



BILLET D'ÉTAT

WEDNESDAY, 28th APRIL 2010

IX
2010

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B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **28th APRIL 2010**, immediately after the meeting already convened for that day, to consider the items contained in this Billet d'État which have been submitted for debate.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
9 April 2010

PROJET DE LOI

entitled

**THE COMPULSORY ACQUISITION OF LAND (GUERNSEY)
(AMENDMENT) LAW, 2010**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the Projet de Loi entitled “The Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

entitled

**THE CHARITIES AND NON PROFIT ORGANISATIONS (REGISTRATION)
(GUERNSEY AND ALDERNEY) (AMENDMENT) LAW, 2010**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the Projet de Loi entitled “The Charities and Non Profit Organisations (Registration) (Guernsey and Alderney) (Amendment) Law, 2010” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**THE ENVIRONMENTAL POLLUTION
(WASTE CONTROL AND DISPOSAL) ORDINANCE, 2010**

The States are asked to decide:-

III.- Whether they are of the opinion to approve the draft Ordinance entitled “The Environmental Pollution (Waste Control and Disposal) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE DISCLOSURE (BAILIWICK OF GUERNSEY)
(AMENDMENT) (NO. 2) ORDINANCE, 2010**

The States are asked to decide:-

IV.- Whether they are of the opinion to approve the draft Ordinance entitled “The Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE TERRORISM AND CRIME (BAILIWICK OF GUERNSEY)
(AMENDMENT) (NO. 2) ORDINANCE, 2010**

The States are asked to decide:-

V.- Whether they are of the opinion to approve the draft Ordinance entitled “The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE FORGERY AND COUNTERFEITING (BAILIWICK OF GUERNSEY)
LAW, 2006 (COMMENCEMENT) ORDINANCE, 2010**

The States are asked to decide:-

VI.- Whether they are of the opinion to approve the draft Ordinance entitled “The Forgery and Counterfeiting (Bailiwick of Guernsey) Law, 2006 (Commencement) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

THE PUBLIC HOLIDAYS (LIBERATION DAY IN 2010) ORDINANCE, 2010

The States are asked to decide:-

VII.- Whether they are of the opinion to approve the draft Ordinance entitled “The Public Holidays (Liberation Day in 2010) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

THE BAR (AMENDMENT) ORDINANCE, 2010

The States are asked to decide:-

VIII.- Whether they are of the opinion to approve the draft Ordinance entitled “The Bar (Amendment) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

SCRUTINY COMMITTEE

NEW MEMBER

The States are asked:-

IX.- To elect a sitting Member of the States as a member of the Scrutiny Committee to complete the unexpired portion of the term of office of Deputy M J Storey, who has resigned as a member of that Committee, namely to serve until May 2012 in accordance with Rule 7 of the Constitution and Operation of States Departments and Committees.

COMMERCE AND EMPLOYMENT DEPARTMENT

OFFSHORE RENEWABLE ENERGY – EXTENSION OF HEALTH AND SAFETY LEGISLATION INTO THE TERRITORIAL WATERS AROUND GUERNSEY

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

16th February 2010

Dear Sir

1. Executive Summary

- 1.1 The Report seeks authority from the States for the drafting of appropriate legislation to extend the Health and Safety at Work etc. (Guernsey) Law, 1979, and any provisions made under it ("the extension of the 1979 Law"), to persons carrying on work in the territorial waters around Guernsey, Herm and Jethou in connection with renewable energy projects.
- 1.2 The 1979 Law is an "enabling law" which provides for powers for the States to make provision by Ordinance for securing the health, safety and welfare of persons. The main relevant Ordinance is the Health and Safety at Work (General) (Guernsey) Ordinance, 1987. Therefore, the main practical effect of the extension of the Law would be that the general duties in relation to health and safety in the Health and Safety at Work (General) (Guernsey) Ordinance, 1987 would apply to persons working on tidal energy and wave power projects in Guernsey's territorial waters. It is also proposed to make provision for certain exemptions from such extension.
- 1.3 It is proposed that provisions extending the Law to such persons will form part of the primary legislation relating to renewable energy, which is being drafted following the States' approval of the Department's Report on this subject approved by the States in June 2009 (Article X of Billet d'État No. XVI of 2009).
- 1.4 The extension of the Law will enable the Department's Health and Safety inspectors to enforce appropriate health, safety and welfare standards in relation to work carried on in connection with renewable energy projects.

- 1.5 It is anticipated that a memorandum of understanding will be drafted between the Commerce and Employment Department, in relation to the role of the Health and Safety Executive, and the Public Services Department, in relation to the role of the Guernsey Harbour Authority, to address the interface between maritime health and safety legislation and legislation made under the 1979 Law. Further details of the relationship between maritime health and safety provisions and that under the 1979 Law are set out below.

2. Background - the need to extend the 1979 Law

- 2.1 It is recommended that the 1979 Law is extended to apply to persons carrying on work in connection with renewable energy in Guernsey's territorial waters as -
- a) Work carried out in connection with tidal energy projects and other renewable energy projects, including initial exploratory work, will involve activities giving rise to significant health and safety risks which will be exacerbated by them taking place in a marine environment -in particular heavy lifting and lowering of turbines when placing them on the seabed and carrying out routine maintenance and transferring of persons to turbines or service platforms; such risks are more akin to a major construction project (albeit at sea) than to the normal transit of ships;
 - b) Merchant Shipping health and safety legislation does not adequately address the risks arising from such work as opposed to risks arising from the normal transit of ships.
 - c) There is no express provision in the 1979 Law extending it to the territorial waters and the subject matter of the Law is such that it is not clear that the Law was intended to apply to the territorial waters e.g. a law applying to ships at sea or to fishing. Arguments could be made that the Law was intended to apply in the territorial waters as it defines premises as including vessels and hovercraft and installations resting on the seabed. However, the same references are contained in the U.K. Health and Safety at Work etc. Act 1974 and that Act has been extended expressly by order to the territorial sea in relation to certain activities including activities relating to renewable energy structures. Also, to date the 1979 Law has not been interpreted as applying to offshore activities such as fishing. There is no power in the 1979 Law, similar to that in the U.K. Act, to extend it by order; therefore, it is recommended that the Law is extended expressly by Projet de Loi.

3. Interface with Merchant Shipping health and safety legislation

- 3.1 The Merchant Shipping (Bailiwick of Guernsey) Law 2002, clearly applies, in view of its subject matter, to Guernsey's territorial waters. It contains provisions relating to health, safety and welfare of persons on ships. The

provisions are focussed in particular on the safe running of ships in transit e.g. crew facilities, loading, qualifications of crew. There are also powers under the Law to make further regulations relating to the safety of ships and persons on them; however, no such regulations are as yet proposed. There is also further U.K. merchant shipping legislation relating to safety and welfare of persons on ships which extends to the Bailiwick of Guernsey but much of this is outdated and does not address the specific risks arising from tidal energy operations. In view of this, it is considered that the risks arising from the construction and operation of tidal energy arrays are best addressed by the extension of the 1979 Law which will mean in effect that the general health and safety duties in the 1987 Ordinance, which are broadly drafted and adaptable to all work, will apply to work carried out in connection with tidal energy operations. This also reflects in broad terms the situation in the U.K, where the general health and safety duties have been extended to certain offshore operations; this includes most operations carried out in relation to oil and gas installations, wind turbines and other renewable energy structures.

- 3.2 It is also proposed to extend the provisions to work carried on in the territorial waters in connection with the exercise of functions under the renewable energy law and the 1979 Law as those carrying out such work will be at similar risk to those working on the tidal turbines; this means that persons inspecting tidal turbines and other related apparatus will also be subject to the general health and safety duties in the 1979 Ordinance.
- 3.3 It is proposed to make provision by Ordinance for exceptions from the extension of the 1979 Law; as tidal energy and other renewable energy systems are an emerging technology it is not yet known what all the relevant health and safety risks may be and this will allow flexibility in applying the current provisions in the 1987 Ordinance and any future relevant health and safety provision.
- 3.4 It is also proposed to make some exceptions so that persons carrying out work in connection with tidal energy operations but purely in relation to ships in transit can be exempted as risks arising from the normal sailing and navigation of a ship will be adequately covered by merchant shipping legislation. Finally, it is proposed that the legislation should state, to avoid any doubt, that provisions under the 1979 Law will not apply to persons on foreign ships which are simply in transit through Guernsey waters and not carrying out any renewable energy activities in those waters. This ensures a consistent approach with powers to provide for health and safety regulations in the Merchant Shipping Law which are subject to the same exception.

4. Further policy reasons for extending the 1979 Law

- 4.1 Tidal Turbines and other renewable energy systems will be constructed and, in some cases, assembled, onshore. Therefore, it seems entirely logical that the lowering into place and assembly of turbines at sea should be regulated in the same manner as any construction and assembly of turbines onshore. The

Contractors who will be involved in the construction of offshore renewable energy systems will be specialists; they will be familiar with working in difficult conditions and will be well versed in the safety management of similar projects.

- 4.2 It is likely that they will transport systems fabricated onshore by sea to their designated positions offshore.

5. Conclusion

- 5.1 Extending the Health and Safety at Work etc (Guernsey) Law 1979 and provisions made under it as proposed, will have the effect of extending well known and internationally accepted health and safety standards to activities carried on in connection with tidal turbines and other renewable energy devices at sea; such provisions will be enforced by professionally qualified health and safety inspectors.
- 5.2 The Department, therefore, recommends that the Health and Safety at Work etc. (Guernsey) Law 1979, be extended to persons carrying on work in the territorial waters in connection with renewable energy activities and to persons carrying out functions under the 1979 Law and the proposed renewable energy legislation in relation to such renewable energy activities subject to provision to provide for exceptions as set out in paragraphs 3.3 and 3.4.

6. Resource Implications

- 6.1 There is a strong likelihood that in the coming years, renewable energy systems will be constructed and deployed in the waters around Guernsey. Whilst these will be significant undertakings, the number of them will, in the foreseeable future, be limited and in the light of this it is not considered likely that there would be an increase in workload for the Department's Health and Safety Executive which would affect staffing in the foreseeable future.
- 6.2 There may be a need for the HSE to use specialist external advice but this is considered to be of a scale that can be accommodated within the normal annual budgetary process.

7. Consultation

- 7.1 The Law Officers Chambers have been consulted on these proposals and on the drafting of this Report.
- 7.2 The Harbour Master (Harbour Authority, Public Services Department) has been consulted in detail on the proposals. Furthermore, he is in agreement that a memorandum of understanding should be made which will set out an understanding of how maritime and onshore health and safety legislation will apply in various practical scenarios.

8. Recommendation

The Department recommends that the States:

- a) approves the proposal set out in this Report for the extension of the Health and Safety at Work etc. (Guernsey) Law 1979 and provisions made under it to apply to and in relation to persons carrying on work in the territorial waters of Guernsey in connection with –

- renewable energy activities, and
- the exercise of functions under the 1979 Law and the proposed renewable energy legislation where carried on in relation to such renewable energy activities,

subject to exemptions as set out in paragraphs 3.3 and 3.4 and to provision for the States to provide for further exemptions from the application of such provisions by Ordinance.

- b) direct the preparation of legislation to give effect to those proposals.

Yours faithfully

C S McNulty Bauer
Minister

(NB By a majority, the Policy Council supports the proposals.)

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

X.- Whether, after consideration of the Report dated 16th February, 2010, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the proposals set out in that Report for the extension of the Health and Safety at Work etc. (Guernsey) Law 1979 and provisions made under it to apply to and in relation to persons carrying on work in the territorial waters of Guernsey in connection with –
 - renewable energy activities, and
 - the exercise of functions under the 1979 Law and the proposed renewable energy legislation where carried on in relation to such renewable energy activities,

subject to exemptions as set out in paragraphs 3.3 and 3.4 and to provision for the States to provide for further exemptions from the application of such provisions by Ordinance.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

PUBLIC SERVICES DEPARTMENT

ST PETER PORT HARBOUR – REPAIRS TO NEW JETTY

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

23rd February 2010

Dear Sir

1. Executive Summary

- 1.1. The purpose of this Report is to inform the States of the final costs of the New Jetty repair project and to explain in detail the process which led the Department to arrive at this sum. In so doing the Department is fulfilling its obligation in respect of the States Resolution dated 26 November 2003 “to report back to the States of Deliberation on expenditure on the [New Jetty] project as soon as practicable after completion of the contract.”
- 1.2. The New Jetty project was approved by the States in 2001, with an agreed contract sum of approximately £2.6m. The aim of the project was to extend the life of the jetty by a further 25 years, by way of concrete repairs and the installation of the cathodic protection (CP) system. Work commenced on site in April 2002. As work progressed, it became clear that both the repair and CP elements of the contract had become much more complicated than originally envisaged.
- 1.3. The matter was brought back to the States in November 2003, when it was accepted that the Advisory and Finance Committee could be granted delegated authority to vote further credits to meet the increased costs of the project.
- 1.4. In April 2004, it was considered that external legal advisors would be required to defend the States against the contractor’s escalating claims and the risk of the project going to arbitration. Hammonds was subsequently appointed in May 2004 and a cross-departmental body, the New Jetty Supervisory Group was formed in May 2005 to manage the handling of the claims.
- 1.5. Arbitration proceedings commenced in October 2006 and following a series of high level discussions between the parties it was agreed to attempt to resolve the dispute by mediation. At this point the contractor was claiming in the order of

£27.3m, whereas the independent supervising engineer had valued the work at just £4.8m. In addition to the sum being claimed the contractor would be also be entitled to claim legal costs incurred in the event that it succeeded in part or all of its claim.

- 1.6. In July 2008 the dispute was settled at mediation for £9m, with the contractor agreeing to carry out the outstanding remedial works at its own cost. This settlement was described by the States' Counsel, a top London QC, as "the best achievable" result and was approved by the Public Services and Treasury and Resources Departments.
- 1.7. The repairs to the 'New' Jetty in St Peter Port Harbour were formally completed in June 2009 when the Engineer issued the Maintenance Certificate.

2. Previous States Reports

- 2.1. The original States Report for the repairs dated 9th August 2001 and the States Report seeking additional expenditure dated 22nd October 2003 are attached for information at Appendices 1 and 2.

3. Description of the Jetty and Works Carried Out

- 3.1. The New Jetty was originally completed in 1929 and forms the safe point of entry for sea traffic of both passenger and "Roll-On Roll-Off" freight and, as such, is vital to the Island's economy.
- 3.2. The structure comprises a reinforced concrete deck supported on reinforced concrete piles restrained by horizontal beams and diagonal bracing of similar construction. There is an under deck walkway which provides access at low water.
- 3.3. The jetty has an area of approximately 9,800 m² and contains over 3,000 structural elements including columns, slabs, beams and rakers. The jetty had been repaired on at least three previous occasions and the visual evidence for further repairs was overwhelming.
- 3.4. A number of intrusive investigations and repair trials were therefore carried out in the late 1990s. These helped quantify the extent of the repair works and also confirmed that repair was feasible. Although the work was conceptually simple the project was massively complicated by the lack of easy access to the majority of the structural elements, the twice daily tidal disruption to the working areas and the requirement that the New Jetty remained in operation throughout the works.
- 3.5. As noted there had been previous repairs to the jetty but, in many areas, these repairs had failed and the reinforcement beneath was once again corroding. To avoid a repetition of these problems the contract included the installation of

cathodic protection (CP) systems to protect the reinforcement. This protection is achieved by applying a small negative electrical potential to the reinforcement this potential being sufficient to prevent the movement of electrons required by the corrosion process. The name Cathodic Protection is derived from the fact that the reinforcement is negatively charged and becomes the cathode in the electric circuit.

- 3.6. The jetty was divided into three levels – submerged zone, tidal zone and splash zone. The tidal zone started at mid tide level with the submerged zone below mid tide. Each zone used a different method of applying the electro potential. The submerged zone used zinc anodes, which will be familiar to many boat owners, whereas the tidal and splash zones used transformers to apply the negative potential to the reinforcement, the only difference in the tidal and splash zone systems being in the design of the anodes.
- 3.7. The total area of concrete repaired was just under 9,000 m² and 1503 members (one member being a square of decking, each deck beam between columns, the columns themselves and the rakers) above the lower walkway had some works carried out on them.

4. Chronology of the Repair Contract

- 4.1. Following the decision of the States in August 2001 to proceed with the repairs the contract was duly awarded to Balvac Whitley Moran in November 2001. Scott Wilson Kirkpatrick was also appointed to act as the States' independent engineering consultant to supervise the contract.
- 4.2. The type of contract used for the project was a measurement contract rather than a fixed price contract. In this type of contract the contractor tenders against estimated quantities of work but is paid for the actual quantity carried out. For this project the estimates were based on investigations and trials carried out before the tender documents were prepared. The use of measurement contracts in civil engineering is conventional but in this case was even more necessary as the extent of work to be carried out would only be established as the concrete was broken away and contractors would not be prepared to tender if they were taking the risk that more work was required than indicated in the tender.
- 4.3. Work commenced on site in April 2002, and was focussed on the west side of the jetty. As damaged concrete was removed to examine the steel reinforcement enclosed within the elements the level of corrosion revealed was, in areas, more severe and more extensive than discovered and reported in the Defects Survey report of spring 2000.
- 4.4. There had been no external evidence of this high level of corrosion either during the pre-tender trials or during the visual inspections conducted prior to commencement of work.

4.5. In addition, the following discoveries were made:

- There were some instances of severe localised corrosion at the location of the original construction joints in both deck beams and support columns.
- A number of areas of high loading – not evidenced by the original drawings available - were discovered in the detailed structural analysis subsequently undertaken.

4.6. By the start of 2003, Scott Wilson Kirkpatrick reported to the Board of Administration that the project was considerably larger than originally envisaged. The amount of work to be carried out had increased significantly.

4.7. The Board wrote to the Advisory and Finance Committee on 8 January 2003 informing the Committee that it had become apparent that the condition of the jetty was far worse in certain areas than suggested by the initial engineering inspections, and that extra expenditure was likely, and that the Board had asked Scott Wilson Kirkpatrick to provide it with a more detailed survey of the work still to be done and to advise on the options available to it.

4.8. Scott Wilson Kirkpatrick reported to the Board in May 2003 that, although the scope of the repair works remained unchanged, increased quantities of work beyond what had been detailed in the tender documentation would be required and that the project would need to be extended until approximately December 2004. The revised extent of the repairs, the additional works, the sequencing of the works and the problems under the buildings would have a serious cost implication and the contractor would be due additional monies. Scott Wilson Kirkpatrick also recommended continuing with the repair contract as this remained the most cost-effective solution and the only way to maintain the integrity of the jetty to continue to support port operations safely.

4.9. Having considered this advice and also taken additional specialist legal advice on options to terminate the contract, the Board went back to the States with a Report in October 2003 advising that aborting the project was not a realistic option and recommending the States:

- (1) To delegate to the Advisory and Finance Committee the authority to vote credits of such further funding, in addition to the above sum of £3,282,473, to cover the increased costs of the above project, such sums to be charged as capital expenditure in the accounts of the Harbour of St Peter Port; and
- (2) To instruct the Board of Administration to report back to the States of Deliberation on expenditure on the above project as soon as practicable after completion of the contract.

4.10. This recommendation was accepted by the States and further expenditure was authorised. At that time expenditure was within the original figure authorised by the States at the beginning of the project.

- 4.11. The contract continued and the certificate of substantial completion of the works was issued in April 2006, some two and half years after the original contract completion date. The contract was not finally concluded until June 2009, this more recent delay was mainly caused by the dispute, which was resolved in July 2008, but also by the defects in the cathodic protection system which were identified and had to be rectified before Scott Wilson could issue the maintenance certificate, thus completing the final part of the contract.

5. Contractual Difficulties

- 5.1. To add to the engineering difficulties of this project, serious contractual issues started to emerge with the contractor claiming massively greater sums for the works and extensions of time than those certified by the Independent Engineer as being entitled under the terms of the contract. By mid 2004 the contractual problems had reached such a level that it was obvious to the Board that a dispute would be inevitable. Specialist legal advisers from the UK were appointed in May 2004 in anticipation of legal proceedings and later in 2005, on the advice of HM Procureur, a joint non-political Public Services Department and Treasury and Resources Department Project Board, supported by the Law Officers, known as the New Jetty Supervisory Group (NJSG), was set up to supervise and manage the dispute process on behalf of the States. The Group endorsed the view that external legal advice, together with other specialist support, was required to manage the claim.
- 5.2. In July 2006 the Engineer made his final award for the contract and certified payment of £4.8m and a contractual extension of time of 40.4 weeks, that is to the end of August 2004. At this time the contractor was claiming that it was entitled to sums in the order of £19m and to extend the contract by 83 weeks to the end of June 2005.

6. Arbitration proceedings

- 6.1. As expected the contractor initiated formal proceedings to take the dispute to Arbitration and its Points of Claim was served in April 2007 for a total sum of £27m, being a further £8m above what it had been claiming in July 2006 when the Engineer made his final award. Under the management of the New Jetty Supervisory Group, with the advice of the Law Officers of the Crown and specialist legal advisers, the States team prepared its defence to the claims and issued a counter claim for defective works to the CP system. The defence and counter claim were served in March 2008 and the Arbitration hearing was finally set to be heard at the beginning of 2009.

7. Early Settlement

- 7.1. Throughout the dispute, the senior officials representing the Public Services Department maintained a high-level dialogue with the Managing Director of Balfour Beatty Civil Engineering Limited, the parent company of the contractor

Balvac, in the interests of resolving the dispute at an early stage. Balfour Beatty was repeatedly advised that the States had specific responsibilities as a public body to arrive at a reasonable and auditable settlement. An initial meeting was held in September 2005, and numerous meetings and teleconferences followed. By late 2007 it was apparent to both parties that the legal costs of the arbitration would run into many millions of pounds, potentially in excess of £3m for each party, and high level discussions became more frequent and began to focus on the possibility of mediation.

- 7.2. From its inception the NJSG faced a difficult and deteriorating situation. The Jetty was in a far worse condition in some areas than originally anticipated and, under the measurement contract, the contractor was clearly due additional monies for the extra work carried out. The contractor's claims were apparently excessive and the difference between the claims and the payments certified by the Engineer increased alarmingly as the project continued and even after the date when the repairs works were nominally finished. Problems with the cathodic protection (CP) system were also identified by the Engineer, but disputed by the contractor.
- 7.3. It was essential that the States established a real understanding of its position under the contract in order to be able to assess the strengths and weaknesses of the contractor's claim and consider options for an auditable settlement. Of particular concern was the likelihood that the States would become liable for the legal costs of both sides if the contractor was successful in even a small percentage of its claim and the States itself had initiated a counterclaim against the contractor for defect work on the CP system. Consequently, the NJSG recommended the continued employment of specialist experts and legal advisers to provide the necessary clarification to allow the States to make an appropriate and auditable settlement of the claim as soon as possible. Part of this included the disclosure of all relevant documents concerning the project to the other party.
- 7.4. The States' legal advisers submitted a robust case in defence of the claim but there remained some areas of risk. The evidence of the independent experts employed by the States broadly supported the valuations made by Scott Wilson however they also identified some areas of uncertainty and attempted to value these risks against best and worst case outcomes at arbitration.
- 7.5. The NJSG was advised to wait until after the defence had been submitted before starting the mediation. In order to maximise the chance of reaching a fair and auditable settlement it was essential that the Group had a high level of confidence in the States' position which could only be established after completion of the experts' reports which were being prepared to feed into the defence and once the disclosure of Balvac's documentation had been assessed. Only at this stage would the NJSG and their legal advisers have a reliable indication of the strength of the States' case and also show where the States might have liabilities, thus providing the range of values for a possible settlement (worst case, best case, etc.).

8. Sealed Bid

- 8.1. Having agreed that it would be in both parties' interests to come to an early settlement, arrangements were put in place to set up a formal mediation as soon as possible after service of the defence and counter claim in March 2008. Unfortunately this clashed with the States general election in April 2008 and as a result the mediation was programmed for 7th and 8th July 2008 after the new government departments had reformed. In order to mitigate the effects of this unavoidable delay and reduce the risk of legal costs, the States made a sealed offer in settlement of arbitration of £8m in May 2008. The sealed offer was made up from the £4.8m certified by the engineer including the repayment of liquidated damages and an allowance of £2m totalling £6.8m against the possibility of Balvac succeeding in part of their claim. A further £1.2m was added as the estimate of the States' liability for Balvac's costs. This sealed offer amounted to £8m but was not accepted by Balvac and the mediation went ahead as programmed in July 2008.

9. Mediation

- 9.1. The States mediation team was led by the Chief Officer, Public Services Department and was supported by the States' Counsel David Streatfeild-James QC. Balfour Beatty was led by the Group Managing Director of Balfour Beatty PLC.
- 9.2. The mediation was held in Guernsey under the direction of the jointly appointed mediator, Mr Robert Gaitskell QC. Presentations were made by both parties and a visit was made to St Peter Port harbour to view the Jetty and point out certain issues on site.
- 9.3. At the mediation the States team continued to maintain the position made in the sealed offer but during the course of the negotiations it emerged that Balvac's legal costs were higher than had been estimated at the time of the offer and Balvac was legitimately expecting financing costs. These costs are to cover the interest on the difference between the money certified and paid to the contractor and the final amount paid in the settlement, i.e. the money withheld from the contractor during the period of the dispute. The parties finally agreed to settle for a figure of £9m to cover the claim in full, including costs and financing charges, with a commitment from Balvac, backed up by a bond, to complete the repairs to the CP system and other outstanding works. The States' Counsel, a leading expert in his field, in his Note of Advice dated 9 July 2008 gave the following recommendation:

“I have no hesitation in saying that this settlement is one which the States should accept. It reflects the experts' valuation of the works, results in a saving to the States against almost every other likely outcome, and liquidates all risks of potentially very high cost liabilities.”

- 9.4. This settlement was approved by both the Public Services Department at its Board meeting of 10 July 2008 and the Treasury and Resources Department on 18 July 2008.

10. Total Cost of the Project

- 10.1. The details of the project costs are as follows:

Construction Costs	£9,000,000
Engineering Consultancy	£1,948,999
Claims handling and legal fees	£3,374,171
<u>Total Project Cost</u>	<u>£14,323,170</u>

11. Public Accounts Committee Review

- 11.1. The PAC commissioned FGS McClure Watters (FGS) to carry out an independent review of the New Jetty repair project. The findings of this review are presented in this Billet D'Etat as an appendix to the PAC's report.
- 11.2. The Public Services Department has noted the contents of the FGS review, accepts its conclusion, and agrees with many of the comments and recommendations made throughout the report.
- 11.3. The Public Services Department would comment that most of the observations highlighted in bold in the FGS report have already been addressed by the States of Guernsey since the start of the New Jetty project. For example, as acknowledged in section 4.3 (Project Management) of the Public Accounts Committee's States Report, training in the PRINCE2 project methodology has been offered to staff across all States Departments since 2004. The production of a business case and risk registers are now required for all capital projects under the Treasury and Resources Department's "Construction Codes of Practice", published in August 2009.
- 11.4. Once mediation had been achieved, the New Jetty Supervisory Group reflected on the knowledge which had been gained during the course of the project. As part of this exercise, the Group identified a number of "lessons learnt", many of which were also identified in the conclusions of the FGS report. The New Jetty Supervisory Group produced a document containing a number of recommendations which it hopes will be of assistance to those involved with future projects.
- 11.5. The FGS report accepts the reasoning behind the ultimate settlement of the dispute at £9m, given the potential risks of the arbitrator making an award in favour of Balvac. The Public Services Department considers that the settlement

of £9m was a successful outcome for the States when set against the claimed sum of £27.3m.

- 11.6. FGS also concludes that the prolonged, extensive and expensive litigation which occurred on this project was inevitable, given the magnitude of the dispute between the parties. FGS also considers that even if the early stages of the contract had been better managed, some degree of dispute would have resulted, due to the extensive nature of the works, albeit the States' defence to such a dispute may have been more robust.
- 11.7. FGS acknowledges the positive contribution and effectiveness of the New Jetty Supervisory Group in bringing the dispute to a successful conclusion. It is also worth noting that the Public Services Department's handling of the dispute and contract, which began after the Machinery of Government changes in 2004, is in no way criticised by FGS.
- 11.8. FGS highlights the discussions which took place between senior level representatives of both parties as being a significant aspect in moving the dispute towards a negotiated settlement. The Public Services Department would agree that maintaining a dialogue at a senior level with the contractor was an effective strategy in bringing about the successful conclusion of this dispute. The Chief Officer of the Public Services Department achieved this by holding regular conversations with the primary decision maker for the contractor and ensuring that a positive relationship was maintained through to mediation.
- 11.9. The Public Services Department has noted the Public Accounts Committee's report on the New Jetty and its recommendations.

12. Recommendation

The Public Services Department recommends the States to note the contents of this Report.

Yours faithfully

B M Flouquet
Minister

STATES BOARD OF ADMINISTRATION**ST. PETER PORT HARBOUR – REPAIRS TO NEW JETTY**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

9th August, 2001.

Dear Sir,

ST PETER PORT HARBOUR – REPAIRS TO NEW JETTY

The 'New' Jetty in St Peter Port Harbour was completed in 1929 and forms the safe point of entry for sea traffic of both passengers and 'Roll-on Roll-off' freight and is as such vital to the Island's economy. Originally built for traditional lift on and lift off cargo and the berthing of packet steamers the structure now provides the terminal area for two 'Roll-on Roll-off' berths and a pontoon berth.

The structure comprises a reinforced concrete deck supported on reinforced concrete piles restrained by walings and diagonal bracing of similar construction. There is an underdeck walkway which provides access at low water.

The Board of Administration commissioned a structural report on the strength of the jetty in 1968. The report produced by Consulting Engineers Rendel, Palmer and Tritton commented upon the deterioration of the structure and identified that the worst area was the section above the underdeck walkway.

The report on the jetty was part of a larger commission investigating the whole *modus operandi* of the port traffic. The outcome of the study was the need to strengthen the crane beams on both sides of the jetty thereby enabling restrictions on crane operations to be lifted in 1972.

The installation of the Island's first 'Roll-on Roll-off' ramp on the east side of the jetty was carried out in 1974 and from then on the conventional mail boats which for many years had carried cars and used shore cranes for unloading were quickly phased out and replaced by car ferries.

In 1985 the States agreed that a second 'Roll-on Roll-off' ramp should be installed on the western side of the jetty to ensure the Island against the effects which could result from damage occurring to the original ramp and to enable the Island to cope with the possible introduction of larger vessels in the future. Such vessels could severely damage the jetty structure which when constructed was never intended to accommodate such vessels. In order to protect the jetty and to reduce the loading to which it was continually subjected a fendering system totally independent of the structure was installed. The ramp and fendering system together with the now familiar Inter-Island quay was commissioned in 1987.

The original 'Roll-on Roll-off' ramp installed in 1974 served the Island well until 1998 when it was replaced. By that time it was apparent that the ramp with its slower turnaround and operating restrictions could not maintain the level of efficiency required. The ramp had been designed basically for cars and comprised a single lane thereby not allowing two vehicles to pass. The replacement ramp was 60 metres long and accommodated two lanes of traffic and again the berth was protected by an independent fendering system.

Loadings on the jetty have now been reduced to a minimum. Buildings have been added to the jetty throughout its life but on each occasion the loads from the buildings have been arranged such that the forces are taken directly into the piles supporting the jetty.

The 'New' Jetty is now over seventy years old and well beyond its original 'design' life. (The current British Standard Code of Practice for Maritime Structures suggests a minimum 'design life' for open jetties of 45 years). With the removal of all unnecessary loadings the Board now considers that the main structure needs attention. Repairs have been undertaken throughout its life. These generally have consisted of gunite repairs, epoxy mortar repairs and plain concrete repairs. The aggressive environment in the splash zone between the underdeck walkway and the top deck has given rise to cracking and subsequent corrosion of the reinforcement resulting in the delamination of the concrete cover. This was observed during the inspections which took place as part of the 1968 survey. The report prepared by Rendel Palmer and Tritton on the strength of the jetty concluded that the most likely cause of the cracking was from the berthing forces from vessels and that the deterioration was exacerbated by the shallow concrete cover to the reinforcement found in many locations.

The (then) Department of Engineering advised the Board that the preferred form of repair for the jetty would be a combination of cathodic protection (the electrical protection of underwater structures from corrosion) and traditional concrete repairs. Accordingly in 1997 the Board commissioned Corrosion Control Services Limited of Wolverhampton to undertake further investigations into the structural deterioration and to determine suitable means of protecting and extending the life of the jetty by means of a cathodic protection system. Trials were carried out between 1997 and 1999 and data collected indicated that cathodic protection was a suitable technique that could be adopted to prevent further corrosion damage to the Jetty.

In September 2000 the Board invited specialist Civil Engineering Consultants to tender for the provision of services for extending the life of the jetty for a further 25 years. Scott Wilson Kirkpatrick and Co Ltd were duly appointed and since that time have completed a detailed structural analysis of the jetty and prepared tender documents for the repair of the structure. The documents were issued to selected Contractors and the following tenders were received.

• Balvac Whitley Moran	£2,777,886.87
• Concrete Repairs Ltd	£2,977,140.18
• Geomarine/Brookes (Northern) JV	£3,473,269.11
• Freyssinet	£3,609,139.22
• Miller & Baird (CI) Ltd	£3,914,630.71
• P Trant (Guernsey) Ltd	£5,830,688.42

Alternative designs were submitted by Balvac Whitley Moran, Concrete Repairs Ltd and by Freyssinet. Freyssinet's alternatives were over £300,000 greater than the next lowest alternative and also nearly £600,000 greater than the lowest tender for the proposed design. It was therefore considered unnecessary to pursue these alternatives further.

Concrete Repairs Ltd's alternative suggested minor amendments to the proposed design and resulted in a reduction in their original tender of only £30,000 giving a revised submission of £2,946,917.

Balvac Whitley Moran offered several alternatives to the original design some of which were acceptable to Scott Wilson Kirkpatrick & Co Ltd and some which were not. However detailed post-tender discussions have resulted in a revised tender from the Contractor of **£2,554,973** ie over £390,000 lower than the next lowest offer.

It is difficult to assess the total amount of concrete repair work necessary for the contract – the structure has a surface area in excess of 9,500 sq metres and is supported by over 400 reinforced concrete columns – and it is therefore recommended that a sum of **£200,000** be added to the revised tender sum as a contingency item to cover for any additional works.

The anticipated completion time for the contract is two years. Because of the nature of the work particularly with regard to the cathodic protection element of the contract full time onsite supervision will be required. The Property Services Unit does not have suitably experienced staff available for the necessary supervision and therefore it is recommended that the supervision of the contract be carried out by the design Consultant Scott Wilson Kirkpatrick & Co Ltd. The Consultant has advised that a budget figure of **£527,500** be allowed for the necessary supervision.

The supervision falls into four stages namely:

- **Pre-Construction Period**

The Contractor has stated that they wish to spend the period before full commencement of construction on planning and trials. Subject to States approval of the contract at its meeting scheduled for 31 October 2001 the trials are intended to take place in the UK over a six week period in November and December followed by further work in Guernsey in January and February. The cost of the trials are included in the Contractor's tender however some input will be required from the Consultant.

The estimated cost of the supervision is: £27,300

- **Construction Period**

The Consultant has assumed that the contract warrants the full time employment of three members of staff for an average period of 16 months. The staff comprises an Engineer's Representative supported by an Assistant and an Inspector. As the Contractor will be working six days per week and will work all daylight tides which may involve double shifts during the summer months this level of supervision is considered necessary.

The supervision together with Head Office support is estimated to cost: £443,000

- **Commissioning Tests**

The work is to be divided into 16 discrete sections and on completion of each the cathodic protection system will have to be commissioned. An allowance has been made for a period of three days by the CP specialist for each commissioning.

The estimated cost for commissioning is: £31,600

- **Maintenance Period**

The Consultant has allowed for two visits during the 12 month maintenance period and for one at the end of the final inspection. As-built drawings and maintenance manuals would be finalised during this period together with the Final Account.

The estimated costs incurred during this period are: £25,600

The sum for supervision is the highest estimate and is dependent on the actual length of the contract. It is hoped that the work will be completed in a much shorter period than the expected two years. The Board will make every effort to ensure that the cost of supervision is kept as low as reasonably possible. However the Board must ensure that adequate provision is made at this stage to cover all necessary costs and for that reason an absolute maximum figure has been budgeted.

It should be noted that although the cost of supervision is estimated to be approximately £22,000 per month this is not unusual for maritime contracts. Cost of supervision for the Longue Hougue contract in 1990/91 was £20,000 per month and this sum excluded the services of the Principal Engineer (Harbours & Airports) who was seconded to the consultant (Coode Blizard Ltd) to undertake the role of Engineer's Representative on site.

The total cost of the contract is **£3,282,473.00** comprising:

	£
• Tender	2,554,973.00
• Contingency Item	200,000.00
• Supervision	527,500.00

(It is estimated to demolish and construct a replacement jetty will cost in excess of £20 million).

The Board recommends the States:

1. to approve the repairs to the 'New' Jetty in St Peter Port Harbour as outlined in this report at a cost not exceeding £3,282,473;
2. to authorise the Board of Administration to accept the tender from Balvac Whitley Moran in the sum of £2,554,973 to which sum should be added a contingency item of £200,000;
3. to authorise the Board of Administration to appoint Scott Wilson Kirkpatrick & Co Ltd, Consulting Engineers, to provide Engineering Supervision and Consulting Services for this project for a sum not exceeding £527,500;
4. to vote the Board of Administration a credit of £3,282,473 to cover the cost of the above project, which sum shall be charged as capital expenditure in the accounts of the Harbour of St Peter Port.

The Board should be grateful if you would be good enough to lay this matter before the States with appropriate propositions.

Yours faithfully

R. C. BERRY

President
States Board of Administration

[N.B. The States Advisory and Finance Committee supports the proposals.]

The States are asked to decide:—

XXIII.— Whether, after consideration of the Report dated the 9th August, 2001, of the States Board of Administration, they are of opinion:—

1. To approve the repairs to the New Jetty in St. Peter Port Harbour as outlined in that Report at a total cost not exceeding £3,282,473.00.
2. To authorise the States Board of Administration to accept the tender in the sum of £2,554,973.00 submitted by Balvac Whitley Moran, to which sum shall be added a contingency item of £200,000.00, for the carrying out of those repairs.
3. To authorise the States Board of Administration to appoint Scott Wilson Kirkpatrick & Co. Limited, Consulting Engineers, to provide Engineering Supervision and Consulting Services for that project for a sum not exceeding £527,500.00.
4. To vote the States Board of Administration a credit of £3,282,473.00 to cover the cost of the above project, which sum shall be charged as capital expenditure in the accounts of the Harbour of St. Peter Port.

STATES BOARD OF ADMINISTRATION**ST. PETER PORT HARBOUR – REPAIRS TO NEW JETTY**

The President
States of Guernsey
Royal Court House
St Peter Port
Guernsey

22 October 2003

Dear Sir

ST PETER PORT HARBOUR – REPAIRS TO NEW JETTY**1. Introduction and Background**

The 'New' Jetty in St Peter Port Harbour was completed in 1929 and forms the safe point of entry for sea traffic of both passengers and 'Roll-on Roll-off' freight and is, as such, vital to the Island's economy. Originally built for traditional lift on and lift off cargo and the berthing of packet steamers, the structure now provides the terminal area for two 'Roll-on Roll-off' berths and a pontoon berth.

The structure comprises a reinforced concrete deck supported on reinforced concrete piles restrained by walings and diagonal bracing of similar construction. There is an underdeck walkway which provides access at low water.

The Board of Administration commissioned a structural report on the strength of the jetty in 1968. The report produced by Consulting Engineers Rendel, Palmer and Tritton commented upon the deterioration of the structure and identified that the worst area was the section above the underdeck walkway.

The report on the jetty was part of a larger commission investigating the whole *modus operandi* of the port traffic. The outcome of the study was the need to strengthen the crane beams on both sides of the jetty thereby enabling restrictions on crane operations to be lifted in 1972.

Loadings on the jetty have been reduced to a minimum. Berthing forces have been removed with the installation of independent fendering systems. Although buildings have been added to the jetty throughout its life, the loadings from the buildings have generally been taken directly into the piles supporting the jetty.

With the removal of unnecessary loading the Board decided in 1997 that the main jetty structure needed attention.

The (then) Department of Engineering advised the Board that the preferred form of repair for the jetty would be a combination of cathodic protection (the electro-chemical protection of structures from corrosion) and traditional concrete repairs. Accordingly the Board commissioned Corrosion Control Services Limited of Wolverhampton to undertake investigations into the structural deterioration and trials to determine suitable means of protecting and extending the life of the jetty by means of a cathodic protection system. Trials were carried out between 1997 and 1999 and data collected indicated that cathodic protection was a suitable technique that could be adopted to prevent further corrosion damage to the jetty.

The above repair methodology comprises a process whereby, in respect of structurally weakened members, the concrete is broken away to expose the reinforcing bar to check its condition, a seriously corroded steel bar is renewed and a new concrete casing applied. The cathodic protection protects against further corrosion of the steel reinforcing bar.

In the spring of 2000, Corrosion Control Services Ltd in conjunction with Balvac Whitley Moran were commissioned, at a cost in the region of £48,000, to assess the defective areas with a view to quantifying these (as a result of which a total of 2,475m² were estimated by Corrosion Control Services and Balvac Whitley Moran) and to confirm that no factors were in place to preclude possible future concrete repair and cathodic protection remedial works.

In September 2000, the Board appointed civil engineering consultants Scott Wilson Kirkpatrick to consider the aforementioned reports, undertake a structural analysis of the jetty and to prepare tender documents for the repair of the structure to extend its life for a further 25 years.

Tender documents were issued to specialist contractors and details of these were presented to the States of Deliberation by the Board in October 2001 (Billet D'Etat XXI of 2001).

After consideration of the Board's report in October 2001, the States of Deliberation:

- Approved repairs to the "New Jetty" in St Peter Port Harbour as outlined in a report by the Board of Administration dated 9 August 2001 at a cost not exceeding £3,282,473;
- Authorised the Board of Administration to accept the tender from Balvac Whitley Moran in the sum of £2,554,972, to which sum a contingency item of £200,000 was added;
- Authorised the Board of Administration to appoint Scott Wilson Kirkpatrick & Co Ltd, Consulting Engineers, to provide Engineering Supervision and Consulting Services for the project for a sum not exceeding £527,500; and

- Voted the Board of Administration a credit of £3,282,473 to cover the cost of the above project, the sum to be charged as capital expenditure in the accounts of the Harbour of St Peter Port.

2. Progress since States Resolution

Following the decision of the States, the contract was duly awarded to Balvac Whitley Moran in November 2001.

Work commenced on site in April 2002, and was focussed on the west side of the jetty. Once the cover concrete had been removed it became clear that the level of corrosion was more severe and more extensive than reported in the Defects Survey report of spring 2000 by Corrosion Control Services and Balvac Whitley Moran.

It was initially assumed that this excessive corrosion would be confined to just the outer sides of the jetty, which had been subject historically to the stresses of ships' berthing loads. However, as work progressed to other areas and as more and more concrete was removed, it gradually became apparent that the high levels of corrosion were not confined merely to those areas. In particular, a significant number of the shear links had completely corroded and the ability of the beam to carry its design load was in question. It also became evident that the occurrence of fully corroded links was extensive in the bays close to the perimeter of the jetty.

There had been no external evidence of this high level of corrosion either during the pre-tender trials or during the visual inspections conducted prior to commencement of work. The spend on site investigations had been in the region of £48,000 which was itself a significant figure. Any further expenditure on site investigations would have become a substantial proportion of the overall expenditure for this project.

As work continued, further information became known. The loss of main steel in beams was found to be significantly greater than the 20% figure estimated in the Defect Survey report, with actual losses of 40% and 50% in the section area of the main bars. Again, the extent and degree of the corrosion and the need for additional support during repair had not been anticipated.

In addition, the following discoveries were made:

- The severe localised corrosion associated with the construction joints in the beams was also found in the piles.
- On removing the cover concrete, the fabrication and configuration of the original reinforcement was found to be at variance with, and significantly poorer than, as shown in the construction drawings.
- A number of areas of very high loading – not evidenced by the original drawings available - were discovered in the detailed structural analysis subsequently undertaken.

In short, the Board is of the view that the present causes of the need for additional work were never identified in Scott Wilson Kirkpatrick's 2001 Report. In addition, the Board is of the view that these unidentified causes are not in any way connected or referable to the contingency figure originally proposed. The Board has been led to believe that volumes which Scott Wilson Kirkpatrick finally recommended for the items, that were subject to the contingency, turned out to be fairly accurate.

Scott Wilson Kirkpatrick has reported to the Board in the following terms on why the project is now so much more complicated than originally envisaged.

"The remedial works consist of concrete repairs and the installation of a Cathodic Protection (CP) system. The purpose of the CP system is to arrest further corrosion for a design life of 25 years and the repairs are limited to reinstating the structural integrity of the jetty.

Both these elements of the work have proved more difficult than could have been inferred from the trials and surveys undertaken before the contract was let. As a result, the time required to complete the works will extend by at least one year and the cost will substantially increase over the tendered sum.

Concrete Repairs

The contract includes for the removal of defective concrete by hydro-demolition and the replacement of heavily corroded reinforcement with new steel before spraying back a concrete cover to the exposed area. The precontract trial suggested that the amount of steel remaining in members after the removal of corrosive products was generally sufficient for structural purposes and only in exceptional cases would steel have to be replaced. Visual inspections suggested that the corrosion was worst near the top of the piles and on the underside of the beams.

The contractor mobilised in March 2002 and spent most of the first three months erecting an underdeck access platform and testing the hydro-demolition and guniting equipment. In July 2002, breakout revealed that the corrosion was far more extensive than could have been expected from the trials and earlier surveys. In particular, some bars at the top of the beams were found to be totally corroded, although there was no external indication of cracking or little rust staining. Similarly, in some of the columns, the main reinforcement has been found to be totally corroded at very localised positions with little evidence at the surface. Elsewhere there was only a small percentage loss of steel due to corrosion. This local phenomenon appears to occur at the joint between the precast and in situ concrete sections where there was a plane of weakness for saltwater penetration. This loss of steel in structural members was further compounded by the discovery that the buildings on the jetty were substantially heavier than inferred from the reference drawings.

As a result, additional detailed analysis of the structure was necessary and the contractor has been instructed to undertake the works in a particular sequence and to repair critically loaded members in a phased manner so that the stability of the

structure was not endangered. As a further precaution, the contractor was only allowed to work under the deck in areas which were fenced off to limit the loading. Only limited areas can be made available at any one time as the jetty has to remain operational.

Under the buildings, it is not possible to reduce the loading and a new repair method has been developed which minimises the amount of demolition and the need for any concrete removal on the supporting columns. Despite this, additional temporary supports will be required during the remedial works to the deck under the buildings.

Under the contract, the contractor will be granted additional time to complete the works and he will be entitled to additional monies to reflect the changed circumstances.

CP Installation

The CP installation consists of discrete anodes placed within the vertical and raking members below the deck and a conductive mortar sprayed on the beams and underside of the deck. It is not anticipated that this work will be on the critical path, nor are the installation costs likely to increase significantly. However, to be effective, there must be electrical continuity between the steel reinforcement within the structure. This is normally good within a structure as reinforcement consists of touching bars within a tied cage. The earlier trials suggested that there may be a break in continuity at some of the node points where members join and the contract allowed for reinstating this continuity. Tests have shown that the level of continuity within some members is very low and additional chases will have to be cut so that the bars are exposed and spot-welded at their intersections. The contractor will be entitled to additional payment for this unforeseen additional work. To limit the escalation in cost, it will be necessary for the Employer to accept some of the risk associated with discontinuous steel. As a result, there may be some future isolated corrosion of steel in non-critical areas."

3. The way forward

By the start of 2003, the Board was concerned that the project was reported by Scott Wilson Kirkpatrick to be larger than that originally envisaged. The amount of work and services to be provided had increased significantly.

The Board wrote to the Advisory and Finance Committee on 8 January 2003 informing the Committee that it had become apparent that the condition of the jetty was far worse than suggested by the initial engineering inspections, and that extra expenditure was likely, and that the Board had asked Scott Wilson Kirkpatrick to provide it with a more detailed survey of the work still to be done and to advise it on the options available to it.

Scott Wilson Kirkpatrick reported to the Board in May 2003 and its advice was as follows.

Firstly, Scott Wilson Kirkpatrick has advised the Board that, clearly, additional works beyond those detailed in the tender documentation are required and that the project is likely to be extended until December 2004.

Scott Wilson Kirkpatrick advised the Board that the revised extent of the repairs, the additional works, the sequencing of the works and the problems under the building would have a serious cost implication and the contractor will be due additional monies. Scott Wilson Kirkpatrick has recommended continuing with the repair contract as this remains the most cost-effective solution and the only way to maintain the integrity of the jetty to continue to support port operations safely.

Whilst the nature of work is essentially unchanged in light of the new information as to the condition of the jetty, there will be an increase not only in the measurement of works but also significantly increased additional costs required as a result of the sequencing of the works and the problems entailed in working underneath the buildings.

At this stage of the contract it is impossible to determine with any degree of accuracy what the final cost of the works will be. However, it can be stated with certainty that the costs will be substantial. In any event the figure will be dependent upon highly complex and detailed negotiations with Balvac Whitley Moran and are therefore commercially sensitive. To date expenditure is within the original tender but clearly additional capital will be required to cover the extra works.

The Board also intends that, when the Machinery of Government reform proposals are implemented and a Scrutiny Committee and a Public Accounts Committee are established, that the appropriate Committee be invited to consider this matter.

The Board has considered the option of issuing an instruction that progress should be halted while the project is still at a stage where expenditure does not exceed budgetary provision. (It should be stressed at this point that the expenditure at the time of the States meeting is likely to be less than the States voted in October 2001, but that commitments on that date could take expenditure beyond that sum). However, given that the jetty is strategically important to the Island for the loading and offloading of cargo and passengers, it must remain operational and must continue to support the current facilities for the public and port users safely. Accordingly, the only strategy which is viable at this stage is to continue with the present repair contract. The Board has received engineering advice that continuing with the existing contract is the best way forward.

On this point, Scott Wilson Kirkpatrick has advised the Board that;

“With the current knowledge on the condition of the jetty, it is no longer an option to do nothing. Either the jetty must be repaired or the future operations on the jetty must be severely restricted.”

Leaving aside legal/contractual issues – about which the Board for obvious reasons cannot make public comment – it must be stressed that **aborting the contract is not a realistic option**. While detailed structural analysis confirms that the jetty is safe for use – load restrictions having been applied, there is a real and pressing need to undertake repairs to reinstate the full structural strength of the jetty as soon as possible. The States, the Board and the Harbour Authority have a duty to ensure the safety of those employed in or occupying the buildings as well as members of the public and passengers using the jetty and the facilities on it.

The Board also considers it appropriate to stress that the repairs and cathodic protection process will ensure that the jetty remains in place for at least twenty-five years but, in all probability, for a considerably longer period than that.

4. Conclusion

In summary, having taken extensive professional advice in this matter, the Board believes that, with the current knowledge as to the condition of the jetty, there is no practical option but to continue with the contract.

RECOMMENDATIONS

The Board of Administration recommends the States:

- (1) To delegate to the Advisory and Finance Committee the authority to vote credits of such further funding, in addition to the above sum of £3,282,473, to cover the increased costs of the above project, such sums to be charged as capital expenditure in the accounts of the Harbour of St Peter Port; and
- (2) To instruct the Board of Administration to report back to the States of Deliberation on expenditure on the above project as soon as practicable after completion of the contract.

I should be grateful if you would lay this matter before the States with appropriate propositions.

Yours faithfully

R. C. BERRY

President
Board of Administration

(NB The States Advisory and Finance Committee supports the proposals)

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated the 22nd October, 2003, of the States Board of Administration, they are of opinion:-

1. To delegate to the States Advisory and Finance Committee the authority to vote credits of such further funding, in addition to the above sum of £3,282,473, to cover the increased costs of the above project, such sums to be charged as capital expenditure in the accounts of the Harbour of St Peter Port.
2. To instruct the States Board of Administration to report back to the States of Deliberation on expenditure on the above project as soon as practicable after completion of the contract.

(NB The Policy Council has no comment on the proposal.)

(NB The Treasury and Resources Department has no comment on the proposal.)

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated 23rd February, 2010, of the Public Services Department, they are of the opinion:-

To note the contents of that Report.

PUBLIC ACCOUNTS COMMITTEE

NEW JETTY REVIEW

The Presiding Officer
The States of Guernsey
Royal Court House
St Peter Port

23rd February 2010

Dear Sir

1. Executive Summary

- 1.1 In October 2001 the States of Guernsey approved a budget of £3.2m to repair the New Jetty, a pier within the harbour at St Peter Port upon which the harbour office and terminal are built. Two years later the Board of Administration returned to the States¹ to request further funds due to the increased costs of the project. At this time the States were informed that the project would be independently scrutinised by the appropriate Committee following the Machinery of Government reforms; and resolved that the expenditure on the project be explained to the States as soon as practical after completion of the contract.
- 1.2 The Public Accounts Committee (“the Committee”) undertook to scrutinise the New Jetty project from its inception in 2004 and has been awaiting the outcome of dispute resolution to commence its review. In 2008 the case was settled at a total cost of £14.3m for the project and the Committee commissioned FGS McClure Watters (“FGS”) to carry out a review on its behalf, which occurred in the early part of 2009. A hearing was held in September 2009 based on the independent review. The independent report is appended to this report. The Public Services Department has also written a report in accordance with the 2003 resolution of the States.
- 1.3 40% (£5.6m) of the final cost of the project arose as a result of a dispute between the parties over the final certified cost. Further problems were also encountered on the project through insufficient preparatory work (such as physical investigation, provision of a detailed business case, risk register, and selection of contract type) prior to the project commencing as well as inadequate project management.

¹ Billet d’Etat XXV, 26 November 2003

- 1.4 Many of the lessons learnt from this capital project have been rectified already and most incorporated in the new mandatory Financial and Resource Rules. These include the adoption of proper project management concepts, with some areas on reporting still needing further clarification by the Treasury and Resources Department so that departure from the rules is not possible.
- 1.5 Building on its experience from examining other project overspends, the Committee re-iterates that further consideration be given to the centralisation of capital projects so that service delivery departments can concentrate on their core business and that the provision of capital projects is undertaken on their behalf, albeit with input to the design and delivery from the service delivery departments. Acting corporately in respect of projects will allow the States to build up expertise, save costs and guarantee proper project management and reporting.
- 1.6 The lessons learnt from this project will help ensure that future projects are carried out in a more professional and cost effective way.

2. Background to Review

- 2.1 The Committee is mandated to examine whether public funds have been applied for the purposes intended by the States and to ensure that extravagance and waste are eradicated. In addition the Committee will ensure that proper scrutiny is given to the States' assets, expenditure and revenues to ensure that States' bodies operate to the highest standards in the management of their financial affairs.
- 2.2 In October 2001² the States approved the repairs to the New Jetty in St Peter Port Harbour and allocated funds of £3.2 million to undertake the work. In November 2003³ in considering the additional funds required for the New Jetty Project, the States were informed by the then Board of Administration that:

Figure 1

“The Board also intends that, when the Machinery of Government reform proposals are implemented and a Scrutiny Committee and a Public Accounts Committee are established, that the appropriate Committee be invited to consider this matter.”

Source: Billet d'Etat XXV, 26 November 2003, page 2418

- 2.3 Since its inception, the Committee has been mandated to review projects and in particular the management of capital projects to establish whether they are on time, on budget and fit for purpose. Projects reviewed have been Beau Sejour, St Sampson Pumping Station and Fire Main as well as investigating the awarding of the contract for the Clinical Block. In addition a number of

² Billet d'Etat XXI, 31 October 2001

³ Billet d'Etat XXV, 26 November 2003

independent post implementation reviews commissioned by the department undertaking the project have been considered, ranging from the Royal Court Extension to schools within the Education Development Plan. Furthermore the involvement of the Committee has been defined in the Treasury and Resources Department's Codes of Practice for Capital Projects, adopted by the States in September 2009⁴ and approved as Directives in November 2009⁵.

- 2.4 As a result, the Committee has a particular interest in ensuring that all lessons, both positive and negative, learnt from one capital project are appreciated by all departments and applied, as appropriate, to future projects. Accordingly, it was entirely appropriate that the Committee assumed responsibility for the review as outlined in Figure 1 above.
- 2.5 Although the project commenced under the old structure of government, with responsibility subsequently transferring from the Board of Administration to the Public Services Department in 2004, the Committee had been unable to carry out its review earlier due to the ongoing dispute resolution. This delay arose from advice being received that any documents produced by, or on behalf of, the Committee may have become discoverable to the contractor's legal representatives.
- 2.6 Upon settling the legal issues in the latter half of 2008, the Public Services Department informed the Committee that it was now possible for the review to be carried out. In discussions it seemed unnecessary and a waste of public funds to undertake a post implementation review as well as the review requested by the States. The Committee agreed with the Public Services Department that the review commissioned by the Committee would be the only independent view sought. It was also agreed to return to the States at the same time so that all information on the matter would be provided simultaneously, especially since in 2003⁶ the States resolved that the Board of Administration report back to the States on expenditure on the above project as soon as practicable after completion of the contract.
- 2.7 The work on the New Jetty was finally completed at the end of 2008 and the investigation commissioned by the Committee was undertaken in the first half of 2009 by FGS, selected from the Committee's framework agreement of third party reviewers. The FGS report on the project overspend and capital project management is appended to this report. The Committee held a hearing based on the findings of the FGS report in September 2009. This report is based on the FGS report, the hearing and other evidence gathered.
- 2.8 The Committee is grateful for the support of the Public Services and Treasury and Resources Departments in providing the information needed to complete the review, through documents, minutes and access to staff.

⁴ Billet d'Etat XXIV, 29 September 2009

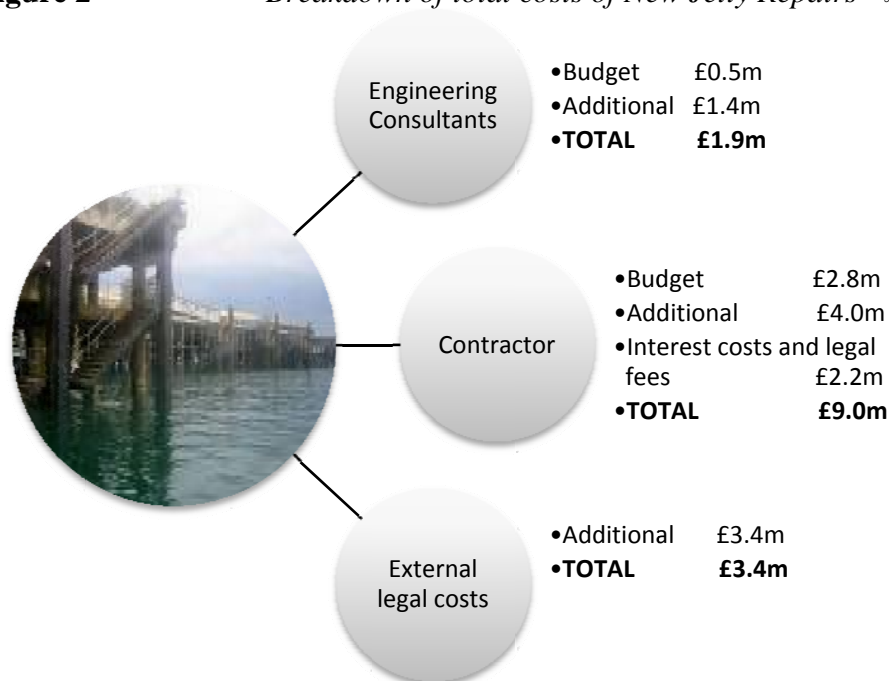
⁵ Billet d'Etat XXXI, 25 November 2009

⁶ Billet d'Etat XXV, 26 November 2003

3. Brief History of the New Jetty Project

- 3.1. In October 2001 the former Board of Administration sought approval of the States (Billet XXI, 31 October 2001) to repair the New Jetty, an arm within St Peter Port Harbour which was built in 1929, at a total cost not exceeding £3,282,473. The lowest tender was accepted at £2,554,973 to be carried out by Balvac Whitley Moran (“Balvac”) and supervised by consultants Scott Wilson Kirkpatrick and Co Ltd (“Scott Wilson”) at a cost of £527,500 plus a contingency of £200,000.
- 3.2. Two years later in November 2003, the former Board of Administration returned to the States to provide an update on the repairs at the New Jetty. The corrosion of the steel reinforcement within the beams was greater than first envisaged with a loss of typically 40 to 50% against the original estimate of 20%. Scott Wilson advised that further repair work was required at a greater, but un-quantifiable, cost. The advice received was that, in order to keep operations going at the harbour, repairs were necessary. The States approved delegation to the former Advisory and Finance Committee (a function subsequently transferred to the Treasury and Resources Department) of the authority to cover the increased costs of the project, although no specific value was given, and for the matter to be reported back to the States.
- 3.3. A New Jetty Supervisory Group was established in 2005 to manage the legal dispute that had arisen, comprising staff from the Public Services and Treasury and Resources Departments and legal advice from the Law Officers’ Chambers. In May 2006 Scott Wilson issued the Certificate of Completion to Balvac. Balvac challenged the certified amount, with that dispute being resolved without recourse to the courts. The Engineer certified £4.8m and the Contractor claimed £19.7m, which at one point during the process increased to £27.3m. The Public Services Department also incurred additional expert and legal costs. In November 2006 the Committee was invited to be involved in the New Jetty Supervisory Group but this invitation was declined because of its intention to conduct this review at arm’s length.
- 3.4. The dispute was finally settled in June 2008 for £6.8m (budget of £2.8m plus £4.0m additional costs) following mediation, with a further £2.2m in legal and financing costs. When the additional engineering consultants’ costs of £1.4m and £3.4m of external legal costs were added, the total overspent amount was **£11.0m**, well over three times the original budget. Therefore £5.6m of the “overspend” related to the costs associated with conducting the resolution of the dispute and £5.4m to additional consultancy and repairs work. Corrective work on the New Jetty was completed in December 2008 at a final cost of £14.3m including all legal and professional advisor costs.

Figure 2 *Breakdown of total costs of New Jetty Repairs - £14.3m*



Source: Public Accounts Committee from evidence received.

3.5. Fuller details are provided in the appended report by FGS⁷.

4. Lessons Learnt and Recommendations

4.1. The appended FGS report indicates the key issues that led to the increased cost and difficulties of the New Jetty repair work and the dispute that followed, as found in the executive summary on pages 4-10 of the appended report. The key issues were listed as:

- Severity of corrosion
- Inadequate physical investigations
- Misinterpretation of Preliminary Investigations
- Information Provided to Contractor
- Provision of Contingency Allowance
- Imposition of Rules
- Project Management

⁷ Since the FGS report was completed in September 2009, further information relating to expenditure on engineering consultancy, which was unavailable at the time, has come to light. The figures quoted in the Committee's report reflect the final expenditure.

- Procurement of Consulting Engineers
- Lack of Formal Business Case
- Absence of a Project Board
- Non initiation of a risk register
- Choice and form of contract and re-measurement risk
- Standard form contract
- Dispute resolution and settlement

4.2. The Committee has considered what the States can learn from this project so that similar mistakes do not occur again.

4.3. Project Management

4.3.1 Following previous investigations by the Committee it is apparent that a recurring and now familiar theme was the weakness of the quality of capital project management, in that difficulties arose from States departments failing to acknowledge project management theory, rather than departing from existing processes and procedures. At that time there was no guidance on project management in the Administrative and Accounting Guidelines, although there was advice on submitting information for consideration as a capital project and on tendering.

4.3.2 Even though the UK government had adopted project management principles in the mid 1990s, it was not until the Audit Commission report on “Project Management” in May 2003 that the States acknowledged the significance of these principles. It is now standard practice, with a dedicated section on the States intranet providing project management guidance for employees to follow, courses for staff to train such as Prince2⁸ Practitioner (since 2004) and recently with the introduction of Codes of Practice as Directives to the Finance and Resource Rules, approved by the States in November 2009⁹. **As stated above, it is important to note that none of this was in place at any time during the repairs and subsequent dispute resolution process.**

4.3.3 The Committee understands and is pleased to note that the States has adopted proper project management concepts in accordance with best and accepted practice for all future major capital projects.

4.3.4 What became apparent at the New Jetty hearing was the difference in opinion on the structure of the project boards and the involvement of politicians. Reviewing

⁸ Prince2 (**P**rojects **i**n **C**ontrolled **E**nvironments) is defined as a process based method for effective project management.

⁹ Billet d’Etat XXXI, 25 November 2009

other capital projects undertaken by the States in the early 2000s demonstrated that the concept of project boards had been accepted. The Beau Sejour development (a project approved in 2001) was led by the Project Manager and not the Client Committee with political representation on the board, and in respect of the Royal Court Extension (a project approved in 2000) the Project Board was politically chaired and following the governmental reforms in 2004, included the whole political board.

- 4.3.5 The Construction Codes of Practice recommend that the composition of project boards should depend on the size and complexity of the project, and suggest that the project board should have membership comprising representatives from the sponsoring department board, the Treasury and Resources Department board, States Property Services, a senior responsible officer and sponsoring department officers. It is usual for the Chief Officer of the sponsoring department to be the senior responsible officer in high value capital projects, and he is considered the key decision maker, and ultimately accountable.
- 4.3.6 The New Jetty did not have a project board but at the hearing the Committee was informed that another project with a cost of £80m and the largest project undertaken through the capital reserve and undertaken through the same department, did have a project board but for a period of time this had comprised only staff with no political representation, prior to States approval to fund the project.
- 4.3.7 **The Committee is concerned about the governance arrangements for large capital projects and the fact that, even after numerous overspends, lessons have not been learnt on the structure for project boards and that there may even be no political representation on some. There should be clear direction on whether political representation from both the sponsoring department and the Treasury and Resources Department is required or not, and this should not be left for project management to determine.**
- 4.3.8 The sponsoring department has a critical role in monitoring and directing the project and it is important that there is an interface between the project board and departmental board. Again there is differing opinion on frequency of notifying the sponsoring department of the project progression. Projects have been an agenda item for every meeting of the Education Department in respect of the Education Development Plan and also were for meetings of the Social Security Department in respect of the Guernsey Integrated Social Security System, so that members are informed if there is anything to report; the Committee understands that a similar situation occurs with the Public Services Department where the board is informed on a need to know basis. It is also possible to report back at milestones¹⁰ or stage boundaries and exceptions. The Codes of Practice indicate that the Project Board should report regularly to the political board.

¹⁰ A milestone is defined as a scheduled event signifying the completion of a major deliverable.

4.3.9 The Committee considers that there should be some direction within the Codes of Practice on what is expected in respect of the reporting of a project from the Project Board to the political board.

4.3.10 It is important that the right governance arrangements are put in place for each project as they contribute to the successful delivery of a project. It is not that problems with projects will cease with good governance but that they are identified and reported; and corrective actions can be taken before they escalate.

4.4 Business Case

4.4.1 It is important to do the ground work before commencing any project and to consider the reason and rationale behind the development, exploring the options, what the outcome would be and the benefits achieved, revenue implications once commissioned, the risks of delivering the project, costs, timetables and investment appraisal of the project proceeding and not proceeding.

4.4.2 In respect of the New Jetty project this was inadequate and, unfortunately, has been repeated in recent submissions for capital funds from the Capital Reserve. In September 2009¹¹ the States approved that future projects coming forward for funding from the Capital Reserve must include a full business case, in accordance with the Codes of Practice.

4.5 Risk Analysis and Risk Registers

4.5.1 In April 2007¹² the States considered a report by the Committee and an appended report by the National Audit Office on Risk Management and Insurance in the States of Guernsey, which followed up on a similar report by the Audit Commission in 2000¹³.

4.5.2 FGS identified that risk management had not been undertaken for the New Jetty project and if the risks had been analysed and registered that the risks may have been managed better. The New Jetty project was considered by the States in October 2001, some 18 months after the States had been notified of risk management by the Audit Commission and after the States had incorporated risk management in the Policy Plan of 2000. Even then no risk management on this project was carried out at any time up to its completion in late 2008 (although a risk register was maintained during the legal dispute). As part of the Construction Codes of Practice¹⁴ and the changes recently implemented by the States Property Services Section of the Treasury and Resources Department risk workshops are a common feature before all projects commence.

¹¹ Billet d'Etat XXIV, September 2009

¹² Billet d'Etat III, January 2007

¹³ Billet d'Etat X, 5 April 2000

¹⁴ Billet d'Etat XXIV, Volume 1, 29 September 2009

- 4.5.3 **The Committee is pleased that the States has developed its present approach to risk and that the Codes of Practice fully incorporate clear instructions on risk management including risk analysis and risk registers.**

4.6 Head of Capital Projects

- 4.6.1 One of the problems that has been identified with past capital projects in the States is that the Chief Officer and staff of the commissioning department are embarking on and being responsible for projects without adequate qualifications or on occasion real experience in dealing with expensive construction and procurement projects. Although they have willingly undertaken the role, frequently as an additional load to the normal business of the department, they would often be the first to admit that it had not been envisaged as part of their chosen career path.
- 4.6.2 FGS have recommended that, in order to overcome this problem, the States create a post of Head of Capital Projects, which would not be department specific, so as to provide focus to project management and procurement and to allow for a build up of expertise.
- 4.6.3 Despite the apparent merit in central management of projects, there was little enthusiasm for the creation of this post from the Public Services Department staff and, to an even greater extent, by the Treasury and Resources Department. Both Departments indicated that what they have in place, with representation on the project board by suitably experienced and Prince2 Practitioner qualified staff from the Treasury and Resources Department, with support from consultants, is sufficient.
- 4.6.4 The Committee, however, wishes to take this recommendation further. Reiterating a point made in its report on the Beau Sejour Redevelopment project¹⁵, the Committee is still convinced that all major construction contracts should be carried out by one central body, staffed by adequately and appropriately trained personnel, and maybe operating as an independent non-governmental organisation. Following the submission for a project into the capital prioritisation programme, once accepted the project would be developed and managed centrally, with the sponsoring department and its responsible officer being part of the board rather than leading it. This corporate approach would benefit the management of projects by the States.
- 4.6.5 **The Committee believes that centralisation of the management of capital projects would provide better value to the States and bring a corporate approach to the provision and management of new capital resources.** This proposal will complement the property Summary Opportunity Reports in the Fundamental Spending Review¹⁶, now incorporated into the Financial Transformation Programme.

¹⁵ Billet d'Etat III, January 2006, page 267

¹⁶ Billet d'Etat XXV, 27 October 2009

4.7 Preliminary Investigations

- 4.7.1 Much of the increase in the cost of the New Jetty repairs related to not realising how much of the New Jetty had corroded, even though concerns regarding the structural strength of the New Jetty were made as early as 1968. FGS calculated that only 10 locations were tested, relating to some 3,053 elements, representing 0.3% of the elements of the New Jetty. They considered that it was insufficient to provide a clear understanding of the severity and extent of the corrosion of the steel reinforcement and concrete degradation.
- 4.7.2 In 2003 Scott Wilson admitted that the preliminary investigations were inadequate, but even if further investigations had been carried out there is still an element of doubt on whether they would have picked up the full extent of the corrosion. The then Board of Administration was very much in the hands of the appointed consultants as the Board were inexperienced in marine engineering.
- 4.7.3 Lessons have been learnt from the New Jetty project as at the hearing the Committee was informed that repairs to Number 3 and 4 berths at the St Peter Port Harbour were being subjected to more investigations to assess the scale of repairs originally required.
- 4.7.4 The Committee is pleased to note that appropriate action is being taken to ensure that the full extent of work needed has been taken on board and to ensure that the risks involved are incorporated into the budget request.** Marine construction and other such bespoke projects should be treated as being very specialised and a wide range of specialist advice should be sought.

4.8 Information provided to Contractor

- 4.8.1 FGS criticised the inadequacy of the information provided to the contractor. Although the design drawings for the 1928 New Jetty were available, there was no guarantee that what was planned had actually been constructed. There was also uncertainty as to whether any additions had been made to the structure by the Germans during the Second World War. Furthermore there is no record of whether the contractor saw the available designs at the time of preparing the tender submission.
- 4.8.2 However, at the hearing the Committee was informed that there is now the expectation that the contractor will carry out its checks on the information provided, which is borne out by the comments made by FGS in its report in paragraph 4.48. While the contractor is expected to satisfy itself as to the extent of the work required, the choice of contract type will ultimately determine where the risk of any additional work lies and specialist advice should be sought where necessary.
- 4.8.3 FGS recommends that the States should check information provided for validity and accuracy. However, in respect of repairs to old structures there is the danger

that such checks may overlook major issues that may come to light through an independent check.

- 4.8.4 This is the second investigation of the Committee where the initial estimates of the concrete cover have been inaccurate and factual information taken from original drawings and documentation did not match what was actually found during the works; the first was Beau Sejour. In both instances, these factors affected the final contract price. Therefore it is important that this should form part of the risk analysis. The information should be substantiated before the tender documentation is sent out, so that the contractors' pricing is comparable and not based on their interpretation or whether they have undertaken extra checks.

4.9 Contingency Allowance

- 4.9.1 The Committee is concerned that the contingency allowance for this project changed from 25% to 7%. Although the higher contingency allowance is one factor which tended to indicate the element of risk in the project, the reduction in the percentage may indicate political intervention and the desire to proceed within a particular budgeted cost.
- 4.9.2 At the hearing the Committee was informed that the current procedure is for a Project Board to discuss and determine the contingency allowance for projects, based on the risk assessment of the project. Throughout the project, gateway reviews re-assess whether the contingency allowance continue to be sufficient.
- 4.9.3 **The Committee is pleased to note that full consideration of the risks is now reported to be undertaken in order to set the contingency allowance for a current capital project.**

4.10 Form of Contract

- 4.10.1 The form of contract for a project can have a severe effect on the outcome of a project and who bears the risk. At the time there was little legal advice on contracts and reliance was placed on the consultants to suggest the contract choice.
- 4.10.2 The 5th Edition of ICE form of contract was selected because it had been used on previous contracts since the early 1970s; had been amended to take account of Guernsey laws; and because there was knowledge of this form of contract. More recent forms of contract available at that time (e.g., the 6th Edition brought out in 1991 and the 1999 7th Edition) were not suggested. In fact the Estates Sub-Committee of the Advisory and Finance Committee again chose in 2003 to investigate the use of the 5th Edition of the ICE form of contract.
- 4.10.3 There are similarities to the choice of contract for the Beau Sejour Redevelopment where an earlier version of the JCT contract had been used. ICE form of contracts are designed specifically for engineering projects.

- 4.10.4 The Board of Administration sought professional advice from those experienced in contract law within the private sector after the contract had been commenced. Time constraints and the limited availability of this type of advice within Guernsey, combined with the price obtained being below the tender threshold, resulted in a direct approach to a local law firm for advice.
- 4.10.5 Since the time when the New Jetty contract was being let the States have employed contract lawyers at the Law Officers' Chambers. (They are now involved earlier on in the project, as part of the project board, and provide legal advice throughout the project.) One contract lawyer was recruited in 2005 and since then the number of lawyers available to assist in this area has increased.
- 4.10.6 Although the Committee supports legal intervention at an early stage in the procurement process, such advice comes at a cost to the States, which is seldom included in the cost analysis, being regarded as "in house".

4.11 Imposition of the Rules

- 4.11.1 The lack of legal advice on contracts at the time the contract was let meant that great reliance was placed on consultants. Where this contract encountered problems was with the imposition of rules on the contractor by the consultant in charge of the project and the interpretation of these rules by the contractor. This became a major issue in the legal dispute that followed.
- 4.11.2 **The Committee believes that the involvement of contract lawyers prior to the procurement process reaching the tendering stage, which is now available, should minimise the risk of similar problems occurring again.**

4.12 Other matters

- 4.12.1 Throughout the project there were a number of appointments made to support the work, such as consultants, contractors and others. Although the States' tender guidelines had been issued previously there seemed to be a disregard of them and those invited to tender were identified as a result of prior experience and knowledge of their work. There was no evidence that any of the checks now expected to be carried out on contractors submitting tenders were in fact carried out. There was an instance where there was no selection made at all and the contract was awarded to those in place at the time.
- 4.12.2 The introduction of mandatory Financial and Resource Rules should avoid any recurrence of these problems.
- 4.12.3 The Committee has been unable to identify any one individual or organisation to call to account in respect of this project. The States did not provide mandatory directions on procuring and completing projects, choosing instead to issue guidelines, which could then be ignored without any direct sanctions ensuing.

Project management practices were not instituted by the States until 2003. On a positive note, however, the handling of the dispute about the amount due under the contract resulted in the development of a stronger corporate team.

5. Conclusion

- 5.1 Even though the New Jetty has been repaired and its life extended, there were serious shortcomings in the early stages of the project which contributed to the eventual cost increasing to over four times the original budget. Although the reserves within the Ports Holding Account have covered the cost and no funds have been requested from the Capital Reserve, the drain on the Ports Holding Account must have affected the investment of those funds into other capital projects within the Airport and Ports whilst the legal issues were ongoing.
- 5.2 It is unfortunate that the biggest lesson learnt from this overspend was the experience gained during the dispute resolution. Although there had been no previous experience in such legal procedures, those involved will have the benefit of this experience for any similar legal disputes. The Committee considers that this was an expensive way in which to learn such a lesson and it would have been unnecessary had the appropriate steps been taken at the early stages.
- 5.3 The Committee was reassured of the progress made in addressing the substandard processes and procedures of the early 2000s in the management of projects, the appointment of consultants, tendering and quality of information. The introduction of mandatory rules with regard to Finance and Resources will remove many of the poor practices highlighted from this review and, being mandatory, accountability for performance will be clearly laid out and rest with the project boards and responsible officers, although there are still some areas to be clarified in order to ensure total conformity to best practices by departments.
- 5.4 Following the allocation of Capital Reserve funds through the capital prioritisation process, there are some large scale capital projects to be progressed before the States finally approve them. This review has indicated the detrimental effect on final costs when insufficient work is carried out in the early stages of a capital project. Although the project may take longer to get off the ground, the long term benefits of carefully thought out and prepared projects will better serve the Island and is an important lesson learnt.
- 5.5 The Committee has reviewed a number of projects, some more successful than others, and has made comments in the past on how the States can manage its capital projects. It believes that the control and governance of projects should be centralised. Departments generally have a service to deliver, and it should not be their role to provide the capital resources to support those services. A corporate approach should bring long term financial benefit to the States in providing better value.

6 Recommendations

6.1 The Committee recommends the States:

- a) To note this report and its appended report;
- b) To direct the Policy Council to ensure that the findings and recommendation within this Report are considered and where appropriate implemented within the context of relevant work streams contained within the Financial Transformation Programme.

Yours faithfully

L R Gallienne
Chairman

Please note that, due to conflicts of interest, the under mentioned members of the Public Accounts Committee did not participate in the process leading to the production of this report:

Deputy Barry Paint	Reason: former career as Harbour Pilot
Mr Mike Best	Reason: former Vice President, Board of Administration



Client

The States of Guernsey

Project

New Jetty Review

Division

Consulting

September 2009



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Appendices

Appendix 1	Key Reference Material Used in the Review
Appendix 2	Timelines of Project

1 TERMS OF REFERENCE

FGS McClure Watters had been invited by the States of Guernsey Public Accounts Committee to tender for a review of the repairs to the New Jetty in St Peter Port.

Having subsequently been awarded the contract to carry out this review, the key elements of the Terms of Reference were as follows in relation to whether the correct course of action was taken by the States regarding:

- The level of work carried out by the States in assessing the problem — surveys, feasibility studies, risk management, future needs of the harbour, business plan, putting the business case forward etc
- Gaining the appropriate approval to proceed with the repairs
- Resourcing the project - appointment of staff from within the service and externally to oversee the work (qualification, experience, knowledge and actual number); setting the budget
- The tendering process for the repair work and consultants, including reviewing the six tender submissions and the criteria for selection
- The setting of and finalising the terms of contract - did it cover all eventualities, was the contract signed before work commenced
- Project management — setting up Project Boards, with Project Sponsor and Project Manager and lines of accountability
- Reporting the progress of the repair work, financially and structurally to project boards, Board of Administration/ Public Services Departments political Boards and the States
- Ensuring that the work was done - certification, quality control, mile stones etc
- Settling the contract, the approach taken, appointments made, could it have been achieved in a more cost effective way
- How the dispute was managed once commenced, are there lessons to be learned about pre-contractual provisions and was this achieved in the most time and cost effective manner.

In the following sections we address these points in detail and bring to the attention of the States our key findings and lessons learned along with recommendations for future major capital projects.

2 EXECUTIVE SUMMARY

Introduction

- 2.1 The States of Guernsey ("The States") is the owner of the New Jetty which was originally constructed in 1929. It is an example of an early reinforced concrete marine engineering project and one which has had various repairs made to it over the intervening years. However, around 1997, it became obvious that the state of the concrete was poor and a proposal to make major repairs to the New Jetty was made. The objective was to extend the life of the New Jetty by at least another 25 years.

As a result, a firm called Corrosion Control Services Ltd (CCSL) undertook a trial of what was called Cathodic Protection systems for some limited areas of the New Jetty between February 1998 and June 2000.

- 2.2 In September 2000, tenders were invited by the Board of Administration for engineering consultants to "investigate measures to further extend the working life of the New Jetty in St Peter Port harbour, Guernsey". Their commission was also to:

- Examine the findings of recent studies;
- Assess the structural integrity of the jetty;
- Recommend the 'way forward';
- Prepare tender documents for refurbishing the structure;
- Advise on suitable contractors to be invited to tender; and
- Issue tender documents, evaluate completed tenders and recommend a course of action to the Board of Administration.

- 2.3 In November 2000 the Board of Administration appointed Scott Wilson Kirkpatrick (Scott Wilson) as the Engineering Consultants ("the Consulting Engineer") to the States at a proposed cost of £46,900 with an additional £10,000 allowance for a contingency fee.

- 2.4 Scott Wilson were subsequently asked by the Principal Engineer Harbours & Airport to submit an additional proposal for them to carry out the actual supervision of the jetty repair works. Scott Wilson responded with a proposal for the supervision of the works in which they estimated a total cost of £527,376 including expenses. This supervision would involve a Resident Engineer, Assistant Resident Engineer and an Inspector all site based, supported by Head Office project management, commissioning tests and maintenance visits, covering a 19 month period to match the programme of the appointed contractor.

- 2.5 The tender for the contract to carry out the actual repairs to the New Jetty was issued to six different companies, of which there was a mixture of 'on Island' and 'off Island'

contractors, selected by Scott Wilson for their ability to undertake works of a similar nature or who were specialists in this field.

- 2.6 The prices submitted in the tender responses ranged from a low of £2,777,942 from Balvac Whitley Moran to the highest tendered price of £5,830,688. Some of the tenderers also offered alternatives, as allowed for in the tender documentation, which ultimately resulted in a reduction in the price of three of the tenders, with the lowest price tender from Balvac being reduced to a contract sum of £2,554,973. The tender was subsequently awarded to Balvac by the States.
- 2.7 Balvac actually commenced mobilisation on site on the 6th March 2002. In the subsequent months progress on site was very slow and breakout of the first beam was eventually undertaken on the 10th July 2002 where subsequently a total loss of linkages was found due to severe corrosion. This was the first sign that the extent of the corrosion of the steel reinforcement was in some areas, more severe and extensive than Balvac had originally estimated.
- 2.8 After further work in breaking out the concrete from various parts of the jetty, Balvac were of a view that the level of corrosion that had been discovered was greater than either the external visible evidence or the CCSL/Balvac report of June 2000 had indicated. There was also a problem with some of the drawings originally supplied to Balvac, in that they were inaccurate regarding the actual loadings on some parts of the jetty, specifically where some of the buildings on the New Jetty were heavier than expected and therefore were putting more stress on the jetty structure than these drawings had indicated.
- 2.9 The Board of Administration wrote to the Advisory and Finance Committee on 8th January 2003 informing the Committee that it had become apparent early in the contract that the condition of the jetty was much worse than was indicated by the initial engineering inspections and that an overspend in the contract was likely. They also informed the Committee that they had asked Scott Wilson to provide them with a more detailed survey of the work still to be completed and to advise on the options available to it.
- 2.10 Scott Wilson subsequently reported to the Board in May 2003 that while the scope of the work remained unchanged, increased quantities of work would be required and that the completion date of the project would need to be extended. Balvac produced a programme of works which indicated that the contract would not be completed until November 2005, some 24 months later than the original completion date. Based on this proposed completion date, Balvac estimated that the outturn cost would be between £8m and £8.5m. Given the disparity between the figures, it was inevitable that litigation would ensue and this commenced mid 2006.
- 2.11 The New Jetty repairs were finally completed in early 2009, almost 7 years after the initial mobilisation by the contractor. The final settlement from the negotiations between the States and Balvac amounted to £6.8m for the repairs along with an additional amount to include interest costs and legal fees of Balvac totalling £2.2m. In addition, the

States external legal costs (to include professional witnesses and other experts) amounted to £3.4m. The final cost element relating to the repair of the New Jetty was the payment of £1.8m to Scott Wilson as engineering consultants to the States. In total, the costs relating to the repair of the New Jetty totalled £14.2m.

- 2.12 In the following sections, we outline the key issues that our review team identified along with a section on recommendations that we believe will reduce the chances of such a situation occurring in future major capital projects.

Key Issues

Severity of Corrosion

- 2.13 Initial physical investigations carried out in the CCSL Defect Survey and Diagnostic testing (2000) failed to identify the full extent and severity of reinforcement corrosion. The States of Guernsey had appointed specialist technical experts to undertake the preliminary trials and took advice from these experts in the specification used for these physical investigations, but the quantity and extent of physical investigation is not considered sufficient given the size of the structure and the nature of the works planned to be undertaken.
- 2.14 It must be acknowledged that although this review concludes that the preliminary physical investigations were inadequate, there is no guarantee that further investigations would have revealed evidence of any or all of the various problems that became apparent during the execution of the works although the likelihood would have been increased.

Inadequate Physical Investigations

- 2.15 The Consulting Engineer for the implementation stage, Scott Wilson did not carry out further physical investigations prior to detailed design. It is clear that Scott Wilson were aware of the limitations of the original inspections/investigations and that they were also aware of the likelihood that concrete repair contracts can by their very nature be subject to significant variations.
- 2.16 Design Stage 1 Report - section 6 – Scott Wilson noted that *“From Scott Wilson’s experience and the knowledge acquired to date, it would appear that the nominal percentages assumed for repair in the Corrosion Control Services Ltd report are low”*.
- 2.17 The Scott Wilson Design Stage 1 report went on to note the need for further surveys prior to authorisation of each phase to give more accurate quantities, but for such an important issue which Scott Wilson acknowledge, we consider Scott Wilson could have been more proactive in making the States aware of potential implications at an early stage of the project.
- 2.18 We consider that Scott Wilson had sufficient opportunity to specify that additional physical investigations be carried out before tender but do not appear to have made the States aware that these would have been advantageous.

Misinterpretation of Preliminary Investigations

- 2.19 Although the scope of the preliminary investigations is considered to be inadequate they did provide some level of information on the extent of corrosion to the steel reinforcement in the structure. The CCSL Defect Survey and Diagnostic Testing Vols 1 & 2, June 2000 recorded that typically damaged areas exhibited evidence of “greater than” 20% loss section in reinforcing bars but does not make any attempt at being more precise.
- 2.20 There was a fundamental misinterpretation of the results of the preliminary investigations which was carried forward through the project in that it appears that from original statements indicating corrosion in excess of 20% the engineer has made an assumption that corrosion is approx 20%. CCSL / Balvac could have been more definitive in the description of the levels of corrosion in their reports to leave the actual extent open to less interpretation. This fundamental misinterpretation appears then to have been perpetuated through subsequent correspondence and may have therefore been used as a basis for making subsequent decisions.

Information Provided to Contractor

- 2.21 The level of information provided to the contractor at tender stage was limited and in some cases was inaccurate. There was confusion regarding the status of the record drawings available for inspection which may have caused delay during the contractor's design of the CP system. Much responsibility was placed on the contractor to assess the structure but limited information was provided for him to do this. Provision of as much accurate information at tender stage will help to mitigate risk and claims during the execution of contracts.
- 2.22 It is apparent from the review of contract correspondence that certain information only became available to the contractor after the award of contract and in addition some information provided during the tender was subsequently proven to be inaccurate.
- 2.23 It also became apparent after the award of the tender and during the detailed assessment of the structure that a 350 mm slab along with heavier than anticipated blockwork was present in some areas of the existing structures. This had not been identified at the time of tender and additional works were required to strengthen the jetty at this location.
- 2.24 It is not clear from the documentation what validation, if any, of the existing information was carried out by Scott Wilson however it can be concluded that had this issue been identified prior to tender then at least some delay and additional cost could have been mitigated.

Provision of Contingency Allowance

- 2.25 A suitable contingency should be provided in any contract to allow for unforeseen circumstances. An assessment of risk should be undertaken to identify and attempt to quantify those risks most likely to impact on the contract in terms of programme or cost. A contingency was allowed for in the contract in relation to risk of remeasurement but it

is not clear if any allowance was made for other unforeseen circumstances arising.

- 2.26 From a consideration of the relevant files it appears that in their draft tender evaluation report¹ Scott Wilson originally proposed to the States that a contingency sum of 25% of the contract value be allowed for potential cost overruns. A letter from the Principal Engineer to Scott Wilson regarding their report makes reference to this recommendation and indicates he would have difficulty in explaining a 25% contingency item to the Board of Administration. A copy of the original draft tender evaluation report in which that contingency was suggested is not available and the subsequent report does not make any reference to a 25% contingency and in fact ultimately recommends a £200,000 (7%) contingency.
- 2.27 Although the context of the original 25% contingency is not known, and setting aside the fact that actual cost overruns were in any event greatly in excess of this allowance, the inclusion of the original 25% contingency recommendation in the tender report may have made the Board of Administration more aware of the potential for cost variations in the type of works being undertaken.

Imposition of the Rules

- 2.28 Initial concrete breaking out was commenced on site by Balvac in April 2002 however this was quickly halted by Scott Wilson acting in the role of Consulting Engineer due to Balvac's "over exuberant trial breakout of the structure"². Scott Wilson instructed Balvac to stop work until detailed method statements including a sequence of working had been submitted as required under the contract. A first draft of rules for implementation of the works were produced by Balvac's consultants on 23rd July 2002 with a further drafts being issued on 9th August 2002 and 29th August 2002.
- 2.29 Scott Wilson rejected the Balvac rules as they did not ensure the stability of the structure in the temporary condition and proceeded to develop their own rules which were issued to the contractor in a number of phases between October 2002 and February 2003.
- 2.30 It is clear from the review undertaken that the imposition of rules on the contractor became a significant issue in the dispute that arose during the contract and indeed impacted then on the settlement negotiations. It is clear that Scott Wilson considered the Balvac rules in some detail and made detailed comments on them. They were diligent in their approach to this issue and it is accepted that the ongoing issue of Balvac's failure to produce an acceptable set of rules was a cause for concern in terms of structural stability, Health & Safety and progress on the works. However, it may have been advantageous to have taken some legal advice on the contractual impact of imposing rules, before doing so, particularly as this relieved Balvac of some obligations under the contract.

¹ Scott Wilson Tender Evaluation Report, Doc No OUT/03, dated 9th July 2001

² Scott Wilson Kirkpatrick letter to Balvac, dated 22nd April 2002

- 2.31 Scott Wilson indicated on a number of occasions that the decision to impose rules was undertaken in discussion with and in agreement with the States.

Project Management

- 2.32 In relation to project management, there were significant weaknesses in the way this was handled and we found that those weaknesses contributed too many of the problems that were encountered along the way. While better project management in itself would not have reduced the amount of work required to repair the New Jetty, it would have increased the likelihood of identifying the problems earlier and consequently, enabling more informed decisions to be made that may have minimised the ultimate cost to the States.
- 2.33 This is against the backdrop of an Audit Commission report on Project Management, published in May 2003, which outlined how the States should be managing what it called *“an unprecedented number and range of capital projects.”* It went on to say:
- 2.34 *“Such projects need careful project management to ensure that the end result is in line with expectations, and delivered on time within budget and to protect the States’ assets and resources.”*
- 2.35 However, it would appear that not only were the project management arrangements limited when the project commenced in 2001, but that no significant changes or improvements were made after the issue of the Audit Commission report in May 2003.

Procurement of Consulting Engineers

- 2.36 The process of procuring the engineering consultants did not include all potential providers of this service to the States and may therefore not have provided best value for money.
- 2.37 During the time whilst the tendering process was being managed by Scott Wilson, they were asked by the Principal Engineer to provide a quotation for Scott Wilson to act as supervising engineers to the actual contract. This process was in effect a single tender exercise with no other firms being asked to provide a quotation. Whilst Scott Wilson may well have been the best choice for this role, we cannot know if there were better qualified providers of this service available or whether the quotation represented value for money to the States.
- 2.38 Such an approach to the award of a contract, initially budgeted at the level of £527,500, was extremely poor in terms of procurement practice and ensuring value for money to the States.

Lack of Formal Business Case

- 2.39 **There was no formal business case prepared at any point to identify the most appropriate option for the New Jetty repairs and therefore the subsequent approval process was potentially restricted due to the lack of a full evaluation and costing of the various options available to the States, such as would normally be included in a formal business case.**

- 2.40 From the outset it was determined that the Cathodic Protection route was the only viable option to repair the New Jetty. Although experts in the marine engineering field may well concur with this assessment; there does not seem to have been a formal procedure or mechanism to discount the other possible approaches to repairing the jetty.

Project Board

- 2.41 In any capital project of this size and complexity, we would expect to see a Project Board being put in place, before the project commences, to oversee the project from the original tender process to the final sign off when the repairs were completed.
- 2.42 It is apparent from our review of all of the documents relating to project management, that the Principal Engineer and the Board of Administration were in close contact regarding all the decisions that were made throughout the tender process. However, we believe that it would have been prudent to have other experienced individuals brought together in the form of a Project Board, not dissimilar to the New Jetty Supervisory Group, formed in 2005, albeit at this stage many of the problems associated with this project had already occurred.
- 2.43 We understand that many of these project management duties were delegated to Scott Wilson due to their expertise within the marine environment. However the States still have **ultimate and overriding responsibility** for the project. It therefore is imperative that internally within the States, the Project Board's roles, responsibilities and decision making process is clearly defined.

Risk Registers

- 2.44 The setting up of a formal Risk Register would have provided a focused approach to the quantification of risk and the subsequent management of this risk by at least identifying where the risks could occur and therefore allow for risk mitigation strategies to be put in place. In the case of the New Jetty project, no such register or risk strategy was considered until such times as the legal dispute came to the fore and the New Jetty Supervisory Group was put in place. While the Audit Commission produced a report on risk management, we see no specific evidence of the recommendations being implemented in this project.
- 2.45 A Risk Register, or any mechanism to assess and plan for project risk, was not initiated for the New Jetty project. A register or record of the key risks was however maintained during the legal dispute to outline and quantify the different possible outcomes during this legal process, which we believe to be a positive step, but was in effect too little too late.

Choice and Form of Contract and Re-Measurement Risk

- 2.46 In the case of the repairs to the New Jetty, the contract form that was used with Balvac was what is called a re-measurement contract and as a result, the corresponding risk of cost overruns was initially underestimated.

- 2.47 The Tender approach appears to have been to impose risk in relation to the pre-tender reports and available information on the Contractor. While that in itself is not necessarily an uncommon position, to fulfil that aim generally requires very specific drafting within the form of contract that is adopted. In construction contracts, where there is a degree of ambiguity, the employer always runs the risk that a court may construe that such ambiguity goes against the employer (called the *contra proferentem* rule). In such a case, the employer would be considered the originator or “owner” of the document and, therefore, arguably in a stronger position to protect itself.
- 2.48 In the present case, there appears to have been some, but not a great deal of debate, firstly about the form of contract to be adopted and, secondly, about the nature of the project specific amendments that were required to achieve the desired result.

Standard Form Contract

- 2.49 Standard form contracts, in this case the ICE, are pro forma documents – skeletons with standard clauses that are made project specific by a combination of the textual amendments to the printed text (often by way of appendix) and/or the actual specification for works and/or project specific requirements (which are generally appended).
- 2.50 The project specific aspects of the tender and the various amendments and inclusions to the final contract did not focus on re-measurement risk as to the extent of the repair works themselves. In that regard there appears always to have been an acceptance that in the standard (ie unamended) clauses and language used that the form of contract adopted was a re-measurement form of contract. Indeed, given the works that was probably a standard approach and we do not criticise it per se. It follows, however, that there was an acceptance that risk on the extent of the repair works required and the potential of a cost overrun (where the concrete repair works themselves turned out to be more extensive than initially assumed) lay with the States as the employer.
- 2.51 The Board sought the advice of external legal advisers - Ozannes – seeking specifically legal advice as to the options open to it under the ICE Conditions of Contract 5th Edition, including but not restricted to:
- (i) *the Board's options to terminate the Contract followed by either re-tendering or issuing a new Contract with the existing Contractor;*
 - (ii) *suspending works whilst obtaining States' approval for additional funding and/or renegotiation of the rates with the existing contractor.*
- 2.52 Messrs. Ozannes responded by way of a letter of advice of the 20th June 2003. After undertaking an analysis of the contractual position, Ozannes were of the opinion that neither termination nor suspension of the Contract were viable options for the States at that point and, in essence, confirmed the opinion which had been given by Scott Wilson in their 2003 Report.

Dispute Resolution & Settlement

- 2.53 Given the extent of divergence between the parties, earlier settlement of the dispute on a basis that was auditable for the States was unlikely and it was inevitable that litigation would ensue.
- 2.54 At its height, the Balvac claim was asserted at a level of £27m against Scott Wilson's certified amounts under the Contract of £4.3m (with a further £0.5m of withheld liquidated damages) (giving a total contract sum of £4.8m). In addition, the States external legal costs (to include professional witnesses and other experts) amounted (in conclusion) to £3.1m. Balvac's legal and associated costs were subsequently agreed at a figure of £2.2m. Those are the component financial figures that formed the basis of the finally negotiated settlement.
- 2.55 Prior to the arbitration, and based on expert advice and through detailed analysis, the States lodged a sealed offer on the following basis:
- A figure of £6.8m in full and final settlement of the Contractor's claims (calculated on the basis of the engineer's certified values of £4.8m) with a further £2m on account of "additional" (and largely unspecified) works - but which we are assuming largely was to meet any claim on the "Rules" issue; and
 - An additional figure of £1m on account of Balvac's estimated legal costs, costs which were calculated by reverse engineering, based on the States own legal costs of circa £3.1m.
- 2.56 When the arbitration proceedings opened, it became clear early on that Balvac's "true" construction costs were in the region of £13m and their legal costs to date were in the region of £2.2m;
- 2.57 To avoid a finding in favour of Balvac – regardless of whether it was based on the merits of Balvac's claim or, indeed, in terms of the quantum of legal costs – the States agreed to move to a negotiated settlement at a figure of £9m being the £6.8m for the works (as per the sealed offer) and an increase of £1.2m on account of the additional legal costs which Balvac had incurred over the estimate made by the States to come to the total they actually incurred of £2.2m. Such a settlement was commended to the States by its then instructed lawyers, Eversheds, and the Queens Counsel representing them, Mr. David Streatfield-James QC.
- 2.58 The financial settlement was subject to the outstanding defects in the CP System being rectified to the States satisfaction – which eventually occurred (post-settlement) leading to the issue of the final Maintenance Certificate in January 2009.

Recommendations

- 2.59 The repairs to the New Jetty ended in a considerable cost overspend and a much longer time frame for the repairs to be completed. In the sections above, we have identified the key issues that were involved in this capital project and that contributed to

the problems with this project.

- 2.60 As with all such projects, there are lessons to be learned that can contribute to the minimisation of the risk of such problems occurring in future projects of a similar size and complexity. As a result, we have listed below our key recommendations for consideration by the States.

Project Management

- 2.61 One of the key weaknesses was the lack of formal project management disciplines in the management and delivery of the repairs to the New Jetty. Therefore, we recommend that proper project management procedures should be put in place before the commencement of any capital contract. These procedures should also cover the procurement process, contract administration and project acceptance stages. It is also recommended that a Project Board, with a mix of appropriate skills for the project in question, should be put in place before commencing any aspect of a major capital project.

One of the most fundamental aspects that can affect the success of a project is the governance structure put in place to oversee the project including the reporting lines to the sponsoring Department and onwards to the States. It is essential that the ownership, responsibilities and accountabilities are clearly laid out, understood and accepted by all parties involved.

Business Case

- 2.62 It is recommended that for all major capital projects that a formal Business Case should be prepared for approval by the States before funds for any such project are approved. This Business Case should include as a minimum a description of the reasons for the project and the justification for undertaking the project, the various options available to deliver the project, the estimated costs of the project, the inherent risks and the expected business benefits that are expected to accrue from the project.
- 2.63 A Business Case should be one of the key drivers for the decision-making process and should have been used to continually align the project's progress to the benefits that would have been defined within the Business Case.

Risk Analysis & Risk Registers

- 2.64 A risk analysis should be carried out at the outset of any project and where risk actually lies should be fully understood by all involved (both from the States and the Contractor perspective) and an appropriate set of contractual documents entered into to reflect the agreed apportionment of that risk.

- 2.65 We also recommend that a formal Risk Register should always be set up as part of the project management arrangements and considered on a regular basis by the Project Board. Such a risk register should provide a focused approach to the quantification of risk and the subsequent management of this risk by at least identifying where the risks could occur and therefore allow for risk mitigation strategies to be put in place.

Head of Capital Projects

- 2.66 Major capital projects, such as the repairs of the New Jetty are complex to manage effectively. In particular the management of procurement processes, setting up of project boards and then monitoring progress while continually assessing risks is a role, which requires a specific set of skills. Therefore, we recommend that the States should consider creating a role for a Head of Capital Projects to give focus to procurement and project management issues to allow a build up of expertise and ensure that issues and/or problems are avoided in future. This role should not be Department specific as it should be there to service all major capital projects.
- 2.67 We would also note that such a person should not necessarily be expected to be a technical specialist, but rather an expert in project management who knows how to bring effective teams together on a project by project basis to deliver successful outcomes.

Preliminary Investigations

- 2.68 While there may have been some constraint on the budget for investigation works we would recommend that with certain types of very specialised work, there is a clear need to ensure an adequate level of investigation at an early stage.
- 2.69 It must be emphasised that with concrete repair works in particular, there is always a risk that more significant defects may become apparent during the works and that the possibility of this occurring must be balanced against the cost of preliminary investigations.

Information Provided to Contractor

- 2.70 It is concluded that it is essential when a contractor designed element is included in a contract that the contractor should be provided with as much information as possible during the tender process. Where possible, drawings and information should be validated, prior to inclusion in tender documentation.
- 2.71 We therefore recommend that any information provided to a contractor from the initial tender stage onwards is fully checked for validity and accuracy by the technical advisers to the Project Board. Only once this information has been validated, should it be released to the contractor(s).

Contingency Allowance

- 2.72 It is recommended that a suitable contingency allowance should be provided in any major capital project to allow for unforeseen circumstances. An assessment of risk should be undertaken to identify and attempt to quantify those risks most likely to impact on the contract in terms of programme or cost and a contingency allowance should be set at an appropriate level for the project in question. The level of contingency that is recommended should not be influenced by anything other than the risk profile of the project in question. The project board should ensure the Employer is made fully aware of the risks associated with the project and with the particular form of contract being used, i.e. re-measurable or lump sum.

Form of Contract

- 2.73 The choice of contract type is a very important decision, which needs to be made prior to the initiation of the tendering process. To delay such a decision will mean that the opportunities to make any future changes will be minimal. Therefore, we recommend that the Project Board should choose the most suitable form of contract and at the same time, ensure the Employer is made fully aware of the risks associated with both the project and also with the particular form of contract being used.

Imposition of the Rules

- 2.74 The imposition of “rules” on the contractor in this instance became a major issue in the dispute that arose during the contract. Legal advice could have been sought on the contractual impact of imposing the rules, before doing so, particularly as this relieved Balvac of some obligations under the contract. It cannot be known what such advice may have been at the time but in taking such advice the Consulting Engineer and Employer would have had at their disposal as much information as possible to assess the likely impact of imposing the rules and to also examine alternatives. It is therefore recommended that any where any contractual or significant operational changes may become necessary during a contract, that legal advice is sought before any such changes are proposed.

3 BACKGROUND INFORMATION

Introduction

- 3.1 The States of Guernsey ("The States") is the owner of the New Jetty which was originally constructed in 1929. It is an example of an early reinforced concrete marine engineering project and one which has had various repairs made to it over the intervening years. However, around 1997, it became obvious that the state of the concrete was poor and a proposal to make major repairs to the New Jetty was made. The objective was to extend the life of the New Jetty by at least another 25 years.
- 3.2 As a result, a firm called Corrosion Control Services Ltd (CCSL) undertook a trial of what was called Cathodic Protection systems for some limited areas of the New Jetty between February 1998 and June 2000. A number of reports were produced for this trial as detailed below:
- CCSL Cathodic Protection Trial, Installation & Commission Report (January 1999);
 - CCSL Cathodic Protection Trial, Interim Performance Report (January 1999);
 - CCSL Cathodic Protection Trial, System Review Report (October 1999); and
 - CCSL in Conjunction with Balvac Whitely Moran Ltd, issued a Defect Survey and Diagnostic Testing Report (June 2000) ("CCSL/Balvac Report").
- 3.3 These reports then informed the States of the estimated extent of the corrosion problems and potential future solutions around cathodic protection.

Appointment of Engineering Consultants

- 3.4 In September 2000, tenders were invited by the Board of Administration for engineering consultants to "investigate measures to further extend the working life of the New Jetty in St Peter Port harbour, Guernsey". Their commission was also to:
- Examine the findings of recent studies;
 - Assess the structural integrity of the jetty;
 - Recommend the 'way forward';
 - Prepare tender documents for refurbishing the structure;
 - Advise on suitable contractors to be invited to tender; and
 - Issue tender documents, evaluate completed tenders and recommend a course of action to the Board of Administration.

- 3.5 Three engineering consultants, Scott Wilson Kirkpartick, ("Scott Wilson"), High Point Rendel Group and W S Atkins were asked to tender for the work and submitted proposals based on a scope prepared by the Principal Engineer, Harbours and Airports, of the Department of Engineering at the time. The Principal Engineer assessed all three proposals submitted and made recommendations to the Board that the contract be awarded to Scott Wilson. Although Scott Wilson's proposal was not the lowest in cost, their scope was considered more detailed and it was also felt that their experience was greater than that of the tenderer who provided the lowest price.
- 3.6 In November 2000 the Board of Administration accepted the recommendations made by the Principal Engineer and Scott Wilson were appointed as the Consulting Engineer to the States at a proposed cost of £46,900 with an additional £10,000 allowance for a contingency fee.
- 3.7 Following their appointment, Scott Wilson attended various meetings with the States and in December 2000 they presented their Stage 1 Report to the Board of Administration, which showed an expected cost of the works to be around £3.7m. A meeting was subsequently held on 10 Jan 2001 between the Principal Engineer and three representatives from Scott Wilson, to discuss the Design Stage 1 Report. At this meeting, the Stage 1 Report was formally accepted by the Department of Engineering and all aspects of the proposed tender documentation were also discussed. During this meeting, Scott Wilson, were also asked by the Principal Engineer to submit an additional proposal for them to carry out the actual supervision of the jetty repair works.
- 3.8 Subsequently, on the 16th July 2001, Scott Wilson responded with a proposal for the supervision of the works in which they estimated a total cost of £527,376 including expenses. This supervision would involve a Resident Engineer, Assistant Resident Engineer and an Inspector all site based, supported by Head Office project management, commissioning tests and maintenance visits, covering a 19 month period to match the programme of the appointed contractor.
- 3.9 This additional proposal from Scott Wilson was accepted by the States in October 2001.

Tender Process

- 3.10 The tender for the contract to carry out the actual repairs to the New Jetty was issued to six different companies, of which there was a mixture of 'on Island' and 'off Island' contractors, selected by Scott Wilson for their ability to undertake works of a similar nature or who were specialists in this field. The six companies to be invited to tender were:
- Balvac Whitley Moran Ltd;
 - Concrete Repairs Ltd;
 - Freyssinet Ltd;

- Geomarine Ltd;
 - Miller and Baird Ltd; and
 - P Trant Ltd.
- 3.11 The Principal Engineer of the Department of Engineering requested approval from the Chief Executive of the Board of Administration to invite those six companies to tender for the contract and approval was subsequently given.
- 3.12 The tender documents were issued to all six contractors on the 2nd March 2001.

Tender Results

- 3.13 The tender process for the New Jetty repair work commenced on 2nd March 2001 and ended with the tender submission deadline of 12th April 2001. During this period, all 6 contractors were invited to carry out their own site visits to the New Jetty. Clarification questions were also submitted by one of the tenderers and there followed various circulars and addendums containing further information sent to the tenderers by Scott Wilson to assist in their tender completion as follows:
- Circular No. 1 issued on 4 April 2001;
 - Circular No. 2 issued on 9 April 2001;
 - Addendum No. 1 issued on 16 March 2001; and
 - Addendum No. 2 issued on 4 April 2001.
- 3.14 In addition, a copy of the Design Stage 1 Report was issued to each of the Tenderers on 7 March 2001, whilst copies of the four reports on the CP trials by Balvac/CCSL were issued to the Tenderers on 16 March 2001.
- 3.15 Completed tenders were received from all six companies by the closing date of 12th April 2001 and these were subsequently evaluated by Scott Wilson on behalf of the States. Evaluation was based on price, being *“the most economically advantageous Tender, having taken account of all relevant technical factors based upon the supporting information submitted with the Tender Documents.”* A tender evaluation report was subsequently issued to the States on 9th July 2001 and this report was reviewed by the Principal Engineer.
- 3.16 The prices submitted in the tender responses ranged from a low of £2,777,942 from Balvac Whitley Moran to the highest tendered price of £5,830,688. Some of the tenderers also offered alternatives, as allowed for in the tender documentation, which ultimately resulted in a reduction in the price of three of the tenders, with the lowest price tender from Balvac being reduced to a contract sum of £2,554,973.

- 3.17 The Tender Evaluation report in its final form presented the recommendation of Scott Wilson for the award of the tender to Balvac at the price identified above, in which an additional contingency amount was to be allowed relating to remeasured items ultimately totalling £200,000.
- 3.18 The Principal Engineer then reported the findings to the Board of Administration on 17th July 2001 via a detailed memorandum requesting approval to appoint Balvac as the successful tenderer and advised that a Policy Letter be prepared and submitted for debate to the States of Deliberation at its meeting scheduled for 31st October 2001
- 3.19 Approval to appoint Balvac as the preferred bidder and acceptance of Scott Wilson's proposed costs for the supervisory works was granted by the Board of Administration on 25th July 2001. The Policy Letter was prepared by the Principal Engineer on behalf of the Board of Administration and submitted to the States of Guernsey in August 2001 and deliberated in the Billet D'Etat XXI on 31st October 2001. The policy letter was approved by the States of Guernsey and the contract was awarded to Balvac Whitley Moran with a starting date for the repair works of 26th November 2001 and a projected completion date of 26th November 2003, the contract period being 104 weeks.
- 3.20 It would appear from our investigations that the formal contract (although forming part of the Tender Documents) was never actually signed by the parties and that acceptance (and therefore formation) of the contract was achieved by exchange of letters.

Programme of Works

- 3.21 At tender interview Balvac stated that the period between contract commencement (26th Nov 2001) and the commencement of works would be spent in "detailed planning and value engineering". The Balvac tender programme indicated works commencing on 4th March 2002 and completion on 26th April 2003. A clause 14 programme differed slightly stating a mobilisation period in early February 2002 and start on site between 4th and 11th March.
- 3.22 Balvac actually commenced mobilisation on site on the 6th March 2002. Trial breakout was commenced early in the site period however this was quickly halted due to the site Engineer's concerns with regard to the structural integrity of the structure during concrete breakout and a lack of control measures and operating restrictions. In the subsequent months progress on site was very slow and by Progress Meeting No 4 on 25th June, the works on site were estimated to be 10 weeks behind programme. During this period only limited progress appears to have been made on the Cathodic Protection design due to concerns in relation to electrical continuity and estimation of steel reinforcement densities.
- 3.23 Breakout of the first beam was eventually undertaken on the 10th July 2002 where subsequently a total loss of linkages was found due to severe corrosion. This was the first sign that the extent of the corrosion of the steel reinforcement was in some areas, more severe and extensive than Balvac had originally estimated.

- 3.24 After further work in breaking out the concrete from various parts of the jetty, Balvac were of a view that the level of corrosion that had been discovered was greater than either the external visible evidence or the CCSL/Balvac report of June 2000 had indicated. There was also a problem with some of the drawings originally supplied to Balvac, in that they were inaccurate regarding the actual loadings on some parts of the jetty, specifically where some of the buildings on the New Jetty were heavier than expected and therefore were putting more stress on the jetty structure than these drawings had indicated. This would ultimately have the effect of requiring Balvac to provide additional support under parts of the jetty when working below these buildings to ensure the safety of all jetty users.
- 3.25 These issues all combined to create a situation where the project for the repair of the jetty was much larger than had originally been envisaged. Also, due to the increased size of the project, the original cost estimates were no longer adequate and it became clear that the project would cost more than originally estimated. The timescales involved are shown in Appendix 2, where we detail the chronology of the project.
- 3.26 The Board of Administration wrote to the Advisory and Finance Committee on 8th January 2003 informing the Committee that it had become apparent early in the contract that the condition of the jetty was much worse than was indicated by the initial engineering inspections and that an overspend in the contract was likely. They also informed the Committee that they had asked Scott Wilson to provide them with a more detailed survey of the work still to be completed and to advise on the options available to it.
- 3.27 A report was issued by Scott Wilson in May 2003 which subsequently informed the Board that the revised extent of the repairs, the associated additional works, the sequencing of these additional works and the problems with the loadings, would have a serious cost implication and the contractor would be due additional monies. The report went on to state that Balvac had estimated the out-turn cost to be between £8m and £8.5m at this time. However this had yet to be substantiated by the contractor as this estimate was based on an extension of the current run rate of expenditure to the end of the contract period. Scott Wilson commented that this figure should be considered as the absolute ceiling cost as all the indications were that the final cost would be substantially within this amount. For budget purposes Scott Wilson recommended that provision should be made for a final contract cost of £7.0m, and they stated that every effort would be made to conclude the project with savings on this amount.
- 3.28 In considering the options available to the States at this time, Scott Wilson reconsidered the possibility of the following:
- Enclosing the jetty with a sheet pile wall and infilling the enclosure;
 - Abandoning the jetty, using the dolphins only for the berthing of ships;

- Reducing the loads on the jetty by demolishing the building;
 - Relocating the passenger terminal building to the shore end of the jetty;
 - Rebuilding the entire jetty; and
 - Rebuilding elements of the jetty.
- 3.29 Many of the above options appear to have been considered prior to the decision to commence the repair contract. These options had been rejected for technical, operational, cost or safety reasons, all of which according to Scott Wilson remained relevant at the time. However, there was no evidence that there was any formal evaluation of these options prior to commencement of the project and therefore the decision making process must be called into question without the presence of a fully costed options appraisal as part of a formal Business Case. This is considered further in Section 4 below.
- 3.30 Scott Wilson subsequently reported to the Board in May 2003 that while the scope of the work remained unchanged, increased quantities of work would be required and that the completion date of the project would need to be extended until around December 2004. Scott Wilson also stated that these issues would have a serious cost implication, but that continuing with the contract remained (a) the most cost effective solution and (b) the only way to maintain the integrity of the jetty to continue to support port operations safely.
- 3.31 The Board, having considered this advice and also having taken specialist legal advice from Ozannes, a Guernsey legal firm, about the options available to it to terminate the contract with Balvac, decided that aborting the contract was not an option, not least due to the likelihood of legal action against the States for breach of contract by Balvac and the financial risk that such an option would incur.
- 3.32 The Board of Administration prepared a Policy Letter that was sent to the States of Guernsey on 14 October 2003 updating them on the current situation and asking for the following to be deliberated at the next States meeting:
- “To delegate to the Advisory and Finance Committee the authority to vote credits of such further finding, in addition to the above sum of £3,282,473.00 to cover the increased costs of the above project, such sums to be charged as capital expenditure in the accounts of the Harbour of St Peter Port”; and*
- “To instruct the Board of Administration to report back to the States of Deliberation on expenditure on the above project as soon as practicable after completion of the contract.”*

- 3.33 This resolution was deliberated in the Billet D'Etat XXV on 26th November 2003 and subsequently approved. The contract continued and the Certificate of Substantial Completion was issued in April 2006, which was some two and a half years after the original contract completion date.
- 3.34 The contract was not finally completed until January 2009, due to both a legal dispute between the States and Balvac and also due to defects in the cathodic protection systems, which were identified and had to be rectified before Scott Wilson could issue the final Maintenance Certificate and therefore complete the final part of the contract. Details of the dispute are contained below along with the process that ensued at this time.

Dispute and Legal Process

- 3.35 Around April 2003, Balvac produced a programme of works which indicated that the contract would not be completed until November 2005, some 24 months later than the original completion date. Based on this proposed completion date, Balvac estimated that the outturn cost would be between £8m and £8.5m and that every additional month after the completion date would add a further £80,000 per month to the cost.
- 3.36 It appears to be as a result of these time and cost overruns that the States sought legal advice through it's then Deputy Chief Executive of the Board of Administration, when he wrote to the law firm Ozannes on 16th June 2003 asking then to provide him with their opinion in relation to (a) the Board of Administration's options to terminate the contract followed by a retendering exercise or new contract with the existing contractor and (b) whether the Board of Administration could suspend works whilst obtaining additional funding from the States or renegotiating rates with the existing contractor.
- 3.37 The subsequent response from Ozannes to these questions indicated that it was their belief that there were no appropriate options to terminate the contract as, in simple terms, Balvac were not actually in breach of the original contract. In fact they stated that a termination of the contract would be a repudiatory breach of contract by the Board of Administration and would entitle Balvac to sue for damages. On the second issue around suspension of the works, Ozannes advised that there were no grounds for suspending the contract.
- 3.38 Ozannes also confirmed that the contract was in a form which provided that if Scott Wilson as the consulting engineers decided that additional works were required and asked Balvac to carry out these works, that Balvac was then obliged to carry out those additional works and to be paid extra money and/or given extra time to complete them. In performing that role, Scott Wilson acted as an independent expert and not as an agent of its employer – in this case the States.
- 3.39 In a letter dated 1 September 2003 from HM Procureur to Deputy RC Berry, concerns were raised around the fact that the original contingency figure of 25% of the contract value (a contingency amount of £672,113) had been reduced to a contingency of 7% or

£200,000 at the time of contract award. The letter indicated that there had been no explanation as to how the reduction occurred and neither did our investigations find any supporting documentation for this decision. The letter went on to say that had the contingency been left at 25% of contract value, this would have served to underline with some force the uncertainty attributable to the project. There was a view within the States that the additional contingency would have made no difference to the decisions made or the ultimate outcomes as the method and volume of work had changed substantially. Regardless of the correctness (or otherwise) of that view, what the debate serves to highlight was the initial uncertainty around the overall likely extent of the works – a point that we will return to later in Section 5.

- 3.40 The various issues discussed above were presented to the Advisory and Finance committee at their meeting on 19 September 2003. The committee expressed disappointment that the severity of the structural deterioration had not been previously identified, but agreed that there was no other realistic alternative but to continue with the remedial works as authorised by Scott Wilson and to report the matter to the States.
- 3.41 As mentioned previously, by mid 2003, Balvac's claims were accelerating against Scott Wilson's certified amounts. At the point when the Scott Wilson 2003 Review was undertaken, Balvac's claims to that point amounted to approximately £8m as contrasted with Scott Wilsons' anticipated overall costings for the entire Project of approximately £7m. Given the disparity between the figures, it was inevitable that litigation would ensue.
- 3.42 That litigation was commenced mid 2006, but the actual detail of the claim only became clear when Balvac's actual Points of Claim were served which outlined the details of the claim against the States. At its height, the Balvac claim was asserted at a level of £27m against Scott Wilson's certified amounts under the Contract of £4.3m (with a further £0.5m of withheld liquidated damages) (giving a total contract sum of £4.8m). In addition, the States external legal costs (to include professional witnesses and other experts) amounted (in conclusion) to £3.1m. Balvac's legal and associated costs were subsequently agreed at a figure of £2.2m. Those are the component financial figures that formed the basis of the finally negotiated settlement. The issues relating to the dispute itself are dealt with in Section 5 below.

4 TECHNICAL CONSIDERATIONS

Introduction

- 4.1 This section of the report reviews the technical aspects of the project from inception to completion of the works on site and also addresses issues relating to the eventual legal/financial settlement where technical considerations had a bearing on this process.
- 4.2 The scope of this review is not intended to include a detailed assessment of the technical merit or accuracy of the scheme design or the subsequent design/investigations carried out as part of the ongoing contract administration and dispute procedure, but concentrates on where technical issues have impacted on the smooth administration of the contract or where these considerations were associated with the delays and cost increases which occurred during the course of the project.
- 4.3 In some cases we have made comment on general issues which, whilst they may not have had a significant direct impact on the eventual outcome of the contract, in any case may have been better dealt with and which could be implemented in future schemes.

Key Findings

Severity of Corrosion

- 4.4 Initial physical investigations failed to identify the full extent and severity of reinforcement corrosion. The States of Guernsey had appointed specialist technical experts to undertake the preliminary trials and took advice from these experts in the specification used for these physical Investigations.
- 4.5 The increasingly poor condition of the New Jetty in St Peter Port had been a subject of ongoing concern to States of Guernsey ever since they considered the structural strength of the jetty as early as 1968. Various repair works and strengthening had been carried out in the past to attempt to maintain the New Jetty and prevent further deterioration.
- 4.6 The more recent investigations can be traced back to 1993 and the sequence of events in terms of investigatory works can be summarised as follows.
- Global Corrosion Consultants – Pilot Corrosion Study (April 1993)
 - CCSL Cathodic Protection Trial, Installation & Commissioning Report (January 1999);
 - CCSL Cathodic Protection Trial, Interim Performance Report (January 1999);

- CCSL Cathodic Protection Trial, System review report (October 1999); and
 - CCSL in conjunction with Balvac Whitely Moran Ltd, issued a Defect Survey and Diagnostic Testing report (June 2000).
- 4.7 Works undertaken on site included visual inspection, hammer tap surveys, covermeter surveys, chloride testing, and petrographic analysis at a total of 10 locations, 8 of which exhibited signs of degradation and 2 appeared to be unaffected (5 piles, 4 beams and 1 raking pile).
- 4.8 The quantity and extent of physical investigation carried out in the CCSL Defect Survey and Diagnostic testing (2000) is not considered sufficient given the size of the structure and the nature of the works planned to be undertaken. The jetty structure measures some 210m x 47m and comprises 400 vertical columns, 9 rows of longitudinal beams and 34 rows of transverse beams. The total number of individual elements is 3,053. Therefore the breaking out of 10 areas in the year 2000 investigations represents a sample of only 0.3 % of elements of the New Jetty and much less when considered as a proportion of the total area. This is not considered sufficient to provide a clear understanding of the extent and severity of ongoing corrosion of the steel reinforcement or to allow the accurate estimation of likely repair quantities. This is evidenced by the large discrepancy in the estimated quantities compared to those actually undertaken during the works and the incidence of higher than expected levels of reinforcement corrosion uncovered during the works.
- CCSL Report June 2000 2475 m sq. (33%)
 - Bill of Quantities 7468 m sq. (100%)
 - Quantities Measured 8925.69 m sq. (119.5%)
- 4.9 The inadequacy of the preliminary investigations is acknowledged by Scott Wilson in their 2003 report to the Board of Administration³ stating *“No further trials or surveys were allowed for and the previous work was used in conjunction with a visual survey as a basis for determining the most appropriate CP installation in conjunction with repairs. This June 2000 report was the main technical basis for the definition of the works and was undertaken by acknowledged experts in concrete repair and Cathodic Protection. With hindsight it is apparent that the investigation covered by this report was not extensive enough nor was it a reliable basis for further work.”*
- 4.10 It must be acknowledged that although this review concludes that the preliminary physical investigations were inadequate, there is no guarantee that further investigations would have revealed evidence of any or all of the various problems that

³ Scott Wilson, Report to Board of Administration on Contract for Rehabilitation of 'New' Jetty, St Peter Port, dated May 2003

became apparent during the execution of the works although the likelihood would have been increased. Sample investigations by their very nature are undertaken at discrete locations and a judgement has to be made between the extent and thus cost of investigations against the risk of unforeseen problems arising at a later date. The severity and extent of concrete degradation is inherently difficult to estimate and we would have expected that, being aware of this difficulty, the specialist contractors CCSL should have specified more extensive investigations and/or advised the State of Guernsey of the risks associated with this type of work.

- 4.11 In 1998 CCSL did highlight a concern about the severity of reinforcement corrosion uncovered during the early Cathodic Protection trials and stated in a letter to the Principal Engineer⁴:

“....we believe it is our obligation to draw your attention to the extent of reinforcement section loss observed in these breakout locations. Within the two main columns there are in certain locations up to 100% loss of ‘link’ over some 75mm length reinforcement combined with up to 20% section loss of the main vertical reinforcement and generally minor pitting in other places. Within the repair areas broken out in the soffit, reinforcement exposed generally shows quite deep pitting with some localised pits resulting in circa 50% loss.”

Despite feeling the need to write specifically to the Principal Engineer to raise this issue no comment was made to these concerns in the 2000 report or to reporting the observations.

- 4.12 Although subsequent issues regarding total loss of links were related primarily to beams these statements would have served to highlight to any subsequent designer/contractor the potential for advanced stages of corrosion in the reinforcement of the structure.
- 4.13 The States of Guernsey rightly appointed specialist corrosion experts to undertake the preliminary trials and took advice from these experts in the specification of the trials, inspections and physical Investigations. It is clear that the advice received and scope of works undertaken was inadequate.

Inadequate Physical Investigations

- 4.14 The Consulting Engineer for the implementation stage, Scott Wilson did not carry out further physical investigations prior to detailed design.

Scott Wilson were the Consulting Engineer appointed by the States to manage the tender specifications and procurement process and, had the opportunity to review the findings of the preliminary investigations prior to undertaking detailed design and preparation of contract documentation. We have been unable to determine with

⁴ Letter, CCSL to the Principal Engineer, dated 3rd March 1998.

certainty whether or not Scott Wilson had sight of the letter of 3rd March 1998 to the Principal Engineer.

- 4.15 It is clear from a number of items of correspondence that we reviewed, as detailed below, that Scott Wilson were aware of the limitations of the original inspections/investigations and that they were also aware of the likelihood that concrete repair contracts can by their very nature be subject to significant variations.

Design Stage 1 Report - section 6 – Scott Wilson noted that *“From Scott Wilson’s experience and the knowledge acquired to date, it would appear that the nominal percentages assumed for repair in the Corrosion Control Services Ltd report are low”*

- 4.16 The Arup report of March 2005 reported the facts of an interview they had with Scott Wilson in which they record in section 3.5.1:

“Scott Wilson believed that the client should have allowed a complete survey to have been made of the jetty but that budget constraints at the time precluded this, given the expenditure that had been made on the investigations by CCSL.”

“Scott Wilson stated that the client then instructed them to prepare tender documents, although Scott Wilson had expressed the view that the inspections that had been carried out at that time were not sufficiently extensive.”

- 4.17 However no contemporaneous evidence was found during the review to suggest any such request for additional surveys had been made. In their proposal for the services of Consulting Engineer, Scott Wilson stated on page 15 section 6.1 that “there is no requirement for additional surveys, inspections or files (in the scope of work). However if the review of the earlier work identified the need, then these additional tests could be recommended as part of the way forward.” This issue was also addressed in a meeting on 14th Nov 2000 attended by Scott Wilson and The Principal Engineer, the minutes of which state in Section 6 “The States of Guernsey stated they hoped that the existing data on the CSL trials was sufficient but will be prepared to carry out further trials if Scott Wilson recommended them”. Whilst this does not relate specifically to physical investigations it would appear that the States were willing to undertake further works should they be required.

- 4.18 In their 2003 report Scott Wilson when referring to the original CCSL Report state:

“No further trials or surveys were allowed for and the previous work was used in conjunction with a visual survey as a basis for determining the most appropriate CP installation in conjunction with repairs. This June 2000 report was the main technical basis for the definition of the works and was undertaken by acknowledged experts in concrete repair and Cathodic Protection. With hindsight it is apparent that the investigation covered by this report was not extensive enough nor was it a reliable basis for further work.”

- 4.19 We consider that Scott Wilson had sufficient opportunity to specify that additional physical investigations be carried out before tender but do not appear to have made the States aware that these would have been advantageous. The record of the interview

from the Arup report suggests Scott Wilson did make the States aware of this issue. We have been unable to identify any specific correspondence to confirm this, however comments in Billet D'Etat Wednesday 26th November 2003 along with comments made in some of the interviews that we undertook do seem to suggest that there may have been some element of budget constraint at the time of the original investigations:

“The spend on site investigations had been in the region of £48,000 which was in itself a significant figure. Any further expenditure on site investigations would have been a substantial proportion of the overall expenditure for this project”⁵.

In hindsight, however, that comment to some extent reveals a lack of understanding of the likely risk of a cost overrun – something that was always possible in a project of this type.

- 4.20 The Scott Wilson Design Stage 1 report does note the need for further surveys prior to authorisation of each phase to give more accurate quantities, but for such an important issue which Scott Wilson acknowledge, we consider Scott Wilson could have been more proactive in making the States aware of potential implications at an early stage of the project. This basis is fundamental as it also led to the selection of the form of contract as discussed in paragraph 5.2 below.
- 4.21 In summary we feel that Scott Wilson could have recognised the limitations of the original surveys and being familiar with the uncertainties of concrete repair works could have taken the opportunity to have further investigations carried out prior to tender. This would have increased the chances of identifying those areas of more significant corrosion prior to tender although this would not have been guaranteed. Also, it is important to note that additional surveys, assuming they identified the scale of the repairs required, would have been unlikely to have reduced the final cost of repairs, but instead would have allowed the States to have been aware of the full scale of the works and potentially have avoided the dispute with the contractor.
- 4.22 While there may have been some constraint on the budget for investigation works we would suggest that with certain types of very specialised work, there is a clear need to ensure an adequate level of investigation at an early stage.
- 4.23 It must be emphasised that with concrete repair works in particular, there is always a risk that more significant defects may become apparent during the works and that the possibility of this occurring must be balanced against the cost of preliminary investigations.

Misinterpretation of Preliminary Investigations

- 4.24 There was a fundamental misinterpretation of the results of the preliminary investigations which was carried forward through the project.

⁵ Billet D'Etat Wednesday 26th November 2003

- 4.25 Although the scope of the preliminary investigations is considered to be inadequate they did provide some level of information on the extent of corrosion to the steel reinforcement in the structure. The CCSL Defect Survey and Diagnostic Testing Vols 1 & 2, June 2000 recorded that typically damaged areas exhibited evidence of "greater than" 20% loss section in reinforcing bars but does not make any attempt at being more precise. In reference to the deck soffit, deck beams and column elements the report recorded the following:

"...severely corroded with extensive loss of cross sectional area (greater than 20% loss of cross sectional area)."

"...significantly corroded in places, with extensive loss of cross sectional area (greater than 20%), and pitting corrosion."

"...extensively corroded with significant loss of cross sectional area (greater than 20%), and pitting corrosion."

- 4.26 However when this data was interpreted in the Scott Wilson Design Stage 1 report the following statements are made:

"Where the concrete had delaminated, the steel reinforcement showed a reduced cross sectional area, approximately 80% of the original area."

"...there were areas where the reinforcement had lost 20% of its cross sectional area due to the effects of corrosion."

"Where the concrete was damaged, the reinforcement had reduced in section due to corrosion to approximately 80% of its original size."

- 4.27 The Scott Wilson report also states in the structural assessment section:

"Although previous studies have indicated loss of section of reinforcement of up to 20% ..."

- 4.28 It appears that from original statements indicating corrosion in excess of 20% the engineer has made an assumption that corrosion is approx 20%. CCSL / Balvac could have been more definitive in the description of the levels of corrosion in their reports to leave the actual extent open to less interpretation but also, given the relatively broad comments made, Scott Wilson could equally have investigated further, either by consultation with the report authors or by further physical investigations to more accurately determine the extent of corrosion. This fundamental misinterpretation appears then to have been perpetuated through subsequent correspondence and may have therefore been used as a basis for making subsequent decisions. For instance: In their 2003 report Scott Wilson state *"The investigation carried out in early 2000 suggested that the loss of steel was rarely greater than 20%. It was concluded that in general the repairs could be safely carried out with limited steel replacement"*.

- 4.29 A report from the Board of Administration to the States of Guernsey dated 22nd October 2003 and included in Billet D'Etat, Wednesday 26th Nov 2003 states *"The loss of main steel in the beams was found to be significantly greater than the 20% figure estimated in the Defect Survey Report, with actual losses of 40% and 50% in the section area of the main bars."*

It is not possible to assess the full implication that this misinterpretation actually had on the final outcome of the works however it can be assumed that the misinterpreted levels of corrosion would have been a consideration in any subsequent decisions.

- 4.30 Significant and sometimes total loss of links was identified in the 1998 CP trials, but this was not recognised during the design and implementation of the project under review. This later became an issue during the execution of the works.
- 4.31 A letter dated 3 March 1998 in connection with the CP trials draws the attention of the States to the extent of disrepair of the jetty and in particular notes that *"within the two main columns there are in certain locations up to 100% loss of link over some 75 mm length reinforcement combined with up to 20% section loss to the main reinforcement..."* Although this statement is based on the localised breakout of only 2 columns it does draw attention to the possibility or even the likelihood of the extent of corrosion which may be anticipated in the structure. This statement does not appear to have been repeated in the final reports.
- 4.32 The occurrence of total loss of links was a contributory factor in the greater than anticipated extent of works on the structure and although on site this problem was generally in relation to the deck support beams, the statement in the 1998 letter which related to columns would perhaps have made the Supervising Engineer aware of the likelihood that significant corrosion could be encountered in the structure. However no evidence has been found to indicate Scott Wilson were aware of the contents of this letter and if not then they would not have been aware that total loss of links had been encountered.
- 4.33 This issue highlights the need to ensure that all relevant information should be included in formal reports and also that when consultants are employed during the course of a project that they should be made aware of all relevant information which may be available. Failure to do so can have substantial implications in the procurement of and in the execution of the works.

Information Provided to Contractor

- 4.34 The level of information provided to the contractor at tender stage was limited and in some cases was inaccurate. There was confusion regarding the status of the record drawings available for inspection which may have caused delay during the contractor's design of the CP system. Much responsibility was placed on the contractor to assess

the structure but limited information was provided for him to do this. Provision of as much accurate information at tender stage will help to mitigate risk and claims during the execution of contracts.

Information made available during tender period

4.35 With a contract which either wholly or partially involves contractor designed elements there is a need to provide the contractor with as much information as possible at tender stage in order to mitigate the risk of claims during the execution of the works.

4.36 The works proposed on the New Jetty involved two main elements of contractor design input:

- Design of the cathodic protection system; and
- Assessment of the need for and design of temporary support to the structure during the course of the works.

Both of these elements require accurate information to be provided on the extent of reinforcement in the individual elements of the structure.

4.37 It is apparent from the review of contract correspondence that certain information only became available to the contractor after the award of contract and in addition some information provided during the tender was subsequently proven to be inaccurate. A large number of record drawings of the structure are available in the States archive however it has not been possible to determine with any certainty which were made available to the contractor for inspection during the tender period.

4.38 The tender information provided included drawings of the general arrangement of the structure and the proposed repair works but does not appear to provide any drawings showing the level of steel reinforcement in the structure. The tender documents, Spec CI 50.009 state that:

“Steel reinforcement layout and densities shall be determined by the Contractor from the steel reinforcement drawings. For guidance however, the following steel surface area/concrete surface area or steel surface area/length of member, can be assumed for design purposes (including allowance for ties, laps, etc.).”

4.39 Guidance is then given on areas to be assumed in the design.

4.40 We understand that reinforcement drawings were available for inspection but were not issued with the tender documents, Ref: *Millar and Baird letter dated 6th April 2001, file 15 and tender circular 02*. Tender circular 01 refers the contractor to ITT 23 and notes that drawings are available for inspection whilst Tender addendum 02 included a revision to the steel densities provided for in the specification.

- 4.41 A fax transmission⁶ from Scott Wilson to the Principal Engineer refers to this issue and states that the steel density information included with the tender addendum 02 is sufficient to carry out the design and notes that drawings available are not as built and *“so conclusions drawn from them are not guaranteed representations of the actual structure”*. Yet the contractor is referred to these drawings for the assessment of reinforcement densities. It would appear that responsibility was placed on the contractor for the assessment of steel densities but he was given limited information to base this on, particularly if the record drawings were not part of the tender documents.
- 4.42 Confusion as to the extent of information available and its status under the contract may have in part contributed to the large range in tender prices as individual contractors will have taken different views as to the risks associated with the design elements of the tender.

Information made available after award of contract

- 4.43 It is also the case that additional drawings became available to the contractor after the award of contract which it would appear were not available to him when he was preparing his tender.

This issue resulted in a significant amount of correspondence on the issue of reinforcement densities during the development of the contractor's design and it would appear that delay occurred as a result of the conflict between the specified densities which the contractor was instructed to use at tender and those which were subsequently calculated from the record drawings.

Inaccuracies in information

- 4.44 It became apparent after the award of the tender and during the detailed assessment of the structure that a 350 mm slab along with heavier than anticipated blockwork were present in some areas of the existing structures. This had not been identified at the time of tender and additional works were required to strengthen the jetty at this location.
- 4.45 Scott Wilson stated in an interview with Arup that they were presented with a set of GA drawings by the employer and made general loading allowances for buildings based on these drawings during the preparation of their design.
- 4.46 It is not clear from the documentation what validation, if any, of the existing information was carried out by Scott Wilson however it can be concluded that had this issue been identified prior to tender then at least some delay and additional cost could have been mitigated.
- 4.47 It is concluded that it is essential when a contractor designed element is included in a contract that the contractor should be provided with as much information as possible

⁶ Facsimile transmission, Scott Wilson to the Principal Engineer, dated 6th April 2001

during the tender process. Where possible, drawings and information should be validated, prior to inclusion in tender documentation.

Contractors Responsibility

- 4.48 The tender documents explicitly stated that it was the contractor's responsibility to obtain information on the nature of the site and existing construction (ITT 23):

"It is the responsibility of the Tenderer to visit the Site and obtain all information necessary for the purpose of preparing his Tender. He must inspect and fully satisfy himself as to:

- a) The nature of existing construction.*
- b) The requirements and extent of the Works.*
- c) The means of access to the Site....."*

- 4.49 It is clear from post tender correspondence that although drawings were available for inspection during the tender period and additional drawings were provided afterwards, they did not form part of the contract documents. This view is expressed by Scott Wilson in their fax to Balvac dated 6th Feb 2002:

"The design and specification for the project has been assembled using a number of existing data sources all of which were, as noted in the Instructions to Tenderers, available for inspection during the tender period. These sources were not part of the Tender Documents, and are therefore not part of the Contract Documents. The instructions to tenderers also places the onus on the Tenderer for finding out the nature of the existing construction."

- 4.50 The position of the contractor in relation to the status of information provided is uncertain. If the contractor used them, did this imply that he was taking on the risk associated with any variance between the actual construction of the jetty compared to the drawings? In reality the contractor was in no position to take any other course of action as there was no other way of assessing the levels of reinforcement required during the tender process. The contractor was always therefore going to be in the position that the actual form of construction would only become apparent during the course of the works.
- 4.51 It would appear from the contract documents that the responsibility for the design of the Cathodic Protection system and the assessment of the temporary stability of the structure was passed to the contractor but that at the time of tender there was limited information available other than that which was given no status under the contract. It could reasonably have been anticipated that this uncertainty would lead to disagreements with the contractor during his design and implementation of the works. The significance of this is dealt with in Section 5 below.
- 4.52 It is clear that there were significant issues of dispute between the Consulting Engineer and the Contractor in relation to design responsibility which continued into the contract period. An opportunity existed to clarify this situation with the contractor before award

of the contract and thus mitigate the risk of ongoing dispute however there does not appear to have been any such effort, the relationship between Consulting Engineer and Contractor remaining confrontational. To do so may have mitigated some of the delays to the project in relation to Cathodic Protection design.

Provision of Contingency Allowance

- 4.53 A suitable contingency should be provided in any contract to allow for unforeseen circumstances. An assessment of risk should be undertaken to identify and attempt to quantify those risks most likely to impact on the contract in terms of programme or cost. A contingency was allowed for in the contract in relation to risk of remeasurement but it is not clear if any allowance was made for other unforeseen circumstances arising.
- 4.54 As highlighted above, from a consideration of the relevant files it appears that in their draft tender evaluation report⁷ Scott Wilson originally proposed to the States that a contingency sum of 25% of the contract value be allowed for potential cost overruns. A letter from the Principal Engineer to Scott Wilson regarding their report⁸ makes reference to this recommendation and indicates he would have difficulty in explaining a 25% contingency item to the Board of Administration. A copy of the original draft tender evaluation report in which that contingency was suggested is not available and the subsequent report does not make any reference to a 25% contingency and in fact ultimately recommends a £200,000 (7%) contingency.
- 4.55 When the difference in the extent of works and likely cost overrun became apparent, this point was again referred to in a letter dated 1 September 2003 from HM Procureur, where the Procurer raised concerns around the fact that the original contingency figure of 25% of contract value (a contingency amount of £672,113) had been reduced to a contingency of 7% or £200,000.
- 4.56 The final tender evaluation report indicates that the £200,000 contingency is based on an assessment of re-measurement risk for concrete repair quantities. It is not clear what the basis for the original contingency allowance was, however the fact that Scott Wilson felt it necessary to make such a recommendation in the first place would suggest they had some reservations regarding the potential risks associated with the contract. Mr Hill states in his witness statement⁹ on this matter that “Scott Wilson considered my points and, of their own volition amended their tender evaluation report to include a contingency of £200,000”.
- 4.57 Although the context of the original 25% contingency is not known, and setting aside the fact that actual cost overruns were in any event greatly in excess of this allowance, the inclusion of the original 25% contingency recommendation in the tender report may

⁷ Scott Wilson Tender Evaluation Report, Doc No OUT/03, dated 9th July 2001

⁸ Letter, Principal Engineer to Scott Wilson, dated 18th May 2001

⁹ Principal Engineer, Witness Statement, dated 6th December 2003

have made the Board of Administration more aware of the potential for cost variations in the type of works being undertaken.

Imposition of the Rules

- 4.58 The imposition of “rules” on the contractor became a major issue in the dispute that arose during the contract. Legal advice could have been sought on the imposition of rules**
- 4.59 Initial concrete breaking out was commenced on site by Balvac in April 2002 however this was quickly halted by the Scott Wilson acting in the role of Consulting Engineer due to Balvac’s “over exuberant trial breakout of the structure”¹⁰. Scott Wilson instructed Balvac to stop work until detailed method statements including a sequence of working had been submitted as required under the contract. A first draft of rules for implementation of the works were produced by Balvac’s consultants on 23rd July 2002 with a further drafts being issued on 9th August 2002 and 29th August 2002.
- 4.60 Scott Wilson rejected the Balvac rules as they did not ensure the stability of the structure in the temporary condition and proceeded to develop their own rules which were issued to the contractor in a number of phases between October 2002 and February 2003.
- 4.61 It is clear from the review undertaken that the imposition of rules on the contractor became a significant issue in the dispute that arose during the contract and indeed impacted then on the settlement negotiations.
- 4.62 The expert report prepared by Arup¹¹ concludes that the rules prepared by Balvac were not adequate and that the rules imposed by Scott Wilson corrected the inadequacies of the Balvac rules. The report also acknowledges that “the Scott Wilson rules required Balvac to undertake the work in a manner beyond that required to meet the contractual requirements, due to the changes in the applied loadings and the consequences thereof.”
- 4.63 The need to issue rules to correct deficiencies in the Balvac rules is worthy of examination. In accepting that the Balvac rules were inadequate the question is asked “did the Consulting Engineer need to impose rules and by doing so did this lead the contractor to claim them as an instruction/variation, or rather could the Consulting Engineer have required Balvac to re-submit the rules to address any deficiencies?”
- 4.64 It is clear that Scott Wilson considered the Balvac rules in some detail and made detailed comments on them. They were diligent in their approach to this issue and it is accepted that the ongoing issue of Balvac’s failure to produce an acceptable set of rules

¹⁰ Scott Wilson Kirkpatrick letter to Balvac, dated 22nd April 2002

¹¹ Ove Arup & Partners, Stage 1 Report, dated 21st February 2005

was a cause for concern in terms of structural stability, Health & Safety and progress on the works. However, it may have been advantageous to have taken some legal advice on the contractual impact of imposing rules, before doing so, particularly as this relieved Balvac of some obligations under the contract. It cannot be known what such advice may have been at the time but in taking such advice the Consulting Engineer and Employer would have had at their disposal as much information as possible to assess the likely impact of imposing the rules and to also examine alternatives. The imposition of the rules most certainly opened the door to the potential for a legal debate around whether, and then to what extent, the rules either forced an alternative methodology on the Contractor and/or constituted a contract variation on the back of which Balvac would then be entitled to an extension of time and/or additional costs and further debate on the rates which were then applicable to those costs.

- 4.65 The Cyril Sweet report "Initial report on planning and programming matters" dated 30th April 2006 acknowledges the risk in Scott Wilson issuing their own rules and states "There is a real risk therefore that the issue of the ER of their own rules and/or site instructions could be interpreted as an instruction or direction under Clause 13(1), which has in fact disrupted Balvac's proposed arrangements and methods of construction and therefore entitles Balvac to claim".
- 4.66 Scott Wilson indicated on a number of occasions that the decision to impose rules was undertaken in discussion with and in agreement with the States.
- 4.67 The Arup report states "Scott Wilson reported that the States had agreed that Scott Wilson should produce its own rules to expedite the contract". Scott Wilson also state in many of their progress reports "Following discussion with the Client's Representative we informed Balvac that Scott Wilson will be issuing repair/breakout instruction for the future areas of work. This relieves Balvac of the obligations under CI 1.021 but will allow Scott Wilson more control over the safety of the structure".
- 4.68 The Principal Engineer appears to have been officially informed of the Rules by a Scott Wilson letter dated 6th Nov 2002¹² which states "The result of this analysis is a series of rules and limitations set by Scott Wilson within which the Contractor will be required to work." We have not identified any specific correspondence from the States on this particular issue agreeing to Scott Wilson issuing their own rules.
- 4.69 In conclusion we are of the view that the consequences of the issuing of Scott Wilson rules could have been examined in detail and legal advice taken before any such rules were issued as an instruction to the contractor. At the very least, that process could have informed as to the ongoing risks (and attendant costs) that might be faced.

¹² Letter from Scott Wilson to the Principal Engineer, Ref: DMDW/MWPSP/02/086, dated 6th November 2002

5 PROCUREMENT AND PROJECT MANAGEMENT

Introduction

- 5.1 The two key procurement exercises involved in the repairs to the New Jetty were firstly the appointment of the engineering consultants and secondly the appointment of the main contractor. The engineering consultants were initially appointed to prepare the tender documentation and to oversee the tender process through to the appointment of the contractor. However, during the time the Scott Wilson were advising the States through the tender process, they were asked to provide a price quotation to provide the States with the additional service of Supervising Engineers during the construction phase.
- 5.2 In relation to project management, there were significant weaknesses in the way this was handled and we found that those weaknesses contributed too many of the problems that were encountered along the way. While better project management in itself would not have reduced the amount of work required to repair the New Jetty, it would have increased the likelihood of identifying the problems earlier and consequently, enabling more informed decisions to be made that may have minimised the ultimate cost to the States.
- 5.3 This is against the backdrop of an Audit Commission report on Project Management, published in May 2003, which outlined how the States should be managing what it called *“an unprecedented number and range of capital projects.”* It went on to say:
- “Such projects need careful project management to ensure that the end result is in line with expectations, and delivered on time within budget. It is also fair to say that projects mean change, and change brings uncertainty and risk. Modern project management practices are needed to ensure all these facets are properly managed, to ensure the above objectives are met, to manage the change process (and minimise its impact on staff and other stakeholders), and to protect the States assets and resources.”*
- 5.4 However, it would appear that not only were the project management arrangements limited when the project commenced in 2001, but that no significant changes or improvements were made after the issue of the Audit Commission report in May 2003 and hence the guidance contained in this report was not acted upon in relation to this project. While there is a question as to whether such project management arrangements being put in place almost two years after the contract was awarded to Balvac would have made any significant difference to the ultimate outcome, this is not the issue, as the lack of strong project management principles did continue to effect the delivery of the project, for example in how the ‘new rules’ were enacted in October 2002.
- 5.5 It wasn’t until the New Jetty Supervisory Group was set up in 2005, that there was any real sense of a Project Board taking control. This group’s role was to manage the dispute process and the group were certainly much more successful in giving a point of

focus to bring about a resolution to the problems which ultimately led to the legal dispute.

- 5.6 In the following sections, we will present our findings on the procurement of the advisers and contractors and also in terms of how the project was managed on a day to day basis by the States and its advisers.

Key Findings

Procurement of Consulting Engineers

- 5.7 **The process of procuring the engineering consultants did not include all potential providers of this service to the States and may therefore not have provided best value for money. More importantly, the engineering consultants were appointed as supervising engineers on the basis of a single quotation tender process which was totally inadequate for the level of expenditure envisaged.**
- 5.8 Three engineering consultants were asked to tender for the initial investigative and tender preparation work. The Principal Engineer of the Department of Engineering sought approval from the Board of Administration to approach Scott Wilson, High Point Rendel Group and W S Atkins to request quotations. In terms of his recommendations he felt Scott Wilson and High Point Rendel were already familiar with the New Jetty structure and that WS Atkins had the necessary skills due to the previous work they had carried out for the Department and their considerable experience in maritime engineering works.
- 5.9 The Board of Administration subsequently approved this request and the Principal Engineer proceeded accordingly to prepare and send a letter to the three engineering consultants detailing the scope of the requirements. There are various key processes we would comment on that relate to this stage of the project.
1. Although the process of appointing engineering consultants appears to be quite straight forward and the three consultants that were recommended to the Board had either an existing knowledge of the New Jetty structure or had other suitable experience, it would have been appropriate for tenders to have been sought from more than three consultants, possibly through an 'open' tender process. This would have ensured that value for money was being delivered to the States and that the best and most experienced team available would be appointed to carry out the work. While it is not clear exactly what assessment of the submissions by the three consultants was carried out, it is clear that they had the technical expertise and experience to provide a suitable level of service to the States. We wish to record that this is not a criticism in any way of the quality of Scott Wilson, rather a case of ensuring that best practice is applied to the procurement process.
 2. The scope of works provided to prospective consultants was relatively brief and consultants were asked to indicate their proposed conditions of contract to be used. This could have led to difficulties in the assessment of tenders had different

consultants proposed significantly different conditions of contract. It would have been better to state the conditions of contract under which the contract would be awarded.

- 5.10 The Principal Engineer then assessed the tenders and provided a report to the Chief Executive of the Board of Administration detailing the three tender amounts that had been received and making recommendations as to which engineer to choose. A recommendation was made to approve the tender submitted by Scott Wilson at a cost of £46,900 even though this was not the most economically advantageous tender. The Principal Engineer did however provide detailed reasons to the Board of Administration as to why he was recommending Scott Wilson. These recommendations were approved by the Board of Administration and Scott Wilson was subsequently appointed to carry out the work they had been successful in tendering for.
- 5.11 On 10th January 2001 the Advisory and Finance Committee wrote to the President of the Board of Administration stating that due to an oversight Scott Wilson had already been appointed and had begun their work before they had approved the costs. The Advisory and Finance Committee had no objections to the costs however this indicates that reporting structures may not have been as closely followed as they should have been. This links back to our comments on the engagement of a Project Board at the beginning of the project as discussed in paragraph 4.25 of this report.
- 5.12 During the time whilst the tendering process was being managed by Scott Wilson, they were asked by the Principal Engineer to provide a quotation for Scott Wilson to act as supervising engineers to the actual contract. This process was in effect a single tender exercise with no other firms being asked to provide a quotation. Whilst Scott Wilson may well have been the best choice for this role, we cannot know if there were better qualified providers of this service available or whether the quotation represented value for money to the States.
- 5.13 Such an approach to the award of a contract, initially budgeted at the level of £527,500, was extremely poor in terms of procurement practice and ensuring value for money to the States. It is certainly not clear why this approach was taken, apart from the possibility that it was believed that Scott Wilson had, by this stage, built up a knowledge base of the New Jetty which the States wanted to avail of.

Lack of Formal Business Case

- 5.14 **There was no formal business case prepared at any point to identify the most appropriate option for the New Jetty repairs and therefore the subsequent approval process was potentially restricted due to the lack of a full evaluation and costing of the various options available to the States, such as would normally be included in a formal business case.**
- 5.15 A formal Business Case was not prepared which would have provided a structured and considered approach to determine the most cost effective and economically advantageous option to the States for the long term future of the New Jetty. No project

of this scale and complexity should be approved without the appropriate level of pre-project appraisal, both in terms of feasibility and financial viability. From the outset it was determined that the Cathodic Protection route was the only viable option to repair the New Jetty. Although experts in the marine engineering field may well concur with this assessment; there does not seem to have been a formal procedure or mechanism to discount the other possible approaches to repairing the jetty. We know that during the actual repairs when it became apparent that the final cost was going to be considerably higher than estimated, that Scott Wilson considered the following options:

- Enclosing the jetty with a sheet pile wall and infilling the enclosure;
- Abandoning the jetty, using the dolphins only for the berthing of ships;
- Reducing the loads on the jetty by demolishing the building;
- Relocating the passenger terminal building to the shore end of the jetty;
- Rebuilding the entire jetty; and
- Rebuilding elements of the jetty.

5.16 There was also a mention in a letter from the Board of Administration in August 2001 to the the States that the cost of demolishing the existing jetty and constructing a new jetty would cost in excess of £20m. It is clear that the idea of building a 'new' jetty had been looked at in the past and discounted on a number of different occasions. Therefore the States had chosen to repair the New Jetty because of the expert advice it had been given, albeit we can find no clear evidence that any sort of formal or detailed evaluation of the various options had been carried out as would be expected in a proper Business Case.

5.17 A typical Business Case for any major capital project contains a description of the reasons for the project and the justification for undertaking the project, based on the estimated costs of the project, the inherent risks and the expected business benefits that are expected to accrue from the project.

5.18 A Business Case in this situation would have been the driver for the decision-making process and should have been used to continually align the project's progress to the benefits that would have been defined within the Business Case. Key elements that we would have expected to see would typically include:

- **Reason** – explanation of the rationale of the project namely the short remaining life of the New Jetty, the level of corrosion and the Health and Safety issues.
- **Options** – description of the various options that have been considered to deliver the required outcomes ranging from the construction of a replacement jetty to the repair of the New Jetty along the lines of those listed above.
- **Benefits Expected** – Identification of each monetary and non monetary benefits that would be achieved by the project's outcome.
- **Risk** – A summary of the key risks facing the project that, if they were to happen,

would seriously affect the delivery of the outcome. The importance of this is self explanatory given the issues faced, in particular around the extent of the corrosion identified and the risk that this could have been higher than was estimated.

- **Costs and Timescales** for the projects including sensitivities to determine the financial implications of project overruns or an additional requirement for unforeseen works.
- **Investment Appraisal** – the balance between the development, operational, maintenance and support costs against the financial value of benefits over a 25 year period and benchmarked against the costs and benefits associated with the operation of the New Jetty in the current state.

- 5.19 The Business Case would also have enabled all internal stakeholders (the Board of Administration and the States) to understand the issues facing the project and the potential mechanisms to develop the New Jetty from the offset. A thorough understanding and buy in by stakeholders is pertinent to successfully understanding, managing and delivering Capital Projects such as this. The concept of the repairs to the New Jetty has been ongoing from the early nineties, and was intertwined with ongoing Health and Safety and operational issues. Added to this, the full consideration of the alternative options such as the construction of a totally new jetty should have also been carried out at this stage to ensure the most appropriate decisions are taken when all of the relevant facts are available. The fact that these issues are critical demonstrates the need for the issues and options to be formally outlined in an open and transparent manner to the key internal stakeholders.

Tendering Procedures General

- 5.20 **During our review of the New Jetty project we also reviewed the States Tendering Procedures document issued by the Advisory and Finance Committee that would have been used to provide guidance to all States Committees on procedures to be adopted when tendering for the purchase of goods and services. We found in our review that not all elements of the procedures were followed which likely caused an impact on the management of the project.**
- 5.21 Below is a summary of the key findings from this report that relate to the New Jetty Project. The document recommends that the merit of tenderers must be assessed giving appropriate weight to various factors one of these in particular being that normal commercial considerations such as financial stability, reputation etc must be assessed. From our review of the New Jetty files there was never any real assessment carried out for the three engineering consultants who were asked to provide prices for the work required. The Principal Engineer recommended the three consultants on the basis that they were familiar with the structure or due to the previous work they had carried out for the Department and their considerable experience in maritime works however there was never a process carried out by which the three tenderers were asked to provide details on financial stability, previous experience, current work ongoing and references that the Principal Engineer of the Board of Administration could contact.

- 5.22 This would have been beneficial as it would have allowed both the Principal Engineer and the Board of Administration to be provided with up to date, accurate information and a full list of current and recent jobs that all three engineers had worked on and be able to make an informed decision as to who was the best for the job. Selecting an engineer via recommendation is not best practice and does not fall in line with the States Tendering Procedures that were in place at the time.
- 5.23 The States Tendering Procedures also gives further guidance on the above matter as follows:
- “The purpose of pre-tender qualification of prospective tenderers is to ensure that only those assessed to be capable of performing the subject of the tender satisfactorily, incur the costs of drawing up and submitting a tender. It is unethical to seek bids if there is any doubt as to either the competence, financial stability etc. of the prospective tenderer and it is important to avoid disqualifying a tenderer after receipt of tenders for reasons that should have been identified earlier. It must be ensured that any information on which pre tender qualification is based is equitable, up to date and accurate.”
- 5.24 We note that the above procedures were carried out in relation to the appointment of the contractor for the works but were not in terms of the appointment of an engineering consultant. There does not seem to be coherency between the two tender processes that took place during the New Jetty Project. The presence of an appropriately experienced Project Board again would have helped ensure that all of the tender processes were carried out correctly.

Project Board

- 5.25 **In any capital project of this size and complexity, we would expect to see a Project Board being put in place, before the project commences, to oversee the project from the original tender process to the final sign off when the repairs were completed. In the case of the repairs to the New Jetty, there was no formal Project Board put in place which had the potential for decisions to be made without the benefit of a robust challenge function by a board that understood the project in great detail while considering all of the inherent risks and benefits.**
- 5.26 Our file review indicated that in general the States Department of Engineering outlined the proposed course of action to the Board of Administration but did not furnish a range of different options that may have been available to them. In other words, the course of action was already decided by the Department of Engineering and then it was proposed to the Board of Administration. In addition, it appears that the Board of Administration relied on the recommendations of the Principal Engineer without having access to the information that the Department of Engineering used to form their decision. We appreciate that this may have been the ‘normal practice’ within the States at that juncture, however it is appropriate that all relevant parties should be engaged in the decision making process and at the same time have all appropriate information available to them to objectively make the decisions.

- 5.27 We accept that the Board of Administration may not have marine engineering expertise, but this could have been mitigated by the formation of a formal Project Board at the commencement of the project, with the responsibility for the overall direction and management of the project providing the appropriate approvals at the various stages. This Project Board would also have been in a strong position to identify problems early on and to highlight these to the States, along with its recommendations, for further consideration by all parties.
- 5.28 The Project Board would ultimately have been responsible for assurance that the project remained on course to deliver the desired outcomes with responsibilities including:
- Appointing a suitably qualified Project Manager and agreeing his/her remit and delegated authority. In this case, it could well have been the Principal Engineer who fulfilled this role, albeit with the additional support and oversight of the Project Board;
 - Signing off the Project Brief and Project Initiation Document (based on the original Business Case for the repairs to the New Jetty) (See Paragraph 4.14 above);
 - Agreeing all major plans and authorising any major deviations from those plans. In the case of the New Jetty, one of the most important and fundamental deviations from plan was in the context of the adoption of “the rules” as discussed in the section 3 covering the Technical Issues:
 - Signing off the completion of each stage, including that the expected outputs have been delivered, and giving approval to the start the subsequent stage;
 - Communicating information about the project to the Board of Administration and ultimately to the States as necessary;
 - Resolving any conflicts escalated by the project team including Scott Wilson as the project engineers;
 - Agreeing the project tolerances for time, quality and cost;
 - Ensuring the risks associated with the project are managed. Given the level of overrun in terms of timing and cost for the New Jetty, the importance of risk management cannot be overstated.;
 - Approving the end project report and the lessons learned report; and
 - Ensuring that a post implementation review is scheduled and takes place.
- 5.29 It is apparent from our review of all of the documents relating to project management, that the Principal Engineer and the Board of Administration were in close contact regarding all the decisions that were made throughout the tender process. However, we believe that it would have been prudent to have other experienced individuals brought together in the form of a Project Board, not dissimilar to the New Jetty Supervisory

Group, formed in 2005, albeit at this stage many of the problems associated with this project had already occurred.

- 5.30 We understand that many of these project management duties were delegated to Scott Wilson due to their expertise within the marine environment. However the States still have **ultimate and overriding responsibility** for the project. It therefore is imperative that internally within the States, the Project Board's roles, responsibilities and decision making process is clearly defined.
- 5.31 It should be recognised that the New Jetty Supervisory Group, which was formed in 2005 more than three years after the project commenced, resulted in a more coordinated approach to decision making and the closing out of the project. However this sub group was only commissioned once the project had been running for some considerable time and was only put in place once the litigation route had commenced. See paragraph 4.36 below for further detail.

Clear Roles & Responsibilities

- 5.32 **There should have been clear and unambiguous roles set out at the start of the project that clearly identified who was responsible for the different aspects of the repairs to the New Jetty. This would also have been the opportunity to ensure that the necessary skills were available within the States project team to successfully manage this project through to completion.**
- 5.33 At an early stage, the Department of Engineering correctly acknowledged that there were inadequate skills and resources available internally to successfully manage this contract. This was formally reported to the Board of Administration in July 2001 and resulted in the supervisory role being delegated to Scott Wilson. The precise roles and duties to be carried out by both Scott Wilson and the Department of Engineering were however not clearly defined. Given the project management role was effectively being outsourced, it was imperative that the respective responsibilities of the third party and the States were carefully and clearly defined to ensure accountability within the project team and mitigate the level of risk exposure to the States.
- 5.34 One of the most fundamental aspects that can affect the success of a project is the governance structure put in place to oversee the project. It is essential that the ownership, responsibilities and accountabilities are clearly laid out, understood and accepted by all parties involved. Given that there was no formal Project Board as discussed above, the responsibilities of the States seemed to rest with the Principal Engineer who then reported to the Board of Administration. Although the technical expertise within the States rests with the Principal Engineer and the Department of Engineering, project management encompasses a greater array of disciplines than the technical aspects of this repair work and we believe that this may have been lacking at the inception of the project.
- 5.35 In addition to having adequate project management arrangements in place, the reporting and control of the project by the States left much to be desired.

New Jetty Supervisory Group

- 5.36 The New Jetty Supervisory Group was formed in 2005 with the objective of managing the legal dispute between the States and Balvac and ensuring that the outcome to the States was as favourable as could reasonably be achieved. This group appears to have been an effective vehicle to manage this process and clearly should have been formed much sooner as the basis of a Project Board.**
- 5.37 The New Jetty Supervisory Group was formed in 2005 acting on delegated authority of both the Public Services Department (formerly the Board of Administration) and the Treasury and Resources Department. The mandate of the Group included supervising and managing the claims process and taking whatever steps necessary to safeguard the interest of the State; and dealing with all outstanding issues relating to Balvac and Scott Wilson to see the project successful reach completion.
- 5.38 The initial Group consisted off:
- Deputy Chief Officer;
 - Director of Engineering Services;
 - Director of Strategic Property Unit;
 - Harbour Master;
 - Law Officers of the Crown; and
 - Administrative Officer.
- 5.39 The Supervisory Group reported to the Board of the Public Services Department and the Treasury and Resources Department.
- 5.40 In October 2007, the mandate of the Group was amended and the membership expanded to include the Public Service Department's Finance Director to offer advice on financial matters as well as a New Jetty Claims Co-ordinator to act as a focal point for liaison with all parties on the project.
- 5.41 The development of a specific Group with proper reporting channels to manage the New Jetty process was a positive step and will have ensured that the contract was brought to a close in a more coherent and co-ordinated manner, especially in light of the complex legal process involved in the dispute resolution. This Group in essence represented a "Project Board", but skewed with a specific technical and legal emphasis, which mirrored the pertinent issues facing the contract at that juncture.
- 5.42 We believe that the setting up of a Project Board at the inception may have aided the delivery of the project in a more efficient and effective manner. While we recognise that at the commencement of the project, the States had a limited number of staff who were skilled in the field of Project Management, there were several technical experts with experience in construction projects and some specialist external resource could have been used very effectively to advise in this area.

Risk Registers

- 5.43 **The setting up of a formal Risk Register would have provided a focused approach to the quantification of risk and the subsequent management of this risk by at least identifying where the risks could occur and therefore allow for risk mitigation strategies to be put in place. In the case of the New Jetty project, no such register or risk strategy was considered until such times as the legal dispute came to the fore and the New Jetty Supervisory Group was put in place.**
- 5.44 A Risk Register, or any mechanism to assess and plan for project risk, was not initiated for the New Jetty project. A register or record of the key risks was however maintained during the legal dispute to outline and quantify the different possible outcomes during this legal process, which we believe to be a positive step, but was in effect too little too late.
- 5.45 Risk management is an integral part of good project and programme management and a robust assessment of risk needs to be undertaken to ensure that target spend is achieved together with successful project implementation. Integral to good planning is the identification and management of risk to achieve project plans and objectives. Risk management is not about avoiding the taking of risks, but is about finding ways of managing those uncertainties to a tolerable level to realise the benefits/objectives of the project, in this case the repair of the New Jetty.
- 5.46 Particularly in a marine project such as this, with all the inherent risks that concrete repair in a marine environment brings, we would expect to see 'best practice' risk management strategies put in place. This would dictate that a full risk assessment is carried out before the start of the New Jetty project to identify any risks and ensure strategies are put in place to mitigate/manage these risks. Subsequent to this, a comprehensive Risk Register should be created and reviewed at regular points through the life of the project by the Project Board.
- 5.47 While the risk register maintained by the New Jetty Supervisory Group was maybe not in a standard 'text book' form, it demonstrated all of the key elements we would expect to see contained in a risk register, with a brief example of these being detailed below.

Stage 1 - Risk Impact Assessment

- 5.48 The impact of risk, should it occur, needs to be considered in time, cost and quality terms.

Time – the impact on the project programme. Will the works be completed within the initial 24 month time frame?

Cost – the impact on the ultimate claim value. Is the final claim likely to be within the Balvac tender amount, even if we take into account the £200k contingency allowance?

Quality – the impact on outcomes or outputs. Will the repairs to the New Jetty, including the Cathodic Protection system, provide for at least another 25 years of useful life from the New Jetty?

Stage 2 - Risk Probability Assessment

- 5.49 This considers the likelihood of each of the risks occurring (each category broken down into more specific details); rating each risk in terms of the percentage chance of the risk occurring.

Stage 3 - Risk Severity and Ranking/ Risk Allowance

- 5.50 This combines the effect of the impact and probability above to quantify the overall severity of each risk. The higher the resulting figure, the more significant the risk and so the risk can be prioritised and ranked accordingly and also ensure more focus is given to mitigate this risk.
- 5.51 As the project progresses, new risks may arise, for example the issues around the additional loading on the New Jetty of the buildings, which was only discovered once the work had actually commenced. Some of these risks may prove to be unwarranted or become either more or less important through the project lifecycle. Best practice dictates that as the project evolves and there are changes to the project scope, which clearly occurred once the extent of the corrosion was identified, further risk assessments should be completed to identify the potential impact of the proposed changes on the rest of the project in terms of cost, time and the effect it will have on the end product and associated benefits derived from the project.
- 5.52 In reality, all material changes to the project including the introduction of “the rules” and the issues associated with the development and implementation of the Cathodic Protection system should have been appropriately assessed in terms of risk to fully understand and mitigate their impact on the project.
- 5.53 We also understand that defects in the Cathodic Protection systems were identified and had to be rectified before Scott Wilson could issue the final Maintenance Certificate, increasing further the delay in the completion of the repairs. The adoption of “the breakout rules” was considered by Balvac to be a variation to the specification of the project and had a significant impact on the project programme, which is explored in further detail in Section 3 of this report. We believe that these issues materially affected the project, and if adequate risk management strategies were adopted this could potentially have limited the impact of the problems such as these which were encountered during the repair project.

6 LEGAL AND DISPUTE RESOLUTION

Introduction

6.1 Clearly in a project of this complexity there are going to be a number of legal issues, but perhaps the best way of considering them is the order in which they occurred, i.e. sequentially and then in the following stages:

- Pre-contract or tendering stage;
- Contract administration; and
- Dispute resolution.

Key Findings

Pre-Contract or Tendering Stage

6.2 **Insufficient analysis was undertaken to provide a full understanding of what risks existed within the New Jetty Project and how they could be mitigated or otherwise dealt with in the Contract.**

6.3 As a general principle, the aspiration of any building contract is the appropriate allocation of risk between the parties according to the party that is best able to manage that risk. Pricing, generally speaking, is proportionate to the assumption of risk so, for example, in a design and build project the contractor would generally incorporate a premium for the higher design and implementation risk which he assumes. In a management style contract, one might expect reduced pricing because the project management risk remains within the employer.

6.4 There are two particular areas where it would seem, with the benefit of hindsight, that insufficient attention was paid during the preliminary stages of this project, and before a Contract was entered into:

- Quality assurance of the information on which the Tender was based; and
- The choice and/or form of contract used for the repair of the New Jetty or the project specific amendments incorporated in it.

The Quality of Tender Information

6.5 **The misconceptions surrounding both the quality and the extent of tender information provided to the six companies tendering for the contract increased the likelihood of a dispute between the parties and possibly influenced the approach adopted in the tendering process.**

- 6.6 In Section 3 above we identified a number of important themes that:
- the underlying reports on which the Tender for the repairs to the New Jetty was based were insufficiently robust;
 - further there was a misinterpretation of some of those preliminary investigations; and
 - there existed a degree of uncertainty as to the nature and extent of the information on which tenderers could base their tender and resultant confusion (or at least ambiguity) as to the contractual status of certain documents.
- 6.7 In Section 3 above, we have highlighted the misinterpretation of some of the preliminary investigations. That misinterpretation may have:
- Led Scott Wilson to assume a position of greater neutrality on the issue whether further surveys should be undertaken as part of the preparation for and subsequent release of the Invitations to Tender; and
 - Possibly (either directly or indirectly) encouraged the view taken by the Principal Engineer and, perhaps, more widely within the States that sufficient monies had been spent on the earlier reports – particularly when compared with the anticipated value of the Works (originally estimated by Scott Wilson in 2001 at £3.7m) that further investigative work (in the context of that scale of project) was unnecessary.
- 6.8 The approach that appears to have been adopted is that, notwithstanding:
- The design aspects of the Project around the Cathodic Protection design and installation and preservation of the structural integrity of the jetty during the course of the repair works; and
 - The uncertainty around the extent of the repair works themselves.
- 6.9 That within the contract risk would be passed down to the Contractor – evidenced by some of the wording of ITT23, for example ***“It is the responsibility of the Tenderer to visit the Site and obtain all information necessary for the purpose of preparing his Tender...” he must inspect and fully satisfy himself.....[on] the requirements and extent of the Works***” [The section is quoted in full at paragraph 3.45].
- 6.10 As we have tried to show in Section 3, the production of information which is unverified is not a firm basis for approaching the procurement of any project. It is, perhaps, understandable that an employer will try to impose as much risk as possible on tenderers at this competitive stage, but the more confrontational approach the greater risk there is for an adversarial position to exist between the parties during the course of the Project. It is for that reason that more modern forms of contract – such as the NEC – adopt more of a partnering approach to risk allocation.

- 6.11 It is possible that Scott Wilson did try to temper this approach to some extent by the suggestion of the more generous 25% contingency which, as commented above, was subsequently (in the final instance) reduced to a contingency of only 7% but that is pure conjecture. In reality, we were not able to definitively establish the reasons behind the reduction.
- 6.12 Scott Wilson always had the view that the 5th Edition ICE Contract was “confrontational” in nature and, with hindsight, given the nature and quality of the information available, the more confrontational approach adopted at Pre-Tender and Tender stage (albeit coupled briefly with a generous contingency) does seem to have been Scott Wilson’s strategy. However the use of this form of contract increased the risk of dispute as the contract progressed, which turned out to be the case in practice. For that strategy to have been successful within the Contract, the allocation of risk would have to have been more clearly defined and imposed upon the successful contractor in respect of the more general concrete repair work as well as the more specific CP design and installation aspects of the Project. There is, we feel, a telling comment contained in one of Scott Wilson’s Progress Reports (Number 15, October 2003) – just after the latest cost estimate of the Project had been put (by them) at £7m:
- “That the pre contract conditions and investigations by CCSL / Balvac did not record the full extent of the re-enforcement loss or area of repair is now all too clear”*
- 6.13 That could be interpreted as an acknowledgement that the basis of tendering adopted had equally been somewhat naïve – a naivety which had been fed (we suspect) by the misinterpretation of those preliminary investigations - that we have already highlighted and an overall under estimation of the true extent of the works.

Choice and Form of Contract and Re-Measurement Risk

- 6.14 **That the reality of a re-measurement contract, of the type used for the repairs to the New Jetty and the corresponding risk of cost overruns was initially underestimated.**
- 6.15 As we have suggested, the Tender approach appears to have been to impose risk in relation to the pre-tender reports and available information on the Contractor. That, in itself, is not necessarily an uncommon position. To fulfil that aim, however, generally requires very specific drafting within the form of contract that is adopted. In construction contracts, where there is a degree of ambiguity, the employer always runs the risk that a court may construe that such ambiguity goes against the employer (called the contra proferentem rule). In such a case, the employer would be considered the originator or “owner” of the document and, therefore, arguably in a stronger position to protect itself. In the present case, there appears to have been some, but not a great deal of debate, firstly about the form of contract to be adopted and, secondly, about the nature of the project specific amendments that were required to achieve the desired result.

Standard Form Contract

- 6.16 Standard form contracts – such as those promoted by the NEC; the JCT or, as in this case, the ICE are pro forma documents – skeletons with standard clauses that are made project specific by a combination of the textual amendments to the printed text (often by way of appendix) and/or the actual specification for works and/or project specific requirements (which are generally appended).
- 6.17 Scott Wilson were contractually responsible for the issue of tender documents and, subsequently, the evaluation of the tenders received. As part of that role, they suggested as their starting point the adoption of the ICE standard form of contract. Indeed, it would appear that initially the 6th Edition of that standard form contract was suggested. Subsequently it was agreed between the Principal Engineer and Scott Wilson that the 5th Edition of that contract would be used, largely for the following reasons:
- The States were familiar with that form of contract – it having been adopted in all major infrastructure contracts undertaken by the States since the early 1970's¹³; and
 - There were already in existence a standard set of Guernsey-specific contractual amendments that had been developed by the Law Officers to the States (developed in May 1982).
- 6.18 Perhaps, of itself, not a great deal turns on that dialogue or the final choice of standard form – providing that the approach adopted in the Tender (i.e. the imposition of risk on the contractor in certain material respects) was then followed through with consistent, precise and clear contractual amendments focused primarily on the allocation of risk that the employer was seeking to impose on the contractor. That risk focused mainly on:
- The design risk around the CP system and its installation; and
 - The design risk surrounding the nature and extent of the supporting structures which would be required during the course of the concrete repair works.
- 6.19 The project specific aspects of the tender and the various amendments and inclusions to the final contract did not focus on re-measurement risk as to the extent of the repair works themselves. In that regard there appears always to have been an acceptance that in the standard (ie unamended) clauses and language used that the form of contract adopted was a re-measurement form of contract. Indeed, given the works that was probably a standard approach and we do not criticise it per se. It follows, however, that there was an acceptance that risk on the extent of the repair works required and

¹³ E-mail 12th March 2003 – Scott Wilson to Principal Engineer

the potential of a cost overrun (where the concrete repair works themselves turned out to be more extensive than initially assumed) lay with the States as the employer. Even the Policy Letter of 20th July 2001 prepared by the Principal Engineer on behalf of the Board of Administration gave some suggestion of this:

“It is difficult to assess the total amount of concrete repair work necessary for the contract – the structure has a surface area in excess of 9,500 square metres and is supported by over 400 reinforced concrete columns – and it is therefore recommended that a sum of £200,000 be added as a contingency to cover any additional remeasurement element associated with the works”

6.20 As we have already pointed out, the original contingency suggested by Scott Wilson was considerably higher – although it is not clear whether it was to cover re-measurement work or was more in the nature of a general contingency. To the extent, however, that parties within the Board of Administration or the States itself ever felt that there was a fixed price contract, they were wrong. That remeasurement risk always lay with the States – a point that Scott Wilson and the Principal Engineer always knew, but perhaps was not fully appreciated by others until the break out works commenced in 2002, resulting in the escalating claims by Balvac leading (ultimately) to Scott Wilson’s 2003 Review and the advice provided by Ozannes in June 2003 on the State’s position under the Contract. In retrospect, it may be fair to say that it was only after the completion of those two significant pieces of advice that the States as the employer under the building contract truly appreciated the position in which it was then placed.

6.21 It is probably appropriate at this point to analyse the position as it stood in 2003 when the contractual dispute first became apparent. In Scott Wilson’s 2003 Report, they set out the nature of the claim:

“The Contractor has argued that the nature of the work has substantially changed and the rates within the Contract are no longer valid. The [Consulting] Engineer has countered that the scope of work is essentially unchanged in nature, and estimates that the actual surface areas to be repaired are still estimated to be within 2% of those contained in the bill of quantities, however, it is accepted that the extent of the repairs, the additional works, the sequencing of the works and the problems under the building will have a serious cost implication and the contractor will be due further additional monies.

6.22 *The Form of Contract, ICE 5th Edition, does not make provision for any form of partnering or risk sharing and is confrontational in nature. This requires the Contractor to submit claims for additional payment and for the engineer to seek substantiation. As a result, the sides become polarised, and there is a requirement for both sides to keep comprehensive contemporaneous records.”*

6.23 That report, having analysed the various options available, recommended to the Board of Administration that continuing under the Contract, but with increased supervision was, in essence, the only sensible route forward.

6.24 At the same time the Board of Administration sought the advice of external legal advisers - Ozannes – seeking specifically:

“Legal advice as to the options open to it [the Board] under the ICE Conditions of Contract 5th Edition, including but not restricted to:

- (i) *the Board’s options to terminate the Contract followed by either re-tendering or issuing a new Contract with the existing Contractor;*
- (ii) *suspending works whilst obtaining States’ approval for additional funding and/or renegotiation of the rates with the existing contractor.*

The Board’s primary objective is to limit its financial exposure under the Contract and hence budget overspend, whilst exploring the options open to it.”

6.25 Messrs. Ozannes responded by way of a letter of advice of the 20th June 2003.

It is probably sensible, at this point, to quote directly from that letter:

“Clause 11 of the ICE Conditions of Contract provides as follows:

*“The contractor shall be deemed to have inspected and examined the Site and its surroundings, and to have satisfied himself before submitting his tender as to the nature of the ground and sub-soil **so far as is practicable** {Emphasis added} and having taken into account any information in connection therewith which may have been provided on behalf of the employer) the form or nature of the Site, the extent and nature of the work, and materials necessary for completion of the Works.”*

“It is arguable that, if the delays and additional expenses derive from the matters listed above and, in particular, the unknown amount of corrosion hidden underneath the concrete beams, then such risks have been subsumed in Balvac’s tender offer.”

“The key phrase is “so far as is practicable”. We are not engineers, but note that there is no express criticism of Balvac in the Scott Wilson Report (who are engineers). Indeed, there might be some sympathy from a court for the idea that it is not reasonably practicable for a Contractor to investigate each and every beam in a structure to satisfy itself of the corrosion levels as part of a tender process, at a time when there is no guarantee that they will get the job.”

“On balance, therefore, on the evidence available to us at the moment, we think it unlikely that clause 11 will operate so as to prevent Balvac from seeking increased payments as a result of the increased corrosion of the Site.”

6.26 After undertaking an analysis of the contractual position, Ozannes were of the opinion that neither termination nor suspension of the Contract were viable options for the

States at that point and, in essence, confirmed the opinion which had been given by Scott Wilson in their 2003 Report.

- 6.27 Specifically, in relation to the position of Scott Wilson (and their certifying role under the Contract) Ozannes' included the following comment:

"In the present circumstances, the increase in cost is likely to be in the region of 200% and the increase in time approximately 100%. However, in the absence of any wording to the contrary, the rules applicable to a 10% increase are the same as those applicable to a 200% increase. If Scott Wilson approves it, the Board is bound to go along with it."

- 6.28 Whilst the quoted sections are lengthy, they very eloquently set out the contractual situation which prevailed and faced the States in 2003 – and indeed until final settlement of the dispute. In the final event (ie. upon completion of the Contract) Scott Wilson certified sums properly due to the Contractor to a value of £4.8m (approximately) - taking into account (as they were obliged to do) the extra costs (for the extra work undertaken) together with the Scott Wilson awarded extensions of time.

Ozannes advice on this point was largely confirmed by the States' subsequent legal advisers.

Project Specific Amendments and Design Risk

- 6.29 We have dealt above with the "standard" or re-measurement aspects of the Contract. Two other key aspects of the obligations assumed by Balvac were more project specific and related to design risk:

- In the design and installation of the cathodic protection system; and
- Around the methodology of the works and preservation of the structural integrity of the jetty during the course of the repair works.

- 6.30 Those project specific sections were contained in the detailed specification of works appended to (but obviously forming part of) the Contract itself.

- 6.31 For the purposes of this report, suffice to say that the Contractor struggled with not only the design, but also the installation of the CP System. It remained a core part of the issues in dispute between the parties and, indeed, its satisfactory conclusion remained a condition of the final settlement. In point of fact, the final Certificate in relation to the CP Works was not issued until January 2009 – when Scott Wilson as Consulting Engineer was satisfied that the installation had been completed, and the maintenance period had satisfactorily expired. In terms of the context of this Report, not a great deal else needs to be said, save that it does need to be noted that there was a clear distinction between the project specific aspects of the Contract (in this specific regard) where (within limits) the risk lay more clearly with the Contractor and the more general

or standard aspects of the Contract where a greater share of the risk of re-measurement lay with the States as the employer.

- 6.32 The second aspect of design risk focused on the methodology of working and the Contractor's proposals for the maintenance of the structural integrity of the Jetty during the course of works. Again, this was dealt with in the specification of works and, to that extent, defined more precisely the contractor's obligations. The methodology adopted, however, resulted in a further dispute between the Consulting Engineer and the contractor which is dealt with in the paragraph immediately below.

Contract Administration

- 6.33 **The Scott Wilson Rules introduced a degree ambiguity into the contractual relationship between the parties.**

- 6.34 As we have mentioned above, the Contract attempted to impose two key aspects of design risk upon the Contractor, namely:

- Design risk surrounding the design and installation of the CP system; and
- The methodology of working, i.e. the assessment for and design of the support structures required to maintain the jetty during the repair works.

- 6.35 Under the 5th Edition ICE Contract, the role of the Consulting Engineer, in this case Scott Wilson, is clear – he is the independent expert retained by the employer to administer the Contract. During the course of the New Jetty Project there appears to have been no doubt that Health & Safety issues surrounding the structure of the New Jetty necessitated action. Scott Wilson took the view that the rules prepared by the Contractor ("the Balvac Rules") were inadequate, and went so far as to issue alternative rules ("the Scott Wilson Rules") to countermand them. The significance of this was commented on in the Cyril Sweet Report commissioned by the States (through Hammonds, its then legal advisors based in London) in 2006.

- 6.36 We quote from paragraphs 10.8 to 10.10 of that report:

*"Implication of **"rules"** in relation to contract clause 13:*

10.8 Pursuant to clause 13(3), the Contractor has a right to compensation if the Engineer's instructions or directions disrupt his "arrangements or methods of construction". That said, the [Consulting] Engineer has a right to refuse approval of works under clause 13(2) that do not fully meet the Contractor's responsibility under clause 8(2) and the mode, manner and speed of construction and maintenance of the works are to be of a kind and conducted in the manner approved by the Engineer;

- 10.9 However, the ER did not just instruct Balvac to redo the rules or state that they did not approve the Balvac rules. Instead, the ER issued his own rules and also site instructions. **There is a real risk, therefore, that the issue by the ER of their own rules and/or site instructions could be interpreted as an instruction or direction under clause 13(1) which has, in effect, disrupted Balvac's proposed arrangements and methods of construction, and therefore entitles Balvac to claim {emphasis added}.**

Implication of rules in relation to contract clause 51:

- 10.10 it may be argued that the rules and/or site instructions were in fact variations of the Work, i.e. a change in the specified sequence, method or timing of construction entitling Balvac to a fair valuation. Balvac has independent rights of the actual site conditions result in variations in accordance with clause 51, omissions or mis-descriptions in the bill under clause 55, or in changes in quantities within clause 56.

Further, Cyril Sweet as the Expert Engineer commented in his Report:

[Citation]

*"I have concluded that, as a minimum, the piles, broken out in accordance with the Balvac Rules, would not have been adequate to ensure the stability of the structure and consequently the Balvac Rules were not adequate. The Scott Wilson Rules corrected the inadequacies of the Balvac Rules and considered the structure in both the temporary and the repaired states. The Scott Wilson Rules required Balvac to undertake the work in a manner **beyond that required to meet the contractual requirements, due to the changes in applied loadings and the consequences thereof.**"*

- 6.37 What, however, remains a live question (because it was never definitively determined because of the negotiated settlement) is if Scott Wilson, in countermanding Balvac's rules by the introduction of its own created a situation whereby the contract was varied and Balvac, therefore, relieved to some extent of the design risk which it had assumed under the original terms of the contract. To the extent that the Scott Wilson rules had that effect, the risk would have reverted to the Employer and to some underdetermined extent, left the door open for the contractor's claim for an extension of time and costs. We have touched on this point in Section 3 above, and have recommended that, prior to issuing the Scott Wilson Rules, greater thought should have been taken as to the potential legal effect of doing so Scott Wilson did not accept that view – emphasising their independent and expert role as consulting engineers under the form of contract used. Equally they asserted that the States knew of and approved the issue of the Rules. We do not feel we need rehearse that debate in this report. We have touched on these issues above, and we do not repeat that technical analysis here. It is

sufficient, at this point, to say that the Scott Wilson rules did introduce a level of uncertainty or ambiguity into the contractual relationship between the parties, and did appear to make the case for a negotiated settlement much more compelling.

- 6.38 The fact that the States may or may not have known and/or authorised the Scott Wilson rules is largely irrelevant in terms of this contractual assessment. The only live question is if whether, as a matter of fact and law, the Scott Wilson rules had the effect of varying the scope / methodology and/or the contract itself. That is not something which we feel we need to determine in this report, save only in terms of the impact of that uncertainty upon the settlement of the case – a point which we deal with below.
- 6.39 The issue is, however, relevant in terms of the general principles of governance and decision taking. In a project headed by a project board, and perhaps more rigorously managed, a risk analysis might have been carried out to assess more accurately the impact of the Scott Wilson rules as discussed further in Section 4 above. An alternative, without compromising Scott Wilson's independence, would have been to simply require Balvac to produce a revised set of rules which were more compliant with the contractual standards required under the terms of the contract and avoid a dispute on whether the contractor's risk (and attendant cost) had reverted to the States as employer and/or the contract had been varied.
- 6.40 As Cyril Sweet commented, the imposition of something that imposed a greater obligation than possibly existed under the original contract did open that level of ambiguity and consequent uncertainty that ultimately led to litigation.

Dispute Resolution

- 6.41 **That given the extent of divergence between the parties, earlier settlement of the dispute on a basis that was auditable for the States was unlikely.**
- 6.42 We included earlier a comment contained in one of Scott Wilson's Progress Reports (Number 11), July 2003) to the effect that the ICE Form of Contract, in its practical application was "confrontational". That was certainly true in relation to the New Jetty Project. That confrontational approach existed between Scott Wilson and Balvac throughout the period from 2003 through to the arbitration proceedings and subsequent negotiated settlement which occurred in early to mid-2008.
- 6.43 At its height, the Balvac claim was asserted at a level of £27m against Scott Wilson's certified amounts under the Contract of £4.3m (with a further £0.5m of withheld liquidated damages) (giving a total contract sum of £4.8m). In addition, the States external legal costs (to include professional witnesses and other experts) amounted (in conclusion) to £3.4m. Balvac's legal and associated costs were subsequently agreed at a figure of £2.2m. Those are the component financial figures that formed the basis of the finally negotiated settlement.

6.44 That settlement took the following course:

- By mid to late 2003, Balvac's claims were accelerating against Scott Wilson's certified amounts. At the point when the Scott Wilson 2003 Review was undertaken, Balvac's claims to that point amounted to approximately £8m as contrasted with Scott Wilsons' anticipated overall costings for the entire Project of approximately £7m;
- Given the disparity between the figures, it was inevitable that litigation would ensue;
- That litigation was commenced mid 2006, but the actual detail of the claim only became clear when Balvac's actual Points of Claim were served;
- The State's defence (albeit after some delay) was prepared on the back of the expert evidence produced by Faithful & Gould (commenting on quantum), Ove Arup (who undertook the engineering analysis (including an analysis of the Rules)) and Cyril Scott Sweet (who focused on programming and productivity);
- After the parties' respective positions became established through normal legal discovery and the service of the claim and defence, more meaningful negotiations were commenced;
- Those initial discussions were inconclusive, but as the anticipated date for the arbitration approached, more meaningful discussions became focused between the States and the Chief Executive of Balvac's parent company, Balfour Beatty;
- Prior to the arbitration, and based on expert advice and through detailed analysis, the States lodged a sealed offer on the following basis:
 - A figure of £6.8m in full and final settlement of the Contractor's claims (calculated on the basis of the engineer's certified values of £4.8m) with a further £2m on account of "additional" (and largely unspecified) works - but which we are assuming largely was to meet any claim on the "Rules" issue; and
 - An additional figure of £1m on account of Balvac's estimated legal costs, costs which were calculated by reverse engineering, based on the States own legal costs of circa £3.4m including specialist advisers;
- When the arbitration proceedings opened, it became clear early on that Balvac's "true" construction costs were in the region of £13m and their legal costs to date were in the region of £2.2m;
- To avoid a finding in favour of Balvac – regardless of whether it was based on the

merits of Balvac's claim or, indeed, in terms of the quantum of legal costs – the States agreed to move to a negotiated settlement at a figure of £9m. This was based on:

- The £6.8m for the works (as per the sealed offer); and
- But included an increase of £1.2m on account of the additional legal costs which Balvac had incurred over the estimate made by the States to come to the total they actually incurred of £2.2m.

6.45 Given the potential risks involved in even a marginal award against the States at that point, a commercial settlement around that figure did seem to make sense, and was commended to the States by its then instructed lawyers, Eversheds, and the Queens Counsel representing them, Mr. David Streatfield-James QC.

6.46 The financial settlement was subject to the outstanding defects in the CP System being rectified to the States satisfaction – which eventually occurred (post-settlement) leading to the issue of the final Maintenance Certificate in January 2009.

6.47 That is a very truncated history of the course of the litigation which led to the arbitration and, ultimately, the negotiated settlement between the parties.

6.48 In our terms of reference, we have been asked to consider if the need for prolonged (and expensive) litigation could have been avoided.

The Need for Litigation

6.49 **That the divergence between the parties was of such a magnitude that it meant resolution was unlikely in a way that would have proved auditable from the States' perspective without capitulation on the part of the Contractor.**

6.50 It will have been apparent from the earlier sections of this Report that as between Balvac and the States there existed:

- A valid dispute in relation to the contractual rights and obligations which existed between the parties; and
- A massive difference between the parties in terms of the quantum of that dispute (in financial terms).

6.51 That polarised position was always going to make any early settlement of the dispute both difficult to achieve and, from the States' perspective, difficult to justify from an audit perspective. We quote from the Faithful & Gould Report:

"A settlement struck on the basis of the difference between the sums applied for and

*sums certified carries with it a significant risk of overpayment of the Contractor.*¹²

- 6.52 Shortly put, therefore, in the face of a potential claim of £27m against a certifiable value of the works at circa £4.8m, it is difficult to envisage a situation where – in the absence of capitulation on the part of the Contractor – a settlement could easily have been achieved at an earlier point. That total capitulation clearly was always going to be unlikely.

Factors Leading to Settlement

- 6.53 **Clarity around the strengths and weaknesses of the States' case was only established after legal due diligence and it was only then that real endeavours to settle the case could be made.**

- 6.54 In our opinion, there are two material factors which led towards the negotiated settlement. The first relates to the simple progression of the legal defence on behalf of the States. As indicated above, there was some delay in the States being in a position to serve its defence to Balvac's claim. The factors which led to that delay (ignoring the issues around change of lawyers etc which is unlikely to have had a significant impact on the legal costs incurred) appeared to be:

- The time required to collate the expert evidence from Faithful & Gould, Ove Arup and Cyril Sweet; and
- The proofing of witnesses – including Scott Wilson.

- 6.55 In short, therefore, the States was not in a position to serve its defence until late 2007. Therefore it was not until that point that the States could take an auditable view of the strengths and weaknesses in its own case and, it was only on the completion of that analysis – based then (as it was) on Expert Consultants – and the legal analysis which was done by Eversheds and Counsel on the back of those reports – that it could meaningfully engage in commercial negotiations to compromise and/or settle the Balvac claim.

- 6.56 The second significant aspect in the movement towards a negotiated settlement was the engagement of the parties at a senior level. Whilst earlier negotiations and dialogue had been commenced, it was not until the States and the Chief Executive of Balfour Beatty on behalf of Balvac engaged in one to one negotiations that a commercially negotiated settlement appeared possible. Even at that point, there still was a considerable difference between the parties (Balvac felt that there claim was justified in the "high teens") and from the interviews and discussions which we have had with various parties it would appear that it was only when the arbitration proceedings

¹² Faithful and Gould Report, paragraph 5.5

commenced that minds were focused on achieving a negotiated settlement – something which was achieved on the basis outlined above.

- 6.57 As to the question raised in our terms of reference, therefore, ie whether the extensive and expensive litigation could have been avoided, our considered view is that where a dispute of the magnitude that existed between the parties had arisen, it was inevitable that comprehensive, complex and, therefore, inevitably expensive, litigation would ensue. To ask the question if that could have been avoided, is to ask the fundamental questions which are dealt with in the earlier paragraphs of this section of our Report, namely whether the contract procurement and award was sufficiently robust. If the pre planning, site investigation and contract development had been more thorough, that may have avoided the later ambiguities and, potentially therefore, the dispute. The likelihood is, however, that given the more extensive nature of the works that some degree of dispute would have resulted, but perhaps the States' defence to it would have been more robust.

7 RECOMMENDATIONS

- 7.1 The repairs to the New Jetty ended in a considerable cost overspend and a much longer time frame for the repairs to be completed. In the sections above, we have identified the key issues that were involved in this capital project and that contributed to the problems with this project.
- 7.2 As with all such projects, there are lessons to be learned that can contribute to the minimisation of the risk of such problems occurring in future projects of a similar size and complexity. As a result, we have listed below our key recommendations for consideration by the States.

Project Management

- 7.3 One of the key weaknesses was the lack of formal project management disciplines in the management and delivery of the repairs to the New Jetty. Therefore, we recommend that proper project management procedures should be put in place before the commencement of any capital contract. These procedures should also cover the procurement process, contract administration and project acceptance stages. It is also recommended that a Project Board, with a mix of appropriate skills for the project in question, should be put in place before commencing any aspect of a major capital project.
- 7.4 One of the most fundamental aspects that can affect the success of a project is the governance structure put in place to oversee the project including the reporting lines to the sponsoring Department and onwards to the States. It is essential that the ownership, responsibilities and accountabilities are clearly laid out, understood and accepted by all parties involved.
- 7.5 As we found no evidence of a contract being signed or correspondence as to why this should be the case, we would recommend that the Project Board ensure that all future capital projects have the correct form of legal contract in place and that the contract is signed by all parties. We would also recommend that appropriate legal advice is sought on any specialist legal matters to ensure the interests of the states are protected accordingly.

Business Case

- 7.6 It is recommended that for all major capital projects that a formal Business Case should be prepared for approval by the States before funds for any such project are approved. This Business Case should include as a minimum a description of the reasons for the project and the justification for undertaking the project, the various options available to deliver the project, the estimated costs of the project, the inherent risks and the expected business benefits that are expected to accrue from the project.

- 7.7 A Business Case should be one of the key drivers for the decision-making process and should have been used to continually align the project's progress to the benefits that would have been defined within the Business Case.

Risk Analysis & Risk Registers

- 7.8 A risk analysis should be carried out at the outset of any project and where risk actually lies should be fully understood by all involved (both from the States and the Contractor perspective) and an appropriate set of contractual documents entered into to reflect the agreed apportionment of that risk.
- 7.9 We also recommend that a formal Risk Register should always be set up as part of the project management arrangements and considered on a regular basis by the Project Board. Such a risk register should provide a focused approach to the quantification of risk and the subsequent management of this risk by at least identifying where the risks could occur and therefore allow for risk mitigation strategies to be put in place.

Head of Capital Projects

- 7.10 Major capital projects, such as the repairs of the New Jetty are complex to manage effectively. In particular the management of procurement processes, setting up of project boards and then monitoring progress while continually assessing risks is a role, which requires a specific set of skills. Therefore, we recommend that the States should consider creating a role for a Head of Capital Projects to give focus to procurement and project management issues to allow a build up of expertise and ensure that issues and/or problems are avoided in future. This role should not be Department specific as it should be there to service all major capital projects.
- 7.11 We would also note that such a person should not necessarily be expected to be a technical specialist, but rather an expert in project management who knows how to bring effective teams together on a project by project basis to deliver successful outcomes.

Preliminary Investigations

- 7.12 While there may have been some constraint on the budget for investigation works we would recommend that with certain types of very specialised work, there is a clear need to ensure an adequate level of investigation at an early stage.
- 7.13 It must be emphasised that with concrete repair works in particular, there is always a risk that more significant defects may become apparent during the works and that the possibility of this occurring must be balanced against the cost of preliminary investigations.

Information Provided to Contractor

- 7.14 It is concluded that it is essential when a contractor designed element is included in a contract that the contractor should be provided with as much information as possible during the tender process. Where possible, drawings and information should be validated, prior to inclusion in tender documentation.
- 7.15 We therefore recommend that any information provided to a contractor from the initial tender stage onwards is fully checked for validity and accuracy by the technical advisers to the Project Board. Only once this information has been validated, should it be released to the contractor(s).

Contingency Allowance

- 7.16 It is recommended that a suitable contingency allowance should be provided in any major capital project to allow for unforeseen circumstances. An assessment of risk should be undertaken to identify and attempt to quantify those risks most likely to impact on the contract in terms of programme or cost and a contingency allowance should be set at an appropriate level for the project in question. The level of contingency that is recommended should not be influenced by anything other than the risk profile of the project in question. The project board should ensure the Employer is made fully aware of the risks associated with the project and with the particular form of contract being used, i.e. re-measurable or lump sum.

Form of Contract

- 7.17 The choice of contract type is a very important decision, which needs to be made prior to the initiation of the tendering process. To delay such a decision will mean that the opportunities to make any future changes will be minimal. Therefore, we recommend that the Project Board should choose the most suitable form of contract and at the same time, ensure the Employer is made fully aware of the risks associated with both the project and also with the particular form of contract being used.

Imposition of the Rules

- 7.18 The imposition of “rules” on the contractor in this instance became a major issue in the dispute that arose during the contract. Legal advice could have been sought on the contractual impact of imposing the rules, before doing so, particularly as this relieved Balvac of some obligations under the contract. It cannot be known what such advice may have been at the time but in taking such advice the Consulting Engineer and Employer would have had at their disposal as much information as possible to assess the likely impact of imposing the rules and to also examine alternatives. It is therefore recommended that any where any contractual or significant operational changes may become necessary during a contract, that legal advice is sought before any such changes are proposed.

APPENDIX 1

KEY REFERENCE MATERIAL USED IN THE REVIEW

The States of Guernsey – References

1. Scott Wilson Progress Reports 1 to 34 re St Peter Port 'New' Jetty (30 June 2002 – May 2005)
2. Minutes of Progress Meetings 1 to 40 by Scott Wilson (February 2002 – January 2006)
3. Minutes of States Advisory and Finance Committee Estates Sub-Committee (January 2001 – March 2004)
4. Minutes of Board of Administration Meetings (August 1997 – 10 February 2004)
5. Aide Memoire from Principal Engineer (July 1997 – November 2000)
6. Aide Memoire from Finance Director (November 2002)
7. Aide Memoire from Chief Executive (July 2003)
8. Aide Memoire from Commercial Manager (July 2003 – November 2003)
9. Aide Memoire from Administration Officer – Ports (September 2003)
10. Aide Memoire from Harbour Master (February 2004)
11. Minutes of Ports Sub-Committee Meetings (September 1996 – December 2008)
12. Aide Memoire from Deputy Chief Officer (August 2004 – October 2006)
13. Aide Memoire from Chief Officer (May 2006 – April 2008)
14. Aide Memoire from Property Administration Assistant (December 2003)
15. Aide Memoire from Senior Finance Officer (February 2005 – December 2006)
16. Aide Memoire from Supervisory Group (July 2005)
17. Aide Memoire from Administration Officer (May 2008 – September 2008)
18. Aide Memoire from New Jetty Claims Co-Ordinator (February 2008)
19. Notes from Telephone Conversations between Public Services Department and Balfour Beatty Plc:
 - a. 9 November 2007
 - b. 4 February 2008
 - c. 25 February 2008
20. *States of Guernsey Board of Administration St Peter Port Harbour 'New' Jetty Repairs and Cathodic Protection Work – Design Stage 1 Report*, – Scott Wilson (December 2000)
21. *States of Guernsey Board of Administration St Peter Port Harbour 'New' Jetty Repairs and Cathodic Protection Work – Tender Documents*, Scott Wilson (March 2001)
22. *Tender Evaluation Report - St Peter Port Harbour 'New' Jetty, Contract for Repairs and Installation of Cathodic Protection*, Scott Wilson (July 2001)

23. *"The Rules"*, Balvac Whitley Moran Ltd, June 2002
24. *Report to Board of Administration on Contract for Rehabilitation of 'New' Jetty, St Peter Port*, Scott Wilson (May 2003)
25. *Preliminary Report on Contractor's Claims - States of Guernsey v Balvac Whitley Moran Ltd*, Faithful & Gould (September 2004)
26. *Stage 1 Report – Balvac Whitley Moran Ltd v States of Guernsey*, Ove Arup & Partners (February 2005)
27. *Initial Report on Planning and Programming Matters, In the Matter of Dispute between States of Guernsey and Balvac Ltd*, Cyril Scott Wilsonett Ltd (30 April 2006)
28. *States of Guernsey 'New Jetty' Defect Investigation Report*, Electro-Tech CP Ltd and Balvac Ltd (14 May 2007)
29. *Scott Wilson Tender Submission – St Peter Port Harbour 'New' Jetty, Contract for Repairs and Installation of Cathodic Protection*, Scott Wilson (July 2005)
30. *New Jetty, St Peter Port, States of Guernsey, ICCP System – Splash Zone, Review of Balvac Ltd Data – June to December 2007*, Kevin G Davis Ltd (January 2008)
31. Eversheds LLP Arbitration File:
 - a. Agenda – Issues with Scott Wilson (21 November 2006)
 - b. Scott Wilson Letter to the States dated 10 November 2006, Beale & Co Letter to Hammonds dated 9 November 2006
 - c. Duncan Goldsby's Witness Statement to Date
 - d. Identification of Issues Pre Interview
 - e. Example of Where Documents are not Clear
 - f. Request for a List of the Generic Categories of Documents in Scott Wilson's Custody
32. Eversheds Arbitration Correspondence File (May 2007 – February 2008)
33. Hammond and Cyril Scott Wilson Chronological Bundle Schedule
34. Cyril Scott Wilsonett Schematics of Progress Presentation
35. Aide Memoire, for Board Meetings – Public Services Department
 - a. New Jetty Arbitration – Financial Report and Approval of Budget Required for Arbitration (11 June 2008)
 - b. New Jetty Arbitration – Financial Approval (14 February 2008)
 - c. New Jetty Mediation – Financial Approval (21 February 2008)
 - d. New Jetty Supervisory Group – Position Paper (9 March 2006)
36. New Jetty Arbitration – Financial Cost Estimates 2008/09

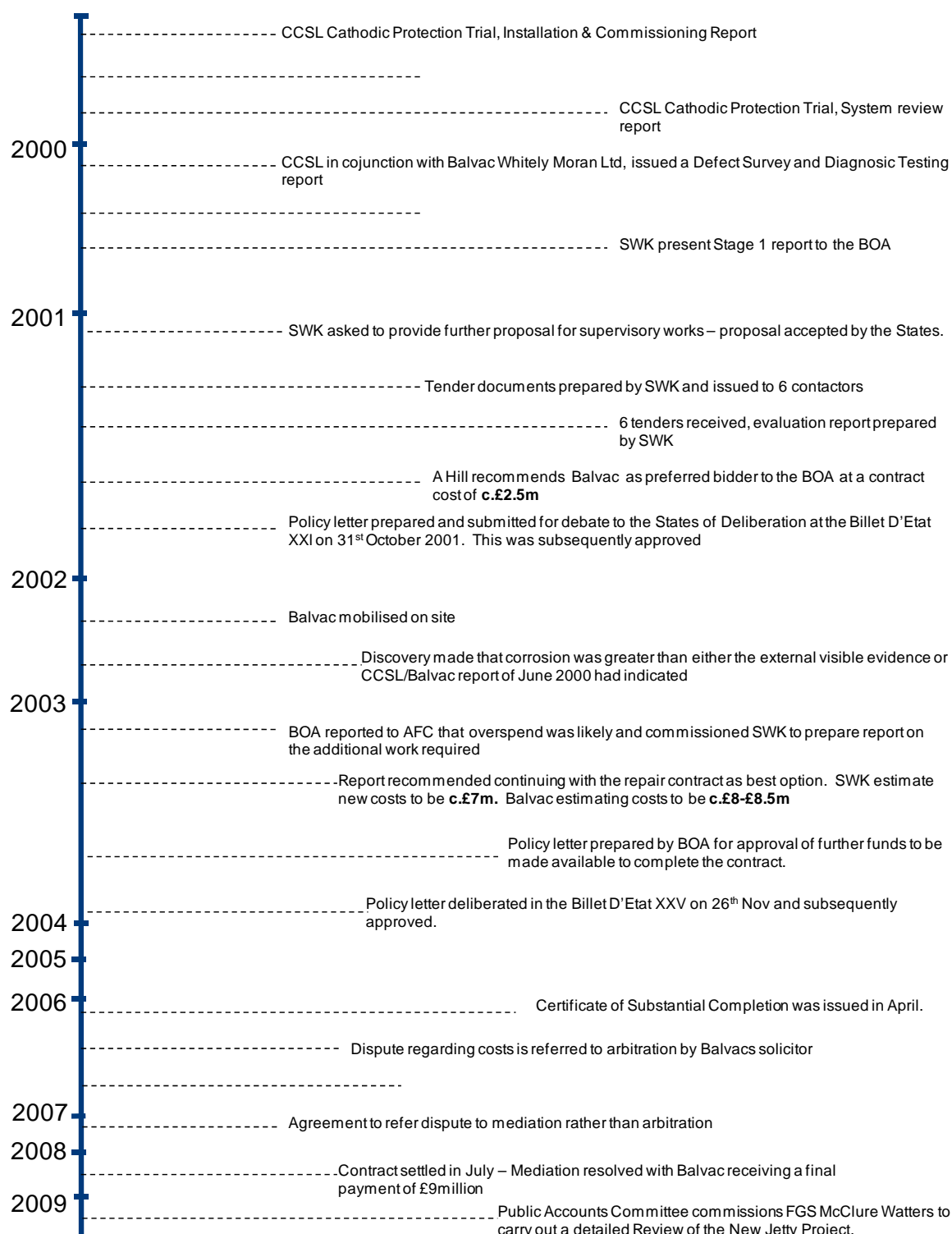
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37. *Association of Consulting Engineers Conditions of Engagement, 1995*, The Association of Consulting Engineers
 38. Memorandum of Agreement between States of Guernsey and Scott Wilson Kirkpatrick & Co Ltd, 14 November 2000
 39. Correspondence between Ozannes and Board of Administration (June 2003)
 40. Correspondence between Mace & Jones and Eversheds LLP (November 2007 - June 2008)
 41. Correspondence between Mace & Jones and Keating Chambers (March 2008)
 42. Correspondence between Eversheds LLP and Keating Chambers (January 2008)
 43. Correspondence between Eversheds LLP and States of Guernsey (October 2007 - January 2008)
 44. Correspondence between Eversheds LLP and Scott Wilson (May 2008 - June 2008)
 45. Correspondence between Eversheds LLP and Beale & Co (February 2008)
 46. Internal Correspondence between Eversheds LLP (March 2008)
 47. Correspondence between Law Officers of the Crown and The States of Guernsey (July 2003 – July 2008)
 48. Correspondence between King Sturge and Board of Administration (July 2003)
 49. Correspondence between Scott Wilson Ltd and Board of Industry (August 2003)
 50. Correspondence between Balvac Ltd and Board of Industry (July 2003)
 51. Correspondence between Scott Wilson Ltd and States of Guernsey (May 2001 - September 2003)
 52. Correspondence between Scott Wilson Ltd and Balfour Beatty Regional Civil Engineering (September 2008)
 53. Correspondence between Scott Wilson Ltd and Harbour Master (March 2003 - Dec 2003)
 54. Correspondence between Scott Wilson Ltd and Balvac Ltd (May 2001 – June 2008)
 55. Correspondence between Board of Administration and Harbour Authority (Oct 2001 – January 2004)
 56. Correspondence between Board of Administration and Guernsey Technical Services (October 2002 – January 2004)
 57. Correspondence between Board of Administration and Customs and Immigration Department (March 2003)
 58. Correspondence between Board of Administration and Property Services Unit (July 2001 – November 2003)
 59. Correspondence between Board of Administration and Balfour Beatty Plc (December 2007)
 60. Correspondence between Board of Administration and States of Guernsey Advisory and
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Finance Committee (August 2001 – April 2004)

61. Correspondence between States of Guernsey Harbours and Guernsey Commercial Port Users Association (June 2003)
62. Correspondence between States of Guernsey Harbours and Scott Wilson (July 2003)
63. Correspondence between Advisory and Finance Committee and Harbour Authority (October 2003)
64. Correspondence between Advisory and Finance Committee and Strategic Property Advisor (June 2003 – October 2003)

APPENDIX 2

TIMELINES OF PROJECT



KEY
SWK – Scott Wilson Kirkpatrick
BOA – Board of Administration
AFC – Advisory and Finance Committee

The States are asked to decide:-

XII.- Whether, after consideration of the Report dated 23rd February, 2010, of the Public Accounts Committee, they are of the opinion:

1. To note that Report and the appended report from FGS McClure Watters.
2. To direct the Policy Council to ensure that the findings and recommendation within that Report are considered and where appropriate implemented within the context of relevant work streams contained within the Financial Transformation Programme.

STATES ASSEMBLY AND CONSTITUTION COMMITTEE

AMENDMENTS TO THE RULES OF PROCEDURE OF THE STATES OF DELIBERATION RELATING TO THE STATES STRATEGIC PLAN

The Presiding Officer
The States of Guernsey
Royal Court House
St Peter Port

23rd March 2010

Dear Sir

EXECUTIVE SUMMARY

1. This report proposes changes to the Rules of Procedure of the States of Deliberation to the effect that amendments and sursis to propositions to approve a States Strategic Plan shall be subject to 12 clear days notice. Changes are also proposed as a consequence of the replacement of the Island Development (Guernsey) Law, 1966 by the Land Planning and Development (Guernsey) Law, 2005.

REPORT

2. On the 29th October 2009 the States resolved, inter alia -

“To direct the States Assembly and Constitution Committee to consult with the Policy Council to review the rules of procedure for publication, amendment and debate of future States Reports/ Requêtees affecting the SSP, and the SSP report itself, and to report to the States with recommendations no later than 30 April 2010.”.

This report is therefore laid before the States pursuant to that Resolution.

3. On the 25th February 2010 the States considered a report of the States Assembly and Constitution Committee¹ and resolved that general Billets d’État would, with effect from the September 2010 meeting of the States, be published not less than 5 weeks before the meeting. That being so the special provisions which required Billets d’État containing Detailed Development Plans, Policy and Resource Plans and Strategic and Corporate Plans to be published not less than 30 clear days before the meeting were repealed. The States Strategic Plan is therefore subject to the general rule which requires publication not less than 5

¹ Article 12 of Billet d’État IV of 2010, p.129

weeks before the date of the States meeting. This does not, of course, preclude the earlier publication of such reports if that is considered desirable.

4. Rule 13(2)(e), in conjunction with Rule 13(3), presently requires 12 clear days notice in respect of amendments and sursis to a proposition to approve a Detailed Development Plan or alteration or addition to such a Plan and 5 clear days² to a proposition to approve a Strategic and Corporate Plan. The Committee proposes that these rules be changed in two regards.
5. Firstly, to ensure that the nomenclature conforms with the changes brought about by the coming into force of the Land Planning and Development (Guernsey) Law, 2007 and secondly to require 12 clear days notice of amendments and sursis to the States Strategic Plan so as to ensure that any proposed changes to the Plan can be given full consideration in advance of the debate. Consequential amendments are required to sub-paragraphs (9) and (10) of Rule 13. The proposed changes to the Rules are set out in extenso in paragraph 9 below.
6. The Policy Council, represented by the Chairman of the States Strategic Plan Team, expressed concern that the present rules allowed any department or committee to present a motion to the States for the spending of sums not included in the prioritisation process. He suggested that rules might be introduced with regard to future States reports and requêtes which include a motion involving expenditure on a new service or substantially enhanced existing service, to the extent that the report/requête would have to include additional propositions –
 - (a) stating how the new service was to be funded, and
 - (b) specifically amending the States Strategic Plan.
7. In considering that suggestion the Committee acknowledged that where new funding is required it will be necessary to have regard to the States Strategic Plan but nonetheless, by a majority, it believes that departments and committees would be un-necessarily constrained by the suggested rules outlined above. Consequently it is not proposing further changes to the Rules of Procedure at present.

CONSULTATION

8. The Presiding Officer and HM Greffier have been consulted by the Committee as required by Rule 14(6) of the Constitution and Operation of States Departments and Committees. The Law Officers have also been consulted. Appended to this report is a letter from the Policy Council setting out its views on the matter.

² This period will increase to 7 days with effect from the September 2010 meeting of the States of Deliberation

RECOMMENDATIONS

9. The States Assembly and Constitution Committee recommends the States to resolve that the Rules of Procedure of the States of Deliberation shall be amended with immediate effect as follows:

- (1) in Rule 13, delete sub-paragraph (2) (e) and substitute therefor –

“to a proposition to approve –

- (i) a States Strategic Plan; or
- (ii) a draft Strategic Land Use Plan, or any amendment to such a Plan, which is laid before the States pursuant to section 5 (3) of the Land Planning and Development (Guernsey) Law, 2005; or
- (iii) any proposals for a Development Plan, Subject Plan or Local Planning Brief or any amendment to such a Plan or Brief, which is laid before the States pursuant to section 9 (4) of the Land Planning and Development (Plans) Ordinance, 2007,”

- (2) in sub-paragraph (3)(a) of Rule 13 delete the words “sub-paragraph (2) (e) (ii)” and substitute therefor “sub-paragraph (2) (e)”.

- (3) in Rule 13, delete paragraph (9) and substitute therefor –

“An amendment within sub-paragraph (2) (e) (iii) shall (unless the States, with the agreement of the Environment Department (“the Department”) otherwise resolve) be treated as an amendment to defer adoption (but not debate) of the Plan or Brief or amendment thereto, until –

- (a) the Department has been given the opportunity to withdraw the proposals to consider any implications of such amendment within paragraph (2) (e) (iii) in accordance with section 10 (2) of the Land Planning and Development (Plans) Ordinance, 2007;
- (b) where relevant, the inspector has reported on the amendment within paragraph (2) (e) (iii) pursuant to section 10 (3) of that Ordinance; and
- (c) the Policy Council has, at the request of the Department, laid before the States any alterations or additions to the documentation laid before the States pursuant to section

9 (4) of that Ordinance as a result of the consideration of the implications of the amendment within paragraph (2) (e) (iii).”

- (4) in paragraph (10) of Rule 13
 - (i) delete the words “a further report is” and substitute therefor “alterations or additions are”, and
 - (ii) in sub-paragraph (a) delete the words “that further report” and substitute therefor “those alterations or additions”.

Yours faithfully

I F Rihoy
Chairman

Appendix

POLICY COUNCIL

The Chairman
States Assembly and Constitution Committee
Sir Charles Frossard House
La Charroterie
St Peter Port

22nd March 2010

Dear Deputy Rihoy

Thank you for giving the Policy Council sight of your Committee's report proposing amendments to the Rules of Procedure in relation to the States Strategic Plan.

The States first Strategic Plan (SSP) was approved in October 2009 and is currently undergoing the process of annual review. The 2010-2014 Plan will be presented to the States in September. The 2009 SSP report explained that *"The SSP is a tool to enable the States to decide what they want to achieve in the medium to long term and how they will allocate limited public resources to fulfil those objectives... it is intended to generate a stronger sense of political direction within Guernsey's consensus form of government and to establish a real relationship between corporate strategy (what the States as a whole are aiming to achieve), departmental policymaking and the delivery of services"*.

The Plan talks about the importance of establishing a line of authority or 'golden thread' throughout the government policymaking process. This emphasis on demonstrating a consistent commitment from setting long term goals to service delivery which the public can understand and for which the States can be held to account, is fundamental to the effectiveness of the SSP. It also makes a very important contribution to good governance.

The SSP establishes a process for the States to consider New Service Developments in an integrated and corporate manner in the context of all competing bids for funding. The 2009 SSP report explained that *"Having established a list of such projects through the SSP process it is vital that individual proposals not signalled as pending projects through the SSP process should not come forward for debate and approval outside this framework. Otherwise the fair and transparent process that is being developed would be undermined."*

It is likely that new rules of procedure will be required to help the States to maintain self-discipline in such matters. The Policy Council considers that it is within the mandate of the States Assembly and Constitution Committee to consider such matters, and is anxious that this be achieved without delay. In the meantime, however, it is important that the States anticipate this discipline and behave accordingly.”

The Policy Council welcomes the committee’s recommendation to increase the period of notice for amendments and sursis to the SSP. This proposal will certainly support a well ordered and informed SSP debate each year. However, there is no proposal in the report which will resolve the Policy Council and SSP Team’s concerns that the corporate prioritisation of spending on New Service Developments is simply incompatible with the pre-emptive approval of funding outside the SSP process via individual States Reports, amendments and requêtes when no attempt is made to show where additional funding will be found.

All Departments and Committees have a stake in the fair and open allocation of annual efficiency savings achieved through the Financial Transformation Programme to pay for New Service Developments. At the time of writing the SSP Team is about to consult with all States Members on a detailed rationale to be applied to determine the relative priorities to be attached to New Service Development bids to arrive at a system that commands majority support. A process which enables individual bids to ‘jump the queue’ via a report, amendment or requête without any requirement to reconcile that action with the reasoned prioritisation of spending that has been agreed by the States, *at the very least*, severely undermines efforts to improve standards of governance and to avoid unaffordable increases in aggregate expenditure which would be contrary to the position that the States has taken towards achieving a balanced budget.

The Policy Council therefore considers that the States should direct the States Assembly and Constitution Committee to consider the matter further and return to the States no later than the end of July meeting with revised recommendations to amend present Rules of Procedure and intends to place an amendment to this effect.

The Policy Council would be grateful if your Committee would agree to append this letter to your report.

Yours sincerely

L S Trott
Chief Minister

The States are asked to decide:-

XIII.- Whether, after consideration of the Report dated 23rd March, 2010, of the States Assembly and Constitution Committee, they are of the opinion:-

To amend the Rules of Procedure of the States of Deliberation with immediate effect as follows:

(1) in Rule 13, delete sub-paragraph (2) (e) and substitute therefor –

“to a proposition to approve –

- (i) a States Strategic Plan; or
- (ii) a draft Strategic Land Use Plan, or any amendment to such a Plan, which is laid before the States pursuant to section 5 (3) of the Land Planning and Development (Guernsey) Law, 2005; or
- (iii) any proposals for a Development Plan, Subject Plan or Local Planning Brief or any amendment to such a Plan or Brief, which is laid before the States pursuant to section 9 (4) of the Land Planning and Development (Plans) Ordinance, 2007,”

(2) in sub-paragraph (3)(a) of Rule 13 delete the words “sub-paragraph (2) (e) (ii)” and substitute therefor “sub-paragraph (2) (e)”.

(3) in Rule 13, delete paragraph (9) and substitute therefor –

“An amendment within sub-paragraph (2) (e) (iii) shall (unless the States, with the agreement of the Environment Department (“the Department”) otherwise resolve) be treated as an amendment to defer adoption (but not debate) of the Plan or Brief or amendment thereto, until –

- (a) the Department has been given the opportunity to withdraw the proposals to consider any implications of such amendment within paragraph (2) (e) (iii) in accordance with section 10 (2) of the Land Planning and Development (Plans) Ordinance, 2007;
- (b) where relevant, the inspector has reported on the amendment within paragraph (2) (e) (iii) pursuant to section 10 (3) of that Ordinance; and
- (c) the Policy Council has, at the request of the Department, laid before the States any alterations or additions to the documentation laid before the States pursuant to section 9 (4) of that Ordinance as a result of the consideration of the implications of the amendment within paragraph (2) (e) (iii).”

- (4) in paragraph (10) of Rule 13
 - (i) delete the words “a further report is” and substitute therefor “alterations or additions are”, and
 - (ii) in sub-paragraph (a) delete the words “that further report” and substitute therefor “those alterations or additions”.

REQUÊTE

COMPETITION IN ELECTRICITY AND POSTAL SECTORS

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation SHEWETH THAT:-

1. Your Petitioners believe that the framework of legislation and States' Directions under which the Office of the Director General of Utility Regulation operates requires modification. The existing arrangements are particularly deficient in respect of ensuring the sustainability of the essential services provided by the States-owned utilities in the electricity and postal sectors. Without amendment, the framework of legislation and States' Directions could result in the erosion of these essential services and compromise the trading positions of States-owned utilities to the detriment of the States and the strategic interests of Guernsey and its people. The Director-General's Final Decision on "Guernsey Post's Proposed Tariff Changes" published in December 2009 (Document No: OUR 09/21: the "Final Decision") has brought your Petitioners' concerns in that regard into sharper focus, but those concerns are wider than the impact of that Final Decision alone.

2. The Office of the Director General was established with effect from 1 October 2001 by the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 ("the Regulation Law"). The Post Office (Bailiwick of Guernsey) Law, 2001 and the Electricity (Guernsey) Law, 2001 (the "Sector Laws") were commenced on 1 October 2001 and 1 February 2002 respectively. The operations of the previous States' Trading Boards were transferred to companies that had been established for that purpose, namely Guernsey Electricity Limited and Guernsey Post Limited. Two shares in each company have been issued, held by political representatives, currently the Minister and Deputy Minister of the Treasury and Resources Department, on trust for the States of Guernsey. Your Petitioners believe that it is in the interests of the people they represent that these utilities should continue to enjoy a full or partial monopoly in the provision of essential services. Furthermore, they should remain fully in democratic public ownership.

3. Part II of the Regulation Law deals with the general duties of the States and the Director General. One of the objectives listed in section 2 is "*to introduce, maintain and promote effective and sustainable competition in the provision of utility services in the Bailiwick, subject to any special or exclusive rights awarded to a licensee by the Director General pursuant to States' Directions*". The States and the Director General have the duty of promoting that objective when exercising their respective functions and powers. However, where that objective conflicts with one or more of the other objectives listed, for example, "*to protect the interests of consumers*" or "*to ensure that utility activities are carried out in such a way as best to serve and contribute to the economic and social development and well-being of the Bailiwick*", the duty is to balance those conflicting objectives.

4. States' Directions can be given to the Director General by Resolution in accordance with section 3 of the Regulation Law. They can relate specifically to the matters mentioned in subsection (1), for example, *"the scope of any universal service obligation"* or *"any special or exclusive rights to be awarded to any licensee"*, or they may be *"of a strategic or general nature"*, in which case they must be given by way of an Ordinance.
5. Both forms of States' Direction can be set only by the States of Deliberation further to recommendations made by the Commerce and Employment Department after consultation with the Director General and with the relevant Committees in Alderney and Sark.
6. Your Petitioners note that, following recommendations from the then Board of Industry, States' Directions were given to the Director General by virtue of the Resolutions of 26 September 2001 (Billet d'État XVIII of 2001). Those Directions related to the identities of the entities to which the first licences containing universal service obligations under the respective Sector Laws had to be granted. They also related to the exclusive (or monopoly) rights to be awarded to those licensees.
7. In respect of Guernsey Electricity Limited, for the conveyance of electricity in Guernsey, 10 years of exclusivity was to be granted and, for the supply of electricity, the exclusive period was to be for one year. The Director General was also requested to *"investigate the impact of the introduction of competition into the electricity supply market"*.
8. In respect of Guernsey Post Limited, the exclusive right to provide postal services was to be granted *"to the extent that such exclusive right is necessary to ensure maintenance of the universal postal service"*, as specified in a separate States' Direction of that date. The Director General was also requested *"to review and revise the award of exclusive rights from time to time with a view to opening up the Bailiwick postal service to competition, provided that any such opening up does not prejudice the continued provision of the universal postal service"*.
9. Despite the monopoly of Guernsey Electricity Limited now being confined solely to the conveyance of electricity, albeit that this will continue only for a further 18 or so months, your Petitioners regard it as significant that there has been no new entrant to the electricity supply market during the period when that opportunity has been available.
10. From 1 October 2001 to the present, the exclusive (or monopoly) position of Guernsey Post Limited has covered all postal services costing less than £1.35. At the same time, the Post Office (Reserved Postal Services) Order, 2001, made by the Director General pursuant to section 9 of the Post Office (Bailiwick of Guernsey) Law, 2001, has set the so-called "Reserved Area" at exactly the same

level as that company's exclusive area. Your Petitioners note that, under section 1 of the Post Office (Bailiwick of Guernsey) Law, 2001, a licence is not required for the provision of postal services outside the Reserved Area, with the consequence that the only operator licensed and subject to regulation in the postal sector is Guernsey Post Limited.

11. The Director General's Final Decision will reduce the exclusive rights awarded to Guernsey Post Limited so that from 1 April 2010 they will comprise only postal items, other than postal packets, up to a value of £1.00. At the same time, the Director General intends to reduce the Reserved Area set in the 2001 Order to mirror the exclusivity awarded to Guernsey Post Limited. As a consequence, no entity wishing to compete with Guernsey Post Limited will require a licence or be subjected to regulation.
12. Between October 2001 and the present, although the monetary reference point for the exclusive rights awarded to Guernsey Post Limited and the Reserved Area has remained unchanged, your Petitioners believe that the effect of increases in charges for postal services has actually produced a reduction of the overall coverage of those exclusive rights and the Reserved Area, thereby opening up to competition in a gradual fashion those services in respect of which no licence is required.
13. Your Petitioners believe that the situation in 2010 is different from that in the late 1990s when it was first proposed that the States should commercialise the Trading Boards with a view to the eventual introduction of competition in the electricity and postal sectors. Accordingly, your Petitioners consider that the existing framework which governs the regulation of the commercialised utilities requires review, following which the States should consider giving further, more explicit Directions to the Director General in respect of the special or exclusive rights that apply to the two States-owned entities. Additionally, or alternatively, a similar outcome might be capable of being achieved through amendment of the legislative structure that was put in place in 2001, as outlined above.
14. Your Petitioners are concerned that the potential for the introduction of competition in the electricity and postal sectors is undesirable. However, subject to conducting the balancing exercise referred to in paragraph 3, section 2 of the Regulation Law and the existing States' Directions require the Director General to take steps to liberalise both sectors. Although the Director General's Final Decision (at page 41) explains that the projected lost revenue for Guernsey Post Limited from the reduction of its exclusive rights and the Reserved Area would not result in any "*requirement for the States, as shareholder, to have to bail out*" the company, your Petitioners do not accept that this claim can be robustly substantiated. In any event, further steps taken by the Director General to stimulate competition in both sectors could very well compromise the future sustainability of the States-owned utilities and therefore undermine the wider interests of Guernsey and its people.

15. Your Petitioners believe that the uncertainties surrounding the potential for the introduction of competition should be clarified for the benefit of the States by the Commerce and Employment Department being directed to return with substantive proposals in this regard.
16. Your Petitioners have identified that an alternative approach might be to enable the States to be the decision-maker about any second entrant to both sectors. Your Petitioners believe that the States are as well, if not better, placed to reach such a decision as the Director General. This would entail amending section 3 of the Regulation Law. Your Petitioners believe that this alternative approach is certainly worthy of further consideration.
17. Finally, your Petitioners have noted that the Director General has made several references in the Final Decision to the objective in section 2(d) of the Regulation Law about introducing, maintaining and promoting effective and sustainable competition. Your Petitioners believe that it would be appropriate for the Commerce and Employment Department to investigate whether this objective should be qualified in such a way that the threshold for introducing competition against States-owned utilities is higher than where the sector has already been liberalised to any extent.

THESE PREMISES CONSIDERED, YOUR PETITIONERS humbly pray that the States may be pleased to resolve to direct the Commerce and Employment Department to report back to the States by no later than their October 2010 Meeting with recommendations for amending or supplementing the States' Directions to the Director General in respect of the special or exclusive rights of Guernsey Electricity Limited and Guernsey Post Limited and/or, as the case may be, proposals for amendments to the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and, as appropriate, the Electricity (Guernsey) Law, 2001 and the Post Office (Bailiwick of Guernsey) Law, 2001 in respect of the introduction of competition in the electricity and postal sectors.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 24th day of February 2010

D B Jones
G Guille
B J E Paint
D de G De Lisle
S J Ogier
C A Steere
A R Le Lièvre
M J Fallaize

M G G Garrett
J M Tasker
J M Le Sauvage
J Kuttelwascher
B L Brehaut
M W Collins
S J McManus
G P Dudley-Owen

(NB In pursuance of Article 17 of the Rules of Procedure the views of the Departments and Committees consulted by the Policy Council, as appearing to have an interest in the subject matter of the Requête, are set out below.)

COMMERCE AND EMPLOYMENT DEPARTMENT

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

12th March 2010

Dear Deputy Trott

REQUÊTE: COMPETITION IN ELECTRICITY AND POSTAL SECTORS

Thank you for your letter dated 1 March giving the Commerce and Employment Department the opportunity to comment on the above Requête.

The Commerce and Employment Department does not oppose the Prayer of the Requête but in doing so wishes to make its position absolutely clear.

The body of the Requête contains a number of statements of fact which, in two instances, are either incorrect or misleading and also expresses opinions which are not substantiated by evidence and with which the Department does not concur.

It is also worth noting that none of the signatories to this Requête have contacted the Department to discuss their intentions, check facts and, in turn, give the Department the opportunity to clarify some of the issues and advise of its intentions on future changes to Laws and States Directions, which are referred to below.

The Department would also wish to stress that in not opposing the Prayer of the Requête, it is in no way suggesting that it does not support and have full confidence in the OUR to undertake its regulatory duties diligently, competently and in full compliance with States Directions.

In reporting back to the States in compliance with the Prayer of the Requête, the Department will set out, in full, all of the issues around competition in the electricity and particularly the postal sectors. Whilst the Petitioners discuss the possible implications on GEL and GPL of increased competition, there is little discussion about the possible benefits to customers of well regulated competition.

Turning now to the detail in the body of the Requête, Paragraphs 1 to 13 seek to make statements of fact most of which are correct.

However **Paragraph 2** comments that the Petitioners believe that the utilities should “*remain fully in democratic ownership*” which could be taken to imply that the regulator currently has the authority to require the full or partial sale of the entities. This is most definitely not the case, these two utilities are States Trading Companies and Section 2 (4) of the States Trading Companies Ordinance of 2001 states that:

“No transfer or other disposition of the shares in a States trading company, and no alteration of the share capital of a States trading company, shall be valid unless expressly authorised by resolution of the States.”

Paragraph 7 comments that “*for the supply of electricity, the exclusive period was to be for one year*” (after GEL was formed in 2001), and **Paragraph 9** that the “*Petitioners regard it as significant that there has been no new entrant to the electricity supply market*”. The actual position is that the current Directions extend the original one year period of exclusivity to the period ending 31 January 2012.

Unless there are any significant changes in circumstances, which at present are not apparent, it was and remains the intention of the Department to recommend a further extension of the GEL monopoly for the conveyance and supply of electricity.

For the generation of electricity, there is no exclusivity and there have been “new entrants” in the form of micro generation by householders who can feed-in power to the grid. In future, generation will most likely also include other renewable sources such as tidal power. The Commerce and Employment Department will keep this direction under review as the States energy policies develop.

Paragraph 10 states that “*the only operator licensed and subject to regulation in the postal sector is Guernsey Post Limited*”. This is the current position but following discussions with the OUR, as part of the consultation process into the current tariff review, the Department has already agreed to bring forward proposals to amend the regulatory legislation such that all providers of postal services will require a licence unless specifically exempted. This will ensure that all operators who compete directly with Guernsey Post Limited will be licensed and subject to oversight by the regulator.

Paragraph 13 comments that the “*Petitioners believe that the situation in 2010 is different from that in the late 1990s ... and consider that the existing framework which governs the regulation of the commercialised utilities requires review*”. What is not referred to is the major Review of Commercialisation undertaken jointly by the Treasury and Resources and the Commerce and Employment Departments, using the NAO and Europe Economics as external consultants. The results of that review were presented in Billet X of 2006 and all the recommendations, which covered changes to the regulatory Laws and measures to improve the corporate governance of the utilities, were approved by the States.

Paragraphs 14 to 17 express opinions which are not substantiated by evidence and with which the Department does not concur.

Paragraph 16 suggests that “*an alternative approach might be to enable the States to be the decision-maker about any second entrant to both sectors*”. However, this ignores the fact that the postal sector already has a number of providers of services competing with GPL in one way or another.

In summary, therefore, the Department considers that the Petitioners have made incorrect or misleading assertions in the Requête and have not provided evidence that the current arrangements are inadequate in protecting the immediate and long term interests of customers and the States.

However, the Department does not oppose the Prayer of the Requête and will address these issues in full in its report back to the States.

Yours sincerely

C S McNulty Bauer
Minister

TREASURY AND RESOURCES DEPARTMENT

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

16th March 2010

Dear Deputy Trott

REQUÊTE – COMPETITION IN ELECTRICITY AND POSTAL SECTORS

Thank you for your letter of 1st March 2010 enclosing a copy of a Requête that has been signed by 16 States Members entitled “Competition in Electricity and Postal Sectors”.

Over the past few months my Board has regularly discussed matters associated with the current regulatory framework that has been established by the States specifically in respect of the electricity and postal sectors.

The principal conclusion that we reached and which has been previously communicated to the Policy Council, is that there is an urgent requirement to “reshape” the current regulatory model. My Board is of the view that the current model is inappropriate in scale for a small jurisdiction. In our view it is having an increasingly negative impact on both States Trading Companies such that we fear they could both be reporting annual losses on a long term basis if matters remain unaddressed.

While there are aspects of the Requête with which we would disagree, for example, we are not necessarily convinced that both companies should remain **fully** in democratic public ownership, we support the thrust of the Requête and specifically the requirement for a comprehensive review of all aspects of the existing legislative framework and the underpinning States Directions.

Yours sincerely

C N K Parkinson
Minister

(NB The Policy Council has no comment on the proposal.)

The States are asked to decide:-

XIV.- Whether, after consideration of the Requête dated 24th February, 2010, signed by Deputy D B Jones and fifteen other Members of the States, they are of the opinion:-

To direct the Commerce and Employment Department to report back to the States by no later than their October 2010 Meeting with recommendations for amending or supplementing the States’ Directions to the Director General in respect of the special or exclusive rights of Guernsey Electricity Limited and Guernsey Post Limited and/or, as the case may be, proposals for amendments to the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and, as appropriate, the Electricity (Guernsey) Law, 2001 and the Post Office (Bailiwick of Guernsey) Law, 2001 in respect of the introduction of competition in the electricity and postal sectors.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF
GUERNSEY) LAW, 1999 (AMENDMENT OF SCHEDULES 1 AND 2)
REGULATIONS, 2010**

In pursuance of Section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010, made by the Policy Council on 22nd February, 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations amend Schedules 1 and 2 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

Schedule 1 to that Law lists those businesses which are financial services businesses for the purpose of the Law. The amendments made to Schedule 1 by these Regulations include –

- (a) an amendment which has the effect, in relation to some businesses listed in Schedule 1, that they are "financial services businesses" only when carried on by way of business for or on behalf of a customer, and
- (b) an amendment which adds to the list of businesses, subject to certain exceptions (including, for example, a postal services business carried on under the authority of a licence granted under the Post Office (Bailiwick of Guernsey) Law, 2001), the businesses of the buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps.

Schedule 2 to the Law prescribes those businesses that are "relevant businesses" for the purposes of the Law. The businesses of dealing in high value goods, estate agency, the provision of casinos or organized gambling services and the provision of legal and accountancy services are all relevant businesses. These Regulations amend the description of legal and accountancy services in order to include services provided by way of business by external accountants, insolvency practitioners, auditors and tax advisers, except where the services are provided by employed persons to their employers.

There are supplemental and transitional provisions which defer, until 4 October 2010, any requirement for businesses that fall within the new definition of the business of legal and accountancy services to register under the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 ("the 2008 Regulations"). During the transitional period which runs from the date of commencement of these Regulations until 4 October 2010, businesses can nonetheless register with the Guernsey Financial Services Commission under the 2008 Regulations. As from 1 November 2010 businesses falling within the new definition must both be registered and comply with the relevant regulations and rules.

**THE REGISTRATION OF NON-REGULATED FINANCIAL SERVICES
BUSINESSES (BAILIWICK OF GUERNSEY) LAW, 2008
(SCHEDULE 1 AMENDMENT) REGULATIONS, 2010**

In pursuance of Section 31 of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (Schedule 1 Amendment) Regulations, 2010, made by the Policy Council on 22nd February, 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations amend Schedule 1 to the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008.

Schedule 1 to that Law lists those businesses which are financial services businesses for the purpose of the Law. The main amendment made to Schedule 1 by these Regulations is to include as financial services businesses, subject to certain exceptions (including, for example, a postal services business carried on under the authority of a licence granted under the Post Office (Bailiwick of Guernsey) Law, 2001), the businesses of the buying or selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps.

There are supplemental and transitional provisions which defer, until 31 March 2010, any requirement for businesses that fall within the new definition of financial services business to register under the Law. During the transitional period which runs from the date of commencement of these Regulations until 31 March 2010, businesses can nonetheless register with the Guernsey Financial Services Commission under the Law. As from 23 April 2010 businesses falling within the new definition must both be registered and comply with the relevant regulations and rules.

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (FINANCIAL SERVICES
BUSINESSES) (BAILIWICK OF GUERNSEY) (AMENDMENT)
REGULATIONS, 2010**

In pursuance of section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2010, made by the Policy Council on 22nd February, 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations amend regulation 5(1)(c)(ii) of the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 so that a financial services business is required to carry out enhanced customer due diligence in relation to business relationships which the business considers to be high risk, taking into account instructions issued by the Guernsey Financial Services Commission.

THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (LEGAL PROFESSIONALS, ACCOUNTANTS AND ESTATE AGENTS) (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2010

In pursuance of section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2010, made by the Policy Council on 22nd February, 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations are made under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and amend the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008. The amendments clarify the requirements of prescribed businesses to adopt and implement policies, procedures and controls for the purposes of forestalling, preventing and detecting money laundering and terrorist financing, which take account of and are consistent with instructions issued by the Guernsey Financial Services Commission.

THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2010

In pursuance of section 86 of the Insurance Business (Bailiwick of Guernsey) Law, 2002, the Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2010, made by the Policy Council on 22nd February, 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the minimum criteria for licensing to provide that in determining whether an applicant or licensee under the Insurance Business (Bailiwick of Guernsey) Law, 2002 is to be regarded as conducting his business in a prudent manner the Commission shall also have regard to whether the structure or organisation of the group of companies of which the applicant or licensee is a part hinders effective supervision.

THE INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2010

In pursuance of section 63 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Regulations, 2010, made by the Policy Council on 22nd February, 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the minimum criteria for licensing to provide that in determining whether an applicant or licensee under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 is to be regarded as

conducting his business in a prudent manner the Commission shall also have regard to whether the structure or organisation of the group of companies of which the applicant or licensee is a part hinders effective supervision.

THE MISUSE OF DRUGS (MODIFICATION) ORDER, 2010

In pursuance of Section 30 (3) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, the Misuse of Drugs (Modification) Order, 2010, made by the Health and Social Services Department on 23rd February, 2010, is laid before the States.

EXPLANATORY NOTE

This Order replaces the First Schedule to the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, with a new Schedule.

This Order adds synthetic cannabinoid receptor agonists to Part II of the Schedule which specifies drugs which are subject to control as Class B drugs under the Law.

In addition, this Order adds gamma-butyrolactone (GBL), 1,4-butanediol (1,4-BD), 15 anabolic steroids, two non-steroidal agents, Oripavine, 1-benzylpiperazine (BZP) and a group of substituted piperazines to Part III of the Schedule which specifies drugs which are subject to control as Class C drugs under the Law.

The Order also updates Schedules 1, 2 and 4 to the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997 to ensure that the above drugs are included.

This Order also corrects a number of minor erroneous inclusions, omissions and spelling mistakes which had been made in previous Schedules.

THE MOORING CHARGES REGULATIONS, 2010

In pursuance of Section 5(2) of the Fees, Charges and Penalties (Guernsey) Law, 2007, the Mooring Charges Regulations, 2010, made by the Public Services Department on 13th March, 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the mooring charges payable under section 2 of the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972 (the "**1972 Law**"). These Regulations increase the existing mooring charges by approximately 3 per cent. Under the terms of the Fees, Charges and Penalties (Guernsey) Law, 2007, these charges may now be prescribed by regulations of the Public Services Department

Legislative background

Mooring charges payable under section 2 of the 1972 Law were originally made by way of Ordinance. Section 3 of the Harbours, Moorings and Pilotage (Fees and Dues) Law,

1986 amended section 2 of the 1972 Law to provide that the charges would be payable at such rates as the States may, from time to time, by Resolution prescribe. In 2001, the 1972 Law was further amended by section 2 of the Harbour Dues, Harbour Charges and Mooring Charges (Guernsey) (Amendment) Law, 2001 to provide that such a States Resolution could authorise the Board of the Public Services Department to amend the amount of those dues in respect of any specified twelve month period or periods by an amount not exceeding the change in the Guernsey Retail Price Index during such earlier twelve month period or periods as may be so specified.

THE INSURANCE BUSINESS (LICENSING) REGULATIONS, 2010

In pursuance of Section 86 of the Insurance Business (Bailiwick of Guernsey) Law, 2002, the Insurance Business (Licensing) Regulations, 2010, made by the Guernsey Financial Services Commission on 9th March 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations define the information required of an applicant when applying for a licence to carry on insurance under section 6(3) of the Insurance Business (Bailiwick of Guernsey) Law, 2002.

APPENDIX I

HOME DEPARTMENT

VICTIM SUPPORT AND WITNESS SERVICES

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

19th February 2010

Dear Sir

I enclose Victim Support and Witness Services' Annual Report setting out the Service's activities for the year ending 31st December 2009.

The Home Department is pleased to support the work of the Victim Support and Witness Services and recognises the invaluable role that it fulfils within our community. The Department would further like to put on record its sincere congratulations to Victim Support and Witness Services for being awarded a prestigious Queen's Award for Voluntary Service in 2009.

Whilst there is no legislative requirement for Victim Support's Annual Reports to be laid before the States, my Department is cognisant that the Service is provided with an annual grant from the Home Department and therefore it will be of interest to Members of the Assembly and the public to note how this funding is used. I should therefore be grateful if you would arrange for its publication as an Appendix to the April 2010 Billet d'Etat.

The Department intends to continue to submit Annual Reports in the future.

Yours faithfully

G H Mahy
Minister

Enc



SUMMARY OF VICTIM SUPPORT & WITNESS SERVICE ANNUAL REPORT FOR 2009

The Scheme was first set up in the Bailiwick in 1998, operating first from the co-ordinators home and between 2003 and 2005 from an office in Vauvert. In February 2006 the Scheme moved into a purpose built suite within the new Royal Court building. The purpose of the Scheme is to provide emotional support, practical help and information to all victims or witnesses of crime in the Bailiwick. It provides that same service to the families and friends of victims. Whilst the initial emphasis was on the victims of crime, this was subsequently expanded to include witnesses through the Witness Service which was officially launched by the Bailiff in May 2006.

The Witness Service provides guidance and support for all witnesses who find themselves having to attend the Court when perhaps they have never attended the Court before. This can be extremely daunting and sometimes, particularly for young or vulnerable witnesses, frightening. Witnesses are offered pre-trial visits to the Court when the court procedure will be explained, including where they will be asked to stand and give their evidence, where the judge will sit and where all other participants will be positioned. The visits enable them to be a little more comfortable in the Court surroundings and less intimidated, leading to better quality evidence.

The Service offers support to prosecution and defence witnesses, their family and friends before, during and after attending Court to give evidence. We can also accompany witnesses into the courtroom whilst they give their evidence and provide ongoing support after the event which includes advising them of a verdict and explaining a sentence.

At the worst time of their lives, victims and witnesses will have the very best service provided to them by our staff and volunteers. A single telephone call to a victim may be all that is needed to give initial support but the victim will be assured that more support is readily available if required at any time. We are very much aware that witnesses are at the centre of the administration of justice (No Witness – No Justice) and we are very pleased at the excellent feedback from other agencies and individuals who have used the services we provide.

Volunteers working with both sets of clients are trained specifically for the separate disciplines. The Manager and two of the volunteers are also trained Restorative Justice Facilitators.

The local Scheme was affiliated to the much bigger UK structure until June 2008 when the National Scheme became a single charity rather than a federation.

From 2009 the Bailiwick will have a Memorandum of Understanding with, and be able to purchase services from the National Scheme as will Jersey and Isle of Man. The Islands receive no funding from the National Scheme.

The support and part funding from the Home Department is much valued and the budget provided is used very wisely to ensure best value for money from the Scheme. The Service Level Agreement between the Home Department and Victim Support is attached as Appendix 1. In 2008 when it became obvious that the workload was too much for one person and the office should be manned mornings and afternoons, an assistant was employed on a part time basis to assist the Manager. Funding for the post was sought from external sources and was gratefully received from:-

HSBC Securities Services Guernsey Charitable Foundation; Trustees of The Sarnia Memorial Trust; Northern Trust Guernsey Charitable Trust; The Charles Hayward Foundation; The Securities & Investment Institute; Rothschild Charities Committee; The Association of Guernsey Charities (Christmas Lottery 2007) and Lloyds TSB Foundation for the Channel Islands who provided a further 2 years funding (until September 2010) for the part time post.

As one of the Schools Support Agencies we give talks in secondary schools during PSHE lessons, primarily years 7, 8 and 9. Our aim is to raise awareness of how crime affects victims and their families and friends and to consider what other things may be happening in a victim's life at the time of the crime.

We use examples of bullying, theft and vandalism and explain what Victim Support can do to help those affected by crime. We also talk about court procedures and the feelings of witnesses and what the Witness Service offers in the way of support.

We have a DVD showing Guernsey court procedures if equipment is available to show this in the schools.

We support young victims and witnesses as well as adults and feel that it benefits pupils to have a better understanding of the effects of crime and the work of Victim Support and the Witness Service.

Even if a crime was not against a young person, but against a family member or a friend, that young person may still have worries and fears they need to express. The crime may also have been committed by a family member or friend. We can help young people to contact other organisations if necessary. Some of the confidences shared by pupils with our speaker outside of the classroom, and sometimes with the

whole class present, show that some school children are carrying quite heavy burdens in their home and personal lives. Schools we have been invited into are as follows:-

2006	2007	2008	2009	2010
Beaucamps Yr 10 x 3 sessions	Ladies College Yr 8 x 3 sessions	Ladies College Yr 8 x 3 sessions	Ladies College Yr 8 x 3 sessions	Elizabeth College Yr 7 x 4 sessions
Blanchelande Yr 8 x 2 sessions	Blanchelande Yr 11 x 2 sessions	St Peter Port Yr 8 x 4 sessions	St Sampsons High Yr 7 x 6 sessions	Elizabeth College Year 9 x 4 sessions
Grammar Yr 9 x 5 sessions	CFE Yr 12 (Brock Road annexe) x 2 sessions.	St Peter Port Yr 9 x 4 sessions	Mare de Carteret High Yr 7 x 5 sessions	St Sampsons Yr 7 x 7 sessions
		Blanchelande Yr 8 x 4 sessions;	Blanchelande Yr 7 x 2 sessions	

We held open mornings in 2007, 2008 and 2009 where between 40 and 50 invited guests have visited the suite each year and asked many questions about the services we provide.

Since January 2009 when the Multi Agency Risk Assessment Conferences ('MARAC') began, and in the absence of an Independent Domestic Violence Advisor ('IDVA'), referred victims are divided between Victim Support and the Womens' Refuge. All males are referred to Victim Support as well as any females where there is a likelihood of a court hearing. All other females are referred to the Womens Refuge. (see statistics)

When the Children Law comes into force in 2010, we are unsure how our service will be involved, if at all, we may be asked to provide support to some people attending a Tribunal.

Victim Statistics

Table 1 below shows the number and types of referral to Victim Support for the year 2009. Table 2 shows the years 2005 – 2008. The Multi Agency Risk Assessment Conferences ('MARAC') began on 13 January 2009 and these referrals are included in the Domestic Abuse figures which are in turn included in the main referral figures. The domestic abuse referrals are mainly within the headings of assault, criminal damage and threats.

Table 1 **Victim Support Referrals 2009**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTALS
Homicide													0
Sexual Offences		3		2	5	3	1	2	5	7	7	5	40
Robbery													0
Assault GBH	2	1	2		1		3			2			11
Assault ABH	11	6	13	7	7	15	13	6	13	22	13	17	143
Burglary/Theft	5		1		3	24	11	10	16	26	12	12	120
Criminal Damage	1	2	3	1	2	3	7	5	10	11	10	11	66
Fraud			1						1				2
Arson													0
Other Crime	7	1	2	1	3		1	1			2	2	21
Non Crime				1	1		1						3
Threats	1	1	1		4	1	1	1	1	1		3	14
Road Death						4			7				11
Monthly Totals	27	14	23	12	30	46	38	32	45	70	44	50	431
Domestic Abuse (included in above) *	16	9	16	6	15	10	13	6	13	18	10	15	147

*This figure includes MARAC referrals of 80 females and 18 males for 2009

Table 2 **Victim Support Referrals 2005 – 2008**

	2005	2006	2007	2008	TOTALS
Homicide		4			4
Sexual Offences	14	35	14	26	89
Robbery	3		1		4
Assault GBH	2	9	6	10	27
Assault ABH	34	62	81	68	245
Burglary/Theft	12	25	46	36	119
Criminal Damage	1	5	35	29	70
Fraud		1	5	3	9
Arson			4	1	5
Other Crime	4	14	26	13	57
Non Crime	1	3	1	3	8
Threats	1			4	5
Road Death					0
Annual Totals	72	158	219	193	642
Domestic Abuse (included in above)	31	28	49	45	153

Witness Statistics

Table 3 below shows the number of witnesses referred to the Witness Service since it was officially launched in May 2006.

The Live Link Evidence Ordinance was granted by the States on 12 March 2008. From the total number of witnesses using the video link facility, 2 were witnesses in a criminal case (court 1) and 24 were attending for the family or domestic courts (courts 4 & 5).

From 2006 - 2008 the Courts are not distinguished within the statistics, however for the year **2009** the total number of witnesses divided between the courts as follows:-

Court 1	57
Court 2	153
Juvenile Court	3
Courts 4 & 5 (matrimonial & domestic proceedings)	70

Table 3**Witness Service Referrals 2006 - 2009**

	2006	2007	2008	2009	TOTALS
<16yr Female	13	6	3	2	24
16-21yr Female	2	8	13	34	57
Over 21yr Female	26	47	77	119	269
<16yr Male	14	13	0	2	29
16-21yr Male	5	23	14	6	48
Over 21yr Male	15	45	86	120	266
TOTALS	75	142	193	283	693
Number of Above Referrals by :					
POLICE	64	104	98	141	407
SELF	9	19	53	54	135
OTHER	2	19	42	88	151
PRE-TRIAL VISITS	56	98	33	63	250
VIDEO LINK HEARINGS (operational since 12.3.08)			6	20	26

APPENDIX 1

Service Level Agreement (“SLA”) between the States of Guernsey Home Department and The Bailiwick of Guernsey Victim Support Scheme (incorporating Witness Service) for the provision of support to victims of crime and to potential Court witnesses throughout the Bailiwick of Guernsey

Introduction and Statement of Purpose

Victim Support is a UK-wide initiative which was introduced into the Bailiwick of Guernsey in October 1998. The local Scheme seeks to provide support, information and practical help to persons who have suffered as a result of any criminal offences and their families and friends where such persons are resident within the Bailiwick of Guernsey. The local Scheme now also includes the Witness Service, providing help, information and support to potential Court witnesses, both prosecution and defence, of all ages.

Definitions

- The “*client*” means the victim of crime or their family.
- The “service provider” means the Bailiwick of Guernsey Victim Support and Witness Service.
- The “year” means the budget year.
- The “Scheme” means the Bailiwick of Guernsey Victim Support and Witness Service.
- The “Scheme Manager” means the manager employed by the Scheme, coordinating the Scheme’s volunteers.
- “VS National” means the organising body of UK Victim Support.

Responsibilities of the Service Provider

1. To assist the victims of crime in the Bailiwick of Guernsey through:
 - Making contact offering Scheme services within 48 hours of referral from Police
 - Home visits to victims to offer emotional support after a crime
 - Regular telephone contact and updates with victims
 - Pre court visits with the victim
 - Support to the victim in court on the day of trial (with judicial permission)
 - Liaison with police and other agencies on behalf of the victim
 - Referral to other agencies (with permission of the victim)

2. Maintaining a local database of information to include:
 - Crime Prevention information
 - Information on Court Procedures
 - Information on Compensation
 - Information on other local and UK agencies that might also assist victims locally

3. To assist potential Court witnesses including Children with:
 - An introduction to the Court system
 - Pre trial visits to the courtroom
 - An overview of the Court itself
 - An understanding of the procedures of the Court and their own part in them
 - Accompanying witnesses on the day of trial to provide moral support
 - Providing information on the outcome of the trial where requested
 - Providing support to parties in Matrimonial/Domestic proceedings where requested.

Responsibilities of the Scheme Manager (covering both Victim Support and Witness Service)

1. Liaison with volunteers:
 - Train new volunteers in conjunction with the Probation service
 - Provide further training to accredited volunteers as appropriate
 - Provide regular support to Scheme volunteers
 - Arrange and attend regular volunteer meetings
 - Provide volunteers with regular updates on information from VS National

2. Training and information to agencies outside the Scheme:
 - Liaise regularly with a wide range of local agencies
 - Deliver talks to other agencies or groups about the work of the Scheme
 - Proactively brief the media, speaking to the Press, Radio and Television to widen the exposure of the Scheme locally
 - Provide information to Police probationers on the work of the Scheme

- Attend Risk Management meetings with the Probation Service, when required
- Attend MARAC fortnightly
- Attend Domestic Violence Forum meetings as appropriate
- Liaise regularly with Court Staff
- Involvement with the Restorative Cautioning Scheme
- Attend as appropriate UK National meetings
- Arrange and attend regular Management Committee meetings

3. Operationally:

- To check all voice messages between 8 am and 8 pm (including weekends and Bank holidays)
- Give priority to urgent calls
- Respond to all media requests
- Provide statistics to VS National as required
- Receive regular updates from VS National

Responsibilities of the Management Committee (to include both Victim Support and Witness Service)

Meet on a regular basis to:

- Provide regular supervision to the Scheme Manager with the assigned Probation Officer
- Provide support to the Scheme Manager and volunteers
- Provide advice to the Scheme Manager as and when required
- Set the remuneration policy of the Scheme
- Oversee the finances and budgets of the Scheme through the Honorary Treasurer
- Agree local policies on all relevant operational matters
- Provide the Home Department with a written report, with relevant statistics, on an annual basis and in advance of annual renewal. This document to form the agenda for an annual meeting between the Chairman and the Home Department Board
- Provide the Home Department with a copy of the Scheme's audited accounts
- Liaise with the Home Department on budgetary matters and annual funding

- Meet with the Chief Officer of the Home Department through the Management Committee Chairman, at least once per year

Responsibilities of the Home Department

- Ensure the Scheme is undertaking its responsibilities to the victims and witnesses of crime in the Bailiwick of Guernsey
- Ensure the Scheme maintains its finances within the annual budget
- Meet with the Chairman of the Management Committee at least once per year to discuss progress and budgetary issues
- Report to the Home Department Board once per year on the Scheme value to the Bailiwick of Guernsey.
- Assist with agreed I.T requirements such as Web pages and Databases

Finance

The amount agreed between the Home Department and the Scheme will be £38,000 for the year from July 2009 to June 2010.

Termination of this SLA

Either party to this Agreement may withdraw providing three months notice is given in writing.

Renewal of SLA

The SLA will be re-negotiated annually between April and June, prior to the start of the new budgetary year.

Penalties

There will be no penalties imposed in respect of unfulfilled expectations. Any unresolved difficulties between the partners are initially to be resolved through the Chairman of the Management Committee and the Home Department Board.

In the event of a financial dispute that cannot be resolved the matter will be referred to the Treasury and Resources Department for mediation.

Signed _____ Chairman of the Scheme Management Committee

Signed _____ for and on behalf of the Home Department

*APPENDIX II***CULTURE AND LEISURE DEPARTMENT****THE WILFRED CAREY PURCHASE FUND**

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

15th March 2010

Dear Sir

Introduction

1. In July 2005 the States agreed that a report on the use of the Wilfred Carey Purchase Fund should be submitted every four years at the mid-term of the life of the States. This Report sets out the use of the Wilfred Carey Purchase Fund since the Culture and Leisure Department reported to the States in 2005. I should be grateful if you would arrange for its publication as an Appendix to a future Billet d'Etat.

Background

2. Between 1937 and 1989 the States voted the then Ancient Monuments Committee an annual sum of money to purchase objects of special historic interest to the Island. The annual amounts were placed in a Purchase of Exhibits Fund into which private donations were also paid.
3. By the mid 1980's the Ancient Monuments Committee had concluded that the amounts being paid into the Purchase of Exhibits Fund were inadequate for this purpose. The Committee resolved to explore other ways in which to increase the amount of money available for the purchase of such items without having to ask the States for more funds from the General Revenue.
4. Accordingly on 1 March 1990 after consideration of the Report, dated 24 January 1990, from the Ancient Monuments Committee (Billet d'État III of 1990), the States resolved inter alia:

“To approve the sale by public auction or private treaty of the two paintings by Luis Melendez, which the States acquired in 1929 as part of the Carey bequest.”

“That the monies realised by the sale of those two paintings shall be credited to a new purchase fund for use in acquiring items of specific local interest to add to the Museums Collections of material, having strong Guernsey connections.”

“To approve the name of the new purchase fund as the Wilfred Carey Purchase Fund.”

“That a notice shall be attached to every item purchased with the aid of the Wilfred Carey Purchase Fund indicating that the item was acquired with the aid of that Fund.”

5. The States also agreed that the Wilfred Carey Purchase Fund should clear the overdraft on the existing Purchase of Exhibits Fund.
6. On the 26 April 1990 the President of the Ancient Monuments Committee informed the States that the two Melendez paintings had been sold by private treaty for the net sum of £1,773,000.
7. On 12 July 1990 after consideration of the Report dated 23 May 1990 from the Ancient Monuments Committee on the operation of the Wilfred Carey Purchase Fund (Billet d’État XII of 1990) the States resolved:

“To approve the establishment, operation and use of the Wilfred Carey Purchase Fund as set out in paragraph 3, 4, 5 and 6 of that Report.”

“To approve the presentation to the States from time to time of reports on the operation of that Fund”

8. The money received from the sale of the two Melendez paintings was placed in a Capital Account within the Wilfred Carey Purchase Fund. There are two other accounts in the Wilfred Carey Purchase Fund.
 - a) The Revenue Account into which interest on the capital is paid and out of which an annual sum is paid to the Purchase of Exhibits Account (plus further amounts for any extraordinary purchases);
 - b) The Purchase of Exhibits Account is used to purchase items for the Museums Collections.
9. The Revenue Account is operated on the basis of maintaining the value of the original capital received from the sale of the Melendez paintings.

10. The movements and balances on these accounts are subject to annual external audit and are included in the States year-end accounts Billet d'Etat.

Use of the Wilfred Carey Purchase Fund 2005-2009

11. Details of the history of the use to date of the Revenue and Purchase of Exhibits Account and a description of purchases made with the Fund since 2005 are attached as Appendices to this report. The purchases from the Wilfred Carey Fund form a valuable part of the Museums and Archives Collections. They have been displayed in a variety of exhibitions over the years where they are identified as having been purchased by the Fund. When not on display they form part of the reference collections.

Yours faithfully

M G O'Hara
Minister

Appendix 1**Revenue Account 1990 – 2009**

Year	Interest	Donations/ Commission s	Transfer to Purchase of Exhibits Account	Extraordinary purchases	Purchases	End of Year Balance
	£	£	£	£	£	£
						(114,680)
1990	174,376	-	-	133,800	34,530	(108,634)
1991	201,246	1,388	-	-	54,350	39,650
1992	187,088	874	31,560	-	44,642	151,410
1993	137,119	-	59,773	-	-	228,756
1994	114,882	-	60,610	17,644	-	265,384
1995	143,774	-	62,065	-	-	347,093
1996	134,953	-	64,299	-	-	417,747
1997	154,479	-	66,099	-	-	506,127
1998	177,663	-	69,206	-	-	614,584
1999	136,882	-	89,103	-	-	662,363
2000	147,090	-	73,135	-	-	736,318
2001	128,746	-	75,987	-	-	789,077
2002	105,018	-	77,430	-	-	816,665
2003	94,094	-	80,837	-	-	829,922
2004	115,428	-	83,990	-	-	861,361
2005	125,599	-	88,106	-	-	898,854
2006	126,295	-	62,000	-	-	963,149
2007	156,724	-	60,000	-	-	1,059,873
2008	161,742	-	66,000	-	-	1,155,615
2009	42,790	-	52,000	36,000	-	1,110,405

Appendix 2**Purchase of Exhibits Account 1990 – 2009**

Year	Donations/ Commissions	Transfer from Revenue Account	Purchases	End of Year Balance
	£	£	£	£
1992	-	31,560	-	31,560
1993	375	59,773	77,786	13,922
1994	162	60,610	46,511	28,183
1995	556	62,065	32,730	58,074
1996	180	64,299	24,855	97,698
1997	125	66,099	11,947	151,975
1998	50	69,206	112,694	108,537
1999	2,500	89,103	200,140	0
2000	25	73,135	67,246	5,914
2001	-	75,987	67,283	14,618
2002	-	77,430	74,418	17,630
2003	-	80,837	66,783	31,684
2004	-	83,990	68,155	47,519
2005	-	88,106	111,792	23,833
2006	-	62,000	49,118	36,715
2007	-	60,000	59,042	37,673
2008	-	66,000	98,883	4,790
2009	-	88,000	85,817	6,973

Appendix 3

Items purchased for the Museums Service from the Wilfred Carey Purchase Fund 2005 – 2009

This appendix lists those purchases costing £2,000 or above that were purchased from the Fund and also highlights any extraordinary expenditure.

<u>Item purchased</u>	<u>Cost</u>
2005	
Oil by Peter Peterson Toft; La Coupée Ridge, Sark	£7,500
Oil by John Brett; Off the Coast at Fermain Bay, Guernsey	£4,155
Watercolour by William A. Toplis; Venus Pool	£6,457
Oil by Arthur Spooner; Saints Bay, Guernsey	£4,500
Gouache by Brian Byron; Repairs to the British Squadron at Gibraltar under the direction of James Saumarez during the Battle of Algeciras, 1801	£2,040
Gouache by Brian Byron; Gun deck of the H.M.S. Bristol during the attack on Fort Sullivan, 1776	£2,040
Gouache by Brian Byron; Nelson before the Battle of the Nile, 1798	£2,040
Letter; signed by Admiral Nelson, 1798	£4,560
Chalk drawing by Robert Bowyer; portrait of Admiral Nelson	£6,600
Photographs; Royal Guernsey Militia and Royal Guernsey Light Infantry	£2,240
Guernsey coin collection	£2,019
Watercolour by W.J. Caparne; The Gardens, La Mortola, Italy	£3,450
Costume and Mantle of the Order of the Bath; worn by Sir James de Saumarez	£6,175
Watercolour by B.H. Hansen; The Dolphin of Guernsey, 1839	£2,760
2006	
3 models; the ships 'Isle of Guernsey', 'Island Queen' and 'St. Julien'	£10,500
Gouache by Brian Byron; F.C. Lukis and family at Grange House, 2006	£2,000
Gouache by Brian Byron; F.C. Lukis at the Guernsey Mechanics Institute, 2006	£2,000
Oil by John Tobias Young; A View from Delancey, Guernsey	£10,000
2007	
Album of archaeological illustrations by Peter Le Lievre	£5,000
Watercolour by Percy Robertson R.E.; Guernsey from Sark	£2,300
Pair of oils by T. Shorey; the brigantine Minnie Eaton	£4,500
Oil by Sarah Louisa Kilpack; Rough Weather, Cobo Bay	£5,187
Watercolour by W.J.J.C. Bond; St. Peter Port, Guernsey, c. 1871	£2,500

Watercolour by W.J. Caparne; East Coast of Guernsey and A Wooded Valley (double sided)	£5,750
Oil by unknown artist of the English School; The Rifleman of Guernsey	£5,520
Watercolour by Paul Jacob Naftel; A Snow Capped Mountain, 1871	£2,070
Watercolour by Paul Jacob Naftel; The Loggers in a Stream	£3,450
2008	
Clock and mechanism; removed from Les Vauxbelets school	£2,000
Watercolour by W.J. Caparne; Ragwort on a Cliff Path	£3,450
Watercolour (2) by Laurel Tucker; natural history studies	£3,000
Watercolour (4) by Laurel Tucker; natural history studies	£5,500
Lewis machine gun; First World War	£3,495
Watercolour by Maud Naftel; Picking Wild Flowers	£3,680
Two albums of sketches by Anna Margaret Carr, 19 th century	£7,800
Silver teapot; engraved with the Le Marchant family crest	£3,500
Silver christening cup; inscribed with the Tupper family crest	£2,500
Watercolour by Paul Jacob Naftel; Moulin Huet Bay, Guernsey	£10,625
2009	
Ink drawing (34) by Brian Byron; various scenes of the Royal Guernsey Light Infantry during the First World War	£5,000
Oil by W.A. Toplis; West Coast of Sark from the Eperquerie	£9,000
Various items relating to local shipwrecks	£2,120
Watercolour; A Chestnut Lady in Old Market Place, Guernsey, unsigned From La Seigneurie in Sark	£4,830
Tempera on board by Arthur Bradbury; 'Carette', Rocquaine Bay, Guernsey	£3,000
Sepia wash and pencil (3) by Nicholas Pocock; depicting Sir James Saumarez' action in the Gut of Gibraltar, 12 th July 1801	£5,166
Extraordinary Purchase during 2009	
Pastel, two miniatures and a document relating to Isaac Brock	£36,000

Appendix 4**Items purchased for the Island Archives using the Wilfred Carey Fund, 2005 – 09**

<u>Item purchased</u>	<u>Cost</u>
2005	
Collection of 19 th century letters, relating to Priaulx, De Havilland, Le Marchant families, etc.	£1,003.00
Collection of letters, relating to Guerin, De Sausmarez, Priaulx families, etc., and photographs of various passenger vessels, prints from newspapers concerning same, etc.	£348.00
2006	
Ledger containing manuscript autobiography, photographs, and cuttings of Samuel E. Hoskins (1799-1888), physician, historian and polymath, and his relations.	£1,450.00
Original documents, booklets, etc., relating to Treasury matters, Alderney, lease of Lihou Island, a First World War diary, some deeds relating to Fiefs St Michel and Fief le Comte, etc.	£516.12
Collection of 17 th – 19 th century correspondence relating to the Condamine and Coutart families, including appointments to office of HM Comptroller, etc.	£945.00
<i>Livre de prejugsés</i> (c. 1703) kept by Jurat Hellier Bonamy, of Les Mauxmarquis, containing various acts of Court, also commentaries on Guernsey and Norman law.	£300.00
Collection of 19 th century letters, etc., relating to Harvey and Carey families.	£234.00
Collection of 19 th century letters, relating to Harvey, Guerin, De Sausmarez families, and some items relating to Alderney.	£490.00
2007	
Collection of letters written by Brigadier Snow of Force 135 to his wife, 10 th May 1945 and after.	£950.00
Collection of De Havilland correspondence (1778-1845).	£650.00
Historical Guernsey books (1830-62, including Jacob's <i>History of Guernsey</i>) and postcards.	£832.83
Collection of Singleton photographs and handwritten weather journals (c. 1862 -) kept by Elizabeth Mansell.	£275.66
2008	
Large collection of documents relating to the Guille and Andros families (including the Royal letters patent appointing John Guille Bailiff, 1842).	£2,510.99
Collection of 19 th century Singleton photographs, and two historical books.	£750.72

Royal letters patent appointing Peter De Havilland Bailiff, 1810.	£555.50
Large number of documents and manuscript books (15 th -19 th centuries) late of the Guille family of St George.	£12,368.45
Ledger; containing 16th century copy of the extente of Guernsey of 1331 and other records.	£3,010
2009	
Collection of documents, manuscript books, letters (c. 17 th - 18 th centuries).	£2,092.09
Map by G. Mariette de la Pagerie, dated 1689 showing the bay of St Malo with all the Channel Islands.	£1,130.00
Group of historical letters 1792-1940 and a document relating to the Occupation of Alderney, 1792-1940.	£382.80

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 28th DAY OF APRIL, 2010

**The States resolved as follows concerning Billet d'État No IX
dated 9th April 2010**

PROJET DE LOI

entitled

THE COMPULSORY ACQUISITION OF LAND (GUERNSEY) (AMENDMENT) LAW, 2010

I.- To approve the Projet de Loi entitled “The Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

entitled

THE CHARITIES AND NON PROFIT ORGANISATIONS (REGISTRATION) (GUERNSEY AND ALDERNEY) (AMENDMENT) LAW, 2010

II.- To approve the Projet de Loi entitled “The Charities and Non Profit Organisations (Registration) (Guernsey and Alderney) (Amendment) Law, 2010” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

THE ENVIRONMENTAL POLLUTION (WASTE CONTROL AND DISPOSAL) ORDINANCE, 2010

III.- To approve the draft Ordinance entitled “The Environmental Pollution (Waste Control and Disposal) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE DISCLOSURE (BAILIWICK OF GUERNSEY)
(AMENDMENT) (NO. 2) ORDINANCE, 2010**

IV.- To approve the draft Ordinance entitled “The Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE TERRORISM AND CRIME (BAILIWICK OF GUERNSEY)
(AMENDMENT) (NO. 2) ORDINANCE, 2010**

V.- To approve, subject to the following amendment, the draft Ordinance entitled “The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

AMENDMENT

In section 3 for the inserted section number "3A" (the section is entitled "Disclosure under section 12(10), 15(13) or 15A(8)." and printed at page 106 of the Brochure), substitute "15AA".

**THE FORGERY AND COUNTERFEITING (BAILIWICK OF GUERNSEY)
LAW, 2006 (COMMENCEMENT) ORDINANCE, 2010**

VI.- To approve the draft Ordinance entitled “The Forgery and Counterfeiting (Bailiwick of Guernsey) Law, 2006 (Commencement) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

THE PUBLIC HOLIDAYS (LIBERATION DAY IN 2010) ORDINANCE, 2010

VII.- To approve the draft Ordinance entitled “The Public Holidays (Liberation Day in 2010) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

THE BAR (AMENDMENT) ORDINANCE, 2010

VIII.- To approve the draft Ordinance entitled “The Bar (Amendment) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

SCRUTINY COMMITTEE

NEW MEMBER

IX.- To elect Deputy D de G De Lisle as a member of the Scrutiny Committee to complete the unexpired portion of the term of office of Deputy M J Storey, who has resigned as a member of that Committee, namely to serve until May 2012 in accordance with Rule 7 of the Constitution and Operation of States Departments and Committees.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY) LAW, 1999 (AMENDMENT OF SCHEDULES 1 AND 2) REGULATIONS, 2010

In pursuance of Section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010, made by the Policy Council on 22nd February, 2010, were laid before the States.

THE REGISTRATION OF NON-REGULATED FINANCIAL SERVICES BUSINESSES (BAILIWICK OF GUERNSEY) LAW, 2008 (SCHEDULE 1 AMENDMENT) REGULATIONS, 2010

In pursuance of Section 31 of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (Schedule 1 Amendment) Regulations, 2010, made by the Policy Council on 22nd February, 2010, were laid before the States.

THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (FINANCIAL SERVICES BUSINESSES) (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2010

In pursuance of section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2010, made by the Policy Council on 22nd February, 2010, were laid before the States.

THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (LEGAL PROFESSIONALS, ACCOUNTANTS AND ESTATE AGENTS) (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2010

In pursuance of section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2010, made by the Policy Council on 22nd February, 2010, were laid before the States.

THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2010

In pursuance of section 86 of the Insurance Business (Bailiwick of Guernsey) Law, 2002, the Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2010, made by the Policy Council on 22nd February, 2010, were laid before the States.

THE INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2010

In pursuance of section 63 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Regulations, 2010, made by the Policy Council on 22nd February, 2010, were laid before the States.

THE MISUSE OF DRUGS (MODIFICATION) ORDER, 2010

In pursuance of Section 30 (3) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, the Misuse of Drugs (Modification) Order, 2010, made by the Health and Social Services Department on 23rd February, 2010, was laid before the States.

THE MOORING CHARGES REGULATIONS, 2010

In pursuance of Section 5(2) of the Fees, Charges and Penalties (Guernsey) Law, 2007, the Mooring Charges Regulations, 2010, made by the Public Services Department on 13th March, 2010, were laid before the States.

THE INSURANCE BUSINESS (LICENSING) REGULATIONS, 2010

In pursuance of Section 86 of the Insurance Business (Bailiwick of Guernsey) Law, 2002, the Insurance Business (Licensing) Regulations, 2010, made by the Guernsey Financial Services Commission on 9th March 2010, were laid before the States.

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 29th DAY OF APRIL, 2010

(Meeting adjourned from 28th April, 2010)

**The States resolved as follows concerning Billet d'État No IX
dated 9th April 2010**

COMMERCE AND EMPLOYMENT DEPARTMENT

OFFSHORE RENEWABLE ENERGY – EXTENSION OF HEALTH AND SAFETY LEGISLATION INTO THE TERRITORIAL WATERS AROUND GUERNSEY

X.- After consideration of the Report dated 16th February, 2010, of the Commerce and Employment Department:-

1. To approve the proposals set out in that Report for the extension of the Health and Safety at Work etc. (Guernsey) Law 1979 and provisions made under it to apply to and in relation to persons carrying on work in the territorial waters of Guernsey in connection with –

- renewable energy activities, and
- the exercise of functions under the 1979 Law and the proposed renewable energy legislation where carried on in relation to such renewable energy activities,

subject to exemptions as set out in paragraphs 3.3 and 3.4 and to provision for the States to provide for further exemptions from the application of such provisions by Ordinance.

2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

STATES ASSEMBLY AND CONSTITUTION COMMITTEE

AMENDMENTS TO THE RULES OF PROCEDURE OF THE STATES OF DELIBERATION RELATING TO THE STATES STRATEGIC PLAN

XIII.- After consideration of the Report dated 23rd March, 2010, of the States Assembly and Constitution Committee:-

To amend the Rules of Procedure of the States of Deliberation with immediate effect as follows:

1. (1) in Rule 13, delete sub-paragraph (2) (e) and substitute therefor -

“to a proposition to approve –

- (i) a States Strategic Plan; or
 - (ii) a draft Strategic Land Use Plan, or any amendment to such a Plan, which is laid before the States pursuant to section 5 (3) of the Land Planning and Development (Guernsey) Law, 2005; or
 - (iii) any proposals for a Development Plan, Subject Plan or Local Planning Brief or any amendment to such a Plan or Brief, which is laid before the States pursuant to section 9 (4) of the Land Planning and Development (Plans) Ordinance, 2007,”
- (2) in sub-paragraph (3)(a) of Rule 13 delete the words “sub-paragraph (2) (e) (ii)” and substitute therefor “sub-paragraph (2) (e)”.
- (3) in Rule 13, delete paragraph (9) and substitute therefor –

“An amendment within sub-paragraph (2) (e) (iii) shall (unless the States, with the agreement of the Environment Department (“the Department”) otherwise resolve) be treated as an amendment to defer adoption (but not debate) of the Plan or Brief or amendment thereto, until –

- (a) the Department has been given the opportunity to withdraw the proposals to consider any implications of such amendment within paragraph (2) (e) (iii) in accordance with section 10 (2) of the Land Planning and Development (Plans) Ordinance, 2007;
 - (b) where relevant, the inspector has reported on the amendment within paragraph (2) (e) (iii) pursuant to section 10 (3) of that Ordinance; and
 - (c) the Policy Council has, at the request of the Department, laid before the States any alterations or additions to the documentation laid before the States pursuant to section 9 (4) of that Ordinance as a result of the consideration of the implications of the amendment within paragraph (2) (e) (iii).”
- (4) in paragraph (10) of Rule 13
- (i) delete the words “a further report is” and substitute therefor “alterations or additions are”, and
 - (ii) in sub-paragraph (a) delete the words “that further report” and substitute therefor “those alterations or additions”.

2. To direct the States Assembly and Constitution Committee to formulate, and to lay before the July 2010 meeting of the States of Deliberation, such further change(s) to the Rules of Procedure of the States of Deliberation as may be necessary to ensure that any

Proposition which, if approved, may otherwise result in increased States expenditure must be so worded as to either:

- a) identify how such increased expenditure is to be funded, and expressly amend the States Strategic Plan accordingly; or
- b) take effect only if and when a subsequent States Resolution shall have identified how such increased expenditure is to be funded, and expressly amended the States Strategic Plan accordingly.