18th March 2009 (S.R.1/2009). The Panel's key findings were that –

- *"The proposal to remove States Directors from the Board of WEB can, in itself, be justified and is consistent with previous decisions of the States Assembly.*

- *Any new plans for WEB will need to be monitored carefully to ensure there is an appropriate balance between the maintenance of commercial confidentiality and a sufficiently high degree of transparency".*

The Scrutiny Sub-Panel report included the following recommendations (the Council of Ministers' responses follow each recommendation and are highlighted in bold) –

- *An Oversight Committee of WEB, consisting of States Members, should be established.*

  **Given that the proposed Regeneration Steering Group is composed of 6 (possibly 7) States Members, it would be for this group to provide oversight and a political steer to The States of Jersey Development Company Limited ("SoJDC"). In addition, the Public Accounts Committee and the Corporate Services Scrutiny Panel would also play an important role in the scrutiny and oversight of the activities of SoJDC.**

- *Further clarification should be provided on the role to be played by the Ministerial Appointee.*

  **The Ministerial Appointee would represent the interests of the Minister for Treasury and Resources, which are clearly outlined in section 12 of this Report. The Ministerial Appointee would report to the Minister for Treasury and Resources.**

- *Ministerial Decisions relating to WEB should be subject to a fifteen day 'grace' period in order to allow sufficient transparency and scrutiny.*

  **This recommendation forms part of the proposed role of the Minister for Treasury and Resources as outlined above.**

- *The remit of the Comptroller and Auditor General in relation to WEB should be widened.*

  **The Public Accounts Committee lodged a Proposition (P.54/2009) which was approved by the States Assembly in June 2009 and put this recommendation into effect.**

- *WEB's annual accounts should be formally presented to the States Assembly.*

  **The Minister for Treasury and Resources has already presented WEB's 2008 Annual Accounts to the States earlier in the year. In future it is proposed that the Minister continues to do this on an annual basis.**

**The States of Jersey Development Company**

The Council of Ministers lodged "*Property and Infrastructure: The States of Jersey Development Company Limited"* on 2nd June 2009. The Corporate Services Scrutiny Sub-Panel subsequently published its Report (S.R.9/2009) on 2nd October 2009. On 13th November, the Chief Minister responded, accepting all recommendations. A summary of the key recommendations and actions taken is set out below –

*a.* *Prior to the debate on P.79/2009, the Chief Minister should clarify to which body the Jersey Development Company would ultimately be accountable.*

**These arrangements were clarified through the Council of Ministers Amendment to P.79/2009 and have been further clarified as part of this revised Report and Proposition.**

*b.* *Prior to the debate, the Chief Minister should ensure that the proposition is amended to show, without any room for doubt, that the Jersey Development Company would not be the same as the current Waterfront Enterprise Board.*

**This was clarified through the Council of Ministers' amendment to P.79/2009 and has been further strengthened by the identification of the key activities of SoJDC in Appendix 4 of this Report.**

*c.* *Before the Jersey Development Company begins operation, the Minister for Treasury and Resources should set out clear protocols for the transfer of assets between Jersey Property Holdings and the Company.*

**Protocols for the transfer of assets are included within this Report.**

*d.* *Before the Jersey Development Company begins operation, the Chief Minister should implement a review of the activities undertaken by the Waterfront Enterprise Board, and the assets it holds; present the results of the review to the States Assembly; and implement any actions arising.*

**The outcome of a review of activities and assets undertaken by DTZ is included within this Report.**

*e.* *Before the Jersey Development Company begins operation, the Minister for Treasury and Resources should develop a detailed risk management regime that includes individual project Risk Management Plans.*

**The second DTZ review has identified that WEB currently has strong risk management practices and processes and suggests an overarching policy standard to be adopted by the Board of SoJDC. In addition risk management will continue to be a key feature of the Memorandum of Understanding between the Minister for Treasury and Resources and the company.**

*f.* *The Minister for Treasury and Resources should review the capacity of the Jersey Development Company to purchase privately-owned assets and put in place protocols to ensure that the most effective vehicle is used to effect such purchases.*

**A protocol for the purchase of privately owned assets is included within this Report.**

*g.* *Prior to the debate on P.79/2009, the Chief Minister should clarify how resource and manpower implications for States Departments would be addressed.*

**Clarification of the resource requirements was provided as part of the Chief Minister's response to S.R.9/2009 and has been included within this Report.**

## 17. Benefits of the Proposed Structure

The proposed structure and process for property and infrastructure regeneration addresses the key issues raised by the Corporate Services Scrutiny Sub-Panel and the recommendations of the Comptroller and Auditor General and provides the following benefits –

- It creates a coherent structure which will ensure effective, democratically acceptable regeneration in accordance with States policies.
- A clear division of responsibilities for the control of policy determination, strategic planning, project definition and development implementation.
- It removes the role of master-planning from the Waterfront Enterprise Board Limited.
- A consistent and co-ordinated approach to Island-wide regeneration.
- Clearly defined objectives which align with current and future needs of the Island.
- Transparency and accountability to the States Assembly throughout the development process.
- The ability to assemble public and private land required to facilitate major property and infrastructure projects within the boundaries of current legislation.
- It creates a dedicated States of Jersey company to redevelop agreed States of Jersey assets.
- The means of funding the design development stages of the regeneration process to a point at which projects may be granted planning consent and competitively tendered in the open market.

## 18. Implementation

Subject to approval by the States, it is proposed that WEB should be reconstituted as The States of Jersey Development Company Limited as soon as practicable. As a target date, it is proposed that the reconstituted company should commence operations in, or before, January 2011.

## 19. Conclusion

The Council believes that the proposals outlined in this Report and Proposition provide the right structure and mechanisms for directing the planning, development and implementation of major property and associated infrastructure regeneration projects in Jersey. In particular these proposals –

- Provide an effective, coherent structure with clear division of responsibilities to progress regeneration projects in a consistent and co-ordinated manner in accordance with States policy.

- Provide for transparency and clear accountability to the States Assembly throughout the development process.

- Replace the current Waterfront Enterprise Board with a new entity dedicated to maximising the potential of States property assets.

- Remove the current conflict between master-planning and delivering development by placing the role of master-planning solely with the Minister for Planning and Environment and removing it from the role of the development company.

The Council believes that the establishment of The States of Jersey Development Company Limited will provide the necessary flexibility, expertise and accountability to which will enable it to play a key part in the implementation of a strategy for regeneration in Jersey and particularly that of St. Helier.

## 20. Financial and Manpower Implications

The following provides an analysis of the departmental resource implications of the proposition.

**States of Jersey Development Company**

In the first instance, it is proposed that the executive responsibilities of The States of Jersey Development Company Limited will be carried out by the staff currently employed by WEB. It is possible that additional staff may be needed in due course, but this will be a matter for the Board of Directors of The States of Jersey Development Company Limited. Any increased costs resulting from a decision to employ additional staff would in any event need to be borne by The States of Jersey Development Company Limited and not by the States of Jersey.

**Planning and Environment Department**

Under the Planning and Building (Jersey) Law 2002, the Minister for Planning and Environment is responsible for formulating plans for the future development of the Island. It is therefore an existing responsibility for the Planning and Environment Department to undertake this work and therefore to fund the costs associated with it. Future master-planning will incur additional costs, and these will need to be managed within existing departmental resources and will be offset against the likely planning and building fee income associated with planning and building applications that will ensue from sites within the regeneration zones.

**Chief Minister's Department**

The Chief Minister's Department will provide executive and administration support to the Regeneration Steering Group. This requirement is likely to vary considerably over the year, depending on the work being undertaken and the frequency of meetings. Overall, however the manpower requirement is thought to be light and this will be supported from within the Chief Minister's Department's existing manpower.

**Treasury and Resources Department**

The Treasury has undertaken an analysis of the manpower required to support the roles and responsibilities of the Minister for Treasury and Resources as set out in section 12 of this Report. In addition, the Minister will be responsible for actively managing the shareholding in SoJDC on behalf of the States in accordance with the MoU, which is likely to include approving major transactions, monitoring governance processes, establishing the risk parameters within which the company will operate and agreeing returns from the company. The Minister will also be responsible for advising the Regeneration Steering Group on the financial implications of all proposals and for determining the source of funding or level of return.

Although difficult to quantify in advance, it is estimated that to discharge these responsibilities an additional 0.3 FTE is required within Treasury and Resources. This would equate to approximately £23,000 per annum including on-costs associated with this additional manpower requirement. This requirement has been considered as part of the recent review of the Treasury, and will be included within the 2011 Business Plan.

Jersey Property Holdings will require additional resources to meet the workload and costs of external property valuation prior to transfer, and for the preparation of project specific development agreements. These costs would be met by SoJDC on a project specific basis (see below).

**Project Activities**

On a project-by-project basis, it is expected that each individual project would have an established Project Board, which would include officer representatives from each department. It is not thought that this activity would incur additional manpower requirements. Where costs are incurred by individual departments in relation to specific projects (e.g. Jersey Property Holdings for valuation and development agreements), these costs would be funded by the project.

**Overall**

Overall, the key area where additional departmental resources may be required is within the Treasury in terms of its ability to support the enhanced roles and responsibilities of the Minister for Treasury and Resources. This requirement has been included within the current Treasury review and will be addressed through the 2011 business planning process.

**COUNCIL OF MINISTERS**
**7th June 2010**

**APPENDIX 1**

# PROPOSED MEMORANDUM OF UNDERSTANDING BETWEEN THE MINISTER FOR TREASURY AND RESOURCES AND THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED

## 1. Background

1.1 The States of Jersey by their Act dated 12th December 1995 approved the establishment of Waterfront Enterprise Board Limited. Their Act dated 14th September 2005 approved the extension of the Company's original tenure. Their Act of [date] agreed that the role and remit of the Company should be extended to allow it to undertake, from time to time, the regeneration of redundant States of Jersey assets within designated Regeneration Zones and where appropriate to act as the preferred developer for Jersey Property Holdings' projects either via joint ventures with third party developers or directly. This Act further approved the revised Memorandum and Articles of Association of The States of Jersey Development Company Limited as set out in Appendix 2 of the report of the Council of Ministers dated 7th June 2010 and authorised the Greffier of the States for and on behalf of the States of Jersey to pass, together with the Treasurer of the States, one or more special resolutions of the Company in respect of the change of name and to adopt such Memorandum and Articles of Association.

1.2 The issued share capital of SoJDC is held for and on behalf of the States of Jersey by nominees of the Minister for Treasury and Resources (the "**Minister**").

1.3 The purpose of this Memorandum of Understanding ('**MoU**') is to ensure the appropriate conduct of SoJDC and to put in place an accountability framework appropriate to SoJDC as a business.

1.4 This MoU aims to foster a sound working relationship between the Minister and SoJDC based on a mutual understanding of expectations for the sharing of information, regular dialogue on key issues as they emerge and develop, and most importantly, the operation of a "no surprises" policy such that the Minister, in exercising his responsibilities as holder of securities in SoJDC on behalf of the States of Jersey, is kept fully informed as to key business decisions which have the potential to impact on the States of Jersey's ("SoJ") interests as owner.

## 2. Objectives

2.1 In its business operations SoJDC aims to:

- Develop detailed development proposals for specific projects of major regeneration of property and infrastructure within Regeneration Zones for consideration by the Regeneration Steering Group;

- Provide forward funding for preparing the detailed development proposals;

- Procure the services of appropriate design and development consultants;

- Manage and develop detailed designs for specific sites;

- Submit detailed planning applications to the Minister for Planning and Environment;

- Procure and manage project implementation of development plans for Regeneration Zones agreed by the Regeneration Steering Group either directly or via a joint venture with a third party developer;

- Provide quarterly progress reports to the Regeneration Steering Group with regard to agreed Development Plans;

- Procure and manage project implementation as agreed and directed by the Minister either directly or via a joint venture with a third party developer;

- Provide quarterly progress reports to the Minister in respect of development taking place.

**3. Definitions and Interpretation**

3.1 In this MoU the following defined terms are used:

- "**Board"** means the Board of Directors of SoJDC;
- "**BP"** means Business Plan;
- "**Material"** means any action where the Minister should be made aware under the 'no surprises' policy;
- **"T&R Dept."** means the Treasury and Resources Department**.**

**4. Sensitive information**

4.1 Nothing in this MoU shall be construed as requiring the inclusion in any BP, annual report, financial statements, or half-yearly report (referred to below) of any information where the making available of the information would be likely to unreasonably prejudice the commercial position of SoJDC or that of the person who supplied or who is the subject of the information.

**5. Duration**

5.1 This MoU applies from *[insert date]* until it is agreed between the parties that it is no longer valid. This MoU may be modified from time to time by agreement between the parties. While this MoU applies, nothing in it requires the directors of the Board to do, or not do, anything which is inconsistent with their fiduciary duties as directors and if by complying with this MoU the Directors become liable under any action they are fully indemnified by SoJ.

**6. SoJDC's Business**

6.1 SoJDC will:

- carry on business in a manner consistent with its BP; and

- conduct its business in accordance with any decisions of the Minister, as shareholder of the company, and any requirements of the States of Jersey.

**7. Directors**

7.1 The non-executive directors of SoJDC will be appointed by the States Assembly.

7.2 The directors shall be appointed in accordance with the Companies (Jersey) Law 1991 and SoJDC's Articles of Association.

7.3 All decisions relating to the operation of SoJDC shall be made by or pursuant to the authority of the Board, in accordance with its BP.

7.4 The Board shall be accountable to the Minister.

**8. Business Plan**

8.1 The Board shall cause to be prepared annually (in consultation with relevant parties) a business plan and report which shall be sent to the Minister at such time as may be reasonably required setting out the objectives, policies and programmes of the Company and reporting on progress.

**9. Budget**

9.1 The Directors shall submit to the Minister in each year by such date as may be appointed by the Minister a budget of the Company's estimated capital expenditure and receipts and of revenue expenditure and income for the next financial year of the Company.

**10. Annual Report**

10.1 Within 6 months after the end of each financial year of SoJDC, the Board shall deliver to the Minister:

- a report of the operations of SoJDC during that financial year, including disclosures in accordance with the Combined Code;

- audited consolidated financial statements for that financial year, prepared in accordance with UK Generally Accepted Accounting Practice;

- the auditor's report on those financial statements; and

- a comparison of the figures contained within the Operational Budget with actual results achieved by the business for the relevant financial year.

10.2 In addition, the Board will deliver to the Minister, such reporting required on an annual basis and ad hoc basis for the purpose of preparing the financial

statements of the States of Jersey and information required to assist with the financial planning of the States.

**11. Half-Yearly Reports**

11.1 Within 2 months after the end of the first half of each financial year of SoJDC, the Board shall deliver to the Minister:

- a report of the operations of SoJDC during that half year;
- a comparison of the figures contained within the Operational Budget with actual results achieved by the business in the period; and

**12. Corporate Governance**

12.1 Unless in direct conflict with other provisions of this MoU or its Memorandum and Articles of Association, SoJDC and its Board will adhere to Principles of Good Governance. In particular, SoJDC will implement and maintain a sound system of internal controls to safeguard its shareholder's investment and its assets.

12.2 SoJDC will not engage anywhere in any political activity or provide funds in connection with the carrying on by any third party of any political activity.

**13. Important Management Decisions**

13.1 In the spirit of open dialogue and a "no surprises" policy, it is expected that SoJDC will, unless specifically contemplated in the BP, seek the consent of the Minister (on the clear understanding that such approval will not be unreasonably withheld or delayed) before it:

- makes any material change to its BP;
- makes any material change in the nature of its business as carried on or commence any new business by purchasing material interests or acquiring other businesses or assets not being ancillary or incidental to such business;
- sells, transfers, leases, or in any way disposes of all or a material part of its business or assets;
- creates any material mortgage or security interest, other than any arising by operation of law or prior agreed limits over any of SoJDC's assets;
- gives any material guarantee, indemnity or security in respect of the obligations of any person other than in the ordinary course of trading;
- borrows any material sum or factor or discount any material book debts, except in respect of the leasing of plant or equipment in the ordinary course of trading and except as permitted under the terms of any working capital and capital expenditure facilities which may be made available by the States of Jersey to SoJDC;

- enters into any material contract or alters, in a material way, the commercial terms of any material trading arrangements in either case outside the ordinary course of trading;

- undertakes in any financial year any single item or series of items of capital expenditure (including finance leases but excluding operating leases as respectively defined in SSAP 21) involving an aggregate liability during that financial year materially in excess of the sums provided for capital expenditure in its Operational Budget; and/or amounting to a material sum in aggregate;

- changes the financial year end of SoJDC; or

- commences any litigation, arbitration or administrative proceedings, or claim outside the ordinary course of its business which might by itself or together with any such other proceedings or claim have a material adverse effect on the financial condition of the SoJDC.

**14. Provision of Information and Consultation**

14.1 To facilitate an open flow of information between the Minister and SoJDC of such matters as may be the legitimate concern of the States of Jersey as owner, SoJDC will:

- as soon as practicable after litigation, arbitration or proceedings are instituted or, to its knowledge threatened, provide written details to the Minister of any such proceedings or claim which might reasonably be expected by itself or together with any such other such proceedings or claim to have a material adverse effect on the financial condition of SoJDC; and

- when consulting the Minister under this MoU provide the Minister, in good time in advance, with sufficient information properly to assess the issue in question.

14.2 Except as stated below the Board shall supply to the Minister such information relating to the affairs of SoJDC as the Minister may reasonably request from time to time.

14.3 SoJDC will give the Minister access to information to assist the Minister properly and effectively to respond, within the necessary timescale, to requests for information for Ministerial questions and other information required for the Minister to fulfil his responsibilities on behalf of the States or according to the Law. Where such response leads to a request for a direct response or the provision of information directly from SoJDC, SoJDC will provide the response or information in an expeditious manner consequent upon fulfilling the BP.

14.4 For the avoidance of doubt in no circumstances shall the Board be obliged by this MoU to supply to the Minister any information on an individual employee (other than directors), or customer of SoJDC, or any other person, if the information supplied would enable the identification of the person concerned.

14.5 If considered necessary, the Minister may seek such information or commission an independent review of SoJDC which may cover, but shall not necessarily be restricted to, the effectiveness and efficiency of service delivery by SoJDC, and the effectiveness of operation of internal control systems. SoJDC shall comply with the reasonable requests for information pursuant to such a review being commissioned.

14.6 When the Minister is consulted or his consent is required, he will respond decisively to any reasonable request by SoJDC for the Minister's view or consent within 10 working days of SoJDC's request having been received.

14.7 In carrying out his responsibilities under the Law and in acting in accordance with this MoU, the Minister undertakes to provide such information to SoJDC as required enabling it to take account of the views of the Minister in a timely and appropriate manner.

**15. Ongoing communications and accountability**

15.1 For the purposes of ensuring open communications between the Minister and SoJDC, the following meetings will, at a minimum, take place during each calendar year:

15.2 The Chairman, the Managing Director and Finance Director of SoJDC and the Minister will meet on a quarterly basis to discuss matters generally covered by this MoU, with a record of matters discussed at such meetings being made;

15.3 The Chairman of SoJDC will attend, with senior management, a meeting with the Minister in January each year for the purposes of an 'investor briefing' whereby items submitted under sections 0 and 0 above will be discussed; and

15.4 Following the formal annual general meeting of the shareholders each year, the Board of SoJDC will meet the Minister to consider performance in the previous calendar year.

15.5 In relation to discussing the reports submitted by SoJDC or matters concerning those items covered in section 0 and 0 above, senior management of SoJDC will make themselves available, as required, to present matters or answer queries from the Minister.

**16. Directors' Remuneration**

16.1 In accordance with best practice, the annual Remuneration Report of the Remuneration Committee will be specifically voted on by the shareholder at the annual general meeting.

16.2 The board of SoJDC will undertake a review and benchmarking of directors remuneration and terms of employment at least every two years.

16.3 Any changes to the level of remuneration paid to non-executive directors must be agreed, in advance, by the Minister. Newly appointed non-executive directors will have the terms of their appointment approved, if appropriate, in accordance with normal practice at the annual general meeting subsequent to their appointment.

16.4 Information pertaining to any material changes to either the structure or quantum of remuneration paid to directors for their executive responsibilities in the business are to be approved by the Minister in advance of their taking effect.

## 17. Mitigation of Risk

17.1 In order to mitigate risks to the shareholder SoJDC will undertake the following activities:

**Planning** – before any land transfer takes place between Property Holdings and SoJDC, the Minister for Planning and Environment must have adopted the Regeneration Zone within which the assets are located and approved the Masterplan for that particular Regeneration Zone. This will partly remove the planning risk of the regeneration proposals and, once the assets have been transferred, will enable a detailed planning application to be proposed within the parameters of the adopted Masterplan and Development Brief according to the agreed Development Plan set with the RSG.

I**nfrastructure Works** – no infrastructure works will be procured until detailed planning permission has been received on vacated development sites and detailed financial appraisals support the development of the scheme. Given the importance of the public infrastructure works, SoJDC will commission and procure the provision of the infrastructure in accordance with SoJ capital project procurement and delivery procedures.

**Sales** – If it is proposed that a specific development is undertaken directly, before committing to construction costs SoJDC will have to secure a sufficient level of legally binding pre-sales or pre-lets to fund the costs of constructing the first phase of a scheme. This will remove part of the risk of a particular development project and will ensure that there will be no financial liabilities relating to a particular development's construction costs to the SoJDC.

**Pre-development Costs** – all detailed design costs and fees will be funded directly by SoJDC out of its resources.

**Development** – SOJDC will procure development schemes in conjunction with the private sector unless there are specific reasons for direct development. All development proposals will be subject to a transparent open tender process. It is likely that most developments would take place with a single joint venture partner. However, for some large-scale developments it may be that a consortium approach is beneficial. It is assumed that land that is subject to the development will be provided to the development vehicle by SoJDC with the benefit of infrastructure and public realm.

**Land sales –** for projects that require significant upfront infrastructure works, presales may include the sale of part of the land to third party developers. This is to ensure that at any time SoJDC/the SoJ has minimal capital at risk.

**Phasing –** SoJDC will phase large development schemes if practically feasible to do so.

**Design and Specification** – SoJDC will ensure that every development proposal is fully designed and fully specified with bills of quantity. These documents will be put out to the construction market for tendering the build.

**Construction –** SoJDC will follow the SoJ guidelines and best practice in the procurement of construction works. All construction works will be open tendered. All tenders must price the bills of quantity provided by SoJDC and must be a fixed price. The appointment will be with a third party main contractor who will undertake the entire construction contract. The fixed contract price must include minimal provisional sum items (limited to up to 15% of the total contract sum). SoJDC will only enter into fixed price, fixed delivery construction contracts with known third party main contractors with good market and financial credibility. During the construction process a Project Manager employed by SoJDC will monitor the construction works. Monthly design team meetings for each construction project will be held between SoJDC, the Project Manager, the Contractor, the Architect and the Quantity Surveyor in the same way as States of Jersey capital projects are monitored and costs controlled.

17.2 The list of risk mitigation activities in 18.1 should not be taken to be exhaustive.

**18. Insurance**

18.1 SoJDC shall take out and maintain in effect insurance policies with a reputable insurer in respect of the business transferred to it and any new business SoJDC undertakes, which it is usual for a business of this nature to have and which the directors of SoJDC consider prudent having taken into account the policy limits, excess/deductibles and retention of risk.

**19. Without Prejudice**

19.1 This MoU does not prejudice in any way the rights, powers, duties and liabilities that exist in law between the parties and otherwise.

Signed: …… Date ……

Signed: ……. Date ……

**APPENDIX 2**

**Proposed Memorandum & Articles of Association of The States of Jersey Development Company Limited**

**COMPANIES (JERSEY) LAW 1991**

**COMPANY LIMITED BY SHARES**

**MEMORANDUM OF ASSOCIATION**
**of**
**THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED**

1. The name of the Company is: "The States of Jersey Development Company Limited".

2. The capacity of the Company is unlimited and the Company shall have all the powers of a natural person.

3. The liability of each member is limited.

4. The capital of the Company is £20,000,000 divided into 20,000,000 shares of £1.00 each.

5. The Company is a public company.

**ARTICLES OF ASSOCIATION**

**of**

**THE STATES OF JERSEY DEVELOPMENT COMPANY LIMITED**

**INTERPRETATION**

1. In these Articles:

| | |
|---|---|
| **"Articles"** | means the Articles of Association of the Company and "Article" shall be construed accordingly; |
| **"Auditors"** | means the auditors for the time being of the Company; |
| **"Board"** | means the board of Directors of the Company from time to time; |
| **"Chairman"** | means the non-executive chairman of the Board from time to time; |
| **"Company"** | means the company incorporated under the Law in respect of which these Articles have been registered; |
| **"Development Brief"** | means a document that provides information on the type of development, the design thereof and layout constraints relating to a particular site; |
| **"Director"** | means any director of the Company from time to time; |
| **"executed"** | includes any mode of execution; |
| **"Finance Director"** | means the person appointed in accordance with these Articles as the Finance Director from time to time; |
| **"holder"** | in relation to shares means the member whose name is entered in the register of members as the holder of the shares; |
| **"Property Holdings"** | means the department known as States of Jersey Property Holdings; |
| **"Masterplan"** | means a comprehensive document that sets out an overall development strategy for a defined area (which includes both present property uses as well as future land development plans). |
| **"Managing Director"** | means the person appointed in accordance with these Articles as the Managing Director from time to time; |
| **"Minister"** | means the Minister for Treasury and Resources; |
| **"Ministerial Appointee"** | means a Non-Executive Director appointed by the Minister as the Ministerial Appointee in accordance with these Articles from time to time; |

| | |
|---|---|
| **"Non-Executive Director"** | means a person appointed in accordance with these Articles as a Non-Executive Director of the Company and which shall, for the avoidance of doubt, include the Ministerial Appointee and the States Appointees but exclude the Managing Director and the Finance Director; |
| **"office"** | means the registered office of the Company; |
| **"ordinary resolution"** | means a resolution of the Company in general meeting adopted by a simple majority of the votes cast at that meeting; |
| **"Regeneration Steering Group"** | means a group set up to provide guidance on all major Public property and infrastructure regeneration projects in Jersey in accordance with an Act of the States dated [ ]; |
| **"Regeneration Zone"** | means an area of land in Jersey adopted by the States as a Regeneration Zone; |
| **"seal"** | means the common seal of the Company; |
| **"secretary"** | means the secretary of the Company or other person appointed to perform the duties of the secretary of the Company including a joint, assistant or deputy secretary; |
| **"States"** | means the States of Jersey; |
| **"States Appointees"** | means the Chairman and three non-executive directors of the Company appointed by the States as Non-Executive Directors in accordance with these Articles from time to time; |
| **"the Law"** | means the Companies (Jersey) Law 1991 including any statutory modification or re-enactment thereof for the time being in force. |

Unless the context otherwise requires, words or expressions contained in these Articles bear the same meaning as in the Law, but excluding any statutory modification thereof not in force when these Articles became binding on the Company.

The Standard Table prescribed pursuant to the Law shall not apply to the Company and is hereby expressly excluded in its entirety.

## SHARE CAPITAL

2. Subject to the provisions of the Law, and without prejudice to any rights attached to any existing shares, any share may be issued with such rights or restrictions as the Company may by ordinary resolution determine.

## CERTIFICATES

3. Every member, upon becoming the holder of any shares, shall be entitled, without payment, to one certificate for all the shares of each class held by him. Every certificate shall be sealed with the seal and shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up thereon.

## TRANSFER OF SHARES

4. An instrument of transfer of a share may be in any usual form or in any other form which the Directors may approve and shall be executed by or on behalf of the transferor and, unless the shares are fully paid, by or on behalf of the transferee.

## GENERAL MEETINGS

5. (a) The Company shall in each year hold a general meeting of the members of the Company as its annual general meeting in addition to any other meeting in that year. Annual general meetings shall be held once in each year at such time and place as may be determined by the Directors.

(b) All general meetings other than annual general meetings shall be called extraordinary general meetings.

(c) The Directors may call general meetings and on the requisition of members, pursuant to the provisions of the Law, shall forthwith proceed to call a general meeting for a date not later than two months after the receipt of the requisition. If there are not sufficient Directors to call a general meeting, any Director or any member of the Company may call such a meeting.

## NOTICE OF GENERAL MEETINGS

6. An annual general meeting or a general meeting called for the passing of a special resolution shall be called by at least 21 clear days' notice. All other meetings shall be called by at least 14 clear days' notice but a general meeting may be called by shorter notice if it is so agreed by all the members entitled to attend and vote thereat. The notice shall specify the day, time and place of the meeting and the general nature of the business to be transacted and in the case of an annual general meeting, shall specify the meeting as such and shall be given to all the members, the Directors and the Auditors.

7. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

## PROCEEDINGS AT GENERAL MEETINGS

8. No business shall be transacted at any meeting unless a quorum is present. One person entitled to vote upon the business to be transacted, being a member holding not less than fifty per cent (50%) in nominal value of the shares then in issue carrying the right to vote (or a proxy for such a member) shall be a quorum, failing which two persons entitled to vote upon the business to be transacted, each being a member (or a proxy for a member) shall be a quorum.

9. The Chairman or in his absence some other Director nominated by the Directors shall preside as chairman of the meeting, but if neither the Chairman nor such other Director (if any) is present within 15 minutes after the time appointed for holding the meeting and willing to act, the members present shall elect one of their number to be chairman and, if there is only one member present and willing to act, he shall be chairman.

10. A Director or a representative of the Auditors shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting.

11. The Chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for 14 days or more, at least seven days' notice shall be given specifying the day, time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

12. A resolution put to the vote of a meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll is duly demanded. Any member shall be entitled to demand a poll.

13. Unless a poll is duly demanded, a declaration by the Chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

14. A poll shall be taken as the Chairman directs and he may appoint scrutineers (who need not be members) and fix a day, time and place for taking the poll and for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

## VOTES OF MEMBERS

15. Subject to any rights or restrictions attached to any shares, on a show of hands every member who is present in person shall have one vote and on a poll every member present in person or by proxy shall have one vote for every share of which he is the holder.

16. On a poll votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion.

17. An instrument appointing a proxy shall be in writing in any usual common form, or as approved by the Directors, and shall be executed by or on behalf of the appointer.

18. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of such power or authority, shall be deposited at the office or at such other place as is specified for that purpose in the notice of meeting or in the instrument of proxy issued by the Company before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, before the time appointed for taking the poll and in default the instrument of proxy shall not be treated as valid.

19. A vote given or poll demanded by proxy or by the duly authorised representative of a body corporate shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

## REPRESENTATIVES

20. The States whilst a member of the Company may be represented at any meeting of the members of the Company or any meeting of any class of members of the Company by the Greffier of the States, the Deputy Greffier of the States or any other officer appointed to discharge the functions of the office of Greffier of the States under Article 41(15) of the States of Jersey Law 2005 or by any person duly authorised in writing in that regard by the Greffier of the States or the Deputy Greffier of the States. The States shall be deemed to be present in person at any meeting attended by any such person.

## RESOLUTIONS OR NOTICES IN WRITING

21. (a) Anything that may be done by a resolution passed at a meeting of the members of the Company (other than a resolution for the removal of the Auditors) may be done by a resolution in writing signed by or on behalf of each member of the Company.

(b) The States whilst a member of the Company shall be entitled to execute a resolution in writing or any other notice in writing by means of an instrument in writing signed by the Greffier of the States, the Deputy Greffier of the States or any other officer appointed to discharge the functions of the office of the Greffier of the States under Article 41(15) of the States of Jersey Law 2005. Any such resolution, notice or instrument shall take effect upon delivery thereof to the office.

## DIRECTIONS

22. (a) If the Minister shall, in his discretion, be of the opinion that a matter of material public interest has arisen and that it is appropriate to do so, the Minister shall be entitled by notice in writing to give the Directors directions to refrain from doing a particular thing or to do a particular thing which the Directors have power to do and the Directors shall be bound to comply with any such direction.

(b) Any such direction or other written instrument shall be validly executed on behalf of the Minister if recorded in accordance with ministerial procedures as a Ministerial Decision. Any such direction or other written instrument shall take effect upon delivery thereof to the office.

## NUMBER OF DIRECTORS

23. Unless and until otherwise determined by the Company by ordinary resolution, or during the period of any vacancy, the Board shall comprise the Chairman, the Managing Director, the Finance Director, the Ministerial Appointee, and three States Appointees (in addition to the Chairman).

24. A Director need not be a member of the Company.

## POWERS OF DIRECTORS

25. (a) Subject to the provisions of the Law, the memorandum and these Articles and to any directions given to the Directors by direction in writing made in accordance with the provisions of Article 22, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company in any part of the world. No alteration of the memorandum or these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the Directors by these Articles and a meeting of Directors at which a quorum is present may exercise all the powers of the Company exercisable by the Directors.

(b) In the exercise of their powers of management of the Company the Directors shall have regard to:

(i) the objectives for which the Company is established, namely:

(A) To promote, co-ordinate and implement a comprehensive strategy for the development of the whole of the St. Helier Waterfront area and including the greater harbour area and La Collette in accordance with approved Masterplan(s), Development Brief(s) and other relevant guidance prepared by the Minister for Planning and Environment and, where expedient, to undertake development directly.

(B) To exercise administrative control over the use of the land and the adjacent shore and water areas in the St. Helier Waterfront area and to liaise and consult with all relevant Ministers of the States and other governmental and regulatory authorities in relation to investment in infrastructure projects in and development of the St. Helier Waterfront area.

(C) To prepare detailed development proposals for specific projects of major regeneration of property and infrastructure within Regeneration Zones (for consideration by the Regeneration Steering Group).

(D) To undertake the regeneration of redundant States' assets within Regeneration Zones in accordance with approved Masterplans and Development Briefs (including the purchase of third party properties where appropriate) and to act as the preferred developer for projects of Property Holdings (procuring and managing project implementation as agreed and directed by the Regeneration Steering Group.

(ii) any decisions of the States which directly concern the land, shore and water areas within the control of the Company.

(iii) any political steer and/or guidance provided by the Regeneration Steering Group.

(c) The Directors shall cause to be prepared annually (in consultation with relevant parties) a business plan and report which shall be sent to the Minister at such time as may be reasonably required setting out the objectives, policies and programmes of the Company and reporting on progress.

(d) The Directors shall respond timeously to such reasonable requests for information and reports as are made to them by the Minister.

(e) The Directors shall report progress on developments on a quarterly basis to the Regeneration Steering Group.

26. The Directors may, by power of attorney or otherwise appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

27. Subject to the prior written consent of the Minister (which may be given generally or specifically and recorded in accordance with ministerial procedures as a Ministerial Decision), the Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, and to issue debentures and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party. All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments, and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors shall from time to time by resolution determine.

**APPOINTMENT, RETIREMENT AND REMOVAL OF DIRECTORS**

28. The Ministerial Appointee shall be appointed and may be removed by the Minister by a formal Part A Ministerial Decision.

29. Subject to Article 30 and Article 32, the Non-Executive Directors shall be appointed for fixed periods of three years duration. Each Non-Executive Director shall enter into a non-executive directors' service agreement with the Company upon such terms as the Board shall determine. Upon the expiration of the period of office for which they are appointed the Non-Executive Directors shall, ipso facto, retire from office but shall be eligible for re-appointment.

30. (a) The States Appointees shall be appointed by the States on the recommendation of the Minister and such appointment shall take effect upon delivery to the office of notice in writing to that effect executed in accordance with Article 21(b).

(b) The States may remove any States Appointee from office as a Director and such removal shall take effect upon delivery to the office of notice in writing to that effect executed in accordance with Article 21(b).

31. The Directors shall have the power at any time, from time to time without the sanction of the Company in general meeting or otherwise to appoint a person to act as the Managing Director and a person to act as the Finance Director. The Company shall enter into an agreement with each of the Managing Director and the Finance Director for his employment by the Company and for the provision by him of services to the Company. Save for remuneration, which shall be determined in accordance with Article 33, each such agreement shall be made upon such terms as the Board shall determine. In the event of the termination of the employment of the Managing Director or the Finance Director pursuant to their respective service agreements, the appointment of the Managing Director or the Finance Director, as the case may be, as a Director shall, ipso facto, terminate.

32. The office of a Director shall be vacated in any of the following events namely:

(a) If he resigns his office by notice in writing under his hand to that effect sent to or left at the office which notice shall be effective upon such date as may be specified in the notice, failing which upon delivery, to the office.

(b) If he becomes bankrupt or insolvent or makes any arrangement or composition with his creditors generally.

(c) If he becomes of unsound mind.

(d) If he ceases to be a Director by virtue of any provision of the Law, or becomes prohibited by law from or is disqualified from, being a Director.

(e) If he shall for more than 6 consecutive months have been absent without permission of the Directors from meetings of the Directors held during that period and the Directors resolve that his office be vacated.

## REMUNERATION OF DIRECTORS

33. Save for the Ministerial Appointee, the Directors shall be entitled to such remuneration as the Company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day. The Ministerial Appointee shall not be entitled to remuneration where he or she is a member of the States.

## DIRECTORS' EXPENSES

34. The Directors may be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or general meetings or separate meetings of the holders of any class of shares or of debentures of the Company or otherwise in connection with the discharge of their duties.

35. Subject to the provisions of the Law, and provided that he has disclosed to the Directors the nature and extent of any material interests of his, a Director notwithstanding his office:

(a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;

(b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested;

(c) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and

(d) may act by himself or his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as though he were not a Director.

36. For the purposes of the preceding Article:

(a) a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement with a specified person or class of persons shall be deemed to be sufficient disclosure of his interest in any such transaction or arrangement; and

(b) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

## DIRECTORS' GRATUITIES AND PENSIONS

37. The Company may provide such benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any Director who has held but no longer holds any executive office or employment with the Company or with any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary, and for any member of his family (including a spouse and a former spouse) or any person who is or who was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit as the Directors think fit.

## PROCEEDINGS OF DIRECTORS

38. Subject to the provisions of the Law and these Articles, the Directors may regulate their proceedings as they think fit. A Director may, and the secretary at the request of a Director shall, call a meeting of the Directors. Questions arising at a meeting of Directors shall be decided by a majority of votes. In the case of an equality of votes the Chairman shall have a second or casting vote.

39. Unless he is unwilling to do so, the Chairman shall preside at all meetings of the Directors at which he is present. If the Chairman is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the Directors present may appoint one of their number to be chairman of the meeting.

40. The quorum for the transaction of the business of the Directors shall be four Directors. Any Director enabled to participate in the proceedings of a meeting by means of a communication device (including a telephone) which allows all

of the other Directors present at such meeting to hear at all times such Director and such Director to hear at all times all other Directors present at such meeting (in each case whether in person or by means of such type of communication device) shall be deemed to be present at such meeting and shall be counted when reckoning a quorum.

41. The continuing Directors or the only continuing Director may act notwithstanding any vacancies in their number, but, if the number of Directors is less than the number fixed as the quorum, the continuing Directors or Director may act only for the purpose of calling a general meeting.

42. All acts done by a meeting of Directors or by a person acting as a Director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote.

43. A resolution in writing signed by all the Directors entitled to receive notice of a meeting of Directors shall be valid and effectual as if it had been passed at a meeting of Directors duly convened and held and may consist of several documents in the like form each signed by one or more Directors.

44. A Director may not vote in respect of any transaction, arrangement or proposed transaction or arrangement, in which he has an interest but provided that he has disclosed any such interest in accordance with these Articles he may be counted towards a quorum at any meeting of the Directors at which any such transaction or arrangement or proposed transaction or arrangement shall come before the Directors for consideration.

45. The Directors shall cause minutes to be made:

(a) of all appointments of officers made by the Directors;

(b) of the names of the Directors present at each meeting of Directors;

(c) of all resolutions and proceedings at all meetings of the Company and of the Directors.

Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were held, shall be evidence of the proceedings.

## SECRETARY

46. Subject to the provisions of the Law, the secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit and any secretary so appointed may be removed by them.

## MINUTES

47. The secretary shall cause minutes to be maintained in books kept for the purpose in accordance with the Law.

## THE SEAL

48. (a) The common seal shall only be used by the authority of the Directors. The Directors may determine who shall sign any instrument to which the common seal is affixed and unless otherwise so determined it shall be signed by a Director and the secretary or by two Directors.

(b) Subject to the provisions of the Law, the Directors may determine to have:

(i) an official seal for use in any country, territory or place outside the Island of Jersey, which shall be a facsimile of the common seal of the Company. Any such official seal shall in addition bear either the name of the country in which it is to be used or the words "branch seal";

(ii) an official seal for use only in connection with the sealing of securities issued by the Company and such official seal shall be a facsimile of the common seal of the Company but shall in addition bear the word "securities".

## DIVIDENDS

49. Subject to the provisions of the Law, the Board may declare dividends in accordance with the respective rights of the members in such amount as the Board may determine.

50. Subject to the provisions of the Law, the Directors may pay interim dividends if it appears to them that they are justified. Profits will typically be expended wholly and exclusively to improve and extend public infrastructure and works for the good of the Public of the Island of Jersey.

51. Any dividend or other moneys payable in respect of a share may be paid by cheque sent by post to the registered address of the person entitled thereto and payment of the cheque shall be a good discharge to the Company.

52. No dividend or other moneys payable in respect of a share shall bear interest against the Company unless otherwise provided by the rights attached to the share.

## ACCOUNTS AND AUDIT

53. The Directors shall cause to be kept proper accounts of the Company for each accounting period to be prepared in accordance with generally accepted accounting principles in the Island of Jersey consistently applied and that such accounts shall be forwarded to the Minister not more than four months after the end of the period to which they relate. The accounts shall include an income and expenditure statement of the Company in respect of the applicable accounting period and shall include the balance sheet as at the end of that accounting period.

54. The Company shall at each annual general meeting appoint the Auditors to hold office from the conclusion of that meeting, until the conclusion of the next annual general meeting.

55. The accounts shall be audited by the Auditors and shall be accompanied by a report by the Auditors stating that the accounts and financial statements attached thereto have been examined in conjunction with the books and records of the Company and whether the Auditors have obtained all the explanations and information which they have required. The Auditors shall further report whether the accounts are in their opinion properly drawn up in accordance with such books and records and give a true and fair view of the affairs of the Company.

56. The Directors shall submit to the Minister in each year by such date as may be appointed by the Minister a budget of the Company's estimated capital expenditure and receipts and of revenue expenditure and income for the next financial year of the Company.

57. Such person or persons as may be designated by the Minister from time to time shall at any time during the office hours of the Company be entitled to inspect all accounting records or other books or documents of the Company and the Directors shall upon request procure production of the same. The Directors shall co-operate fully with the Comptroller and Auditor General, including enabling access to independently audited papers as appropriate.

## NOTICES

58. Any notice to be given to or by any person pursuant to these Articles shall be in writing except that a notice calling a meeting of the Directors need not be in writing.

59. The Company may give any notice to the States by sending it by post in a pre-paid envelope (care of The Greffier of the States) to the States Greffe, Morier House, St. Helier, Jersey JE1 1DD. The Company may give any notice to the Minister, the Ministerial Appointee or the Treasurer of the States by sending it by post in a pre-paid envelope to PO Box 353, Cyril Le Marquand House, St. Helier, Jersey JE4 8UL.

60. A member present, either in person or by proxy, at any meeting of the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

61. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

## WINDING UP

62. If the Company is wound up, the Company may, with the sanction of a special resolution and any other sanction required by the Law, divide the whole or any part of the assets of the Company among the members in specie and the liquidator or, where there is no liquidator, the Directors may, for that purpose,

value any assets and determine how the division shall be carried out as between the members or different classes of members, and with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

## INDEMNITY

63. In so far as the Law allows, every present or former officer of the Company shall be indemnified out of the assets of the Company against any loss or liability incurred by him by reason of being or having been such an officer. The Directors may without sanction of the Company in general meeting, authorise the purchase or maintenance by the Company for any officer or former officer of the Company of any such insurance as is permitted by the Law in respect of any liability which would otherwise attach to such officer or former officer.

**APPENDIX 3**

**The Protocol for Planning Within the Regeneration Delivery Structure and the Role of the Minister for Planning and Environment**

There are key planning roles for the Minister for Planning and Environment in the regeneration process. These are:

(1) To propose areas that will be designated as Regeneration Zones within the Island Plan process.

(2) The preparation and approval of Masterplans and Development Briefs for regeneration zones and sites within them.

(3) To consult with the Regeneration Steering Group in the preparation of Masterplans and Development Briefs.

(4) The determination role in respect of planning application submitted in respect of development proposals.

**1. To recommend areas for designation as Regeneration Zones**

The Minister for Planning and Environment is empowered under the Planning and Building (Jersey) Law 2002 to make plans and proposals for the development of land on the Island.

As part of this role, the Minister will identify and recommend to the States Assembly areas for designation as Regeneration Zones as part of the Island Plan process.

**2. Policy making role to create the Masterplan and Development Briefs for designated Regeneration Zones**

The Minister will also produce and approve plans and proposals relating to a Regeneration Zone and will consult with the Regeneration Steering Group. The Minister for Planning and Environment will approve the Masterplan for the Regeneration Zone.

Specific Development Briefs will be prepared and approved under Ministerial powers.

The Masterplan will then be used by the Regeneration Steering Group to direct more detailed work to formulate development proposals and planning applications.

The Minister for Planning and Environment will play no role in any commercial decisions as he is involved in decision making on any planning applications submitted.

**3. The Development Control process stage to secure planning consents**

Once the Regeneration Steering Group has received the approved Masterplan and Development Briefs, they will formulate detailed development proposals and planning applications.

These will be submitted to the Planning and Environment Department for determination. The Minister for Planning and Environment is responsible for all planning decisions.

He has the right to call in any specific applications for his own determination, direct them to planning panel or to allow officers to make delegated decisions.

Once in the planning development control process, there will be no further involvement of the Regeneration Steering Group or other political members as this is the sole responsibility of the Minister for Planning and Environment.

Any planning consents will be issued to The States of Jersey Development Company Limited for implementation.

**APPENDIX 4**

**Activities of the States of Jersey Development Company**
**(from the second DTZ review)**

| Stage | Tasks | Responsibility to date | Proposed Responsibility |
|---|---|---|---|
| **Planning Policy** | Setting the strategic framework and policy requirements | SoJ | SoJ |
| **Vision and Objectives** | Establishing the baseline, vision and objectives<br>Outlining real estate components<br>Establishing the urban context<br>Strategic fit with Local Development Framework | SoJ but blurred with WEB | SoJ |
| **Strategic Framework** | Physical, social and economic assessment | Not clear this was undertaken | SoJ |
| **Spatial Masterplan and Design Codes** | Scheme concept<br>Land use zoning<br>Urban design principles<br>Sustainability requirements<br>Site specific frameworks | SoJ, supplemented by WEB<br>Urban design not addressed at beginning | SoJ |
| **Community Engagement** | Establish feedback on Masterplan and Design Codes | Various, led by SoJ and WEB | SoJ |
| **Feasibility Study** | Financial analysis<br>Refine scheme concept | Not clear this was initially undertaken at the project level; individual schemes by WEB | SoJDC |
| **Implementation Plan** | Phasing<br>Procurement strategy<br>Planning strategy<br>Parcel specific design guidelines | WEB | SoJDC |
| **Design Guidelines** | Formulate detailed design guidelines for architects (to comply with Design Codes) | SoJ and WEB | SoJDC |
| **Architects Competition** | Optional stage but could establish overall signature design proposals to guide architects for individual development parcels | WEB | SoJDC |

| | | | |
|---|---|---|---|
| **Outline Planning Applications** | Individual parcel design parameters<br>Detailed applications for main infrastructure | WEB | SoJDC |
| **Community Engagement** | Establish feedback on Outline Planning Applications | SoJ, WEB and developers | SOJ and SoJDC |
| **Marketing** | Sustained campaign to build and maintain the Waterfront brand – to tie in with subsequent marketing of individual parcels by developers (see below) | WEB | SoJDC |
| **Infrastructure** | Design and tendering of procurement of contractors<br>Delivery of key infrastructure | WEB | SoJDC |
| **Developer Selection** | Developer procurement strategy<br>Marketing competitions<br>Short-listing<br>Selection of preferred developers *Phased across individual development parcels* | WEB | SoJDC |

| | | | |
|---|---|---|---|
| **Detailed Design** | Parcel specific designs (likely to be phased over life of project) *Phased across individual development parcels* | WEB | SoJDC in partnership with Developers where appropriate |
| **Reserved Matters Application/ Full Consents** | Phased applications in line with market release of individual parcels *Phased across individual development parcels* | WEB | |
| **Scheme Project Management** | Supervision of Masterplan level controls (design, use, estate management regime, etc.) | WEB | SoJDC |
| **Pre Construction** | Detailed delivery plans<br>Contract tendering | WEB | SoJDC in partnership with Developers where appropriate |
| **Project Management** | Detailed supervision of construction | WEB | |
| **Construction** | Construction of individual buildings on parcels | WEB | |
| **Marketing** | Marketing of individual buildings on parcels | WEB | |

| | | | |
|---|---|---|---|
| **Estate Management** | Agree regime<br>Ensure effective contributions from parcel developers | WEB | SoJDC |
| **Exit Strategy** | Agree strategy and policy for holding, transferring, selling assets once developed<br>Exit | WEB | SoJDC |

**APPENDIX 5**

**SoJDC treatment of assets (from the second DTZ Review)**

| | Interest | Strategy | Comments |
|---|---|---|---|
| **Investment Properties** | | | |
| Waterfront car park | 150 year lease | Transfer to JPH | States of Jersey policy to retain ownership of all public car parks. SoJDC should retain management until such time as Esplanade Quarter public car park is available for occupation (200 spaces required for decanting purposes). |
| Transportation Centre | 150 year lease | Transfer to JPH | |
| Waterfront Hotel | Turnover rent | Transfer to JPH | Could be sold subsequently into market subject to advice on timing of sale to maximise value , and protecting States position on subsequent reversion to higher value use if hotel fails (covenant currently restricts to hotel use). |
| Weighbridge Square | 150 year lease | Transfer to JPH | |
| JEC substation | 150 year lease | Transfer to JPH | |
| | | | |
| **Current Assets** | | | |
| Harbour Reach | 150 year lease | Retain in SoJDC | It may be expedient for SoJDC to retain this asset whilst it continues to occupy it, rather than transferring to JPH and leasing back. |
| **Land Holdings** | | | |
| Esplanade Quarter | 150 year lease | Retain in SoJDC | All land holdings should be retained until developed out to allow SoJDC to act as an effective interface between the States and the market, or to carry out its own development. |
| Castle Quay Phase 2 | Freehold | Retain in SoJDC | |
| Westwater | 150 year lease | Retain in SoJDC | |
| Zephyrus | Freehold | Retain in SoJDC | |

**APPENDIX 6**

**Draft Risk Policy Standard (from the second DTZ Review)**

## Introduction

This Policy Standard sets out the detailed requirements and minimum levels of achievement necessary to implement the risk management elements of the business risk imperative of SoJDC.

Taking and managing appropriate levels of risk is an integral part of all our business activities. Risk Management, performed rigorously and comprehensively, creates stability, indirectly contributes to profit and is a key element of reputation management.

## 1. Definitions

*Risk* is defined as events that may prevent achievement of the aims or goals of one or more key business or project stakeholders.

*Risk Management* is a systematic way of protecting business resources and income against losses so that the objectives of the SoJDC can be achieved without unnecessary interruption.

*Risk Assessment* is the systematic process of identifying and analysing risks.

## 2. Objective and Commitment

SoJDC is committed to implementing appropriate strategies and processes that identify, analyse and manage the risks associated with its activities as a means of minimising the impact of undesired and unexpected events on our business activities. It will therefore:

- identify business objectives that reflect the interests of all our stakeholders;
- identify the threats to the achievement of our business objectives;
- control and manage our exposure to risk by appropriate risk reduction and mitigation actions;
- regularly review our exposure to all forms of risk and reduce it as far as reasonably practicable or achievable;
- apply robust risk management processes as part of a wider management system;
- educate and train our staff as appropriate in risk management;
- regularly review the risks we face as a result of our business activities and of the business and economic climate in which we operate;

- identify cost-effective risk treatment options;
- identify and regularly measure key risk indicators and take appropriate action to reduce our risk exposure;
- regularly review our key risk controls to ensure that they remain relevant, robust and effective.

We will demonstrate achievement of the individual components of this Policy Standard through the preparation of documented procedures, the reporting and review of risk at all levels of the business and a monitoring and audit programme to ensure that the processes are being implemented.

## 3. Principles

We will carry out risk assessments regularly, record the findings and take appropriate management actions in a timely fashion. Risk reviews will specifically address business, operational, financial and reputational risks as well as risks covered by Health and Safety and Environmental Protection legislation.

In particular, the following activities will be undertaken:

- comprehensive risk assessment performed during proposal development;
- integrated contract and risk management processes;
- regular review and update of risk register;
- preparation of contingency plans for high risks;
- early identification of emerging risks and initiation of risk reduction or mitigation action.

Where appropriate, we may need to consider specialist advice for areas such as:

- health and safety;
- environmental protection;
- fire and security;
- disaster recovery;
- insurance;
- media/public relations.

## 4. Requirements

SoJDC is expected to have established systems and procedures which address the issues set out below in ways appropriate to the type of business being undertaken.

### 4.1 Processes

- Processes in place to identify the risks associated with SoJDC's activities, assess risks in terms of probability and consequence and evaluate reduction and mitigation measures and allocate ownership. Management of risk is a continuous process.

- Training to ensure all relevant management and staff understand and implement this Policy Standard.

### 4.2 Risk Assessment

- Risk assessments conducted for development projects, property acquisitions, new and existing contracts and contract changes. The assessments are to address potential risks to the expected benefits and to compliance with relevant legal requirements. These risk assessments form a key part of the formal approval process for the project.

- Risk assessments performed by competent personnel including, where appropriate, expertise from external advisors.

- Procedures established to update risk assessments at appropriate intervals and to review these assessments regularly.

### 4.3 Planning

- Management plans prepared which describe the actions to be taken to address any significant risks.

- Key risk assessments and management measures referenced in project approval documentation.

### 4.4 Management

- Assessed risks addressed by levels of management appropriate to the nature and magnitude of the risk and an overall view of the portfolio risk to the business is taken.

- Risks considered in the light of potential opportunities.

- Decisions documented and the resulting actions implemented.

- Appropriate and cost-efficient actions taken to manage and control risks.

- Specific measures in place to ensure continuing compliance with Health and Safety and Environmental Protection legislation.

### 4.5 Reporting

- Procedures to ensure that regular reports identifying key risks and risk management actions are prepared for each project, contract and business and that summary reports are submitted to the Board.

### 4.6 Audit & Review

- A programme of regular audits and reviews to ensure that the risk management procedures are being followed and that planned risk reduction/mitigation actions have been implemented.

- A regular review of the risk management policies and procedures to ensure that they continue to meet Corporate Governance requirements and the needs of the business.

## 5. Responsibility and Authority

This policy standard is issued under the authority of the Chief Executive of SoJDC. Responsibility for implementation of this policy standard is set out below.

- Responsibility for the achievement of this policy standard rests with the Executive Team.

- All staff are responsible for the ownership and undertaking of their risk management functions in accordance with this Policy Standard and for its implementation within the framework of SoJDC's procedures and directives.

## 6. Evidence of Compliance

To demonstrate compliance with this Policy Standard, the following documentation is to be available for audit:

- Risk Management Policy Standard (this document)

- Risk assessment of SoJDC activities

- Internal and external Audit reports

- Operating procedures

- Project Risk Management Plans and Risk Registers

- Project reviews and sign-off.

**APPENDIX 7**

**Protocols for the Transfer of assets to and from the States of Jersey Development Company ("SoJDC")**

## 1. Principles

1.1 The States of Jersey ("SoJ") is establishing SoJDC as a development company. The prime purpose of SoJDC is to deliver regeneration projects to provide the best socio-economic benefit to SoJ. This will be in the form of enhancing the value of existing properties through refurbishment, the development of new properties, infrastructure and public realm. Regeneration assets may be retained by the Public (SoJ) or disposed of to realise capital proceeds. Property held by either Jersey Property Holdings ("JPH") or SoJDC will be consolidated within the SoJ accounts.

Transfers to SoJDC

1.2 JPH carries assets on its balance sheet valued on their existing use basis.

1.3 For assets within a regeneration zone that could be transferred to SoJDC, JPH will commission an independent land residual valuation of those assets that are capable of being developed independent of an adopted masterplan.

1.4 Where land and property is transferred from JPH to SOJDC, the transfer value will be the market value of the property in its existing condition, with its existing development permissions.

1.5 However, where any land and property is within a Regeneration Zone and where the Regeneration Steering Group has identified a requirement for public realm and infrastructure, an independent assessment of value and costs will be commissioned by the Regeneration Steering Group ("RSG") with inputs agreed by JPH and SoJDC. This independent assessment will determine the land residual value of the sites within a particular regeneration zone under the adopted masterplan. This independently determined land residual value will be the transfer value of land from JPH to SoJDC.

1.6 There will need to be a political decision to progress with the regeneration scheme instead of disposing of certain land.

1.7 Any land to be transferred from JPH to SoJDC which is outside of a regeneration zone will be the subject of an independent valuation to determine market value commissioned by JPH. Such valuation will form the basis of the transfer value from JPH to SoJDC.

1.8 The land which forms the basis for a Regeneration Zone will generally comprise a combination of property currently in Public ownership and privately owned property which will be acquired by mutual agreement or by Compulsory Purchase at Market Value prior to development.

1.9 Where property is acquired by JPH of behalf of the Public under Compulsory Purchase powers for transfer to SoJDC, SoJDC will meet the acquisition costs inclusive of all fees and disbursements at the time of transfer.

1.10 In recognition of the potential additional new income from parish rates generated from any completed new developments in a regeneration zone, the respective Parish should be approached to take ownership of any new areas of public infrastructure and public realm which cannot reasonably be sold as part of a commercial development. In which case the liability for any ongoing maintenance would pass to the Parish.

1.11 In the event that a binding agreement cannot be reached with the respective Parish for the transfer of ownership of public realm and where the transfer value of assets by JPH to SoJDC has recognised and taken account of the costs of providing any exceptional items of public infrastructure and public realm (over and above that which might be already taken into account by the external valuer in assessing Market Value), the transfer back of completed public infrastructure and public realm by SoJDC to JPH shall be at a nominal sum.

1.12 Public realm and infrastructure transferred back to JPH must be accompanied by an appropriate revenue stream (e.g. alfresco income, car parking revenue and/or rental income) which provides sufficient income to meet the future property operating costs

**2. Accounting and Budgeting**

2.1 JPH and SoJDC are both within the States of Jersey group accounting boundary and are required to prepare accounts in accordance with UK GAAP, as interpreted by the Jersey Financial Reporting Manual (JFReM) and associated Financial Directions and procedures.

2.2 All assets belonging to JPH and SoJDC will be recorded in accordance with UK GAAP, interpreted by the JFReM and associated Financial Directions and procedures.

2.3 Accounting for the transfer of assets between the JPH and SoJDC will be undertaken within the group boundary in accordance with the JFReM and associated Financial Directions and procedures. The Treasurer will provide direction on the specific accounting entries for each transfer.

2.4 Where an asset is transferred from JPH for the purpose of development and/or regeneration under paragraph 1.5, above, this is not intended to result in a loss of income or charge against the JPH budget unless budget has been provided for this purpose.

2.5 Where an asset is transferred from a States trading operation for the purpose of development and/or regeneration under paragraph 1.5, above, it is not intended to financially disadvantage that operation.

**3. Detailed Protocols**

3.1 Detailed protocols will be prepared for the transfer of assets relating to individual schemes and all schemes will be subject to development agreements in accordance with all the principles set out above.

3.2 The Minister for Treasury and Resources will consider all of the principles set out above including detailed protocols and development agreements and the financial obligations thereto before any scheme is approved.

APPENDIX 8

# States of Jersey

## A Review of Proposals for The States of Jersey Development Company

**Confidential**

DTZ
125 Old Broad Street
London
EC2N 2BQ

May 2009

# Contents

## 1. Scope of Work and Methodology

1.1 The Chief Executive of the States of Jersey (SoJ) has instructed DTZ to carry out an independent external review of the proposed establishment of the States of Jersey Development Company Ltd (SoJDC) relative to the other structures that might be available. The terms of reference of this review have been agreed as follows:

- To review the report proposing the establishment of SoJDC and provide comments on the arguments used to justify the recommended structure.
- To identify alternative structures and provide a detailed analysis of the strengths and weaknesses of each in comparison to the proposed SoJDC.
- To carry out an analysis of the proposed creation of SoJDC in relation to extending the role and remit of the Waterfront Enterprise Board (WEB). During the course of our advice, proposals have been developed such that SoJDC will include the activities and assets of WEB.
- Subsequently, we have been asked to consider the JPH paper which provides initial recommendations on the basis upon which assets will be transferred into SoJDC.

1.2 DTZ has undertaken a high level review based on the papers provided and our assessment of the appropriate alternative structures, principally from our knowledge of structures used in the UK. Legal and tax advice has not been sought or included. In order to deliver our advice, DTZ has undertaken the following workstreams:

- Stage One – reviewing the SoJ objectives that any new structure should contribute towards and providing our assessment of risk, the basis of asset transfer and overage.
- Stage Two – identifying alternative partnership models and structures that could be available to SoJ and establishing a framework for evaluating these approaches and structures.
- Stage Three – drawing conclusions from the evaluation in the form of strengths and weaknesses of the alternative structures relative to the objectives set out in Stage One.
- Stage Four – recommendations including a critique of the proposals for SoJDC having regard to the alternatives and the arguments used in the proposal paper to justify the recommended structure; this critique will also assess the potential to extend the role and remit of WEB.

1.3 During the course of our reporting we have identified and discussed certain issues such as the extent of risk that SoJDC will bear and the treatment of asset value at transfer where we considered the proposals needed clarification or amendment. We have identified these issues within this report together with changes adopted.

## 2. Establishing and Prioritising SoJ's Objectives

2.1 The Corporate Services Scrutiny Panel established criteria in its assessment of the original proposals for the establishment of the Jersey Enterprise Board. An important theme from this analysis was the need for clear objectives.

2.2 There are multiple and complex objectives for a new regeneration structure within Jersey. The over-arching objective is stated in the brief to DTZ as being:

> **"To ensure that effective regeneration takes place and to encourage the provision of low cost and other housing. It may also have a role to play in major infrastructure projects."**

2.3 The first draft of the SoJDC proposal paper also included implicit reference to the objectives (for example through reference to the rationale and benefits of the proposed structure). Notwithstanding the clear objective stated in the instructions to DTZ and the implied objectives in the SoJDC proposal paper, we considered that it would be helpful for the proposal paper itself to set out clear objectives as this was an area of uncertainty coming out of the Scrutiny Committee. The revised SoJDC proposal paper now includes a clearer definition of the roles of SoJDC and its objectives which are stated to be:

- To ensure the primacy of SoJ in the governance of regeneration policy in Jersey and any associated property development agency
- To ensure the effective participation of the appropriate Scrutiny Panel in effective oversight of such governance
- To enable a consistent and co-ordinated Island-wide approach to regeneration which aligns with the current and future requirements of the Island
- To deliver a structure which is able to work with the private sector whilst protecting SoJ's interests
- To ensure a clear division of responsibilities between strategic planning, policy, project management and delivery.

2.4 Based on the contents of the proposal paper, the strategic questions previously posed by the Scrutiny Committee and best practice from other relevant examples, we consider that the objectives for the SoJDC structure fall into three categories:

- The need to deliver regeneration and policy objectives including housing and infrastructure.
- The need to create a structure which optimises the socio-economic, financial and market considerations.
- The need to optimise risk to SoJ and for the structure to protect the public interest.

2.5 Against this background, we have interpreted the following objectives for the new structure:

**Regeneration and Planning Policy Objectives**

- To enable a consistent and coordinated island wide approach to regeneration which align with the current and future needs of the Island.
- To consolidate the current activities of the WEB in order to deliver transformation at the St Helier waterfront and other regeneration zones.
- To establish and coordinate development aspirations through an Island wide strategic regeneration framework.
- To bring surplus SoJ land and buildings into effective use.
- To provide clear accountability and separation between SoJ's policy objectives and the delivery.
- To create a strong policy framework and design guidance that drives quality standards into the development process.
- To ensure a balance between physical, social, economic, financial and environmental objectives.

2.6 These objectives point to the need for a structure which coordinates and raises the profile of regeneration on the island and which is closely aligned to policy and focussed on delivery. It will be necessary to agree where CPO powers sit within the structure. The structure will need activities to be separated and be sufficiently flexible to balance different objectives.

**Market and Financial Objectives**

- To deliver a structure which provides value for money to SoJ.
- To ensure development schemes being promoted are financially viable and to create conditions that will attract significant and long term private sector finance.
- To facilitate the assembly of public and private land required to facilitate development.
- To ensure that the pre-development stages of the regeneration process can be funded.
- To ensure that SoJ benefits from development profits through the distribution of a dividend.
- To use private sector expertise, where appropriate, and private sector capital.
- Where appropriate, to transfer risk to the private sector.
- To unlock economies of scale throughout the development process.

2.7 These objectives mean that the structure will need to bring forward schemes which optimise value. Schemes may need "pump priming" by the new vehicle where delivery (for example phasing or delivery of quality design) is critical.

**Legal and Governance Objectives**

- To ensure a clear division of responsibilities between SoJ policy, strategic planning, project definition and delivery.
- To establish a structure which has appropriate governance, accountability and is vires.
- To ensure the delivery of best value and absolute transparency and accountability to SoJ throughout the development process.
- To enable SoJ to receive an appropriate fair value for its sites at transfer into SoJDC.
- To ensure that there is an appropriate exit strategy for SoJ when required.

2.8 These legal and governance objectives require a structure that is transparent and which is defensible both legally and in being able to demonstrate additional value. Best value, in the context of SoJ's objectives and the specific circumstances prevailing in Jersey, and the mitigation of risk will be critical criteria in ensuring that this set of objectives is met.

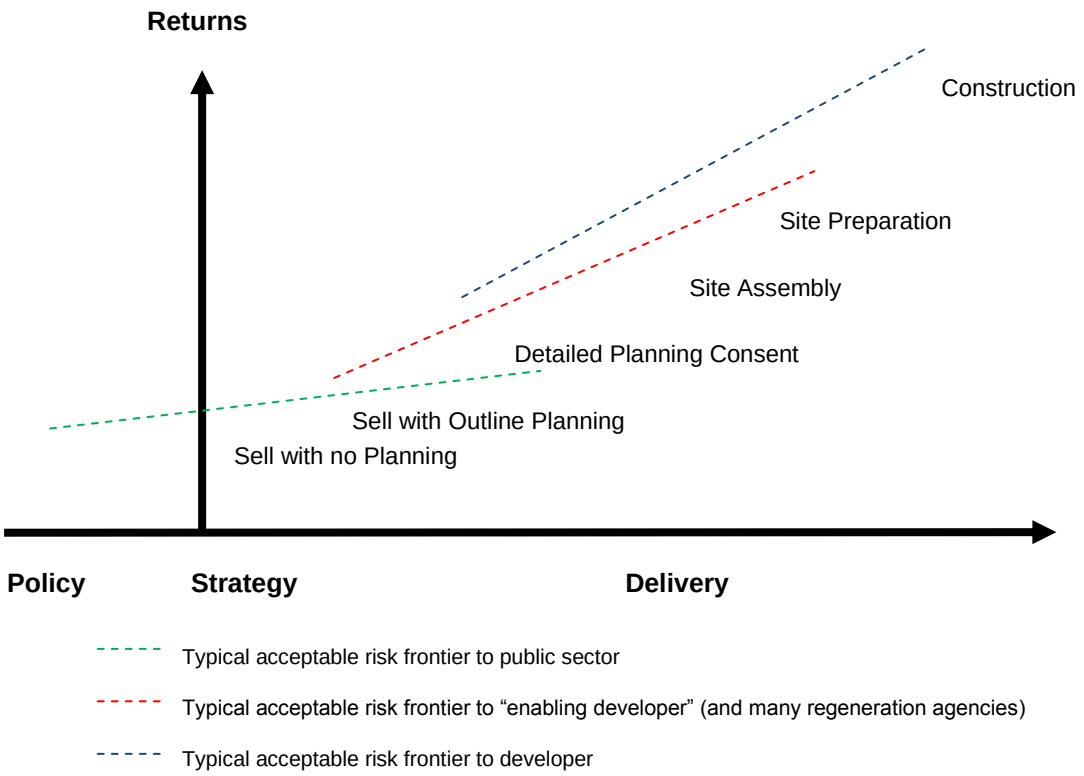
2.9 To avoid any perception of a conflict of interest, the statutory roles of planning policy making and the determination of planning applications should be separated from the role envisaged for SoJDC and its delivery partners.

2.10 We include within this report our observations and recommendations on the proposals in relation to the mechanism for SoJ to receive market value when assets are transferred to it.

**Risk**

2.11 Many of the objectives listed above relate to the appropriate assessment and management of risk. An overarching policy objective which we believe should be clarified upfront is the extent to which SoJ wishes to bear market, financial and development risk. There is a clear relationship between the returns that are possible and the associated risks. An optimum structure should therefore balance risk and return rather than *de facto* delivering the highest returns. In simple terms the relationship between the amount of pre-sale delivery activities and returns can be expressed as in the diagram overleaf, against which we have plotted the typical "risk frontier" that will be acceptable to participants in the development process:

**Diagram 1: Risk Transfer**




2.12 In our experience, the public sector in the UK is generally reluctant (or in some cases statutorily unable) to bear significant development and market risks other than where it has a specific mandate to deliver development or regeneration outputs (as has been the case, for example, in various stages in the evolution of the UK's Homes and Communities Agency and with some of the UK's Regional Development Agencies). There are of course also examples of where the public sector has borne the risks of site assembly and site preparation – typically with regeneration agencies that have intervened in situations of market failure where the private sector has not been prepared to engage.

2.13 Development vehicles and partnerships, in the broad form proposed for SoJDC, allow the public sector to take progressively higher risks to take more control over the form and timing of delivery and in expectation of higher returns. A well structured development vehicle will allow the public sector to participate with private sector finance and resources to allow it to have more control (and potentially more return albeit at a higher risk) in the development and delivery process. Although we will examine examples where the public sector has participated in 50% of the risk, the principle of limiting the public sector's exposure to excessive market and project risk should still be an important objective of the new structure. There are some cases where the public sector will actively engage in direct development beyond the site assembly and site preparation stages such as Waterfront Edinburgh.

2.14 In our draft report and advice, we recommended that the project delivery stage should involve private sector delivery partners who might typically bear at least 50% of the direct project risks

with SoJ contributing land assets as part of its equity contribution. We observed that the proposal paper envisaged that SoJDC would have **the option** either to engage with the private sector or to retain all of the development risk itself by undertaking direct development without private sector involvement. In our draft report, we considered that this would impose excessive risk on SoJDC and we recommended that SoJDC should share the risks more equally with the private sector except for projects which have exceptional circumstances. In discussions with JPH and WEB, we have subsequently had regard to:

- The processes that are now proposed to be put in place in order to mitigate risk, as described in the proposal paper and the MOU.
- The fact that SoJ controls the majority of strategic land on the island and so can control the supply of this land and thus manage risk.
- The specific circumstance prevailing in Jersey, most notably the fact that there are very few potential development partners which have both a substantial balance sheet and significant experience on the island. Also, the need to safeguard the delivery of major infrastructure projects.

2.15 The current proposals still envisage SoJDC bearing greater than 50% of risk including pre development, planning and construction. We have discussed this with officers in JPH and WEB and have concluded:

- The role of developer that SoJDC will assume carries risks that cannot be completely eliminated. The risk mitigation processes envisaged in the proposal paper and MOU do however combine to help mitigate risks to SoJ.
- The fact that SoJ controls the majority of the strategic land on the island is an additional protection on the assumption that SoJ and SoJDC agree to coordinate the supply of land in the future.
- We believe that there could be potential to use the creation of SoJDC to challenge the lack of a substantial private sector development capacity on the island by creating an asset backed vehicle which would create critical mass to challenge some of the barriers to entry. In this way, SoJDC could be used to attract developer appetite beyond the existing participants. We have however been advised by WEB that this is not a key objective and, in these circumstances, the continued lack of private sector development capacity is an influencing factor that tends to support the proposal to retain development and risk on the SoJ balance sheet.

2.16 Against this background and having regard to the circumstances set out above, and on the assumption that the risk mitigation processes envisaged in the proposal paper and the MOU, we consider that there is a case to support the proposition that SoJDC should retain more risk than would be typical in the UK.

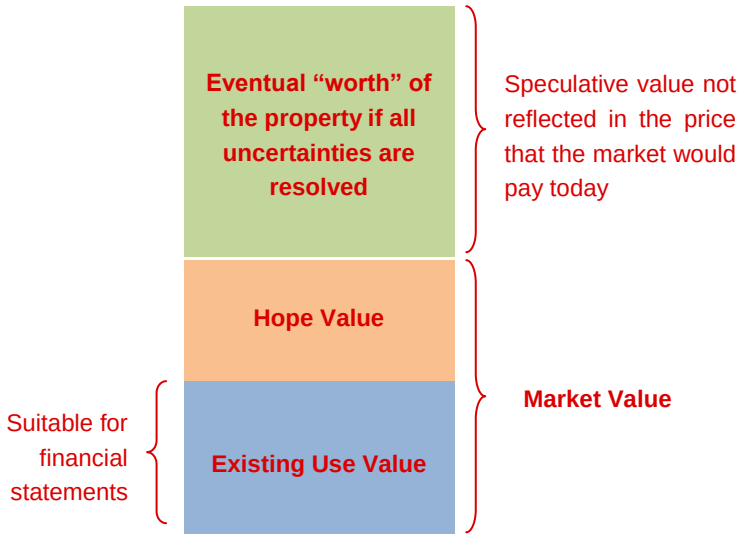
**Asset Pricing at Transfer**

2.17 Irrespective of the structure adopted, SoJ will need to consider at what point, and on what basis, the underlying value of the assets should be received. We have read the JPH paper

recommending the basis of asset transfer and concur with its conclusions and we understand that it is now proposed that it will be the standing presumption that assets will transfer at Market Value (as described below) and that any exception to this will be at the discretion of the Minister for Treasury and Resources. The key departure from the principle of Market Value is envisaged to be the where there is a significant cost of providing upfront infrastructure costs and public realm. As most of the scheme's are envisaged to be in a Regeneration Zone, and in turn most regeneration projects require upfront infrastructure and/or public realm, it is likely in practice that many schemes will fall into the category of sites which require the Minister to exercise its discretion.

2.18 To assist in establishing the principles, we have illustrated below the component parts of an asset's value. This is not to scale as the proportion of each component will vary between assets and indeed, for any particular asset, will change over time depending on circumstances such as development certainty.

**Diagram 2: Segmenting current and future value**




2.19 DTZ considers that it would be appropriate, as a general principle, for SoJDC to pay **Market Value at the date of transfer**. As opposed to Existing Use Value, Market Value includes such expectation of a change in the circumstances of the property that buyers generally in the market would reflect in the price. The Royal Institution of Chartered Surveyors (RICS) gives examples of circumstances where hope value would impact on Market Value as being "the prospect of development where there is no current permission for that development; and the prospect of...merger with another property."

2.20 We consider that it is logical that properties that have been declared **surplus** and which are transferring from JPH to SoJDC for **development** should transfer at a price that includes hope value (to the extent that the market generally would reflect future prospects, as per the definition of Market Value) rather than being constrained to the definition of Existing Use Value. It should be further noted that the RICS Valuation Standards states that Existing Use Value should only be used for valuing property that is owner occupied for inclusion in financial statements.

2.21 The fact that the transfer will be to a company owned by SoJ does not imply to DTZ that Market Value should not be paid. In the UK, the general rule is that transfers between Departments are at Market Value. HM Treasury guidance (Managing Public Money, February 2009) states that "public sector organisations may transfer assets among themselves without placing the property on the open market, provided they do so at market prices." We consider that transfer at Market Value will protect SoJ in the event of a catastrophic failure in a project (so that SoJ will at least have received asset value even if it does not receive development profit) and it will impose a discipline on SoJDC so that its focus is on maximising and unlocking the latent development value over and above the Market Value. In this way, separating asset value receivable at transfer from development profit receivable after development will be an important mechanism for SoJ controlling its risk.

2.22 In the event of any regeneration projects it might be appropriate, by exception, for assets to be transferred at below Market Value. This is the basis of the approach set out in the proposal paper. This should be a transparent decision made on a case by case basis having regard to the regeneration benefits that might accrue. In the UK for example, public bodies have the opportunity under the General Disposals Consent 2003 to dispose at less than best consideration (capped at £2m "loss") in cases where it can demonstrate "social and economic wellbeing." We consider that if there are any regeneration projects in Jersey that require transfer to SoJDC at less than Market Value then such a disposal would need to be an exception and subject to appropriate approvals.

2.23 As stated above, we understand that it is now agreed that the assets will transfer at Market Value other than by exception at the discretion of the Minister for Treasury and Resources. This enables the Minister to consider for example whether infrastructure and public realm should be paid for in lieu of asset value.

**Overage and Dividends**

2.24 Adopting Market Value (and therefore such hope value and marriage value that would be payable in the market) does not infer that development profits will not be available to SoJDC. Hope value is generally at a discount to the eventual "worth" of the property reflecting uncertainties such as the prospects of obtaining planning permission and the conditions that will attach to any planning permission. The potential for uplifts in value by resolving the development uncertainties is illustrated by the green segment in diagram 2.

2.25 It will therefore be appropriate for SoJ to share in development profits created by SoJDC having regard to the risks, capital and other resources incurred by SoJDC and its delivery partners. Clearly any private sector partner will require a profit commensurate with these costs and risks and these will need to be paid as a priority ahead of any overage. The share of overage/net profit would be set by the Minister for Treasury and Resources. The amount due from SoJDC could be calculated and become payable on a project by project basis or through an annual corporate dividend.

2.26 We consider that there needs to be a clear policy under which SoJDC distributes dividends back to SoJ. The precise dividend policy has not yet been established but our interim observations are that this could either be a pre-determined and fixed dividend (provides apparent certainty but relies on an accurate projection of the future profitability of SoJDC), or it could be based on a fixed "tariff" system based on outputs (this has the advantage of clarity

but it is inflexible) or it could be based on a "business plan" approach through which SoJDC prepares a five yearly rolling business plan which includes annual budgets against which dividends can be drawn (having the advantage of more flexibility in the event that cash is needed to be retained within SoJDC for future investment - but at the expense of certainty). In any event we consider that an "open book" approach would improve accountability without any significant loss of operational integrity to SoJDC.

**Summary**

2.27 We have identified three primary objectives of SoJ:

- To enable a consistent and coordinated island wide approach to regeneration which align with the current and future needs of the Island.
- To deliver a structure which is attractive to the private sector whilst protecting SoJ's interests.
- To ensure a clear division of responsibilities between policy, strategic planning, project definition and delivery.

2.28 Additional objectives of the States have been identified within three categories: regeneration and policy objectives; market and financial objectives; and legal and governance objectives.

2.29 A vision statement would help to clarify the over-arching purpose of SoJDC and the associated structures to the multiple stakeholders.

2.30 The proposals envisage SoJDC bearing more risk than we would consider typical compared to the public sector's exposure in similar vehicles in the UK, but for the reasons stated, we do think that these circumstances combine to provide a case for SoJDC to retain this risk particularly when it performs the role of developer. Clearly, SoJ will need to be satisfied that it is aware of the risks that SoJDC will bear and that the proposed mitigation risks adequately reflect the risk profile that it is acceptable to the States.

2.31 We consider that properties should be transferred into SoJDC at Market Value, the definition of which includes such "hope value" that the market generally would attribute based on the circumstances of the property at transfer. We understand that this has been accepted as the general presumption with any exceptions being a Ministerial decision.

## 3. Alternative structures and evaluation of different options

3.1 We first identify the alternative structures that should be considered, followed by a commentary on the appropriate evaluation criteria.

**Alternative Structures**

3.2 There is no single definition or type of partnership solution involving public assets. Most previous examples in the UK have addressed regeneration aims and have been set up in a variety of forms such as straight land sales, Development Agreements and Joint Venture Agreements, regeneration vehicles such as Urban Regeneration Companies and wider Public Private Partnerships, for example the Property Regeneration Partnership model introduced by BWB, and regeneration agencies One North East and EMDA.

3.3 More recently the UK Government has encouraged local authorities to consider applying the principles of the regional PRP model in Local Asset-Backed Vehicles (LABVs) in which the council inject both operational/non operational and development assets into the vehicle, and the private sector injects the equivalent equity. There is the capability to borrow against this equity to invest in new development and improved assets, with profits being shared.

3.4 Without a single, centrally approved vehicle or primary legislation there have been numerous examples of potential structures from within the experience of the UK alone. Appendix 1 lists over 30 different structures which have been used to deliver regeneration and service transformation. Each structure has different characteristics reflecting varying objectives and purposes.

3.5 Against this background, we have selected the following category of structures as being potentially available to SoJ and therefore requiring assessment. In short listing these structures, and in the subsequent analysis, we have not reflected any legal or tax consequences which may in practice change the assessment.

3.6 The alternative structures available to SoJ fall into three broad categories:

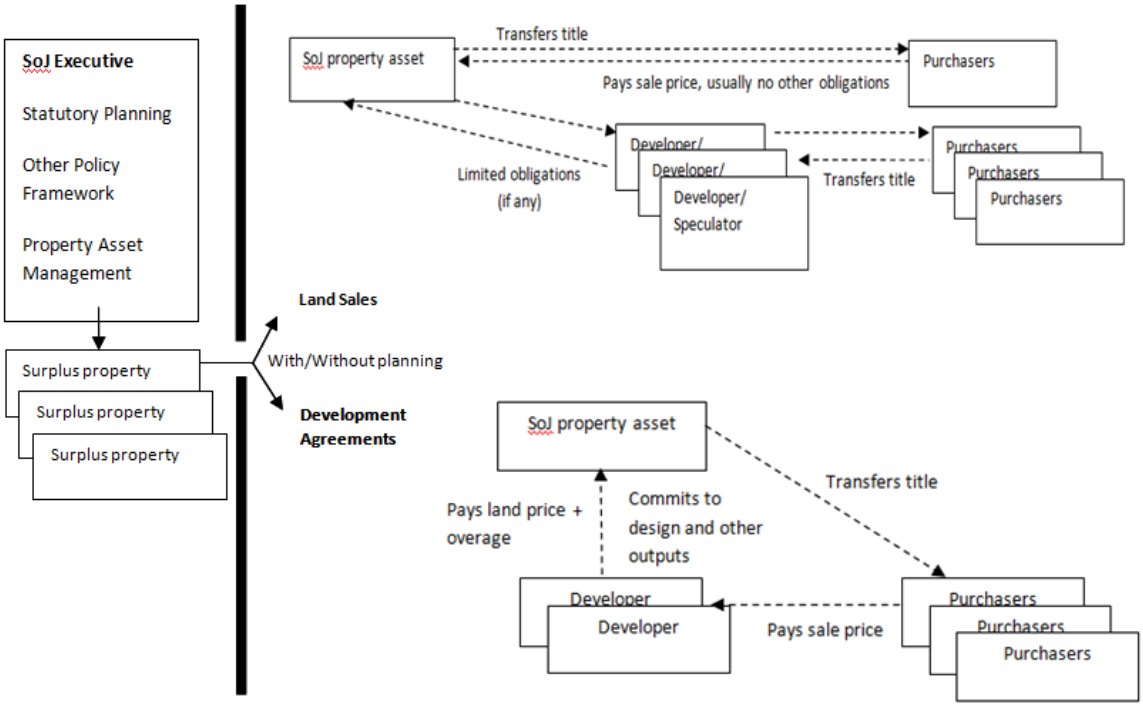
- A national programme of **individual land sales and/or development agreements**, for example the ongoing programme of sale of surplus NHS assets in the UK
- A leadership and coordinating role of delivering economic regeneration such as an **Urban Regeneration Company (URC) structure**, for example Sheffield One, or Urban Development Corporation (UDC).
- City or regional joint ventures with the private sector such as **Property Regeneration Partnerships and Local Asset Backed Vehicles** including City Development Companies. There are several recent or emerging examples including London Borough of Croydon and Blueprint (East Midlands Development Agency, English Partnerships and Igloo).

3.7 The characteristics of each approach are summarised overleaf together with examples of best practice which may be applicable to SoJ aspirations.

**Programme of individual land sales and/or development agreements**

3.8 Although a very familiar and basic concept, the key features of this approach are illustrated below as it would apply for SoJ for comparison with the alternative approaches and to demonstrate the rigid separation (bringing pros and cons) between policy and delivery:

**Diagram 3: A coordinated sales programme**




3.9 The key features of this approach are:

| | |
|---|---|
| **Scope of activities (SoJ)** | • Establish policy and property strategies<br>• Identifying surplus assets<br>• Obtain planning consent prior to sale where appropriate, or overage where sold without planning<br>• Maximise competition between purchasers<br>• Establishing some exemplar schemes through development agreements |

| | |
|---|---|
| **Objectives** | • Orderly disposal of assets<br>• Minimise risk to SoJ |
| **Structure** | • No formal structure for delivery activities<br>• Template sales agreements and development agreements would increase efficiencies |
| **Sources of assets** | • JPH would identify surplus assets and this approach only related to these surplus public assets |
| **Sources of funding** | • Private sector incurs all development costs |
| **Flexibility, Control and Risks** | • Phasing is supply led (release of surplus assets) rather than demand led<br>• SoJ has control of supply of assets but limited control of design beyond normal planning policies and through development agreements |
| **Exit Strategy** | • Ongoing disposal programme without a need for an exit strategy |
| **Best Practice Guidance** | *From NAO Audit of NHS Estates*<br>• Set clear targets for site disposals and exemplar standards<br>• Strengthen estate strategy to improve information in regard to disposal programme plans<br>• Establish whether there is a persistent concentration of sales completed at the year end and investigate the value for money provided by these sales<br>• Improve contact and liaison between estates team and planning officers (subject to vires constraints)<br>• Strengthen guidance on the best use of presale valuations<br>• Assess scope to complete some sales more quickly with potential to bring forward receipts and reduce sales costs<br>• Create a named clearance house arrangement to improve awareness and notification procedures |

**Urban Regeneration Company (URC) and Urban Development Corporation (UDC) structures**

3.10 URCs are a key delivery vehicle in terms of regeneration in the UK. They have been promoted by the Government in an attempt to achieve focussed and integrated regeneration for key towns and cities. They are independent companies established by the local authority and appropriate Regional Development Agency. They work alongside English Partnerships and other local stakeholders including employers, amenity groups and community

representatives. They are perceived as strong in terms of achieving co-ordination and co-operation through integrating different streams of regeneration initiatives.

3.11 They were created to champion and stimulate new investment into areas of economic decline and to co-ordinate plans for their regeneration and redevelopment. Their principal aim is to engage the private sector in a sustainable regeneration strategy, working within the context of a wider Strategic Regeneration Framework or masterplan which takes full account of the problems and opportunities for the whole area.

3.12 In terms of funding for URCs, they are responsible for co-ordinating plans and attracting new investment through the "purposeful and imaginative" promotion of their areas. They require prioritisation of public sector funding over a substantial period (10-15 years) in order to attract private investment at the levels required to bring about sustainable renewal. In most cases, URC's operating costs are funded by the key public sector organisations involved in them which in the UK are the relevant RDA, the Local Authority and EP.

3.13 Urban Development Corporations are similar development vehicles to URCs with a strong emphasis on physical regeneration. They were first established under the Local Government, Planning and Land Act 1980, but have since been revived through the UK Government's Sustainable Communities Plan of 2003 where the Government stated that it would seek to establish new mechanisms in growth areas to drive forward development. UDCs have since been established in Thurrock Thames Gateway, London Thames Gateway and West Northamptonshire.

3.14 The purpose of a UDC is to:

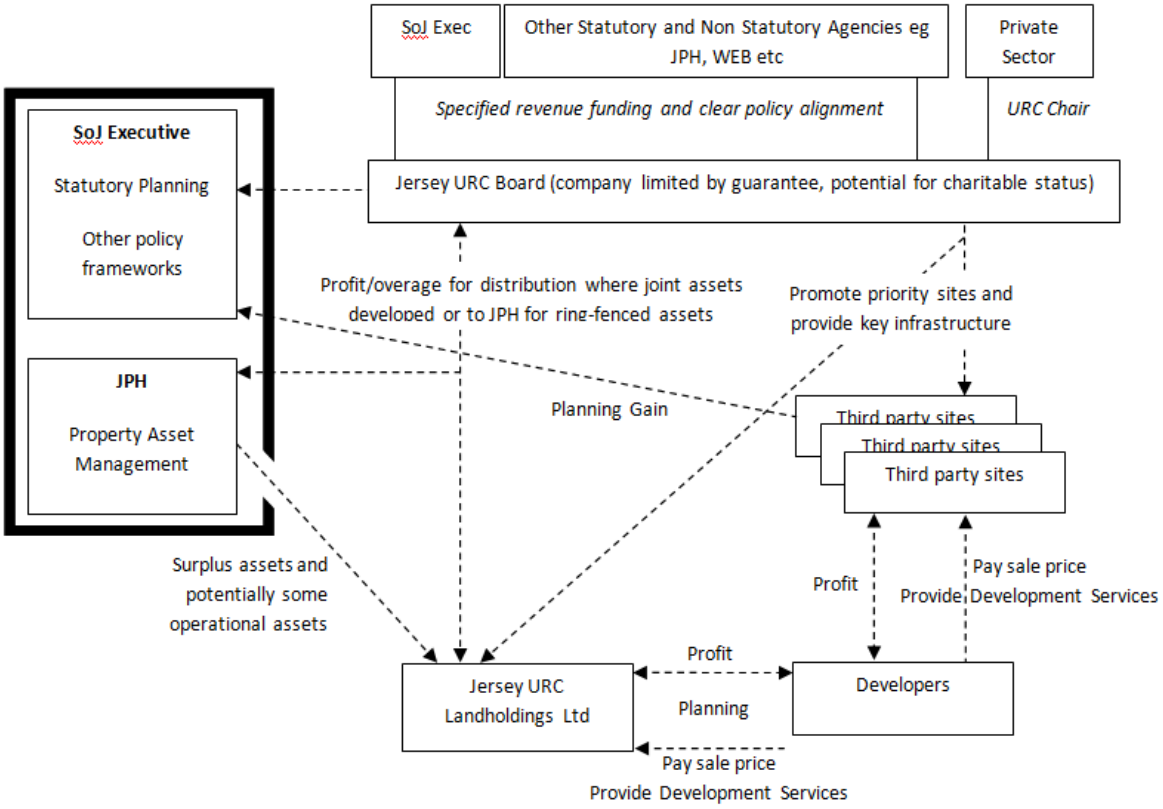
- Bring land and buildings into effective use
- Encourage the development of existing and new industry and commerce
- Create and attractive environment
- Ensure that housing and social facilities are available to encourage people to live and work in the area.

3.15 On this basis UDCs are able to acquire, hold, manage, reclaim and dispose of land and other property (including CPO powers), carry out building and other operations, seek to ensure the provision of water, electricity, gas, sewerage and other services and carry on any business or undertaking for the purpose of regenerating its area.

3.16 UDCs are also invested with development control powers for strategic planning applications in support of their objectives/purpose. Each UDC has a term set for seven to ten years with a review after five years. They are funded by Central Government (DCLG) and run by Boards, Members for which are appointed by the Secretary of State following advertisements through the media but with guaranteed local authority representation.

3.17 A URC/UDC structure as it might apply in Jersey is illustrated below:

**Diagram 4: A URC style structure**




3.18 The key features of this approach are:

| | |
|---|---|
| **Scope of activities** | • Integrated public support, both financial and policy<br>• Recognition in Jersey Development Plan<br>• Focus on prioritising projects, infrastructure and some delivery (eg to address market failure)<br>• URC Board potentially chaired by private sector representative<br>• Determine and respond to island wise priorities rather than being reactive |
| **Objectives** | • Strong link between island wide programmes – policy and delivery |
| **Structure** | • No formal structure for delivery activities |
| **Sources of assets** | • Land from SoJ (JPH)<br>• Third party land can be promoted for development |
| **Sources of funding** | • URCs do not have any additional resources or powers over and above those that the partners commit. Instead they tend to |

| | |
|---|---|
| | champion, influence, guide and stimulate investment into an area.<br>• All funding members of URC should commit at outset to specified revenue funding and indicative capital funding for say 3 years and a longer term commitment (10-15 years). |
| **Flexibility, Control and Risks** | • Business plan led |
| **Exit Strategy** | • Time limited body<br>• Agree exit strategy (long term and *force majeure*) at outset |
| **Best Practice Guidance** | *From URC Guidance and Qualification Criteria May 2004 UK Government*<br>• The need for a long term business plan<br>• The requirement for all funding members to sign up to the URC and the reporting framework<br>• Maintaining a three year rolling funding programme<br>• Establishment of a system of joint approvals for capital projects |

**Property Regeneration Partnerships and Local Asset Backed Vehicles**

3.19 Innovative Public Private Partnerships are increasingly being explored as a means to facilitating the renewal of large urban areas where other regeneration models are having, or likely to have, little impact.

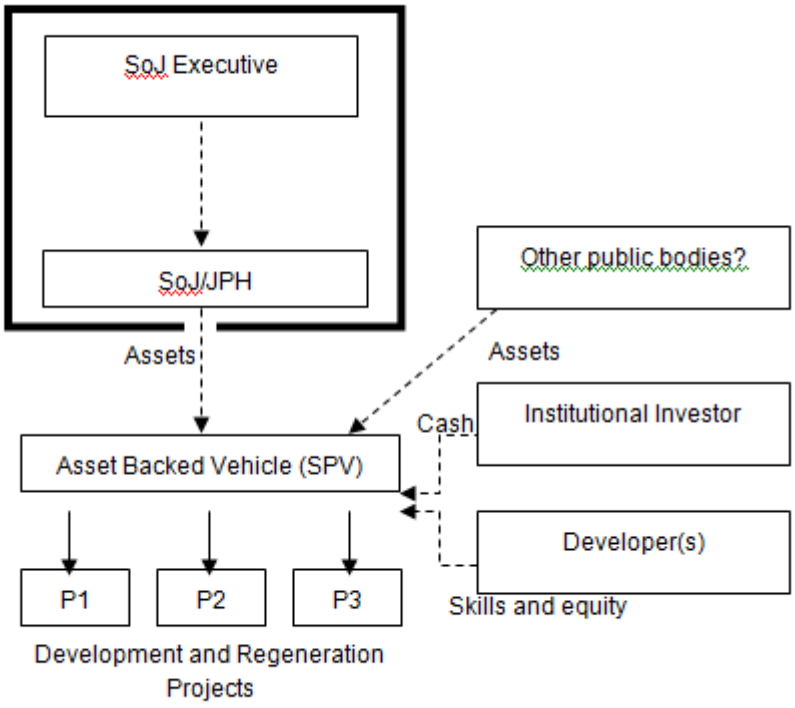
3.20 In the UK, the Housing Green Paper in July 2007 proposed the creation of Local Housing Companies (LHCs) – public private partnerships designed to boost house building rates. LHCs would see local authorities investing land in the development process and private developers and other investors providing funding to an equivalent amount. The joint venture will be jointly owned with a 50:50 split, or 51% by the private sector and 49% by the public with both organisations sharing the risk and benefits of the development process. The theory behind LHCs is that it will strengthen local authorities' position at the centre of the development process, provide a range of opportunities for investors and development partners and at the same time help to increase the supply and range of new homes available. Around 50% of all new homes built by LHCs will be for affordable sale and rent.

3.21 Local Asset Backed Vehicles (LABVs) are another example of a PPP. They were first set up by some RDAs and combined significant public investment with long-term commitment from the private sector. LABVs are organisations with equal public and private sector assets, whose purpose is to comprehensively regenerate an area. Public sector assets, such as land or property, are invested into the vehicle, with the private sector partner providing funding of an equivalent value. The LABV uses its assets to raise further funds from banks and other lenders in order to carry out regeneration projects. Existing examples of LABVs are as follows:

- Isis Waterside Regeneration – a joint venture between regulator British Waterways, the Igloo regeneration fund and developer Muse
- Blueprint – a partnership between East Midlands Development Agency, EP and the Igloo regeneration fund
- PxP – a partnership between regional development agency Advantage West Midlands, developer the Langtree Group and the Bank of Scotland
- Croydon Council Urban Regeneration Vehicle – involving four town centre sites including the council's town hall.

3.22 An asset backed structure as it might apply in Jersey is illustrated below:

**Diagram 5: An asset backed structure**




3.23 The key features of this approach are:

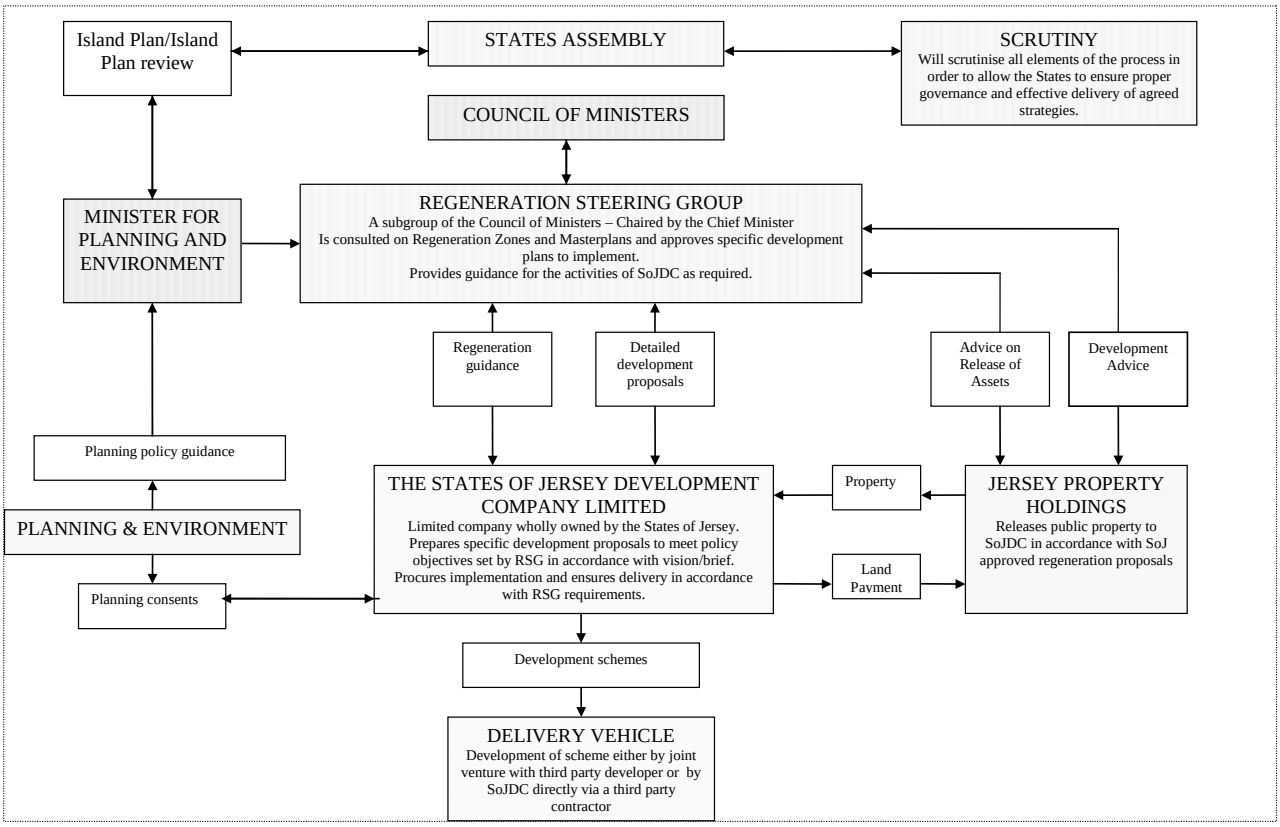
| | |
|---|---|
| **Scope of activities** | • SoJ establishes priorities and policy<br>• 50/50 SoJ and private sector vehicle<br>• Vehicle establishes property strategies and individual masterplans |

| | |
|---|---|
| | • Physical delivery led by private sector but with SoJ sharing in upside (and some project risk)<br>• Can kick start regeneration in areas of weak market appetite because of long term life and profit sharing<br>• Generates a commercial return for distribution between SoJ and private sector<br>• Strong control of deliverables including design and quality |
| **Objectives** | • Strong link between island wide programmes – policy and delivery<br>• Strong focus on delivery of regeneration – and quality<br>• Unlock additional investment |
| **Structure** | • Limited liability partnership<br>• 50% SoJ, 50% private sector<br>• Equal voting rights |
| **Sources of assets** | • Land from SoJ (JPH)<br>• Third party land can be acquired |
| **Sources of funding** | • Private sector "match funds" equivalent to value of public sector assets<br>• Able to leverage debt funding |
| **Flexibility, Control and Risks** | • Alignment between SoJ and private sector<br>• Equal sharing of risk<br>• Control shared between public and private sectors<br>• Flexible length of life |
| **Exit Strategy** | • Time limited body<br>• Agree exit strategy (long term and *force majeure*) at outset |
| **Best Practice Guidance** | • Secure political support<br>• Need to demonstrate additional value created by LABV<br>• Need for appropriate governance given it is a 50/50 vehicle<br>• Establish mechanisms to sustain stakeholder engagement<br>• Financial treatment of assets as they leave SoJ balance sheet<br>• Need for early wins |

## Proposed Structure for SoJDC and Related Agencies

3.24 The current proposal for SoJDC and associated agencies has been explained as illustrated below:

**Diagram 6: Current Proposals for SoJDC and other functions**




3.25 The key features of this approach are:

| | |
|---|---|
| **Scope of activities** | • Clear separation of roles:<br>○ Policy (Planning and Environment Division)<br>○ Vision and Strategy (RSG advised by RAB)<br>○ Scrutiny (SoJ Executive and Scrutiny Committee)<br>○ Ensure best value of property at transfer (JPH)<br>○ Strategic estates planning and delivery (JPH)<br>○ Delivery shared between SoJDC and private sector (although we note that SoJDC can still bear more than the 50% risk that we recommend) |

| | |
|---|---|
| **Objectives** | • Clear distinction and separation of roles to maintain independence of Planning and Environment, ownership and delivery.<br>• To ensure that effective regeneration takes place and to encourage the provision of low cost and other housing and major infrastructure projects. |
| **Structure** | • Separate functions between Planning and Environment Minister (policy and determination of planning applications); Regeneration Steering Group (strategy) and SoJDC (delivery).<br>• The role of the Planning and Environment Minister is set out in the protocol paper provided by JPH.<br>• In addition, SoJDC will be directed by a political group comprising RSG which will be chaired by the Chief Minister. The parameters within which SoJDC will operate are set out in the draft Memorandum of Understanding with the Minister for Treasury and Resources.<br>• SoJDC to be a limited company with a single share held on behalf of the Minister for Treasury |
| **Sources of assets** | • Surplus assets from JPH<br>• Third party land can be acquired if needed to facilitate development |
| **Sources of funding** | • Part funding from Treasury<br>• Part funding from private sector in joint ventures |
| **Flexibility, Control and Risks** | • Structure appears reasonable rigid but activities within each can be flexible<br>• MoU seeks to manage risks by establishing risk boundaries at each stage of development process<br>• DTZ has recommended that SoJ should seek a development partner that will take at least 50% of the risks. The proposals still envisage SoJDC bearing more than this risk. We acknowledge that the MoU has some measures that seeks to allow the public sector risks to be assessed and accepted/rejected for each development at key "gateway" stages.<br>• SoJ should receive Market Value for the sites at transfer into SoJDC in order to protect against a "double whammy" risk of losing underlying asset value and development profit in the event of a catastrophic project failure. Any exception to this will be at the discretion of the Minister for Treasury and Resources.<br>• RSG and SoJDC will be subject to independent scrutiny by the Public Accounts Committee and the Corporate Services Scrutiny Panel. |
| **Exit Strategy** | • SoJDC assets to be transferrable back to SoJ |

**Summary**

3.26 There is no single definition or type of partnership solution involving public assets. We have identified over 30 structures which have been used elsewhere.

3.27 Structures can be grouped into three broad categories which in a Jersey context are: a coordinated programme which raises the profile of JPH and which drives out efficiencies in the process rather than a formal re-alignment of structure; a URC style approach which would be an independent company which champions the development of SoJ's surplus assets and attracts new investment; and an asset backed vehicle with equal public and private sector assets, whose purpose is to comprehensively regenerate areas of Jersey.

3.28 SoJDC is closely aligned to an asset backed vehicle structure and shares many common themes. The principle of private sector engagement needs to be clarified.

# 4. Conclusions on the strengths and weaknesses of the alternative structures and the proposals for SoJDC

4.1 In the previous section we have provided the characteristics of each structure. We have sought to consider and address the following key questions:

- Does the structure give sufficient flexibility and control?
- Does the structure integrate policy objectives and help to deliver island wide priorities?
- Is there sufficient transparency of separation between policy and delivery?
- To what extent are activities focussed on promoting and preparing sites for development and to what extent on the physical delivery of development?
- Do the proposed structure and activities actively help to deliver housing and infrastructure?
- Is the approach reactive or proactive?
- Is funding for project delivery principally from the public resources, private sector or both?

4.2 This analysis forms the basis of the following table:

**Table 1: Evaluation Summary**

| | Control and flexibility? | Island wide policy integration? | Separation between policy and delivery? | Scope of activities? | Housing and infrastructure delivery? | Reactive or proactive? | Funding? |
|---|---|---|---|---|---|---|---|
| **Land Sales/ Dev Agreements** | ▪ Very flexible as sites dealt with individually | ▪ Scope for inefficiency | ▪ Yes | ▪ Planning and disposal only | ▪ Not addressed directly | ▪ Reactive | ▪ Private |
| **URC style structure** | ▪ Flexible approach with control over SoJ assets | ▪ Strong focus on coordinating an island wide approach | ▪ Yes | ▪ Some direct development (shared with private sector) but mainly policy led | ▪ A key aim would be to focus delivery on housing and infrastructure priorities | ▪ Proactive | ▪ Both but principally private sector for delivery |
| **Asset Backed Vehicle** | ▪ Strong control but potentially inflexible | ▪ Strong focus on coordinating an island wide approach | ▪ Yes but may be perception of conflict of interest | ▪ Direct development 50/50 with private sector | ▪ A key aim would be to focus delivery on housing and infrastructure priorities | ▪ Proactive | ▪ Shared 50/50 with private sector |
| **Proposed SoJDC** | ▪ Strong control on the assumption that our recommendation that Market Value is received at transfer is accepted | ▪ Strong focus on coordinating an island wide approach | ▪ Rigid separation between policy and determination of planning applications (Minister), strategy (RSG) and delivery (SoJDC) | ▪ DTZ recommends that that SoJDC engages with the private sector to balance risks and returns. | ▪ A key aim is to focus delivery on housing and infrastructure priorities | ▪ Proactive | ▪ SoJDC will, where appropriate, access private funding but will bear the majority of the development risk. |

**Key**

Likely to meet objectives of SoJDC
Partly meets or requires modification to meet minimum requirements of SoJDC
Unlikely to meet requirements of SoJDC

### Summary

4.3 We can draw the following strengths and weaknesses from this analysis:

- A coordinated land sale approach is straightforward and flexible but unlikely to meet SoJ objectives

- A URC style approach would add value by raising the profile of development and regeneration activities and clarifying policy objectives with a clear champion role. The strong asset base that could be provided by SoJ would probably be sub-optimised by this structure.

- An asset backed vehicle and the SoJDC approach have similar themes, particularly in that both structures separate policy from delivery and we consider that the SoJDC approach does this effectively. The LABV approach envisages a more side-by-side balance of risk between the public and private sectors whereas SoJDC involves less risk transfer for the reasons stated in this report.

## 5. Conclusions including a critique of the benefits stated in the proposal paper

5.1 In critiquing the arguments used to justify SoJDC in the proposal paper, we have:

- Reviewed each stated benefit by seeking to provide an evidence case to support the assertion; and identifying additional potential benefits.
- Reviewed the observations of the Scrutiny Committee to assess the extent to which the arguments provided in the proposal paper address the concerns raised.

**Benefits of the proposition used in the proposal paper**

5.2 We set out below each benefit used in the proposal paper together with our opinion of the extent to which these are evidenced.

**Table 2: Critique of stated benefits**

| **Proposed justification used in the proposal paper** | **Comments** (✓ positive ■ neutral × weak/uncertain) |
|---|---|
| A clear division of responsibilities for the control of policy determination, strategic planning, project definition and development implementation. | ✓ The proposed structure clearly separates policy, strategy and delivery with a transparent separation of planning approvals |
| A consistent and coordinated approach to regeneration; Island wide | ✓ We believe that this is a strong feature of the proposals for SoJDC and the other functions and that the new structure will be able to demonstrate a distinctive role which is adding value to the ambition of a consistent and coordinated approach.<br>✓ The separation of the functions will enable clear ownership of responsibilities to be established within a consistent framework.<br>✓ The proposed structure gives clear ownership and accountability and moves away from a fragmented approach. |
| Clearly defined objectives which align with the current and future needs of the Island | ✓ The structure and functions appear to be flexible to take account of future changes in policy.<br>✓ The structure would enable SoJ to align objectives of multiple stakeholders. |
| Absolute transparency and accountability to the States Assembly throughout the development process. | ✓ The structure clearly identifies that responsibility will be with SoJDC with accountability to RSG.<br>× As stated elsewhere, the scope of activities (primarily in relation to funding and risk) of SoJDC involve more risk than comparable structures in the UK. |

| | |
|---|---|
| | ▪ We anticipate that (once clarified) the roles, responsibilities and limitations of SoJDC will be established through Articles of Association. |
| The ability to assemble public and private land required to facilitate major property and infrastructure projects within the boundaries of current legislation | ✓ We consider this is clear although a legal opinion will clearly be required.<br>▪ We believe that the proposal paper should clarify whether funding for third party land purchase will be from SoJDC (and SoJ funds) or will include private funding.<br>▪ The proposal paper could helpfully include clarification on where CPO powers will sit within the structure. |
| The means of funding the design development stages of the regeneration process to a point at which projects may be granted planning consent and competitively tendered in the open market | ✓ Subject to the clarification referred to previously, we consider that this benefit is clearly established.<br>✓ A coordinated structure as proposed should also enable non-market facing projects to be progressed with cross funding from other profitable projects.<br>▪ A 50/50 structure would enable SoJ to benefit from development profits without taking 100% of the risk but this structure is not being pursued because of the lack of private sector development capacity in Jersey and other circumstances prevailing on the island. |
| By undertaking the redevelopment of States owned property via joint venture SPVs between Property Holdings and the Jersey Development Company, the States of Jersey maintains direct control of its assets | ✓ Taking forward direct development projects will by definition provide total control.<br>× A joint venture of at least 50% private sector equity is more normal in the UK and SoJ needs to be comfortable that the circumstance in Jersey support the proposal to retain most of the risk within SoJDC.<br>▪ |
| Further, if ownership of the developments is retained there are the following benefits:-<br>• the potential to create income generating assets;<br>• greater financial rewards for the Public of the Island from its land ownership and property assets;<br>• greater control over what is built in terms of use/size of units etc. and the design; and<br>• alternative land use for certain activities that may be necessary to diversify the Island's economy | ✓ We agree with these stated benefits, particularly the control of design (although recognising that this can be achieved through design codes, planning consents etc).<br>▪ We consider that the effects of risk need to be addressed as well as alternative opportunity costs of releasing these assets. |

5.3 We consider that the following additional benefits could be stated:

**Table 3: Additional benefits**

| Additional benefits | Comments |
|---|---|
| • Leveraging additional private sector capital | ▪ Could be demonstrated if SoJDC structured to accommodate this. |
| • Promoting a long term view | ▪ The structure could be established so that a private sector partner was incentivised by performance over a long period, say 10-20 years. |
| • Creating efficient procurement processes and demonstrating best value | ▪ Projects can be added to main partnership structure potentially without the need for separate procurement |
| • Enabling cross subsidy | ▪ Structure allows for non-market facing schemes to be cross funded by profitable schemes |
| • Economies of scale | ▪ Combining projects within the vehicle could bring economies and private sector debt at cheaper rates |
| • Risk Transfer | ▪ If structured appropriately, SoJ could benefit from the transfer of specified risks to the private sector. |

### Observations of the Scrutiny Panel

5.4 The Corporate Services Scrutiny Panel established criteria in its assessment of the original proposals for the establishment of the Jersey Enterprise Board. We have listed these below and provided n assessment of whether the current proposals address these criteria.

**Table 4: Responding to Scrutiny Panel observations**

| Scrutiny Panel Observation | Comments |
|---|---|
| • Are the objectives clearly set out? | ▪ On the basis of our comments earlier (on having a separate section on objectives) being accepted, we consider that the objectives will be clearly established. |
| • Does the vehicle structure, its remit and the terms of reference contribute to meeting the objectives relative to alternative structures? | ✓ Subject to clarification on the engagement with the private sector we consider that the proposals represent an appropriate balance between the benefits of an asset backed vehicle and a strong policy based approach typical of a URC. |
| • Is the role envisaged for the State in the proposed structure appropriate? | × We have stated our concerns about the risk of 100% |

| | |
|---|---|
| | development risk. |
| • What are the internal or external constraints which may preclude the success of the proposal? | ▪ Subject to discussion with JPH, we are not aware of any constraints. |
| • Is there a demonstrable benefit from the proposition? | ✓ The benefits listed above combine to provide added value. |

**Extending the role of the Waterfront Enterprise Board**

5.5 Given the perception problems referred to by the Scrutiny Panel, we agree that SoJDC must not be seen as "WEB by any other name." Equally, we do not believe that it would be helpful for WEB to operate in parallel with SoJDC as this would cause confusion in the market.

5.6 We are not aware of the legal implications but in principle we consider that it would be appropriate for WEB to be seen to be disbanded and SoJDC taking its place with a different remit. In practice it may be beneficial for WEB to become a subsidiary of SoJDC so that assets and projects can transfer but it would seem important that this is seen in the public consciousness as a fresh vehicle with a different agenda focussed on excellent design, purposeful delivery, long term value and built on the principles of partnership.

# Appendix 1

# Alternative Structures

## List of indicative alternative structures used in the UK to deliver regeneration and service transformation goals in conjunction with public or private partners

- LABV (Local Asset Backed Vehicles)
- PIP (Property Investment Partnerships)
- PPP (Public Private Partnership)
- UDC (Urban Development Companies)
- URC (Urban Development Company)
- LHC (Local Housing Company)
- CDC (City Development Company)
- LSP (Local Strategic Partnership)
- URC (Urban Regeneration Company)
- DA (Development Agreement)
- Planning Agreement (S106 TCPA 1990)
- UA111 (Unilateral Agreement Section 111 Local Government Act 1972)
- Well being (Section 2, Local Government Act 2000)
- LEP (Local Economic Partnership)
- HA (Highways Agreement s278 TCPA 1996)
- LIFT (Local Improvement Finance Trust)
- MAA (Multiple Area Agreement)
- LAA (Local Area Agreement)
- PFI (Private Finance Initiative)
- URV (Urban Regeneration Vehicle)
- PRP (Property Regeneration Partnership)
- IPPP (Institutional Public-Private Partnerships)
- EDC (Economic Development Companies)
- BID (Business Improvement District)
- LDA (Local Development Agencies)
- BSF (Building Schools for the Future)
- LEP (Local Education Partnerships)
- RSL (Registered Social Landlords)
- HMR (Housing Market Renewal)
- Pathfinders
- LAPF (Local Authority Property Fund)
- TIF (Tax Increment Finance)
- BRS (Business Rate Supplement Business Rate)
- CIL (Community Infrastructure Levy)