

Rozel Boat Owners' Association

Response to JCRA Case P-008 "Regulatory Review of Air and Sea Port Operations: Pricing Framework Non-statutory Draft Decision" dated 20 June 2024

We are broadly in support of the Decision and agree with the approach referred to in questions 1 and 2 of the Consultation questions as far as they may apply to ourselves. We have no comment to make regarding question 3.

Question 4 invites other comments.

This is important to us as we need clarification as to whether the historic harbours (such as Rozel Harbour) are indeed covered by the Licence or form part of the public service obligation (PSO), as referred to in paragraph 2.16 of the draft Decision.

Paragraph 2.16 also refers to Annex 1, but Annex 1 does not quite provide this clarification.

Article 6(1)(c) of the Air and Sea (Incorporation)(Jersey) Law 2015 ("the Law") makes it clear that Ports of Jersey Limited ("POJL") are to act as the custodian of Jersey harbours as a PSO. That custodial role is not covered by the licence.

Whilst Article 5(1) of the Law sets out POJL primary object to provide a safe, secure and efficient port operation, furthermore Article 5(2) of the Law says that POJL is to secure sustainable economic growth whilst carrying out commercial port operations. However, Article 5(3) of the Law goes on to say that the harbour operations which form part of the PSO are excluded from commercial port operations.

The exclusion of the PSO from commercial port operations as set out in Article 5(3) of the Law is reflected in paragraph 12.3 of the port operation licence issued on 1 November 2015 to POJL by the JCRA.

Prior to Incorporation, details as to the position of the outlying harbours was given in a government White Paper

www.gov.je/Government/Consultations/Pages/PortsIncorporation.aspx

In particular section 5.3 of the associated Ports of Jersey Case for Incorporation document states - "*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...*"

www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20A%20Ports%20of%20Jersey%20incorporation%20case%20document%2020140528%20CS.pdf

Section 5.3.5 amplifies the role of Ports of Jersey in looking after outlying harbours. The right to charge for moorings is undisputed but that is clearly within the context of being

custodian and not within the commercial port operation. The full text of section 5.3.5 is as follows:

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."

Projet 5 of 2015 was passed by the States in June 2015 and the status of outlying harbours was again affirmed as being part of the PSO -

"As the name suggests, these Public Service Obligations (PSOs), are legal requirements on the company, and their effective provision is a duty owed by the company to the Public. These include the co-ordination of search and rescue services and the maintenance of historic Harbours, as well as other requirements."

For the above reasons it seems that a pricing regime in excess of inflation and which is tied to the growth of POJL as a commercial entity cannot apply to outlying harbours. These old and beautiful places are held in custody for all the people of the Island to share and enjoy. It can be argued that the most a local boatowner could expect to pay would be sufficient to cover the cost of maintaining the ground chain to which his/her mooring lines are attached.

In summary, fees relating to long-term moorings and barraques in Jersey harbours would appear to be outside of the terms of the port operation Licence issued by JCRA to POJL . Accordingly, we would seek a specific statement expressing the view of the JCRA on this matter.

