States of Jersey

THE PORTS OF JERSEY

THE CASE FOR INCORPORATION

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Ports of Jersey: The Case for Incorporation

FOREWORD BY THE MINISTER FOR ECONOMIC DEVELOPMENT

The Ports of Jersey (PoJ) comprise the Island's key strategic transport assets, the Port of St Helier and Jersey Airport, the historic harbours plus numerous associated maritime and aeronautical assets and functions.

Jersey Airport provides a comprehensive network of commercial routes to 48 UK and European destinations, facilities for business aviation, and for local and visiting private aircraft. It is also contracted, through the Minister for External Relations, to provide air traffic control for the Channel Islands Control Zone on behalf of the French and UK authorities.

In addition to commercial port activity, Jersey Harbours provides marinas and moorings for local boat owners and visitors, including the 'Five Gold Anchor' status marinas in St. Helier, as well as moorings in the outlying harbours and maintenance of those harbours.

Importantly, Jersey Harbours also provides the coastguard service for our territorial waters, an essential public service, which in most jurisdictions is funded by taxpayers, but which in Jersey, is funded entirely by revenue generated through Ports commercial activity.

PoJ is currently operated through two Trading Departments constituted under the Public Finances (Jersey) Law 2005 overseen by a Shadow Board appointed in 2010.

Through P.70/2012, the Assembly gave its in principle approval for the incorporation of the PoJ, following precedent set in respect of Jersey Telecom and Jersey Post. Incorporation will result in the creation of a single entity, with an independent Board. The States will retain 100% shareholding with shareholder responsibility discharged by the Minister for Treasury and Resources.

Following the States decision, the Minister for Economic Development charged the PoJ Shadow Board with taking all necessary actions to prepare for incorporation. A key component of this work, captured in this Report, has been to demonstrate that incorporation will enhance the role of the Ports of Jersey as the Island's strategic gateways and, in doing so, deliver improved value for the taxpayer.

This report captures the result of a vast volume of work undertaken by the Shadow Board, the management and staff of the PoJ, officers from EDD, Treasury, Law Draftsmen and Law Officers and others. It demonstrates that, through incorporation, a serious potential fiscal challenge for the Island can be overcome, and enables the Ports to become self-sustainable and make a positive contribution to public finances whilst retaining and enhancing their key role in Island life.

I am sure that you find the case as compelling as I do.

Senator Alan Maclean

Minister for Economic Development

1 EXECUTIVE SUMMARY

1.1 The Objective of Incorporation

Before summarising the other key aspects of this comprehensive report, it is important to state that, the primary objective that underpins the recommendation to incorporate the Ports of Jersey, is to enable them to continue to provide the essential public services to the Island, but to do so in a commercial and self-sustainable manner that will both enhance services for customers and remove the significant future financial burden to the States.

The History

When the States established the Trading Committees during the 1990s, it was the clear intent that they would become self-sustainable, incorporated entities. The significant financial challenges faced by the States that are outlined in Section 1.3 underline the importance of achieving the aim of self-sustainability. Jersey Telecom and Jersey Post have both incorporated and are now established as independent and successful businesses, with the ability to respond to opportunities and challenges, and react to market dynamics, in a commercially agile and focused manner. This proposal sets out the rationale for the Ports of Jersey to follow a similar course.

There have been a number of reviews, reports and statements made in respect of the incorporation of Harbours and Airport and these example quotes summarise the conclusions:

P213/1998	Jersey Airport: Future Status and Financing	In 1998 the States approved, in principle, the incorporation by 2002 of Jersey Airport Limited, as a company wholly owned by the States, and to charge the Harbours and Airport Committee to present the necessary proposals to the States for approval in 1999
P198/2002	Jersey Airport Future Funding	Rescinded P213/98, however the Committee was strongly of the belief that in the future the Airport would require some form of corporate structure that gave it the ability to act commercially whilst taking account of its strategic role. The Trading Committee status was unsatisfactory in that it allowed too much political interference on a day to day basis and did not permit commercial situations to be reacted to in a timely manner
April 2005	Statement – President of the Harbours and Airport Committee	The analysis points clearly to the benefit of a new corporate governance structure with legally accountable directors, financial independence and a property portfolio supported by WEB. At the same time, policy oversight and ultimate control will still rest with the States. Together these changes will provide best value for the Jersey tax-payer.

In addition, externally commissioned studies completed by Vector and Deloittes came to the following conclusions:

February 2004	Deloitte Report Jersey Harbours High Level Review	The evaluation, which gave equal weighting to nine objectives, revealed that a States Owned Limited Company would be best able to achieve the objectives.
February 2006	Vector Jersey Airport Strategic Study	Incorporation would give greater commercial freedom and with the appropriate incentives performance could improve significantly

Taking the clear and consistent recommendations from these reports into account, in 2010 the Minister for Economic Development took the decision to establish a Shadow Board. On the Shadow Board's advice, the Minister approved the integration of the Harbours and Airport into one organisation, known as Ports of Jersey (PoJ), under a single Group Chief Executive. The businesses were successfully integrated in early 2012. Furthermore the Minister instructed the Shadow Board to establish whether the PoJ should move to an incorporated governance model. In mid 2012 the Shadow Board advised the Minister that incorporation represented the best option to deliver a sustainable commercial future and, as consequence the Minister lodged P.70/2012, seeking States in-principle approval for incorporation.

The proposition (P.70/2012) was presented to the States in late 2012 and was accepted by 42 votes to 5. At that time, the Minister for Economic Development concluded:

> *"This Report lays out a compelling case for the incorporation of Jersey Harbours and Jersey Airport under the Ports of Jersey Limited, a 100% States owned company. Not only through the reduction in financial liability, but also through a significant return to the States and a better deal for customers, the ability for the States to meet public service obligations will be very considerably enhanced. The incremental benefits to a range of stakeholders demonstrate substantial improvements for our customers, employees, the parishes and the public at large."*

1.2 Recent Independent Assessment and Experience of Incorporation

In addition to the above history, a review of other 'incorporations' was undertaken recently by Holman Fenwick Willan LLP (HFW). It is clear from the report that incorporation of Ports' is not a new concept, indeed across the world it could now be considered as the norm, which reinforces the range of recommendations made in Jersey in the past.

As part of the work undertaken for this report, HFW undertook a review of the incorporated governance arrangements of Ports in jurisdictions large and small such as Amsterdam, Rotterdam and Singapore. This review demonstrated that incorporated ports led by dedicated, focused and experienced Boards and executive teams provide greatly improved social and economic returns.

These have been delivered through broadening the revenue base of the incorporated businesses by adopting a commercial approach to the development of the entire asset base rather than a concentration on simply generating revenues from harbour dues and landing fees. The incorporation of the Ports of Jersey provides Jersey with the opportunity to realise the kind of gains already delivered in incorporated ports such as Rotterdam and Singapore to the benefit of the Jersey residents and the Island's economy.

The benefits associated with an incorporated structure have been proven in numerous other Ports that have been incorporated in recent years. The report produced by HFW states:

> *"The main benefit of the corporatisation of ports is that port authorities become more autonomous as the decision-making process devolves from the government to the company's directors.*
>
> *This more dynamic decision-making process fosters competeviness, growth and transparency in the port authority's development, and business and customer satisfaction are given priority.*

> *The focus is also on sustainability and improved productivity, in order to encourage investment in the port authority's development. Overall, corporatisation of port authorities has in many cases led to increased economic profitability, enhanced employment opportunities in the port area and improved commercial flexibility."*

Incorporation provides the agility to develop and deliver commercial initiatives, as has been ably demonstrated by both Jersey Telecom and Jersey Post. The HFW report observes that in many of the ports that it reviewed, politicians and civil authorities invariably have to control a range of diverse priorities, and may lack the specific knowledge and experience required to manage ports operations. The report comments that:

> *"Incorporating a port tends to speed up the decision-making process, as it will in many cases only involve the company's internal decision-making process instead of governmental approval being necessary. In turn, this limits the bureaucracy involved in decision-making, enabling the port to meet developments and market demands more efficiently and flexibly."*

All of the above reinforces the clear intent of States over the years which was overwhelmingly supported in P70/2012. This now report sets out the next, natural step in this process and makes a compelling case to deliver the 'intent' of the reports and recommendations made over the above period.

1.3 The Financial Case

The Financial Challenge Faced by Ports of Jersey

The Ports of Jersey (PoJ) are capital intensive businesses, with a requirement for long-term capital funding totalling £276 million (in 2013 prices) in the period to 2038. This capital investment is required simply in order to maintain the essential infrastructure on which the Ports depend and to enable them to remain open, safe and secure.

Over the past 10 years the Ports of Jersey have experienced declining business volumes and a cost base that is rising faster than revenue. Financial modelling, undertaken as part of the process of preparing for incorporation, suggests a potential cash shortfall of up to £314 million by the end of the financial model period in 2038. Without the positive intervention possible within an incorporated PoJ, such a shortfall could only be addressed through other measures such as price increases including, but not limited to, harbour dues and landing charges, or from subsidy derived from general taxation – in either case, tax-payers and the community would face an incremental and unnecessary burden.

Self-Sustainability Achievable Through Incorporation

In addition to mitigating the above risk of PoJ having to call upon States funding, an incorporated PoJ will provide incremental benefits to Jersey – including a cash contribution of c.£35 million through taxation and dividends. The summary cash flow statement below provides an overview of the benefits that the States could expect to derive from incorporation.

The cash flow statement for the 25 year period shown below, demonstrates the self-sustainability of the Ports of Jersey under an incorporated structure. During the life of the Financial Model, the Ports will:

- Invest £276 million in Ports infrastructure necessary to keep the Ports operational. This figure is at 2013 prices with the inflation increasing that figure to £420 million at the time of investment
- Repay the pre-1987 pension debt of £18 million
- Fully cover the substantial Public Service Obligations (mainly Coastguard and Historic harbours) of £49 million
- Deliver new cash income to States of Jersey of £35 million comprising taxes and dividends
- Generate £1.6 billion in revenues, leading to a net cash inflow from operations of £507 million (which is after an assumption of £99 million on-going benefit to States of Jersey for service contracts)
- Retaining in the business £15 million, demonstrating that PoJ is able to be self-sustainable

Jersey Airport and Harbours Incorporation model
Cashflow summary from 01/01/2014 to 31/12/2038
£ million

	Ports Financial Projection		**Projected Return to States of Jersey**	
			Continuing Cash Benefits	**New Cash Benefits**
Opening Cash balance		40		
Cash inflow from revenue	1,682			
Cash (outflow) from expenditure*	(1,176)		99	
Net cash inflow from operating activities	506			
		546		
Interest received/(paid)	(23)			
Capital Expenditure	(406)			
Cash inflow after capital expenditure		117		
PECRS repayment	(18)			
Tax paid to States	(31)			31
Dividends paid to the States	(4)			4
	(53)			
		64		
Cash outflow for Public Service Obligations operating expenditure	(35)		35	
Cash outflow for Public Service Obligations capital expenditure	(14)		14	
	(49)			
Closing Cash Balance		**15**		
Sub Total			148	35
			Total	**183**

** refers to States contracts already in existence pre-incorporation*

Reconciliation of Capital Expenditure	
Non Public Service Obligation Capital Expenditure	406
Public Service Obligation Capital Expenditure	14
Total Capital Expenditure	420

Addressing the Financial Challenge

The financial model underpinning this proposition includes an initial tranche of commercial projects which have been identified and researched by the PoJ Executive Team and Shadow Board, with a combined value of c£60 million over the next 25 years. Attempts to apply the commercial disciplines required to deliver such initiatives without an incorporated structure have not been effective historically, since management control and strategic focus has been dissipated between various components of the States, which has served to inhibit progress.

Incorporation will enable the agility, focus and capability required to deliver commercial development projects on the PoJ estate to build cash reserves that can be utilised to address the long-term capital programme requirements. Importantly, incorporation will reduce the potential dependence on significant price increases and / or States funding to satisfy future capital requirements.

The analysis shows that that the incorporation of Ports of Jersey offers the best opportunity of delivering the aim of 'self-sustainability'.

1.4 Ports of Jersey Limited

The following sets out a high level view of how this will be achieved with the detail sitting in the report.

Corporate Structure

The process of Incorporation will establish a limited company which will be wholly owned by the States, known as Ports of Jersey Limited. A Memorandum of Understanding (MOU) between the Board of Directors and the Shareholder will govern the relationship between the company and the States of Jersey.

Harbours & Airport Authorities

In order to ensure the continued safe operation of our Ports, certain authorities must be retained. These authorities are clearly documented in the draft Air and Sea Ports (Incorporation) (Jersey) Law and through amendments to the Harbours (Administration) (Jersey) and Aerodromes (Administration) (Jersey) Laws, Ports of Jersey Limited will be appointed by the Minister for Economic Development as the Harbour Authority and the Airport Authority for Jersey.

Public Service Obligations

The incorporation proposals are underpinned by an overriding assumption that Ports of Jersey Limited will continue to assume responsibility for those key areas and duties that its predecessor currently fulfils today. This means that some of the functions carried out by the new company will be over and above those normally associated with the commercial operation of a port or airport, and may previously have been responsibilities of government.

In order to define these particular functions, certain obligations are defined in the Law and will be subject to agreement with the Minister for Economic Development or Minister for External Relations, as appropriate.

The Ports of Jersey support many clubs, associations and organisations all of which are connected to maritime and aviation activities. PoJ feel strongly that vibrant and growing clubs and associations are very important for the future prosperity and customer base of the Ports. This principle is a core pillar of our approach on Corporate Social Responsibility.

It is understandable that clubs, societies and associations are seeking reassurance in respect of the perceived changes that the proposed incorporation of PoJ represents. It is therefore, important to state that PoJ intends to continue to follow the existing policy and that no changes are envisaged in respect of either, terms or security of tenure, as a result of incorporation.

PoJ will hold meetings with each body (some meetings have already been held) in order to provide this reassurance within the context of the policy direction established in 2009. (see section 3.6).

A growing Ports of Jersey will be better placed to invest resources in order to work collaboratively with our clubs, associations and societies with the aim of supporting them in the achievement of their objectives.

Property

The property portfolio currently administered by the Harbours and Airport will transfer to Ports of Jersey Limited. Due to the complexities surrounding the Airport property, this is best accomplished through a freehold transfer. As much of the Harbours property lies on the foreshore or seabed that is currently owned by the Crown, this property will eventually transfer under a long leasehold arrangement, with an immediate ability to operate via an Operating Agreement.

Staff Transfer

The stated intent in P.70/2012 was that staff would be transferred to the incorporated entity on 'identical terms to those which they are entitled to as States employees.

In order to achieve this, a comprehensive and inclusive process was established known as the Staff Transfer Working Party (STWP.) The STWP has held numerous meetings with all appropriate parties, including representatives from Prospect, Unite, Housing Department, Ports of Jersey and Central Human Resources Department.

The key principles contained within the Transfer of Public Sector Employees (TOPSE) agreement, which has been based upon an overriding principle that roles and role-holders transfer across on a like-for-like basis, are as follows:

- There will be no redundancies as a result of the process of incorporation
- There will be no requirement for existing employees to apply for their current roles, nor will there be any probationary period
- All current employees will be transferred on their existing pay, terms, conditions and main policies and procedures. Importantly, existing employees will continue to participate in the

Public Employees Contributory Retirement Scheme (PECRS). This provision is an improvement on UK TUPE legislation which does not provide any pension protection.

- Employees who do not wish to transfer to the new entity will be deemed to have resigned. This is in line with UK TUPE legislation.

1.5 Safeguards

Transforming the Ports of Jersey into an Incorporated entity represents a significant change, and this can be concerning to some people. It is important to highlight the comprehensive safeguards that will be in place upon the Incorporation of Ports of Jersey.

100% owned by States of Jersey

- The Ports of Jersey Limited will be 100% owned by the States of Jersey. This is stated in the draft Law
- A Memorandum of Understanding (MOU) between the Treasury Minister, as shareholder, and the Board of Directors will govern this relationship. This will provide clarity on the governance and operation of the Incorporated Ports of Jersey
- The MOU will say that, each year, the Ports of Jersey will produce a Strategic Business plan outlining the objectives for the upcoming period. This will ensure alignment between States of Jersey and Ports of Jersey in the forward strategic direction.
- Each year and each half year, the Ports of Jersey will produce a set of accounts and hold periodic meetings, to which States Members will be invited in order to ensure transparency into the operation of the business, its financial performance and its continuing success.
- Finally, any significant change to the Balance Sheet of the Ports of Jersey, such as asset disposals, will have to be approved by the shareholder.

Regulation and Legal

- The Ports of Jersey will continue to operate within the normal States of Jersey legal and regulatory environment. This includes oversight of the Ports activities by:
- Jersey Competition and Regulatory Authority (JCRA) for pricing and anti-competitive behaviour.
- Maritime regulatory compliance, as conducted by the Economic Development Department, to ensure safe and compliant maritime operations.
- Director of Civil Aviation, to ensure safe and compliant aviation operations.
- The Ports of Jersey will also have to comply with all laws, including Company Law, Planning and Environment, Competition and Employment.

Transparent Public Service Obligations (PSO)

As mentioned earlier, the Ports of Jersey will continue to be responsible for a number of Public Service Obligations (PSO). These include the provision of Coastguard services and maintenance of our Historic Harbours.

The level of funding required, and the requirements of the obligations, will be part of the PSO and supporting arrangements. This means that the community and economy of Jersey will have complete clarity in what the Ports are expected to do in this regard.

Ministerial Direction

Finally, in times of emergencies, the Minister will still be able to direct the Ports of Jersey to perform certain activities for the national interest.

1.6 Conclusion and Recommendation

The history and the external reports all endorse incorporation as the way forward that provides the best opportunity of PoJ achieving self- sustainability.

In recent years, significant progress has been evident in respect of the Ports' drive towards incorporation led by the Shadow Board and Executive Team. They have been preparing the organisation to thrive in an incorporated state through the 'Direction to 2015' strategy, which has already delivered immediate tangible improvements in operational and commercial performance.

In addition, the level of support given by the States for the recommendations contained within P.70/2012, served to create a momentum that the Shadow Board and the Executive Team have sustained as the incorporation programme has progressed. Incorporation will provide the Shadow Board and the Executive Team with the endorsement and the support required to maintain this momentum and to deliver the benefits that incorporated status has provided not only to other former Trading Committees in Jersey, but also to many other port authorities across the world.

This report therefore strongly re-affirms the recommendations made within P.70/2012 and provides a demonstrable and clear case for incorporation.

2 HISTORY / CONTEXT

2.1 Introduction

In October 2012, the States approved P.70/2012 by a majority of 42 votes to 5. The Proposition sought in-principle approval for incorporation of Jersey Harbours and Jersey Airport as a single limited company, wholly owned by the States of Jersey.

A copy of P70 is attached at Appendix 1.

2.2 Development of The Law

The key features of the AIR AND SEA PORTS (INCORPORATION) (JERSEY) LAW are detailed throughout this document. In the early stages of legislative development, to ensure consistency with P.70/2012, a "Principles of Incorporation paper" was agreed by the Economic Development Department. This is shown at Appendix 2 and the draft Law at Appendix 3.

2.3 Jersey Harbours and Jersey Airport

Since the formation of the Trading Committees in 1991, Jersey Harbours and Jersey Airport have become substantial businesses, achieving a combined turnover of £43 million in 2013. The two ports are the key transport gateways on which the Island's community and its economy depends. In 2013, the two ports handled the movement of 2.2 million passengers and 470,000 tonnes of freight and fuel.

Jersey Airport provides a comprehensive network of commercial routes to 48 UK and European destinations, facilities for business aviation, and for local and visiting private aircraft. It is also contracted, through the Minister for External Relations, to provide air traffic control for the Channel Islands Control Zone on behalf of the French and UK authorities.

In addition to commercial port activity, Jersey Harbours provides marinas and moorings for local boat-owners and visitors, including the 'Five Gold Anchor' status marinas in St. Helier, as well as moorings in the outlying harbours and maintenance of these harbours.

Importantly, Jersey Harbours also provides the coastguard service for our territorial waters, an essential public service, which in most jurisdictions is funded by taxpayers, but which in Jersey, is funded entirely by the Ports Trading Operation.

Since 2012, the two Trading Operations have been integrated under one management and Board structure.

2.4 Previous Governance Recommendations for Jersey Harbours and Jersey Airport

Various internal and external reports and reviews have been commissioned over a number of years to make recommendations relating to the future governance structure for the Trading Operations. Each came to the same conclusion, namely that incorporation as a States-owned limited liability company was the most appropriate and effective governance model in the long term. A summary of the various findings is shown in the following table:

Date / Reference	**Item**	**Content**
P213/1998	Jersey Airport: Future Status and Financing	In 1998 the States approved, in principle, the incorporation by 2002 of Jersey Airport Limited, as a company wholly owned by the States, and to charge the Harbours and Airport Committee to present the necessary proposals to the States for approval in 1999
P198/2002	Jersey Airport Future Funding	Rescinded P213/98, however the Committee was strongly of the belief that in the future the Airport would require some form of corporate structure that gave it the ability to act commercially whilst taking account of its strategic role. The Trading Committee status was unsatisfactory in that it allowed too much political interference on a day to day basis and did not permit commercial situations to be reacted to in a timely manner
February 2004	Deloitte Report Jersey Harbours – High Level Review	The evaluation, which gave equal weighting to nine objectives, revealed that a States Owned Limited Company would be best able to achieve the objectives.
S.R.2/2005	Future of Jersey Harbours	Prolonged uncertainty about the future of Jersey Harbours has hindered the implementation of recommendations aimed at improving the efficiency of the operation of the port.
April 2005	Statement – President of the Harbours and Airport Committee	The analysis points clearly to the benefit of a new corporate governance structure with legally accountable directors, financial independence and a property portfolio supported by WEB. At the same time, policy oversight and ultimate control will still rest with the States. Together these changes will provide best value for the Jersey tax-payer.
February 2006	Vector Jersey Airport Strategic Study	Incorporation would give greater commercial freedom and with the appropriate incentives performance could improve significantly
November 2006	Statement – Assistant Minister for Economic Development	One significant conclusion, however, that has come out of this review to date is that the airport is not fit to be considered, at this time, for incorporation. I have therefore stated to staff that incorporation is not on the agenda during this political cycle.
December 2008	Fisher Review of the Harbours Owned and Operated by the States of Jersey	If the States wants Jersey Harbours to operate as a commercial entity, then incorporation remains a sensible long-term goal. Given the difficulties in implanting such a measure, however, the quasi-corporate option, which is consistent with this, could be adopted in the meantime to establish Jersey Harbours as an entity with a Board working under an MOU.

Taking the clear and consistent recommendations from these reports into account, in 2011 the Minister for Economic Development took the decision to establish a Shadow Board. On the Shadow Board's advice, the Minister approved the integration of the Harbours and Airport into one organisation, known as Ports of Jersey (PoJ), under a single Group Chief Executive. The businesses were successfully integrated in early 2012. Furthermore the Minister instructed the Shadow Board to establish whether the PoJ should move to an incorporated governance model. In mid-2012 the Shadow Board advised the Minister that incorporation represented the best option to deliver a sustainable commercial future and, as consequence, the Minister lodged P.70/2012 seeking States in-principle approval for incorporation.

2.5 Incorporation Programme

Following States approval of P.70/2012, a project was established to manage all aspects of preparing the detailed case for incorporation.

The project has been governed by a Programme Board comprising members from the PoJ Shadow Board, and representatives of Economic Development and Treasury and Resources Departments. In addition, a Political Oversight Group was established to address policy issues as they have arisen. This Group offered a forum for the consideration of the strategic direction of the programme and political oversight of the ongoing work.

As well as completing all of the technical efforts earlier than the original timeline, the project has also been achieved well within the proposed budget with a saving of approximately £300,000. The cost of the project, originally estimated to be circa £1.8m, has been funded entirely from the Ports Trading Fund.

3 BENEFITS OF INCORPORATION

The primary objective that underpins the recommendation to incorporate the Ports of Jersey is to ensure that they continue to be the provider of essential public services to the Island, but in a way that will enable them to achieve self-sustainability. This will enable the incorporated business to self-fund the ongoing capital expenditure programme, whilst at the same time generating a positive financial return to the States.

The combined level of revenue generated by the Ports is currently circa £43 million per annum, with retained profit levels of c£1 million per annum. These profits are retained to support future capital investment requirements, but are currently inadequate to fully cover the anticipated requirements of the Long-Term Capital Programme.

3.1 Benefits for the States of Jersey

3.1.1 Managing the Risk to Public Finances

Current projections of the Long-Term Capital Programme demonstrate a requirement for funding of £276 million (at 2013 prices) to support critical infrastructure projects simply to ensure that the Ports continue to function and remain operationally safe. If the Ports continue to operate as they have done historically, a shortfall of up to £314 million will arise as detailed in the Section 4 Finance Overview of this business case. This represents a major risk to public finances and will inevitably create tension in relation to funding requirements for other projects that the States of Jersey may wish to pursue. Because the capital expenditure cannot be avoided as it is required to keep PoJ operational, it is the Shadow Board's view therefore, that it should perhaps be represented as a contingent liability in the States' financial plans.

The managerial agility and strategic focus that incorporation will enable represents the most appropriate and effective means of managing the risk that the current operating model poses to the public purse.

Under an incorporated structure, the Ports ability to cover the requirements of the Long-Term Capital Programme is significantly improved from its current position within the States of Jersey.

3.1.2 Generation of New Revenue Streams Payable to Treasury

The Ports will be required to make a return to the States commensurate with the fair value of the assets to be transferred to the company, adjusted to reflect the community and heritage obligations undertaken by the business. As a consequence of incorporation, the Ports will be treated in line with all other utility companies in Jersey and consequently, willgenerate revenue for the States through taxation, dividends and payment of licence fees.

The financial modelling for an incorporated structure indicates that after satisfying the Long Term Capital Programme requirements, the Ports will provide a cash return of £35m to States of Jersey. Importantly, these benefits accrue after meeting the Long-Term Capital requirements of the operations.

The new revenue streams payable to the States include additional taxation revenue, since the Ports would be taxed in line with other utility companies. In addition, the assumptions contained within the model provide for the continuance of contracts with States of Jersey departments, including Transport and Technical Services Department, Treasury & Resources Department, Information Services Department, and Human Resources. If these contracts continue unchanged throughout the life of the financial model, they represent an estimated £99 million of benefit to States of Jersey over the life of the model.

Finally, the Public Service Obligations, primarily encapsulating the provision of the Coastguard service and maintenance of the Historic Harbours, represent a further estimated financial benefit to the States totalling £49 million.

3.1.3 Additional Benefits to the States

In addition to the above revenue benefits a number of other important benefits arise which include the following:

Responsibility and Accountability for Managing the Assets: Incorporation will create an accountable body with responsibility for oversight and management of the extensive asset base of the company. This thereby reverses the current position in which the Ports represent a significant financial liability for the States to one which creates an expectation of generating a sustainable return to the States Treasury.

Transparency of Regulation and Governance: Incorporation will bring greater clarity by ensuring that there is separation between the regulatory requirements and operational functions. In order to ensure that these essential services operate in the most effective and efficient manner, the business will be governed by a Board of Directors which will be accountable to the shareholder through the Minister for Treasury and Resources on the States behalf. Furthermore, the appropriate regulatory agencies and authorities will retain full oversight of the business and its operations.

Delivery of Public Service Obligations: All current public service obligations, such as Jersey Coastguard services, will continue to be provided through the Ports at no direct cost to the States.

Responsibility for Historic Harbours: Maintenance of the Island's historic harbours involves a continuous programme of repairs and maintenance. The operational model that underpins the proposal includes a requirement that the Ports will retain responsibility for maintenance of the Historic Harbours. The financial model demonstrates that the new authority will continue to fund the costs associated with such responsibilities without recourse to the States.

Wider Community and Economic Benefits: The establishment of a commercial business, focused upon the needs and requirements of customers and with the ability to explore and exploit new business opportunities, will contribute to the Island's overall economic growth.

3.1.4 Benefits for Parishes

The Parishes, especially the Parishes of St. Helier and St. Peter, will benefit from the payment of occupiers' and owners' rates by the Ports. Although the States are moving towards paying rates in the Parishes, PoJ are committed to moving to this model earlier through Incorporation. Those Parishes which have an Historic Harbour will benefit from direct involvement in a clear management plan for their Harbours and have the comfort that the Harbours are being managed by a competent authority.

3.1.5 Benefits for the Economy

The Ports of Jersey are the Island's gateways, and consequently, they play an essential role in the economic and social prosperity of the Island by supporting and facilitating the movement of people and goods. The financial stability and self-sustainability provided by incorporation will enable the Ports to continue to support economic endeavours and social activities across all sectors of the Island. Confidence in the Island's transport links is a key enabler of economic prosperity.

The States' Economic Adviser commissioned a report by Oxera on a number of factors including the economic impact that incorporation may have on the Island. In respect of this aspect the reports states:

> *"The incorporation of the Ports of Jersey is unlikely, on its own, to fundamentally change the economic issues surrounding the operations of the airport or ports"*

3.2 Benefits for Ports of Jersey

It was the clear intent of the States, in the 1990s when the Trading Committees were first established that, in time, they would be incorporated. Jersey Telecom and Jersey Post are now well established as successful, independent businesses, which have been free to manage the challenges and capitalise on the opportunities that have arisen in their respective markets. Since incorporation, both Jersey Telecom and Jersey Post have been able to respond quickly to market dynamics and react to external factors with a much greater degree of flexibility and agility than would have been possible had they continued to operate as States Departments under political control.

3.2.1 Commercial Flexibility and Strategic Agility

The incorporation of the Ports will create similar levels of commercial flexibility and strategic agility, including the ability to seek to generate satisfactory returns on commercial assets. This will, in turn, allow the Ports to invest in high quality services for the direct benefit of the Island's business sector and its community, whilst ensuring that the Ports will continue to meet the Island's needs and its own public service obligations.

This will be achieved through the ability to:

- Optimise the use of the asset base to generate improved revenue levels alongside diversification of income streams
- Pursue commercial ventures and initiatives designed to enhance the range of marine and aviation related services for the benefit of both the business sector and the leisure / personal sector, in keeping with the expectations of users and prospective users of Port facilities
- Build cash reserves through the pursuit of business growth and cost efficiency measures
- Raise external funding if appropriate in order to invest in improved technology, service enhancement, and improvements to facilities to meet the needs and demands of customers

- Explore partnership and joint venture opportunities in order to provide more comprehensive services and facilities and achieve economies of scale. This aspect will be a key ingredient in supporting the growth and success of Ports of Jersey as the company would be able to act independently and commercially, yet still within a well-ordered regulatory framework designed to safeguard the proper interests of customers
- Create improved working conditions for employees through the provision of a vibrant business environment, supported by appropriate training and personal development opportunities for all
- Set strategic direction through a Board of Directors whose focus and priority lies with the Ports, rather than being part of a large and disparate public sector which has an inherent obligation to support a vast range of competing challenges and priorities.

These benefits have been demonstrated in a number of other Ports that have been incorporated in recent years as is shown at Appendix 14. The benefits are summarised in this extract from the report produced by Holman Fenwick Willan LLP:

> *"The main benefit of the corporatisation of ports is that port authorities become more autonomous as the decision-making process devolves from the government to the company's directors.*
>
> *This more dynamic decision-making process fosters competiveness, growth and transparency in the port authority's development, and business and customer satisfaction are given priority.*
>
> *The focus is also on sustainability and improved productivity, in order to encourage investment in the port authority's development. Overall, corporatisation of port authorities has in many cases led to increased economic profitability, enhanced employment opportunities in the port area and improved commercial flexibility"*

3.2.2 Financial Sustainability – Access to Alternative Sources of Funding

The nature of the infrastructure and activities through which the Ports operate dictates that both short-term and long-term funding requirements inevitably arise.

The current operating model requires that every investment or financial obligation needs to be funded either by drawing on a cash account, or by seeking support from the States Treasury on each occasion that a cash shortfall occurs.

A key objective of the incorporation programme is for the Ports to achieve self-sustainability over the long-term, thereby removing a reliance on the States Treasury to fund shortfalls.

Furthermore, the principles underpinning the incorporation programme support the resource requirements outlined in the States Strategic Plan by offering the mechanism to provide sustainable services to the Island, and by supporting the ability to plan expenditure on capital and infrastructure with greater certainty.

The financial model demonstrates that funding requirements could be met through raising short-term bridging facilities or long-term capital facilities. Other potential sources of funds include bonds, joint venture partnering on developments, and project specific financing.

3.3 Benefits for Employees

The Ports have made a commitment that all members of staff will be transferred to the new body on identical terms and conditions to those which they currently enjoy as States employees.

A comprehensive communication programme has been conducted with members of staff, Trade Unions and all relevant parties in order to address all concerns and queries.

All parties acknowledge that successful businesses must strive to attract, retain and develop talented people in order to maintain success levels. Such an environment arises from the creation of a commercially astute organisation which continuously aims to provide PoJ employees with greater personal development opportunities.

It is the intention of the Board, upon incorporation, to initiate a review of reward structures to consider rewarding individuals and teams for their contribution to the success of the business and to match the ambitious plans for commercial development. It is important to emphasise that entitlements for existing employees, such as pension entitlement, would not be affected by such proposals. The ability to recognise and reward individuals and teams for their contributions to the success of the business is not currently supported by the remuneration structures for States employees.

Finally, as the integration of Jersey Harbours and Jersey Airport has already demonstrated, considerable organisational and personal enhancements arise from engaging and listening to employees. The engagement programme as a part of the Ports' 'Direction to 2015' Strategy has made major improvements across the organisation. The Ports have been developing the organisation to thrive in a post-Incorporation environment for over two years. This is hallmarked by high engagement, performance management and proactive improvements. The resulting culture and values of the Ports of Jersey have already started to create an environment that enables staff ideas to be developed and implemented to improve business performance and enhance customer experience. The ability to incentivise the delivery of such improvements in an agile and responsive manner will create a platform for further suggestions for improvement, increasing overall capability, performance and delivery levels.

3.4 Benefits for Customers and Ports Users

Incorporation will produce a more responsive organisation focussed upon delivering higher levels of customer service and introducing an enhanced range of services. The increased levels of agility and flexibility that incorporation provides will enable the Ports of Jersey to respond to customers' needs and expectations and adapt operations accordingly.

PoJ have recently implemented a Customer Service Programme at the Airport, the benefits of which are already being seen in customer feedback, and this programme is currently being implemented at the Harbour. are confident that there is significant potential to develop the operation of the business through improved levels of customer service.

Incorporation will allow the Ports to leverage their asset base for development and growth in a way that is not possible under current arrangements. Deriving incremental revenues from the assets, and successfully diversifying revenue streams will help Ports in its efforts to minimise the risk of above inflation increases to the fees and tariffs levied on commercial customers.

In an incorporated entity, management is focused on building a business that is successful in terms of financial performance, operational safety and effectiveness and which increases the range of products and services available to customers. More efficient decision making and operational agility will bring these new products and services to market far faster than is possible today.

3.5 Benefits for Jersey

Considerable progress has already been made since the integration of Jersey Harbours and Jersey Airport, although the required level of improvements in performance will only be realised once management and Board members are held fully accountable for delivery of results. Success of the business can then be measured across the following key dimensions:

- Financial – delivery of profitable and sustainable financial growth and a reduced burden on the tax payer
- Operational – provision of facilities that remain open, safe and secure
- Environmental – development of a programme of efficiency measures across the business which will have a beneficial effect on the environment of the Island
- Social – active participation in the community, supporting the economy and society as a whole
- The ability to work closely with the new Board of 'Visit Jersey' and to play a key role in supporting them in their aim of increasing the levels of tourism to the Island.

It is the view of the Shadow board that identifying and implementing high impact improvements across these dimensions will deliver demonstrable gains for Jersey whilst at the same time, the new company will be able to pursue corporate best practice within the policy framework set by the shareholder.

3.6 Benefits for Clubs, Associations and Societies

The Ports of Jersey will continue to support relevant clubs and associations in a similar manner as they do today. They collectively provide a valuable pipeline of interest into the relevant sector, creating the boat owners and customers of the future. Typically these clubs are associated with the sectors that Ports of Jersey operate in, most notably in Marine Leisure and therefore represent relationships that the Ports of Jersey recognises as fundamental to the provision of its range of core services and also to underpin the future development of business growth initiatives.

A growing Ports of Jersey will be better placed to invest resources in order to work collaboratively with clubs, associations and societies with the aim of supporting them in the achievement of their objectives.

PoJ have planned for this support activity to carry on through the financial model for incorporation. The assumption contained in the business case for incorporation is that support for clubs and associations will continue as a part of our Corporate Social Responsibility programme. A statement on which is shown at Appendix 15.

It is understandable that clubs, societies and associations are seeking reassurance in respect of the perceived changes that the proposed incorporation of PoJ represents. It is therefore important to state that PoJ intends to continue to follow this policy and that no changes are envisaged in respect of either terms, or security of tenure, as a result of incorporation.

PoJ will hold meetings with each body (some meetings have already been held) in order to provide this reassurance within the context of the policy direction established in 2009 (shown below).

> *"Ports of Jersey Policy is to seek Open Market Value (OMV) for all property transactions and identify and document individual discounts where they demonstrate a contribution to the Ports of Jersey objectives through commercial negotiation. This was formalised in MD-E-2010-0163 and is included in the Policy Framework contained within the Business Overview 2009 as published and available on the Port of Jersey website. In essence, this requires the PoJ to seek to ensure that clubs/ societies/associations that occupy PoJ accommodation pay a sensible/reasonable rent and where this falls below OMV then the difference should be justified through the negotiation of a grant and/or SLA"*

4 FINANCE CASE

The Incorporation Financial Model ('the Model') is a long-term projection based on a series of assumptions, the key areas of which have been assessed and validated by independent experts. The Shadow Board Economic Development Department and Treasury and Resources Department are all confident that these projections define a range of realistic scenarios and possible future outcomes.

4.1 Financial Overview of Incorporation

As was made clear in P.70/2012, the aim of incorporation is to enable the self-sustainability of the Island's gateway services for the benefit of the Island.

Incorporation will provide the commercial freedom to deliver revenue growth and income diversification, supported and driven by a focused and dedicated Board of Directors, It will enable the development of delivery capacity through investment in talent, and provide the ability to recognise and reward individuals and teams for their contribution to the success of the business.

At the same time, the Ports will remain a 100% States owned company operating within the Island's regulatory and legal frameworks. Indeed, the regulatory regime and the protection of customers' interests will be significantly enhanced through the licensing regime that will be introduced by the Incorporation Law.

In essence, incorporation will:

- Obviate the financial risk to the States by removing its need to address the significant shortfall in funding that has been identified by the Board:
    - Current projections of the Long-Term Capital Programme indicate a requirement for £276 million to 2038 in order to fund critical infrastructure projects simply to keep the Ports operational. If the Ports continue to operate as they have done, a shortfall of up to £314 million is predicted. This represents not only a risk to public finances, but also a high risk to the functionality of essential Island infrastructure
    - Because the capital expenditure is essential, incorporation will mitigate any need for this liability to be recognised in the States' accounts and projections
    - The freedoms and agility that incorporation will deliver present the best way to reduce this risk.
    - Improve growth delivery through implementing commercial projects, new structures and enhanced capability overseen by a focussed Board of Directors. Commercial projects include the potential of property developments for marine and aviation businesses, as well as service expansion. The prospect of delivery of such initiatives is dramatically improved under an incorporated structure, namely:
    - Ability to enter into joint ventures, equity shares and development partnerships
    - Ability to commit to projects and partners without the uncertainty that the political process brings

- Control and development of organisational delivery capability through investing in talent and performance management
- Focused strategic direction through a Board of Directors where Ports are the priority, rather than being part of a large and disparate public sector which has many competing challenges and priorities
- A 'managed risk' mind-set, rather than a generally risk-averse mind-set within government
- One of the major benefits of incorporation will be to create a focus on the identification and delivery of new income streams, in order to seek to diversify the methods of generating revenue, and thereby reduce the current high reliance on fees and charges levied against Port users
- An incorporated Ports will have greater ability to develop and deliver commercial projects. Contained within the financial model is a programme of 'Commercial Projects.' (an overview of each of these projects is provided in section 3.7) This programme contains an initial tranche of 9 projects with a combined value of c£60 million over the next 25 years. Projects of this nature are conservatively expected to repeat once more throughout the life-cycle of the financial model, to provide a total projected benefit of £90 million
- All new commercial projects will be assessed against a range of factors, including their ability to generate a realistic level of commercial return on investment.

- Provide access to alternative sources of funding rather than total reliance on the current 'cash' investment model. Identifying the most appropriate funding methods, through loans, joint ventures and project specific financing becomes possible, as a result of incorporation.
  - In order to be self-sufficient over the long term, the Ports will have both short and long term funding requirements. Rather than managing every investment through a cash account, incorporation will enable full commercial consideration to be taken regarding access to funds
  - Other sources of funds include bonds, joint venture partnering on developments, and project-specific financing.
- Provide increased benefits to the States of Jersey as incorporation will not only enable the financing of the long-term capital programme without recourse to taxpayers, but also deliver new cash benefits to the States in the form of taxation and dividend payments.
  - The profits generated by the Ports are currently inadequate to cover the requirements of the Long Term Capital Programme
  - Under an Incorporated structure, the Ports will not only cover the funding of the Long-Term Capital Programme, but will also deliver new revenue streams back to the States. After satisfying the Long Term Capital requirements, the Ports will return an estimated £35 million back to States of Jersey.

4.2 Financial Model

The Financial Model which underpins this Business Case has been developed further from P70/2012. Importantly, there are a number of key assumptions where the Ports have sourced external expertise. These include:

- The capital requirements, or Long Term Capital Plan, which has been fully verified by Capita Symonds / Validus. The headline figure is £276 million (in 2013 prices) just to keep the ports open and operational for the next 25 years. Their summary report can be found at Appendix 4
- The growth assumptions for the Airport have been developed by Route Development Company (RDC), and expert firm in the aviation sector. The headline figure is 0.8% likely case growth over the next 25 years. Their summary can be found at Appendix 7
- The growth assumptions for the Harbours have been developed by Fishers, an expert consulting firm in the maritime sector. Their headline figure is 0.0% likely case growth over the next 25 years. Their summary can be found at Appendix 8
- Finally, the entire Financial Model was validated by expert accounting firm, BDO, who have provided assurance regarding the calculations and content of the Financial Model.

The Ports of Jersey (PoJ) is a capital intensive business. The very nature of the services that it provides requires significant and regular capital investment merely to maintain current infrastructure and operating capacity levels, in order to continue to provide the essential gateway services on which the Island depends.

4.3 Assumptions – The Basis of Projections

The original assumptions used in the model presented to the States in October 2012 in P.70/2012 have been reviewed and there have been no significant or material changes.

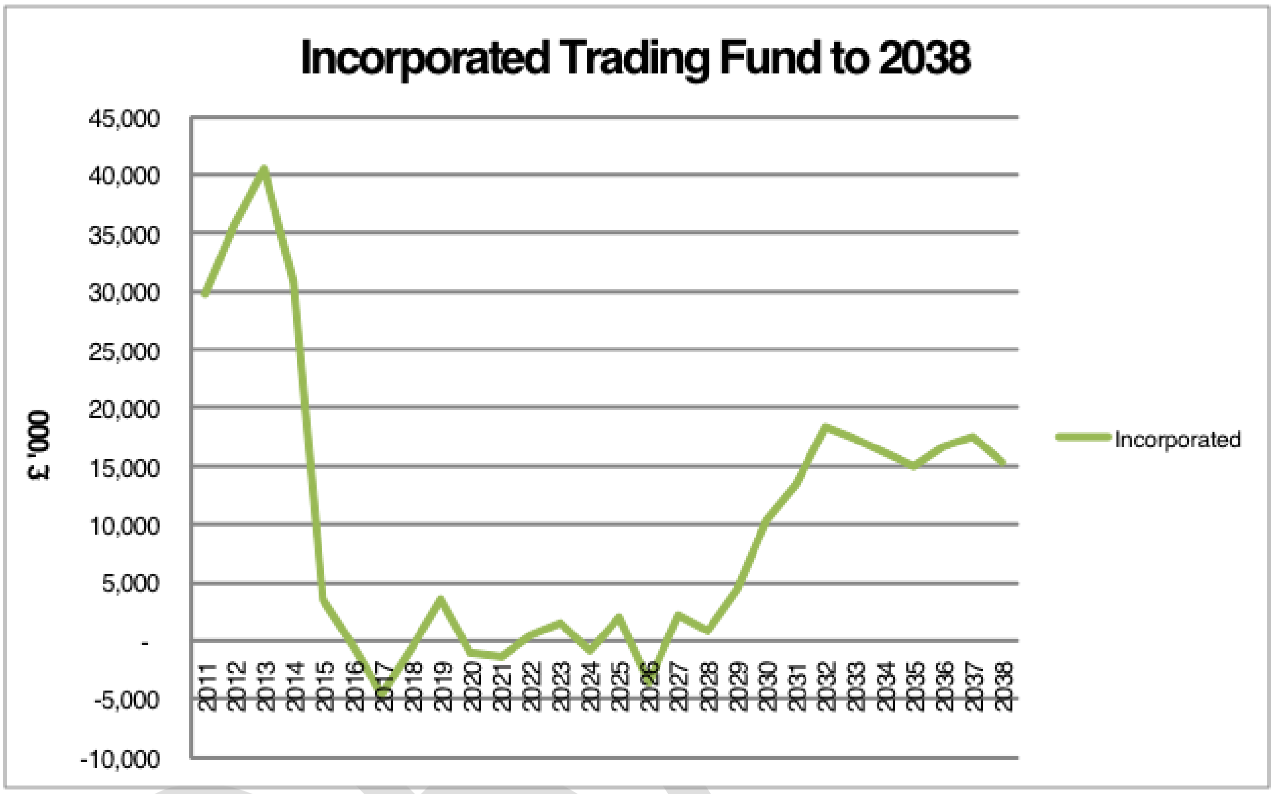
Nevertheless, certain updates have been made, and these include the following:

- Extending the model period to 2038 to match the States' long-term capital and revenue reporting
- Re-validation of the capital programme by Capita Symonds / Validus
- Inflation projections have been updated in line with the latest advice from the States' Economic Advisor
- Borrowing has only been included for capital projects which will deliver a commercial return on investment.
- Growth volumes have been verified by RDC for the aviation sector and Fishers for the marine sector
- Staffing levels have been maintained at 2013 levels and all staff terms and conditions have been protected throughout the model
- There are no above Jersey RPI price increases in relation to the pricing of services

A table providing an overview of the assumptions is included at Appendix 6.

4.4 Financial Performance through Incorporation

The graph below shows the estimated impact on the Trading Fund of implementing the initiatives and proposals outlined within P.70/2012, including meeting the significant costs of the capital requirements that are shown above.



This chart demonstrates the Ports' closing cash balances in each year of the Financial Model. This is net of all taxes and dividends paid to States of Jersey.

The model assumes that certain costs associated with incorporation, such as the funding of PoJ's share of the Pension Fund related pre-87 debt, will be met upon incorporation. The funding of the pension liability, along with a number of major capital projects (shown below), account for the fall in the Trading Fund balance shown in 2014 / 2015.

During the middle period of the model there is a period of significant capital investment, hallmarked by the replacement of the runway at the Airport. Previously accumulated cash surpluses will not cover these requirements, hence the concept of a short term credit facility has been agreed with Treasury. The Ports will have an ability to draw down cash requirements in order to fill the shortfall which, for the purposes of the Model, has been applied at an annual interest rate of 5%. This facility is for short term cash flow funding, and is fully repaid by the end of the financial model leaving the Ports debt free and with £15 million of cash reserves.

As can be seen, the model indicates an ability to meet all liabilities that would otherwise fall to the States, whilst generating additional resources for the Treasury and maintaining an overall positive cash flow position in the long term. The Treasury has reviewed the model with considerable thoroughness and is satisfied that the indicative course to 2038 is both realistic and reasonable.

Summary Cash Flow Statement

The accumulated position of the Ports of Jersey operating under an Incorporated Model is contained in the below cash flow statement.

Jersey Airport and Harbours Incorporation model
Cashflow summary from 01/01/2014 to 31/12/2038
£ million

	Ports Financial Projection		**Projected Return to States of Jersey**	
			Continuing Cash Benefits	**New Cash Benefits**
Opening Cash balance		40		
Cash inflow from revenue	1,682			
Cash (outflow) from expenditure*	(1,176)		99	
Net cash inflow from operating activities	506			
		546		
Interest received/(paid)	(23)			
Capital Expenditure	(406)			
Cash inflow after capital expenditure		117		
PECRS repayment	(18)			
Tax paid to States	(31)			31
Dividends paid to the States	(4)			4
	(53)			
		64		
Cash outflow for Public Service Obligations operating expenditure	(35)		35	
Cash outflow for Public Service Obligations capital expenditure	(14)		14	
	(49)			
Closing Cash Balance		**15**		
Sub Total			148	35
			Total	**183**

** refers to States contracts already in existence pre-incorporation*

Reconciliation of Capital Expenditure

Non Public Service Obligation Capital Expenditure	406
Public Service Obligation Capital Expenditure	14
Total Capital Expenditure	420

The States of Jersey will benefit from a total of £183 million of cash and services by the Incorporated Ports of Jersey. The continuing benefits includes the assumptions of continuing with the contracts with States of Jersey, notably TTS for ongoing harbours maintenance, Central HR, Treasury and Payroll. While these contracts are not committed for the 25 years of the Financial Model, they are assumed in the model, and total £99 million.

The continued delivery of the PSO obligations, mainly Coastguard services and Historic Harbours, will deliver a further £49 million in benefit to the States of Jersey

Importantly the estimated £35 million of Taxes and Dividends are a new cash benefit, only available to the States following Incorporation. As the Ports will operate like any other Jersey Utility, they will be subject to 20% taxation and an annual dividend payment will be generated to the States. These benefits are only available once the corporate structure is changed to an Incorporated Entity.

4.5 Ongoing Capital Requirements – The Scale of the Challenge

The Board has undertaken a thorough assessment of the long-term capital requirement to maintain the Ports. This indicates a need for investment of some £276 million (at 2013 prices) over the 25 year life-cycle of the Long-Term Capital Programme from 2014.

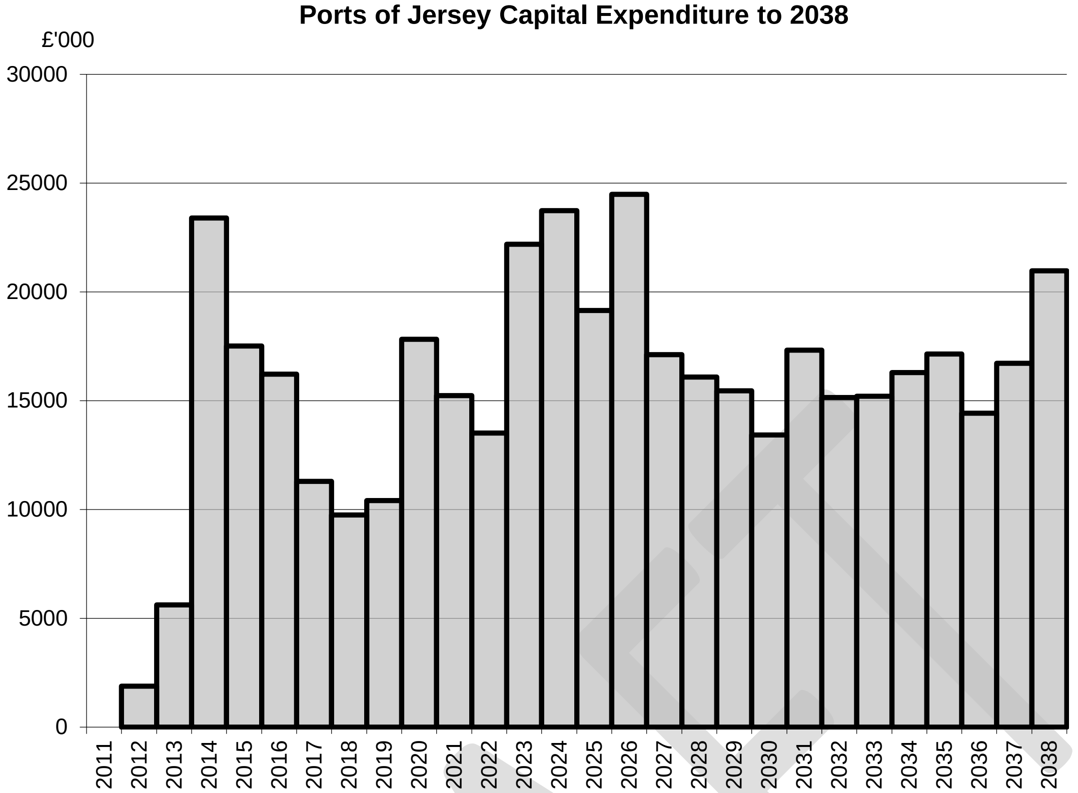
It should be noted that this assessment, informed by detailed work by Capita Symonds/Validus (see Appendix 4), takes account only of the sums required to maintain existing service levels, and makes no allowance for any enhancements or changes to future service requirements to meet the expectations of users and customers.

Furthermore, the Capita Symonds/Validus assessment of a capital requirement is based upon 2013 price levels, and does not include the impact of inflation. In the incorporation financial model, inflation is added to the base cost, resulting in a liability for future infrastructure investment of c.£420 million over the 25 year period from 2014.

For comparison purposes, it is appropriate to note that over the past 10 years, the Ports have incurred expenditure on capital projects totalling c£100m, and consequently, expenditure of £276million over a 25 year period is commensurate with past experience.

All of the following charts and tables include inflation (RPI projections provided by the States' Economics Adviser).

Firstly, the following chart plots the level and timing of the Long Term Capital Programme expenditure.



Secondly, this table formed part of P.70/2012, and has been updated to show the amount of capital spend in 5 years blocks.

£'000	**2014-2018**	**2019-2023**	**2024-2028**	**2029-2033**	**2034-2038**	**Total**
Buildings & Infrastructure	46,681	48,026	63,123	32,616	42,992	233,438
Plant & Equipment	31,508	31,184	37,457	43,970	42,579	186,698
Total	**78,189**	**79,210**	**100,580**	**76,586**	**85,571**	**420,136**

Finally, in order to provide more information on the projects themselves, the following table shows all projects that have an estimated capital spend of over £3m.

PoJ: Capital Projects >£3m - 2014-2038

PROJECT	**YEAR**

PROJECT	YEAR
Engineering Replacement Facilities	2013-16
New Cargo Centre	2014-15
Albert Terminal Replacement	2017-18
Departures hall refurbishment	2017-19
South Apron (East) Replacement & Water Treatment	2019-21
Arrivals Building	2020-27
Reinforce La Collette East Baker Wall	2022
Runway resurfacing works	2022-25
East berth RORO ramp	2024-25
09/08 Runway End Concrete Replacement	2025-27
ATCC refurbishment	2026
La Collette warehousing	2027
Passenger Pier rebuild	2027-28
Bravo Taxiway replacement	2027-28
Alpha Taxiway realignment	2030-32
Terminal: Phase 5 extension & improvements	2033
Departures hall refurbishment	2034-35
Eastern Reed Bed Upgrade/Replacement	2036
Fuel & aggregates berth	2036-37
La Collette warehousing	2037-38
Western Reed Bed Upgrade/Replacement	2038

4.6 Commercial Projects Programme

One of the advantages of Incorporation is the significant improvement in ability to deliver commercial projects. The 'Commercial Projects' programme has identified an initial tranche of nearly 30 projects, of which nine have been the subject of more detailed analysis and consideration so far. These nine projects have been evaluated in order to assess the likely financial impact as well as the relative ease of implementation, with all being implementable within the first 3-5 years of Incorporation. Two of the nine already have planning approval and are underway. A summary of this initial tranche of projects and initiatives is set out below. Further details shown at Appendix 5

Cargo Centre – Phase 1	Relocation of the cargo centre, including the demolition, to facilitate the construction of a new hangar for corporate aviation use, and the re-siting of the cargo centre at an alternative location.
Atrium / Executive Lounge	The creation of an Executive Lounge within the Atrium viewing area through the establishment of a partnership arrangement in conjunction with a specialist provider of such facilities.
Corporate Aviation Facility	The creation and development of a new Corporate Aviation facility for use by Hangar 8 plc. on the existing cargo centre site, along with re-housing tenants from the existing cargo centre to a new facility.
Secure Self-Storage	The establishment of a secure self-storage facility, for use by business and individuals in an easily accessible out-of-town location, as an initial pilot based on available capacity within the Cargo Centre.
Guernsey Waste Project	The importation of waste material from Guernsey for processing at La Collette Waste Processing plant (working in conjunction with TTS and others and in line with assumptions contained within the States' Medium Term Financial Plan.)
Elizabeth Harbour Warehousing Phase 3	Development of a new freight warehouse facility at Elizabeth Harbour, with subsequent re-allocation of existing sites at Elizabeth Harbour and New North Quay.
La Folie Quay and Buildings	Revitalisation and regeneration of La Folie site, to return it to marine and leisure related usage, sympathetic to its heritage and reflective of the significant public interest and affection that the site commands.
Marine Warehouse Project	Investment in existing marine warehouse, thereby securing control of the facility and safeguarding its future use for appropriate maritime and freight related activities.
General Aviation Aircraft and Hangars	The creation of general aviation aircraft parking and hangar facilities. There is a strong demand for such facilities and the strategy is to place these in the more remote areas of the airport to ensure that the core footprint can be expanded for larger commercial aircraft.

These projects are estimated to create a combined value of circa £60 million over the next 25 years. Other projects of this nature are, conservatively, expected to repeat once more throughout the life-cycle of the financial model, to provide a total projected benefit of £90 million.

This is a conservative projection of delivery, as the model assumes that these initial projects will be completed, and then a similar range of projects be repeated halfway through the model. The reality is that once we start creating and delivering projects we will build tremendous momentum and the benefits will accelerate.

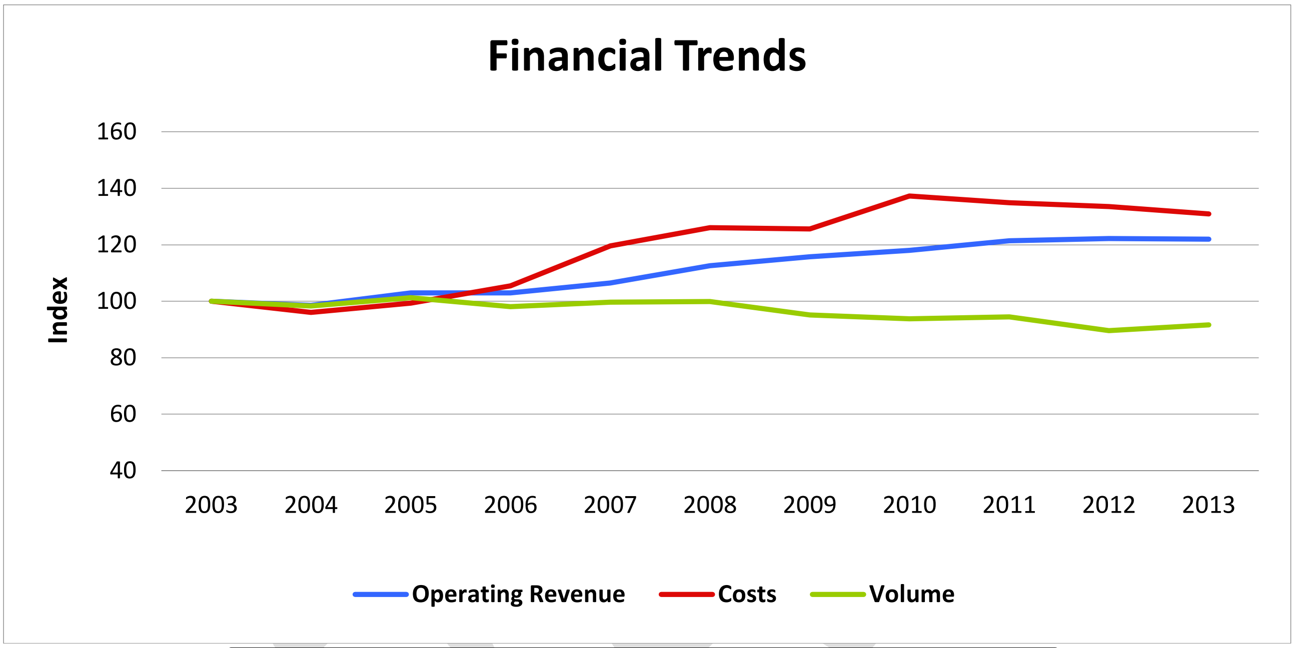
4.7 Historic Performance – An Assessment of Financial Performance Trends

The ability of the Ports to meet the significant capital requirements that they face, without recourse to tax payers money, has been determined solely by its ability to build sufficient reserves from day-to-day trading activities.

However, a review of the performance of the Trading Operations reveals that over the past decade, costs have risen faster than revenue in respect of both the Harbours and the Airport, with overall costs rising by circa 3% per annum, whilst core revenue has risen by only circa 2% per annum over the same period.

This rise in costs, relative to the movement in income levels, has been caused by a combination of factors. Business volumes have declined since the recession of 2008, whilst historically, government policy has tended to be designed to keep any increases in harbour dues and landing fees at low levels, with any rises that have been implemented being restricted to below Jersey RPI. Indeed, as business volumes have declined in recent years, there has been a deliberate policy in the case of the Airport to hold prices in order to seek to encourage increased visitor numbers.

Consequently, the combination of restricted increases in fees and dues, at a time of decreasing volumes and rising costs, has created an unsustainable position, illustrated below:



- Business Volumes are declining
- Costs are rising at a higher rate than revenue

The graph uses an index of 100 as at 2003 as a common base point for ease of comparison of the trends in revenue, costs and passenger volumes.

The Ports have managed to minimise the impact of increasing costs and reducing revenues in recent years, primarily through pursuing ever greater efficiencies and through the delivery of initiatives that have helped to support the overall financial position. These efficiencies and the associated improvements in working practices have been achieved largely as a consequence of the integration of the Harbours and the Airport.

However, improvements in efficiencies of this scale are unlikely to be repeatable without having to resort to a significant reduction in services, and consequently, it is clear that the position is unsustainable in the medium to long term.

4.8 The Current Operating Structure

The Trading Operations structure was always intended as an interim arrangement designed to bridge the period between the entities' status as government departments and incorporation. This was the States' original intention in respect of Jersey Harbours and Jersey Airport, an intention that was ratified by the support given to P.70/2012.

Whilst the Trading Operations were primarily established in order to maintain and deliver services in a commercial manner, to the extent that they should strive to generate sufficient income to meet costs, they still must conform to all States of Jersey policies and governance requirements. Understandably, public sector policies focus on tax and control of public expenditure rather than on commercial income generation. As a result, in practice, the Trading Operations operate in a manner that is neither fully commercial (for example, lacking legal capacity and unable to negotiate terms commercially and in confidence) nor fully 'government departmental' in outlook (since they are not fully funded through general taxation.) There is also no requirement for a Trading Operation to generate commercial levels of return on capital invested.

In addition, due to demands on capital to provide essential services and infrastructure in other Departments, it has not been possible for the States to finance major Ports capital requirements. There has also been understandable unwillingness to financing the capital requirements purely through the implementation of price rises due to the adverse economic impact this would generate.

Consequently, the only alternative means of balancing the books would be through passenger (and associated revenue) growth identified in section 4.3 or by a significant reduction in the services offered in order to reduce overhead costs. The latter is neither in the interests of the States, nor in the wider economic or social interests of residents and businesses in the Island.

Perhaps the key point in this analysis is that the current and historical financial performance data clearly demonstrates that remaining as a not fully commercial Trading Operation will not solve the funding shortfall, as indicated in P.70/2012, and endorsed by the States in 2012). To turn around performance, a fully commercial operation that can deliver business growth, with control over assets and the value that can be derived from them, will have the impact of reducing the dependency on existing revenue streams (largely harbour dues and landing fees) and increase the probability of the PoJ becoming not just self-sufficient but a positive contributor to the public purse.

4.9 Recent Performance

Significant progress has been made in the three years since the formation of the Shadow Board, notwithstanding the constraints of the Trading Fund model to which reference has already been made. The Ports are developing into a customer focused, high performing team and considerable improvements have been made to the performance of the business while preparing for Incorporation.

Indications of this progress include:

- Initiation of new commercial projects such as the Cargo Centre and Hangar 8 corporate aviation facility
- Turning a strategic threat from Flybe pulling off the Gatwick route to a strategic gain by attracting easyJet on to the route
- Customer improvement programmes, including customer satisfaction surveys, that have delivered a number of improvements
- Improved control of costs

- Employee engagement, including open and transparent communication and an annual Employee Engagement Survey
- Collaborative working with the Trade Unions in developing policies both for the transfer of staff and the new company.

These examples are indicative of what can be achieved through focused management efforts and demonstrate the value of striving towards a fully commercial and incorporated status. However, without incorporation, there is a significant risk that this momentum would not be sustained.

4.9.1 Five Year Business Performance

In order to place the forward scenarios into context, the below tables represent the most recent five years of performance for the Ports of Jersey.

Port of Jersey - Passenger and Freight Statistics

	2009	2010	2011	2012	2013
Jersey Airport Passenger Numbers	1,460,595	1,429,248	1,461,003	1,442,798	1,429,200
Jersey Harbours Passenger Numbers	730,318	755,379	785,764	722,972	741,135
Jersey Harbours Freight Tonnage	515,683	499,577	487,958	454,972	477,270

Ports of Jersey - 5 Year Financial Performance £'m

	2009	2010	2011	2012	2013
Income	41.8	42.5	43.7	43.2	43.1
Expenditure	31.0	33.9	33.0	32.4	31.5
Trading Profit	**10.8**	**8.6**	**10.7**	**10.8**	**11.6**
Depreciation	12.5	11.1	9.6	9.7	10.4
Profit	**(1.7)**	**(2.5)**	**1.1**	**1.1**	**1.2**
One-off impairments	0.0	13.8	0.0	129.5	0.0
Retained profit	**(1.7)**	**(16.3)**	**1.1**	**(128.4)**	**1.2**
Capital Expenditure	18.0	4.5	8.8	1.9	5.7
Add back non-cash items	12.5	24.9	9.6	139.2	10.4
Other Balance Sheet movements	3.9	1.9	1.6	(2.3)	(1.0)
Transfer to/(from) Trading Fund	**(3.3)**	**6.0**	**3.5**	**6.6**	**4.9**
Opening Trading Fund balance	23.8	20.5	26.5	30.0	36.6
Trading Fund movement	(3.3)	6.0	3.5	6.6	4.9
Closing Trading Fund Balance	**20.5**	**26.5**	**30.0**	**36.6**	**41.5**

It is important to note that the forecasts shown in Section 4.10 use the 2013 Closing Trading Fund Balance as the starting point.

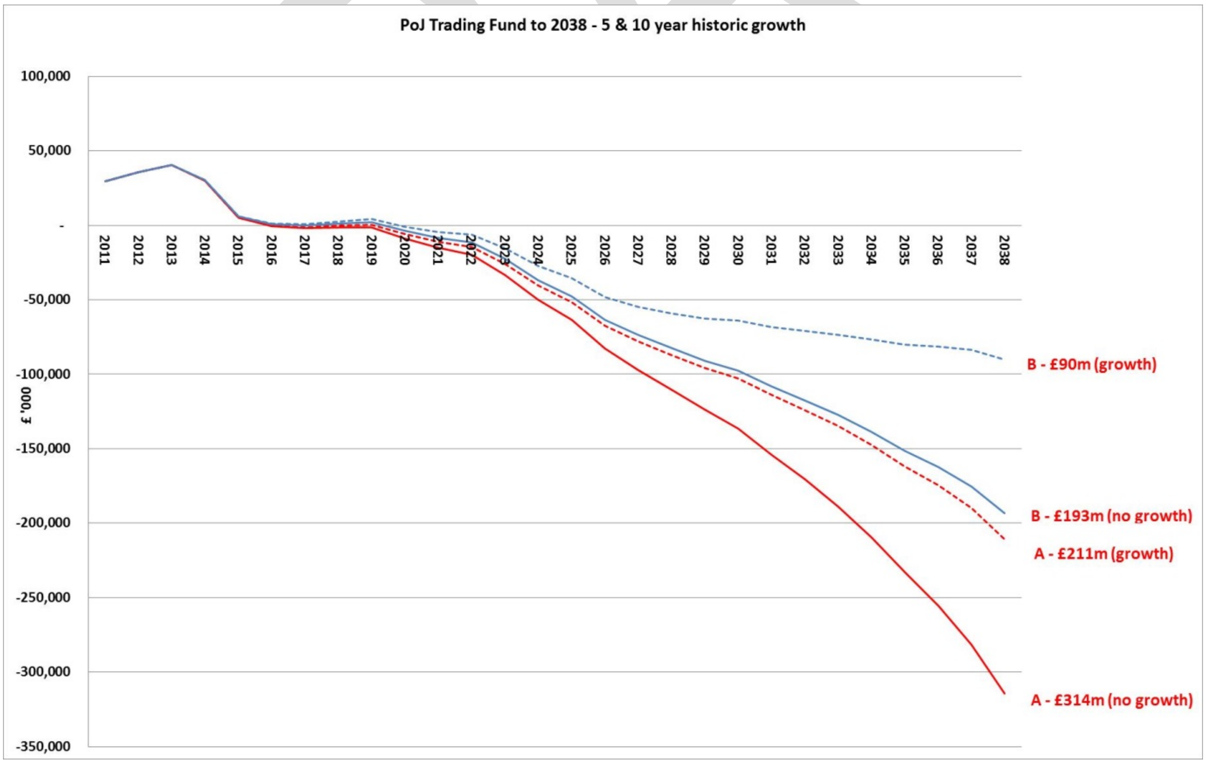
4.10 Financial Modelling Scenarios

In order to provide a basis for comparison, two scenarios have been developed to examine the impact on the cash balance of the Ports' Trading Fund over a 25 year cycle. These projections have assessed the impact of meeting the capital requirements associated with maintenance of essential infrastructure purely from revenue-generating trading activities.

A report from RDC Aviation Limited (see Appendix 7), which provides a long-term forecast relating to airport traffic, suggests that passenger volumes will grow by 0.8% per annum. In light of recent trends in tourism numbers, the basis of these projections is deliberately conservative and assumes that there will be no such growth in passenger volumes. However, the graph also records the impact on the Trading Fund if the RDC growth projections were to be realised, and even after assuming a growth in passenger volumes, the 'best case' scenario still indicates a shortfall of £90 million.

Scenario A: Based on average of the past 10 years performance – This curve illustrates the impact of maintaining performance levels that have occurred over the past 10 years, and extrapolating them forward with no growth in passenger numbers. The result is a cash shortfall of £314 million (The dotted line illustrates the impact if RDC's projected growth rate of 0.8% is realised. This results in a cash shortfall of £211 million).

Scenario B: Based on average of the past 5 years performance – This curve illustrates the impact of maintaining performance levels that have occurred over the past 5 years, and extrapolating them forward with no growth in passenger numbers. The result is a cash shortfall of £193 million. (The dotted line illustrates the impact if RDC's projected growth rate of 0.8% is realised. This results in a cash shortfall of £90 million.)



As can be seen, depending upon the underlying assumptions and the starting points used, these scenarios reveal a funding shortfall ranging from around £90 million to more than £300 million.

Whatever assumptions and base points are chosen, the irrefutable fact is that a significant funding shortfall exists.

If the Ports continue to operate in the same manner as they have done in past years, a shortfall will arise that will need to addressed, through price increases well ahead of inflation, general taxation, or a combination of the two.

In either event, the shortfall will create a serious burden for Jersey, which is not currently reflected in any of the States' financial projections for the public accounts. In order to address this shortfall, decisive action is needed by the States, and the longer that action is delayed, the greater the problem is likely to become.

4.10.1 Upside through Tourism Growth

In recent months, the Tourism Shadow Board has published its initial report which makes reference to a target growth figure of 4% per annum for the tourism industry. The tourism industry, as defined within the report, represents only a modest proportion of the total traffic that passes through the Ports, and consequently, the 4% target growth, if achieved, would equate to growth of 1.6% per annum to the Ports. The ability to deliver such growth is largely out of the hands of PoJ. However, if the target was to be achieved, it would enable PoJ to accelerate the capital and commercial programme, and could also result in higher levels of dividend payments to the States.

4.11 Implications of Non-Incorporation

Although the debate on P.70/2012 resulted in a clear decision to progress towards incorporation, it is important to reflect on what the implications of non-incorporation might be.

Continuing to pursue the current operating model and maintenance of the status quo without the freedoms and flexibilities offered by incorporation, will substantially increase the risk that, in the long term, Ports of Jersey will not generate a sufficient return to cover its Long-Term Capital requirements. In addition, as indicated by the extrapolations of the historic performance data and by the independent reports, the need for a new business model is clear, with any delay in implementation likely to increase the scale of the future challenge faced.

The need to meet future funding requirements has already been established. If the Ports of Jersey was not incorporated other solutions would need to be addressed. Maintaining the status quo is not an option given the scale of the funding requirement involved. Potential alternative approaches might be, for example:

- Additional significant levels of funding to be provided by the taxpayer. The level of funding required could be £193 million if one assumes no passenger growth and the 'best case' scenario shown in the financial projections, or as much as £314 million in a 'worst case' scenario
- A reduction in services with savings arising from a decrease in direct staff numbers
- A marked increase in prices in order to cover the shortfall
- A combination of all of the above, which in practice is what may well be required, given the magnitude of the funding deficit.

4.11.1 Lack of ability to deliver growth projects

As historic performance data demonstrates, the current operating model inhibits the ability of the Ports of Jersey to deliver commercial growth projects.

Over the past decade, very few projects have been initiated by Harbours and Airport, and those that have been have generated minimal additional revenue per annum. Projecting this rate of growth and commercial development into our financial model indicates that a significant proportion of our Long-Term Capital Programme would remain unfunded.

4.11.2 Service Reduction

In order to reduce costs, one option that the Ports of Jersey could take is to either cease or reduce the range of products and services provided or resort to increasing prices. However, any such actions would be viewed negatively by the population and customers of Jersey, lead to a loss of confidence in Jersey by key operators and also have a potentially negative impact on the reputation of the Island. In addition, any cessation or reduction of services would be likely to lead to a reduction in the size of the organisation.

4.11.3 Price Increases

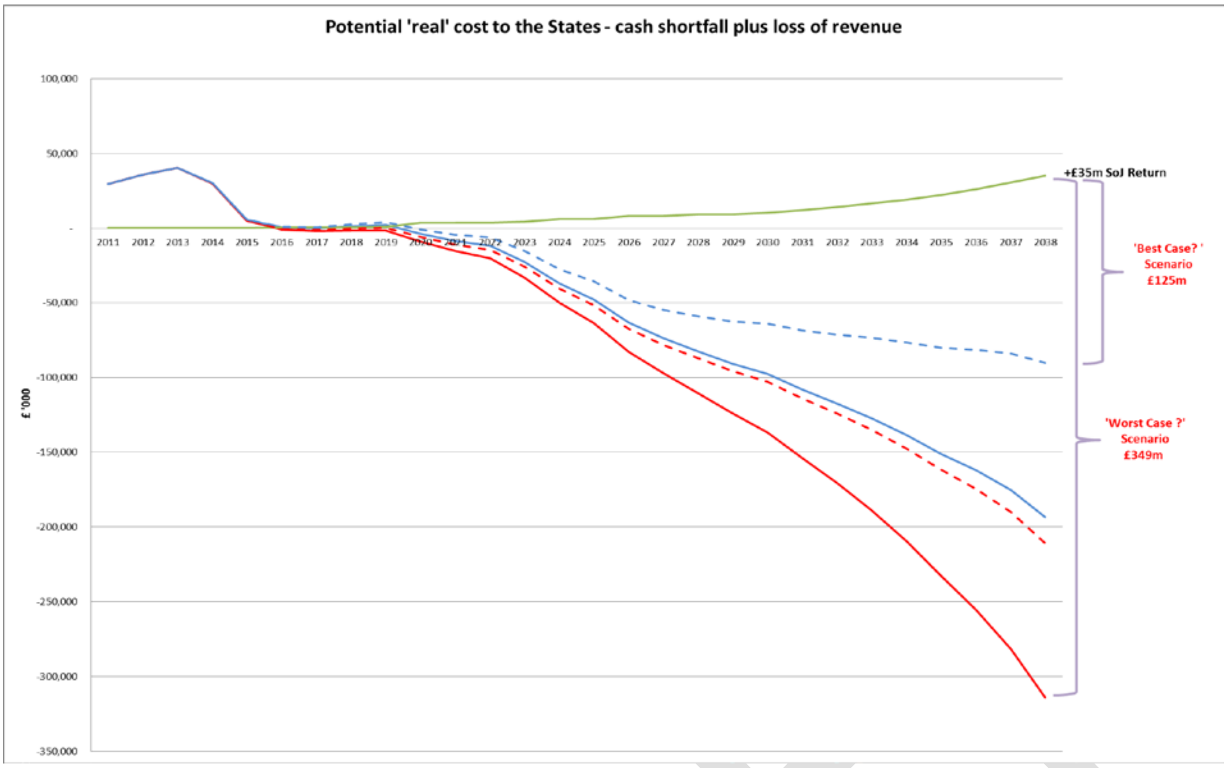
Given the inherent restrictions on the Ports of Jersey continuing to operate as a public sector department of the States of Jersey, the most realistic and practical solution would be to increase prices significantly above R.P.I. levels in order to cover any shortfall in funding. However, this would have a direct impact on the cost of transacting business with, and within, the Island, with the consequent potential impact on the Island's economy.

4.11.4 A Combination of all of The Above

It is unlikely that any one of these options on its own could fully address the funding shortfall that will arise. Furthermore, the subsequent impact of pursuing any of them would have significant consequences that would be detrimental to the Island, and merely exacerbate the problem rather than solve it. For example, reductions in service levels or marked increases in prices would be likely to lead to reduced passenger and freight volumes.

The incorporation model includes an assumption that the Ports will make a contribution to the States Treasury of c£35million, through the payments of taxation and dividends, along with financial benefits associated with the provision of various Public Service Obligations which would otherwise fall to the States. The full impact of non-incorporation will therefore, not only result in the States assuming responsibility to meet the cash shortfall, but also forfeiting the revenue derived from incorporation.

Section 4.10 outlined the projected cash shortfall based on two scenarios – (A) £314m and (B) £90million. The following graph shows the full effect to the States, including the revenue benefits of £35million that would not be realised, should incorporation not proceed.



The graph shows that the real cost to the States of not incorporating the Ports of Jersey falls in the range of £125m to a worst case scenario of nearly £350m. Therefore, whatever projection is used, the potential financial impact is significant.

4.12 Validation of the Financial Model

In order to provide an independent assessment of the validity and integrity of the Financial Model, the views of independent experts were sought throughout.

These included:

- Capita Symonds/Validus – commissioned to assess and evaluate the Long-Term Capital Programme assumptions
- RDC Aviation Limited – engaged to provide a comprehensive and expert assessment of the long-term forecast in relation to the aviation sector
- Fisher Associates Limited – engaged to provide a comprehensive and expert assessment of the long-term forecast for the marine sector.

Summaries of each of these independent reports are shown at Appendices 4, 7 and 8 respectively.

In addition, BDO Limited were commissioned to review the Model and the integrity and validity of its construction including the correct and consistent application of all assumptions. Specifically they were asked to form an opinion on the following:

- Mathematical and arithmetical accuracy
- Consistency between spreadsheets
- Correct linkage between spreadsheets

Following their review a number of minor changes were made. However, their confidence in the Model's integrity is clear from the following extract from their report:

> *"Notwithstanding the recommendations made, we are satisfied, based on our review, our discussions with Management, and our understanding of Management's proposed minor updates, that the Models are mathematically accurate, are consistent throughout and link correctly and therefore the Model data accurately links into the 25 year cash flow statement."*

4.13 Financial Analysis – Conclusions

The conclusion of P.70/2012, as endorsed by the States in 2012, stated that "this report lays out a compelling case for the incorporation of Jersey Harbours and Jersey Airport", adding that incorporation would deliver a "reduction in financial liability" along with "a significant return to the States and a better deal for customers".

The financial analysis on which this report is based, validated by independent experts, fully supports the expectations contained within P.70/2012.

In particular, the analysis and the validations re-affirm that:

- The long-term capital requirements of the Ports are substantial – £276m based upon 2013 price levels
- Current performance trends are unsustainable – costs are rising faster than revenue
- Validated projections all reveal a significant cash shortfall, irrespective of the base / starting point used
- Maintaining the current business model will result in a significant financial burden for the States.

Incorporation provides the optimum model for addressing the deficit, not only by supporting the cost of the capital requirements, but also by providing a return to the States through taxation, dividends and associated benefits. It does this because, simply, the opportunities for revenue growth and operating efficiencies enabled by incorporation would not be available to the organisation while it remains a part of government.

5 THE STRUCTURE AND OPERATIONAL FRAMEWORK

5.1 Ports of Jersey Limited

The Ports of Jersey Limited will become the legal entity for the management and operations of the Harbours and Airport. It will be via this entity that all contracting, employment and licensing will be conducted.

Ports of Jersey Limited will be constituted with a Board of Directors and taxed as any other utility in Jersey.

5.1.1 100% States Owned Limited Liability Company

The most significant change for the organisation will be the transfer of responsibility and legal accountability for the operation, assets and management of harbours and airport from the Minister for Economic Development to a Board of Directors. The relationship between the States, as shareholder, and the Board will become the responsibility of the Minister for Treasury and Resources.

He or she will have an explicit duty to undertake this responsibility (a) in the interests of the States and (b) in such a way as to encourage sustainable growth in the economy of Jersey in the medium to long term.

The relationship between the shareholder and the company will be as usually exists between these parties, with the shareholder holding the Board to account for setting strategic direction, the overall management of the company and its finances along with ensuring proper stewardship of the company's assets.

As with other States-owned companies such as Jersey Post and Jersey Telecom, the formal aspects of the relationship between the Minister as shareholder and the Board will be governed by a Memorandum of Understanding (MoU). This document will cover arrangements for consultation and discussion on the new company's Strategic Business Plan and reporting back on the company's performance. It will also govern the manner in which the Minister should pursue his or her role as Shareholder. The law will provide however, that only the States could approve the sale or creation of new shares, or wind up the company.

The Board will be comprised of a combination of Executive Directors and Non-Executive Directors (NEDs). The number of independent NEDs will always represent a majority of the Board. The Law provides for the Treasury and Resources Minister to appoint the first Chairman. Subsequent appointments by the Board to the office of Chairman will be valid only with the Minister's approval. Separate Board Committees (covering aspects such as Audit, Risk, Remuneration and Nomination) will be formed from the independent NEDs.

As an incorporated entity, Ports of Jersey Limited will be subject to Jersey's financial, commercial and employment laws, including, but not limited to the Companies (Jersey) Law 1991, the Competition (Jersey) Law 2005, Employment (Jersey) Law 2003 and the Health and Safety at Work (Jersey) Law 1989.

5.1.2 Memorandum of Understanding

The purpose of the Memorandum of Understanding (MoU) will be to ensure the appropriate conduct of Ports of Jersey and to put in place an accountability framework appropriate to the business.

It will aim to foster a sound working relationship between the Minister for Treasury and Resources, as shareholder on behalf of the States, and the Board. This wil be based on a mutual understanding of expectations for the sharing of information, regular dialogue on key issues as they emerge and develop, and most importantly, the operation of a "no surprise" policy such that the Minister, in exercising his responsibilities as holder of securities, is kept informed about key business issues and decisions that might have the potential to impact on the States' interests as owner.

The MoU will be open to be modified from time to time by agreement between the parties and, importantly, nothing in it will be inconsistent with the Board's fiduciary duties as directors.

5.1.3 Shareholder Communication

Over and above its Companies Law responsibilities, the Board intends to publish its rolling five year strategic plan for PoJ and to take all necessary steps to ensure that the views of customers, stakeholders and the general public are obtained.

The Board will also institute arrangements to ensure that the Company holds periodic meetings, to which States Members will be invited, in order to be briefed on the company's performance and plans.

5.2 Operational Structure: Harbour and Airport Authorities

Through amendments to the Harbours (Administration) (Jersey) and Aerodromes (Administration) (Jersey) Laws, Ports of Jersey Limited will be appointed by the Minister for Economic Development as the Harbour Authority and the Airport Authority for Jersey.

5.2.1 Harbour Authority

The opportunity has been taken, as part of the incorporation project, to make certain amendments in order to modernise the Harbours (Administration) (Jersey) Law 1961. The principal change will be to create new roles for the Harbour Authority and for the Harbour Master who will be employed by the Authority. The Harbour Authority will assume responsibility for the maintenance, operation, management and improvement of harbours as well as the repair and maintenance of aids to navigation within the harbours and their approaches.

5.2.2 Duty Holder

The Board of Directors of Ports of Jersey Limited, as the Harbour Authority, will become accountable for ensuring the safety of marine operations in the harbour and its approaches. This will be in line with the UK Port and Marine Safety Code, a UK Government guidance document for ports on the governance of marine safety, to which UK shipping lines rightly attach considerable importance. Pursuant to this, the Board will appoint a separate role of 'Designated Person' to provide independent assurance to the Board that the safety management system is working effectively.

The role of the Board will include:

- Maintaining strategic oversight and direction of all aspects of the harbour operation, including marine safety
- Responsibility for the development of policies, plans, systems and procedures for safe navigation
- Ensuring that assessments and reviews are undertaken to maintain and improve marine safety
- Ensuring that the Harbour Authority has appropriate powers for the effective enforcement of regulation, and for setting dues at a level that adequately funds the discharge of their duties.

5.2.3 The Harbour Master

The role of Harbour Master will be retained, as an employee of the Harbour Authority. The Harbour Master will retain powers prescribed in law and, and along with any Assistant Harbour Masters, will continue to be sworn in at the Royal Court as officers with enforcement powers. Specifically, the Harbour Master will continue to have responsibility for policing, operational control and the enforcement of safety and security at the harbours of Jersey.

The Harbour Master will maintain day-to-day responsibility for the safe operation of navigation and other marine activities in the harbours and their approaches. In order to fulfil this, he or she will:

- Have powers of direction to regulate the time and manner of ships' entry to, departure from and movement within harbour waters, and other marine related safety purposes
- Ensure the co-ordination and regulation of all vessels within the harbour and its approaches
- He or she, will also be responsible for developing and implementing emergency plans and procedures, for regulating dangerous goods in transit on ships and for counter-pollution and waste disposal plans.
- Be responsible for the provision and maintenance of aids to navigation

The Harbour Master will have a right of access directly to the Board whenever required (as with the Designated Person, if different). He will have a duty to carry out matters delegated to him by the Harbour Authority, duties assigned to the role by law, and any other such matters as the Minister for Economic Development may direct through the Harbour Authority.

5.2.4 Airport Authority

The aviation sector is already subject to a greater level of regulation, mostly international in nature, than the sea ports. Jersey Air Traffic Control is regulated by the Director of Civil Aviation for the Channel Islands and, for the purposes of the Channel Islands Control Zone, is supported by the Civil Aviation Authority (CAA) in the UK on behalf of both the UK and French governments. There are therefore less consequential amendments in this area of legislation than within the maritime sector.

As with the harbour, the principal change will be to create a new role for the Board as Airport Authority.

5.2.5 Airport Director

The role of Airport Director will remain as an employee of the Airport Authority. The role description will be amended to bring it into line with the role of 'Accountable Manager' which is used in the U.K.

The Airport Director will maintain day-to-day responsibility for the safe operation of the airport and in order to fulfil this, he or she and any deputies will be sworn in at the Royal Court as officers with enforcement powers and will continue to have responsibility for policing, operational control and the enforcement of safety and security at the airport.

As with the Harbour Master, the Airport Director will have a duty to carry out matters delegated to him by the Board as Airport Authority, duties assigned specifically in law and any matters entrusted, through the Airport Authority, by the Minister for Economic Development.

5.2.6 The Chief Executive

The Chief Executive will be responsible for the operational and financial control of the Harbour Authority and the Airport Authority. He will advise the Board, as Duty Holder, on their duties and powers and, with appropriate advice from the Harbour Master and Airport Director, he or she will:

- Oversee the implementation of the Board's policies and procedures
- Have overall executive responsibility for the safety of operations and staff
- Oversee the recruitment and training of staff

5.3 Public Service Obligations

The incorporation proposals are underpinned by an overriding assumption that Ports of Jersey Limited will continue to assume responsibility for those key areas and duties that its predecessor currently fulfils today. This means that some of the functions carried out by the new company will be over and above those normally associated with the commercial operation of a port or airport, and may previously have been responsibilities of government.

In order to define these particular functions, certain obligations are defined in the Law and will be subject to agreement with the Minister for Economic Development or Minister for External Relations, as appropriate. These may be amended by Order.

Specific comments in respect of moorings are made in section 5.3.5 and on PoJ's continuing support for clubs, societies and associations in Section 3.6.

5.3.1 Coastguard

Unlike other jurisdictions, in Jersey the role of coastguard and has been carried out by Jersey Harbours. This includes the provision of the 999 emergency service. The operations room at Maritime House provides 24 hour, 365 days a year service to both commercial and leisure vessels, is responsible for the effective implementation of emergency procedures in response to all incidents at sea (search and rescue, fire, medical or pollution), and acts as the communications link between the casualty and the various emergency agencies.

Coastguard operations will continue to be provided by Ports of Jersey Limited on behalf of the Minister for Economic Development. The arrangements will be the subject of a detailed agreement with the Minister.

5.3.2 Maintenance of Aids to Navigation

The Harbour Authority will have responsibility for the maintenance of aids to navigation in port waters. The States of Jersey remains responsible for those in territorial seas. However, as Ports of Jersey Limited will continue to have the skills and resources required, it will continue to fulfil this function outside port limits, by agreement with the Minister.

5.3.3 Enforcement of Shipping Legislation

As Harbour Authority, Ports of Jersey Limited will continue to play a fundamental role in the management of shipping legislation by powers granted in law to both the Harbour Authority and the Harbour Master. In addition, Ports of Jersey Limited will be entrusted with certain broader administrative functions wider than would be usual for a UK harbour authority.

5.3.4 Limited Port State Control

Jersey does not operate a full Port State Control regime and that function will remain with the Minister for Economic Development as it is important that responsibility for it remains separate from the operation of the commercial port. However, Ports of Jersey Limited has the skills and resources to conduct the function most effectively and arrangements will be made for it to continue to do so on the Minister's behalf.

5.3.5 Management, Maintenance and Conservation of Outlying Harbours

As Harbour Authority, Ports of Jersey Limited will be responsible for the maintenance of moorings within port limits and will have the ability to charge for such moorings. The Harbour Master will retain all necessary rights and powers to ensure that such moorings do not interfere with the safety of navigation within port limits.

The Ports of Jersey Limited will perform a key role in facilitating the good management of the historic harbours, and will be required to develop a management plan for each confirming the planned maintenance and improvement works to be conducted. This will form part of the annual Strategic Business Plan. The management plans will set out the level of annual expenditure required, and it is expected that, in the first plan period at least, will be broadly the same as current spending. Importantly, plans will be developed and agreed with the parishes and be the subject of consultation with relevant interest groups such as boat owners and associations.

In respect of moorings, it is important to re-emphasise the point made earlier in this document. "The incorporation proposals are underpinned by an overriding assumption that Ports of Jersey Limited will continue to assume responsibility for those key areas and duties that its predecessor currently fulfils today". Specifically, PoJ will continue to charge for any moorings for which it currently collects mooring fees. There is no intention to extend charging to private moorings.

5.3.6 Channel Islands Control Zone

Ports of Jersey Limited will continue to provide air traffic services for the Channel Islands Control Zone, fulfilling the States of Jersey's obligations arising from the Memorandum of Understanding between the United Kingdom and French Governments. Ports of Jersey Limited will continue to derive revenue from the French and UK governments for the provision of these services, whilst operating under license from States of Jersey.

5.3.7 Sea Transport Policy

Ports of Jersey Limited will administer the permit regime on behalf of the Minister for Economic Development. The legal and policy framework relating to the management of seaborne external transport links will continue post incorporation as before. The market scope of services currently covered by the policy consists of passenger car ferry services. This may increase to cover freight operations as well, as a result of work being conducted by Jersey and Guernsey in relation to a possible long-term deal with a ferry operator.

The incorporation law provides the flexibility to permit the regulation of 'lifeline services' by the Jersey Competition Regulatory Authority. This is not automatic but, following consultation, may be activated by the Minister for Economic Development at a future juncture if a better outcome for consumers may be achieved as a result of doing so.

6 TRANSFER AND TRANSITION ARRANGEMENTS

6.1 Transfer of Property and Assets

6.1.1 Background

The principle established in P.70/2012 was that all the relevant land, buildings and other assets owned by the Public and under the operational control of the Ports of Jersey (formerly Jersey Airport and Jersey Harbours) at the point of incorporation will be transferred to the newly formed company. A map of the Properties is shown at Appendix 9.

In considering the methodology of transferring the immovable property assets it has been recognised that a balance needs to be established between allowing the newly formed company sufficient commercial freedom and agility to enhance potential income streams whilst still providing the States of Jersey with sufficient assurance that the underlying infrastructure assets are secured to meet the ongoing operation in the Island's overall best interest..

6.1.2 The Approach

Consistent with P70/2012, the principal options for tenure considered in respect of the transfer of land have been either Freehold or Long Term Leasehold.

The mechanics for the proposed freehold transfer of property transfer is for the transfer to be appended to the relevant legislation which is to be put before the States Assembly and (subject to approval) thereafter to go to the Privy Council for Royal Assent and then be returned to the Royal Court for the Law to come into force. A copy of the portion of the Law dealing with the transfer of immovable property assets will be lodged by the Greffier of the States with the Registrar of Contracts for enrolling in the Public Registry. It is the date of the enrolment in the Registry which is the effective date of transfer of the property and until that date it remains in Public ownership.

6.1.3 The Airport

The Airport estate is a patch-work of over of 250 parcels of land and a large number of other contractual agreements. Much of the title detail is evidenced in property contracts but, where these do not exist, the Public relies upon undisturbed possession of land or on historical circumstance. Whilst it is acknowledged that the "boundary work" is relevant whether conveyed by freehold or leasehold, the transfer through the legislative method provides greater certainty in the conveyance of the assets of the Airport as it allows the Public to transfer the land even where history has made the title unclear. The freehold transfer by legislation does not therefore require the bi-lateral agreement of two separate contracting parties (for example a "seller" and a "purchaser"). The Attorney General has confirmed that, as the legal title of the Airport is complex and in order to provide a greater degree of certainty, transfer of freehold title with restrictions, in order to provide assurance to States of Jersey, represents the preferred method of transfer. In these particular circumstances, it is a more effective and efficient method than the conveyance by contract passed before the Royal Court.

The interest of the Public is further protected by a provision in the Law that the company's property assets cannot be sold or hypothecated against without the agreement of the Shareholder (as represented by the Treasury and Resources Minister and/or the States Assembly as defined).

6.1.4 Harbours

In respect of the Harbours, further complexity is encountered as the greater part of the estate rests on the Foreshore, owned by the Crown and leased to the Public of the Island, while other elements sit within the Territorial Sea (also owned by the Crown). The Law is unable to provide for the transfer of the assets to the Ports of Jersey due to the fact they sit on the foreshore and undisturbed possession cannot be claimed from the Crown. In addition, Ports of Jersey have been cognisant of the wider programme of work that is being undertaken by the States of Jersey in respect of the ownership of the foreshore and the seabed.

Negotiations are ongoing between the Public and the Crown for the transfer of freehold title of the Foreshore from the Crown to the Public of the Island of Jersey. Whilst these discussions are not yet concluded they are progressing well and our assumption is that the Crown will likely pass title of the foreshore to the Public of Jersey sufficient for the Public to pass the relevant title in respect of the Harbours estate to the incorporated Ports of Jersey Limited.

The current understanding is that the only option available for the Harbours transfer would be a leasehold arrangement from the Public of Jersey to the Ports of Jersey. It is understood that the Crown will, when ready, consent to pass legal title to the Foreshore and Seabed to the Public of the Island on a basis which would, in turn, enable a long lease of the Harbours estate to be passed between the Public of the Island and the incorporated Ports of Jersey Limited.

Given this, the most effective mechanism is to transfer the Harbours' property assets on a leasehold basis, and that pending the conclusion of the negotiations between the Public and the Crown, to allow the Long Term leasehold transfer, the Harbours estate should operate under an "Interim Operating Agreement." At the conclusion of the negotiations between the Public and the Crown, the transfer of the Harbours estate should be undertaken by the most robust methodology available.

It should be noted that the transfer of the Foreshore from the Public to the incorporated Ports of Jersey relates only to those areas on which Ports of Jersey infrastructure is situated. The vast majority of the foreshore ownership is to remain with the Public. For the purpose of clarity the transfer will not include any 'beach' (as commonly understood) although beneficial rights in relation to the provision of moorings and the right to charge in relation thereto will be transferred from the Public to the Ports of Jersey.

Given this, it is useful to re-state the point made in Section 5.3.5 that, in respect of moorings, PoJ will continue to charge for any moorings for which it currently collects mooring fees. There is no intention to extend charging to private moorings.

6.1.5 Rights of Access

The Public will also retain, such rights of way over the assets transferred to the Ports of Jersey for the maintenance and improvement of retained assets and all infrastructure as may be considered reasonable. Ports of Jersey may not unreasonably restrict such access. This will be reciprocated; where Ports of Jersey may reasonably require rights to the use of or access over retained Public assets, and those rights will be ascribed to the company in a satisfactory manner. The Public (represented by a Minister) will also retain powers of compulsory purchase, which he or she will exercise on behalf of the company if ever needed. Land or property purchased by the Public for this purpose will be transferred into the ownership of the company without duty or taxation. Existing agreements (leases and licences) relating to the estate to be transferred by way of a head lease to the Ports of Jersey.

6.1.6 Other Contractual Arrangements

It is recognised that there are various arrangements in place which benefit existing customers, for example, rental subsidies in respect of various clubs and societies. The Board recognises the important role played in the Island by the various clubs, associations and societies and is committed to striving to maintain support for their activities. The general principle is that the Ports of Jersey will aim to support facilities which serve the broader maritime or aviation interest, to the same degree as is done today.

PoJ will hold meetings with each body in order to provide that reassurance within the context of the policy direction established in 2009 (see section 3.6). It is important to state that no changes are envisaged in respect of either, terms or security of tenure, as a result of incorporation.

6.1.7 Parish Rates

The Ports of Jersey will pay rates to the relevant parish for all its property assets. Arrangements have been sought between Ports of Jersey and the relevant parishes to allow the continued policing of the parking arrangements in the transferred areas.

PoJ have worked closely with all of the Parishes on aspects of incorporation, most notably the property. This has involved a range of meetings with all parishes, with repeat meetings being held with those parishes that have property or facilities within their boundaries. In each Parish we documented all property issues, approach to rates and Public Service Obligations (PSO).

In those Parishes with a Historic Harbour, 'boundary walks' have been undertaken, involving all interested parties (e.g. Parish officials, TTS, Law Officers, Property and Ports). These 'walks' enabled a detailed discussion to take place in each location, on where the boundaries and responsibilities sit. The outcomes of these meetings have been documented and the boundaries are being mapped in great detail using GPS to ensure accuracy and clarity. All issues, in respect of PoJ property and the relevant Parish, have been identified. As the detailed conveyancing documents are developed, which will be used for the actual transfer once Ports have been incorporated, the final positions with each Parish prior to the transfer.

6.2 Staff Transfer Arrangements

6.2.1 Context

In 2011, the Shadow Board recommended to the Minister for Economic Development the integration of the Harbour and the Airport into one organisation known as Ports of Jersey (PoJ). This has led to improved efficiencies and management practices with the senior management team and group functions being able to focus on the business as a whole rather than on one part of the operation. As at 31 December 2013, PoJ had a headcount of 246.

6.2.2 Undertakings and Commitments to Staff

Employees of the incorporated Ports of Jersey will benefit from a range of safeguards, all of which have been documented and enshrined within a committed policy governing their transfer which has been developed in conjunction with the Trade Unions.

The stated intent in P.70/2012 was that staff would be transferred to the incorporated entity on 'identical terms to those which they are entitled to as States' employees.'

In order to achieve this, a comprehensive and inclusive process was established known as the Staff Transfer Working Party (STWP.) The STWP has held numerous meetings with all appropriate parties, including representatives from Prospect, Unite, Housing Department, Ports of Jersey and Central Human Resources Department.

Notwithstanding any philosophical objections that the Trade Unions may have for the principle of incorporation, they have played a key role in developing the TOPSE policy and Staff Transfer Framework.

This process has set out a new approach through which Trade Unions, and the States of Jersey, are able to collaborate in developing and agreeing policies in relation to any significant changes that might impact on employees.

The STWP has developed the Transfer of Public Sector Employees (TOPSE) Policy and the Ports of Jersey and Housing Staff Transfer Framework which set out the specific terms that will apply. This has been a very thorough and successful process and the final documents were presented to the States Employment Board on 13 February 2014. The full submission to the States Employment Board is contained in Appendix 11.

The key principles contained within the TOPSE agreement, which has been based upon an overriding principle that roles and role-holders transfer across on a like-for-like basis, are as follows:

- There will be no redundancies as a result of the process of incorporation
- There will be no requirement for existing employees to apply for their current roles, nor will there be any probationary period
- All current employees will be transferred on their existing pay, terms, conditions and main policies and procedures. Importantly existing employees will continue to participate in the Public Employees Contributory Retirement Scheme (PECRS). This provision is an improvement on UK TUPE legislation which does not provide any pension protection
- Employees who do not wish to transfer to the new entity, will be deemed to have resigned. This is in line with TUPE legislation.

The Ports of Jersey has also agreed to continue to recognise the two Trade Unions that currently represent a number of employees. Consequently, those members of staff who are represented by Trade Unions, and who wish to continue to be so represented, will retain recognition and rights in line with current arrangements.

Trade Union representatives conducted a comparison of UK TUPE legislation with the TOPSE policy, which demonstrated that the TOPSE policy provides at least equivalent, and in many instances, greater benefits and safeguards for staff than provided under TUPE legislation. This document is contained in the 13 February 2014 submission to the States Employment Board.

Ports of Jersey are actively using the TOPSE policy to govern and inform all staff transfer arrangements. Certain aspects relating to the incorporation programme remain the subject of discussion with Trade Unions, namely a request to establish a pay protection period and alternative arrangements for any members of staff who do not wish to transfer. This correspondence is contained in the 13 February 2014 submission to the States Employment Board. It is anticipated that these issues will continue to crystallize through the STWP and the normal negotiation processes up to the point of employment contract exchange.

6.2.3 Staff Communications

In addition to the STWP, the Senior Management Team of the Ports of Jersey has developed a comprehensive communications programme, which provides a particular emphasis on matters and queries relating to incorporation and a forum for staff to clarify any queries or concerns that might exist in relation to their terms and conditions.

In the lead up to P.70/2012 in October 2012 there was a series of staff briefings held to ensure that employees were kept fully informed. This has intensified in the last 18 months through regular ‘Town Hall’ briefing sessions and many other meetings in which the Group Chief Executive (GCEO) briefed employees, in small groups, on the work of the STWP and the development of the TOPSE policy. This comprehensive and intimate briefing and consultation process provided employees with a further opportunity to raise questions, and the GCEO responded to all the key issues and concerns that were raised and circulated a document providing responses for the benefit of all members of staff. The full details of this are contained in the 13 February 2014 submission to the States Employment Board at Appendix 11

In addition, Ports of Jersey, in consultation with the Trade Unions, added two questions to the States of Jersey Employee Engagement Survey that took place in November 2013. The results indicate that the communication and feedback process has been effective. 76% of employees felt that they had been kept ‘fully informed about incorporation’ whilst 84% stated that they had been ‘given the opportunity to raise questions about incorporation.

The Ports of Jersey Senior Management Team has placed great emphasis on communicating with staff in order to ensure that it is fully aware of how employees feel about incorporation and remains focused on ensuring that, any fears are allayed as far as possible. The GCEO team briefings continued in April and May 2014 with presentations to all staff on the business case for Incorporation. This means that all PoJ staff will receive an in depth briefing on the business case for incorporation. As with all of the communication performed in the Ports in recent years, a full Q&A and a detailed set of documents will be placed in the staff internet site.

In addition to the above there are regular communication sessions with Senior Managers and staff ‘Town Hall’ sessions are held to brief all staff 3 or 4 times per year. In order to ensure that all staff have easy access to all of the relevant communications and documents, all these have been placed on the staff intranet site.

6.2.4 Pensions

The Chief Minister has agreed that Ports of Jersey will become an 'admitted body' within PECRS. The PECRS Committee of Management is supportive of this. The Participation Agreement is attached at Appendix 12 and will be signed at the time of Incorporation.

The effect of this agreement is that existing employees will continue to be members of PECRS and will continue to enjoy the same benefits, and pay the same pension contributions, as all other States of Jersey employees.

A series of staff briefings sessions are being arranged specifically to address any outstanding concerns that staff may have.

A consequence of PoJ moving to 'admitted body' status will be the crystallisation of the share attributable to it of the 'pre 87 debt'. The amount involved, which will be calculated precisely by the PECRS Actuary, is likely to be about £18 million. It will be paid from the Trading Fund account. The outstanding debt on the States account will fall by the same amount.

7 RISKS AND SAFEGUARDS

Given the importance of incorporation of the Ports of Jersey, this section addresses a number of the key concerns and issues that may that exist in respect of this proposal. The first section identifies some of the key Risks, and the second sets out the Safeguards that are in place within in the structure of the new company and in the legislative and regulatory regime that the Company will be required to operate within.

7.1 Risks

Throughout the Incorporation Programme, the team have identified a range of high level risks. These are documented in the following table:

Risk/Key concerns	Mitigation
States are giving away the 'crown jewels' in terms of property	As 100% shareholder, the States will hold ultimate control. Any significant change, such as the sale of property, must be sanctioned by either the Minister of Treasury and Resources or, in some cases, by the States itself
As capital intensive business it is very likely that PoJ will still need to come back to the States for funding	The business case sets out the level of financial 'risk' to the States if incorporation does not go ahead. The financial projections indicate that there will be no necessity to come to the States for funding. They are it recognised that they are projections and it is impossible to allow for every eventuality. However, the Board, EDD and Treasury feel that these projections are a sound basis for moving forward and that incorporation offers the best method of reducing the risk to the States and, indeed, of generating additional revenues for the States.
What happens if the list of commercial projects don't deliver as expected	Whilst PoJ are confident that some the projects listed will be successful, the list as it stands is indicative of the type of projects that an incorporated business will be able to deliver. There will be others that will be identified, and the new business will have the agility and the skills to implement them more effectively than is possible today.
How do we make sure that prices will not just be increased?	The financial model does not include any above inflation price rises. More importantly the Law states that PoJ must 'must act in the manner best calculated to secure sustainable growth in the economy of Jersey' In addition, PoJ will be regulated by the JCRA whose regulatory focus will be aimed at ensuring that PoJ does not, and cannot, act anti-competitively in the air and sea transport markets, and that it behaves fairly and reasonably towards all customers. Both of these requirements places customers in a stronger position than they are today.
Staff terms and conditions will be reduced after incorporation.	PoJ have worked very closely with Trade Unions and staff to develop and agree basis on which staff will be transferred. This policy ensures that staff will transfer into the new company on exactly the same terms, which Importantly, includes Pensions. The Trade Unions have stated that the policy that has been developed is better than TUPE in the UK.
PoJ will not focus on meeting its obligations and responsibilities for the outlying harbours	PoJ see this as a very important part of their role into the future. The intent in the Law is, in essence, to ensure that PoJ continues to do what it does now. This is set out in the Public Sector Obligations, an element of which, states that PoJ will have to agree a plan for these Harbours with the Minister and also obliges then to work with the Parishes in respect of implementation.
This is simply the first step towards privatisation	As 100% shareholder, the States will have ultimate control. The Law is very clear that PoJ has no ability to either sell or create shares without the agreement of the States as shareholder.

The incorporation law contains a variety of constraints and safeguards, the main aspects of which are described below.

7.2 Safeguards

7.2.1 States Ownership

Ports of Jersey Limited will be wholly owned by the States of Jersey and governed by a Board of Directors. Only the States will have the power to dispose of any shares or make changes to this ownership structure through the issue of new shares or to wind up the company.

The relationship between the States, as shareholder, and the Board will be managed by a Memorandum of Understanding with the Minister for Treasury and Resources. This will ensure the appropriate conduct of Ports of Jersey Limited and put in place an accountability framework for the business. It will establish a mutual understanding of expectations for the sharing of information, regular dialogue on key issues as they emerge and develop and, most importantly, the operation of a 'no surprise' policy such that the Minister is kept fully informed on key business decisions that have the potential to impact on the States of Jersey, as owner.

Incorporation provides, indeed necessitates, the opportunity to define overarching strategic objectives for the new company. Within a government structure this has never been done. The draft law provides, at Article 5, that PoJ's primary object shall be to provide, or ensure the provision of, safe, secure and efficient port operation for Jersey. Subject to that, in carrying out all commercial operations the company must act in the manner best calculated to secure sustainable growth in the economy of Jersey, and in a way that imposes a minimum of restriction on persons engaging in commercial activities.

The Board welcomes these challenging objectives, which will point the new company very clearly towards acting and delivering services in support of the whole population of Jersey, whether direct customers, users of the harbour and airport, or those who rely for their livelihoods on the timely delivery of goods through the ports. It should be added, importantly, that these duties imposed on the Board are mirrored in the duties imposed on the Minister and the JCRA as to the exercise of their functions under the law.

In addition, the Ports of Jersey will continue their very good open communication with stakeholders, politicians, customers and the public.

7.2.2 Public Service Obligations

Additional public service obligations will be conferred on Ports of Jersey Limited over and above its commercial role as a provider of port operations. These will ensure the continued provision of coastguard operations, maintenance of aids to navigation, and other matters which would not usually be part of the commercial operation of a harbour or airport or have previously been a government responsibility. These obligations will be managed through appropriate arrangements with the relevant government department and subject to review by the JCRA.

The Ports of Jersey support many clubs, associations and organisations all of which are connected to maritime and aviation activities. PoJ feel strongly that vibrant and growing clubs and associations are very important for the future prosperity and customer base of the Ports. This principle is a core pillar of our approach on Corporate Social Responsibility (see Appendix 15).

It is understandable that clubs, societies and associations are seeking reassurance in respect of the perceived changes that the proposed incorporation of PoJ represents. It is therefore, important to state that PoJ intends to continue to follow the existing policy and that no changes are envisaged in respect of either, terms or security of tenure, as a result of incorporation.

PoJ will hold meetings with each body (some meetings have already been held) in order to provide this reassurance within the context of the policy direction established in 2009 (see section 3.6).

A growing Ports of Jersey will be better placed to invest resources in order to work collaboratively with our clubs, associations and societies with the aim of supporting them in the achievement of their objectives.

7.2.3 Legislation and Regulation

The company will operate within all the usual Jersey legislation, and will be subject to all planning, employment, competition and company laws in the normal way. In this regard, it will be the Board of Directors who is legally liable for the behaviour and actions taken by the company.

7.2.4 Economic Regulation

A further crucial, and new element of the arrangements for incorporation will be that the company will be required to be licensed by the JCRA in order to be able to carry out port operations. The company's licence to operate will depend on its meeting a range of conditions set by the JCRA. A wide range of spheres potentially to be covered by this independent regulation is set out in Article 15 of the draft law.

In essence conditions will be aimed at ensuring that PoJ does not, and cannot, act anti-competitively in the air and sea transport markets, and that it behaves fairly and reasonably towards all customers. This will be akin to the regulatory regimes established by the States a decade ago for Jersey Telecom and Jersey Post. This is a significant advance in the interests of Ports customers and users compared with the present situation. The Board welcomes this important part of the whole incorporation package and believes it adds a further strong argument to the business, and indeed economic, case for incorporation. Further detail is shown below:

Ports of Jersey Limited will be regulated by the Jersey Competition Regulatory Authority by sector specific regulation provided for within the legislation. The company will have a right to operate the air and sea ports conferred by licence, which may include certain specific conditions.

Although in practice the company will be the sole operator of air and sea ports in Jersey for the foreseeable future, the company will not hold a perpetual monopoly on such operations and the regulator will retain the right to issue licenses for that purpose to other parties. In practice, however, this is not anticipated.

The Jersey Competition Regulator Authority (Principles of Regulation shown at Appendix 13) will have the capacity to issue binding directions in respect of license conditions following due process and consultation, and the Minister for Economic Development will have the power to give guidance to the JCRA in respect of the regulation of the air and sea ports. The Minister will also have the power to direct the JCRA in certain specific circumstances, in keeping with his powers in respect of other regulated entities.

Post incorporation, Ports of Jersey Limited will be required to maintain a level of transparency in its policy and procedures to the satisfaction of the regulator, which will include matters and decisions relating to the levying of charges and dues. Any cross subsidy between the ports will be transparent and open, and subject to consideration by the JCRA. The need for cross subsidy to exist and for account to be taken of this by the JCRA will be set out in a direction by the Minister upon incorporation.

7.2.5 Operational Regulation

There will be no change to the operational regulation of the sea ports or the airport, with the Director of Civil Aviation continuing to regulate the aviation sector and the Minister for Economic Development continuing to regulate the maritime sector. Details shown at Appendix 10

Aviation Sector

The incorporation of Ports of Jersey will not change the current arrangements for the regulation of the aviation sector. Under the Civil Aviation (Jersey) Law 2008, the Director of Civil Aviation will continue to be responsible for the safety of aerodromes and air traffic, and to license Jersey Airport and approve air traffic controllers. He will also continue to regulate the Channel Islands Control Zone and operation of meteorological services for the purpose of international air navigation in Jersey and the Channel Islands Control Zone.

Maritime Sector

The regulation of maritime safety, security and pollution prevention will remain the responsibility of the Minister for Economic Development. There is no intention to create any new powers or increase the scope of maritime regulation, merely to formalise the arrangements that already exist.

The Minister for Economic Development will retain the power to direct the Harbour Authority in certain circumstances. In this situation, government will be responsible for any liability arising from such actions. Any direction will be made to the Harbour Authority, although may be carried out by the Harbour Master through his delegated authority from the Board. In particular, this may be important in the case of an emergency.

7.2.6 Emergency Powers

Ports of Jersey will be subject to emergency orders or directions by a competent authority under the Emergency Powers and Planning (Jersey) Law 1990.

In times of emergencies, the Minister for Economic Development and Director of Civil Aviation will still be able to direct the Ports of Jersey Limited to perform certain activities in the national interest.

8 CONCLUSION AND RECOMMENDATION

This ‘Case for Incorporation’ follows on from the approval ‘in principle’ to incorporate the Ports of Jersey passed by the States in October 2012. It presents a compelling proposition for the reduction of risk and improvement of benefits to States of Jersey, describes the process and environment of the Incorporation and identifies a wide range of safeguards to the public of Jersey. The goal of Incorporation is to enable self-sustainability of gateway services for the benefit of Jersey and, as this paper shows, incorporation provides the most practical mechanism to enable self-sustainability.

This paper reinforces the recommendations of previous reports and studies, all of which pointed to the conclusion that the Ports of Jersey should be incorporated. The financial challenge is significant. Failing to incorporate Ports of Jersey means that there will be an increased risk of States of Jersey having to fund a large future liability to keep the essential gateway services open.

This paper lays out the stark situation, proposes a realistic solution and identifies a range of safeguards for the public. At the same time, it reaffirms that incorporation reduces the financial risk to the States, enables Ports of Jersey to become self-sustainable and protects the future of the strategic gateways to the Island. Incorporation maximises the opportunities for success.

It is recommended that this proposition is approved and that Incorporation of the Ports of Jersey is finalised at earliest possible date.

LIST OF APPENDICES