



PoJ1395J

# Ports of Jersey Long-term Pricing Framework

## Assumptions

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## Decision

## Jersey Competition Regulatory Authority

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## Contents

<b>1. Overview .....</b>	<b>3</b>
<b>2. Summary of Decision .....</b>	<b>4</b>
<b>3. Introduction .....</b>	<b>9</b>
<b>4. Process for setting a long-term pricing framework.....</b>	<b>11</b>
<b>5. Structure of this Decision .....</b>	<b>12</b>
<b>6. Decision on the Assumptions to be used to underpin a pricing framework .....</b>	<b>13</b>
<b>7. Next Steps.....</b>	<b>34</b>
<b>Appendix 1 – Legal Framework .....</b>	<b>A</b>

## 1. Overview

- 1.1 Ports of Jersey Limited (**PoJL**) is the company that owns and operates the airport, harbours and marinas in Jersey. It is the only licensed port operator for Jersey.
- 1.2 The Channel Islands Competition and Regulatory Authorities (**CICRA**) is the economic regulator with specific responsibilities in respect of the oversight of PoJL. As part of its oversight role CICRA is developing a pricing framework for PoJL.
- 1.3 CICRA is introducing a pricing framework to incentivise PoJL to act in a manner that protects and furthers the interests of ports users in the short and long term. The process of introducing a pricing framework is an interactive one. CICRA provides regular updates of its work, releases information and issues consultation documents for comment. Interested parties have the opportunity to respond and their views are taken into account by CICRA in arriving at its decisions.
- 1.4 In September 2018, CICRA began the public process to introduce a pricing framework by issuing a Call for Information, seeking the views of interested parties about the assumptions proposed by PoJL to underpin a pricing framework. The consultation on the Call for Information closed on 2 November 2018 and, having taken full account of the responses received, on 14 December 2018 CICRA issued its Draft Decision setting out the conclusions it had reached.
- 1.5 In issuing its Draft Decision, CICRA gave interested parties a further opportunity to comment on its reasoning. The consultation on the Draft Decision closed on 18 January 2019, however at the request of PoJL, the deadline for its response was extended to 31 January 2019. Three responses were received.
- 1.6 This document sets out CICRA's Decision on key assumptions to underpin a pricing framework, having taken full account of responses to the Call for Information and the Draft Decision, and having carried out further research to ensure it has fully addressed respondents' points and to develop its own assessment.
- 1.7 CICRA reserves the right to revisit its Decision at a later stage in the process to introduce a pricing framework, on the basis that further and more detailed information may be provided by respondents or identified by CICRA during the course of its work.
- 1.8 The second stage of the process is for PoJL to submit its proposed pricing framework based on CICRA's Decision, in which it will set out its suggested financial model, explain the financial implications of those key assumptions for its stakeholders, including on prices, and put forward a mechanism for assessing compliance with the control.
- 1.9 The third and final stage of the process for setting a long term pricing framework is the Statutory Stage, the end result of which is binding on PoJL.

## 2. Summary of Decision

2.1 This section of the Decision provides a summary of the conclusions which CICRA has reached, having taken full account of responses to the Call for Information and the Draft Decision, and having carried out further research, to ensure it has fully addressed respondents' points and to develop its own assessment.

Assumption	Draft Decision	Decision
Starting Point	<ul style="list-style-type: none"> <li>• The Air and Sea Ports (Incorporation) (Jersey) Law 2015;</li> <li>• The Air and Sea Ports Incorporation (Transfer) (Jersey) Regulations 2015;</li> <li>• The report and proposition 'Incorporation of Ports of Jersey' (P.70/2012);</li> </ul> and for the reasons set out above, to a lesser extent, <ul style="list-style-type: none"> <li>• Evidence and assurances provided to Scrutiny Committees</li> <li>• CICRA's Proposed Regulatory Framework</li> <li>• The Case for Incorporation</li> </ul>	<i>No change</i> <ul style="list-style-type: none"> <li>• The Air and Sea Ports (Incorporation) (Jersey) Law 2015;</li> <li>• The Air and Sea Ports Incorporation (Transfer) (Jersey) Regulations 2015;</li> <li>• The report and proposition 'Incorporation of Ports of Jersey' (P.70/2012);</li> </ul> and for the reasons set out above, to a lesser extent, <ul style="list-style-type: none"> <li>• Evidence and assurances provided to Scrutiny Committees</li> <li>• CICRA's Proposed Regulatory Framework</li> <li>• The Case for Incorporation</li> </ul>
General Inflation	3.0% per annum for modelling purposes, with the exception of existing property leases which should reflect the terms of the agreements in place.	<i>No change</i> 3.0% per annum for modelling purposes, with the exception of existing property leases which should reflect the terms of the agreements in place.
Business Volumes	<ul style="list-style-type: none"> <li>• 2.7% for air passengers;</li> <li>• 1.25% for sea passengers; and</li> <li>• 0.53% for freight &amp; fuel.</li> </ul>	<i>Amended - Regulatory pass-through type mechanism</i> <ul style="list-style-type: none"> <li>• 0.8% for air passengers;</li> <li>• 0.0% for sea passengers; and</li> <li>• 0.53% for freight &amp; fuel.</li> </ul>
Master Plans contained within the	Airport - £34.05m (based on a total investment of £40m),	<i>Amended – total investment cost, clarification</i>

<p>Long Term Capital Plan</p>	<p>Harbour – decision deferred</p> <p>PoJL will be required to demonstrate delivery of the project at, or below, the cost allowed. In the event of a cost overrun, PoJL will be required to demonstrate how it intends to ‘make good’ the overrun.</p>	<p>Airport - £34.05m (based on a total investment of £42.6m),</p> <p>Harbour – decision deferred</p> <p>PoJL will be required to demonstrate delivery of the project at, or below, the cost allowed. In the event of a cost overrun, PoJL will be required to demonstrate how it intends to ‘make good’ the overrun which must be funded through generating additional commercial, i.e. non-regulated, income. PoJL will not be allowed to recover any cost overrun through regulated income.</p>
<p>Long term capital plan</p>	<p>£73.562m over the period of the pricing framework with the requirement that PoJL</p> <ul style="list-style-type: none"> <li>• demonstrates that it has engaged fully and meaningfully with stakeholders, reflecting the views expressed by stakeholders during that engagement process, or state why particular feedback has not been reflected;</li> <li>• demonstrates how its capital expenditure has / will meet the current and future needs of its customers; and</li> <li>• demonstrates that it has delivered those projects at a cost of no more than the minimum amount of money needed.</li> </ul> <p>In the event of a cost overrun, PoJL will be required to demonstrate how it intends to ‘make good’ the overrun.</p>	<p><i>Amended - clarification</i></p> <p>£73.562m over the period of the pricing framework with the requirement that PoJL</p> <ul style="list-style-type: none"> <li>• demonstrates that it has engaged fully and meaningfully with stakeholders, reflecting the views expressed by stakeholders during that engagement process, or state why particular feedback has not been reflected;</li> <li>• demonstrates how its capital expenditure has / will meet the current and future needs of its customers; and</li> <li>• demonstrates that it has delivered those projects at a cost of no more than the minimum amount of money needed.</li> </ul> <p>In the event of a cost overrun, PoJL will be required to demonstrate how it intends to ‘make good’ the overrun which must be funded through generating additional commercial, i.e. non-regulated, income. PoJL will</p>

		not be allowed to recover any cost overrun through regulated income.
Commercial Projects	<p>£17.998m over the period of the price control framework.</p> <p>PoJL must separate commercial from non-commercial projects. Commercial projects should be included on the basis of an appropriate contribution, and non-commercial projects should distinguish between revenues, costs and capital required.</p>	<p><i>Amended - Clarification</i></p> <p>£17.998m over the period of the price control framework.</p> <p>PoJL must separate commercial from non-commercial projects. Commercial projects should be included on the basis of an appropriate contribution, and non-commercial projects should distinguish between revenues, costs and capital required.</p> <p>Commercial projects are defined as those projects that fall outside areas where PoJL has previously been found to be dominant.</p>
Net Debt on Core Activities	No limit set.	<p><i>No change</i></p> <p>No limit set.</p>
Net Debt on Commercial Projects	Debt on specific projects should be assessed on a project by project basis.	<p><i>No change</i></p> <p>Debt on specific projects should be assessed on a project by project basis.</p>
Cost of Debt	<p>3% pre-tax nominal cost in the medium term</p> <p>5% pre-tax nominal cost in the long term</p>	<p><i>No change</i></p> <p>3% pre-tax nominal cost in the medium term</p> <p>5% pre-tax nominal cost in the long term</p>
Operating Cost Efficiency	1.0% in real terms per annum	<p><i>No change</i></p> <p>1.0% in real terms per annum</p>

<p>Depreciation of Fixed Assets</p>	<p>PSO assets - the expected cost of purchasing PSO assets should be allowed in the calculation of revenue, if necessary, but depreciation should not be taken into account.</p> <p>For all Business Assets (those which generate revenue directly or indirectly, including substantial infrastructure such as runways and harbour ramps) depreciation should be allowed over the full anticipated useful life of the asset, based on its actual cost or FRS102 value.</p>	<p><i>No change</i></p> <p>PSO assets - the expected cost of purchasing PSO assets should be allowed in the calculation of revenue, if necessary, but depreciation should not be taken into account.</p> <p>For all Business Assets (those which generate revenue directly or indirectly, including substantial infrastructure such as runways and harbour ramps) depreciation should be allowed over the full anticipated useful life of the asset, based on its actual cost or FRS102 value.</p>
<p>Public Service Obligations</p>	<p>The cost of the PSOs should be assumed at the current (2018) level in real terms less the efficiency assumption set elsewhere in this decision.</p>	<p><i>No change</i></p> <p>The cost of the PSOs should be assumed at the current (2018) level in real terms less the efficiency assumption set elsewhere in this decision.</p>
<p>Community Support</p>	<p>The cost of community support should be assumed to continue at the current (2018) level in real terms less the efficiency assumption set elsewhere in this decision.</p>	<p><i>No change</i></p> <p>The cost of community support should be assumed to continue at the current (2018) level in real terms less the efficiency assumption set elsewhere in this decision.</p>
<p>Dividend to Shareholder</p>	<p>Nil</p>	<p><i>No change</i></p> <p>Nil</p>
<p>Funding Philosophy</p>	<p>Funding for investments will be from a combination of retained capital and debt raised without SoJ guarantees and from retained capital.</p> <p>PoJL should assume the use of a single till based on CICRA's definition that 'all activities (both regulated and non-regulated 'commercial' activities) are taken into</p>	<p><i>No change</i></p> <p>Funding for investments will be from a combination of retained capital and debt raised without SoJ guarantees and from retained capital.</p> <p>PoJL should assume the use of a single till based on CICRA's definition that 'all activities (both regulated and non-regulated 'commercial' activities) are taken into</p>

	<p>consideration when determining the level of charges’.</p> <p>PoJL should not explicitly separate harbour operations from airport operations or make any other possible divisions such as separating public service obligations for the purposes of determining this pricing framework.</p> <p>In the longer term PoJL should generate revenues from investments and operations which cover the actual cost of those investments and those revenues should be linked closely to costs.</p>	<p>consideration when determining the level of charges’.</p> <p>PoJL should not explicitly separate harbour operations from airport operations or make any other possible divisions such as separating public service obligations for the purposes of determining this pricing framework.</p> <p>In the longer term PoJL should generate revenues from investments and operations which cover the actual cost of those investments and those revenues should be linked closely to costs.</p>
Period of Pricing Mechanism	5 years with the possibility of extension following a detailed review	<i>No change</i> 5 years with the possibility of extension following a detailed review.
Other matters	In its next submission, PoJL will be expected to explain how it proposes to utilise its existing cash reserves.	<i>No change</i> In its next submission, PoJL will be expected to explain how it proposes to utilise its existing cash reserves.



### 3. Introduction

- 3.0 Ports of Jersey Limited (**PoJL**) is the company which owns and operates the airport, harbours and marinas in Jersey. PoJL is the only licensed<sup>1</sup> port operator for Jersey, providing commercial port operations and services to a diverse range of customers.
- 3.1 The Channel Islands Competition and Regulatory Authorities (**CICRA**) is the economic regulator with specific responsibility for the oversight of PoJL. The duties of CICRA are stated in the Air and Sea Ports (Incorporation) (Jersey) Law 2015 (the Law) and are set out in full in Appendix 1.
- 3.2 In summary, in addition to licensing port operators, CICRA is responsible for regulating so as best to:
- a) protect and further the interests of ports users in the short and long term;
  - b) ensure that all reasonable demands for port operations can be satisfied;
  - c) ensure that port operations are provided efficiently and effectively; and
  - d) ensure that PoJL (as a licensed port operator) has sufficient financial resources.
- 3.3 In discharging its duties as economic regulator, CICRA places particular emphasis on the oversight of those services provided by PoJL of which PoJL is the dominant supplier<sup>2</sup>.
- 3.4 A CICRA priority is to develop and implement a pricing framework which ensures that charges levied by PoJL, for services where it has been found to be dominant, are reasonable, reflect a fair sharing of risk and incentives between PoJL and ports users, and provide sufficient financial resources to allow for the provision of port operations in both the short and long term.
- 3.5 CICRA is adopting a proportionate and pragmatic approach to the development and implementation of this more comprehensive pricing framework, by relying whenever possible on the information already used by PoJL, subject to an ongoing assessment of the effectiveness of this approach. This is appropriate because, relative to many other economies in which economic regulation occurs, Jersey's is small. The complications and therefore costs inherent in adopting a more intrusive regulatory approach, for example requiring the development of specific regulatory models, need to be proportionate to the benefits likely to be achieved.
- 3.6 In September 2018, CICRA began the public start of the process to introduce a pricing framework by issuing a Call for Information<sup>3</sup> (the **Call for Information**) seeking the views of interested parties about the assumptions proposed by PoJL that underlie its business plan, which were presented by PoJL in their document 'Ports of Jersey – Long Term Capital and Funding Assumptions and Regulatory Principles arising from Incorporation – Submission to the JCRA'<sup>4</sup> (the **Submission**). The consultation period for the Call for Information closed on 2 November 2018. Seven responses were received from the States of Jersey (**SoJ**), Condor,

<sup>1</sup> <https://www.cicra.gg/media/2989/ports-of-jersey-limited-licence.pdf>

<sup>2</sup> CICRA 16/41: Ports of Jersey – Assessment of Market Power. See also Appendix 1.

<sup>3</sup> CICRA 18/40: PoJ1395J - Ports of Jersey Long-term Pricing Framework - Assumptions - Call for Information

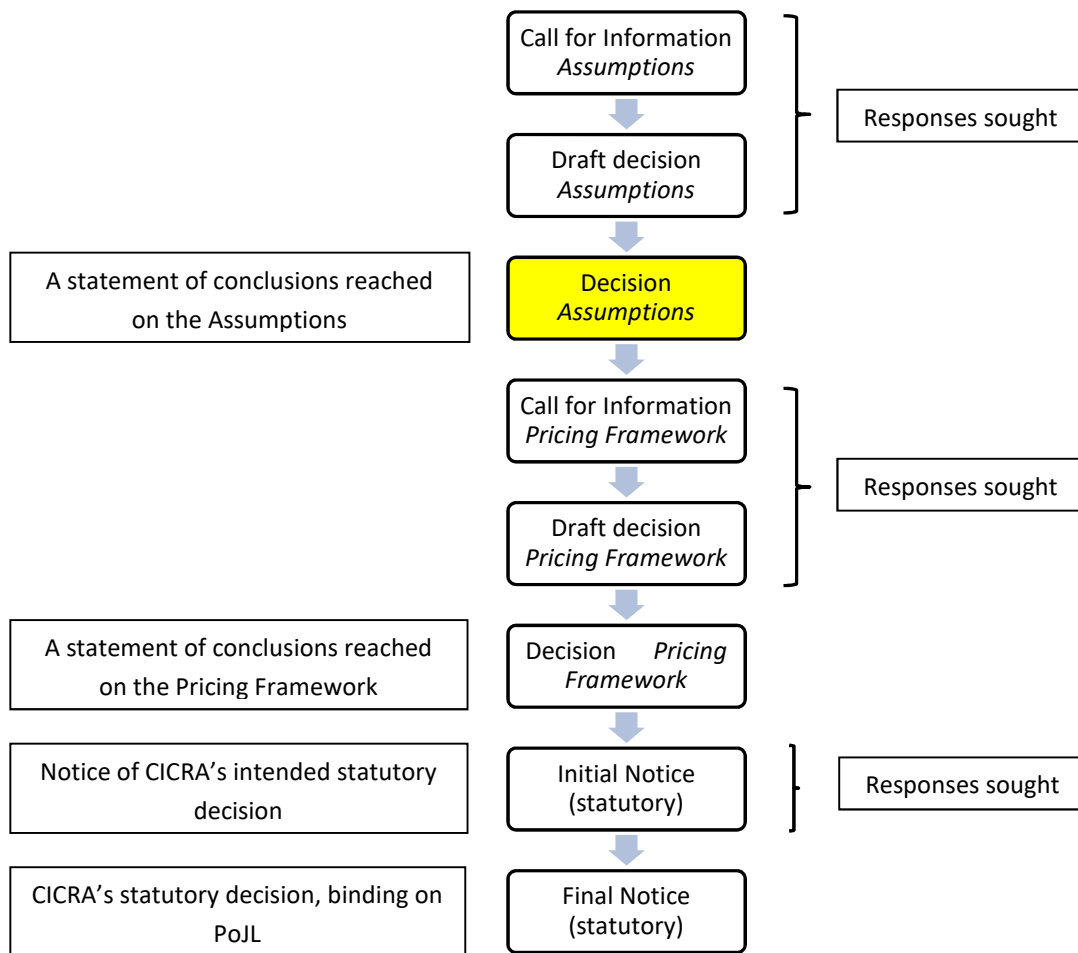
<sup>4</sup> See Annex A of CICRA 18/40

Manches-Iles, Blue Islands, Mr Finch, St Helier Boat Owners Association and one confidential response (the **Confidential Response**). The non-confidential responses are published on CICRA's website [www.cicra.je](http://www.cicra.je).

- 3.7 On 14 December 2018 CICRA issued its Draft Decision setting out the conclusions which CICRA had reached, having taken full account of responses to the Call for Information, and having carried out further research to ensure it has fully addressed respondents' points and to develop its own assessment. In issuing its Draft Decision, CICRA gave interested parties a further opportunity to comment. The consultation period for the Draft Decision closed on 18 January 2019, however at the request of PoJL, the deadline for its response was extended to 31 January 2019. Three responses were received, from the States of Jersey (**SoJ**), Condor and PoJL.
- 3.8 This document sets out CICRA's Decision on key assumptions to underpin a pricing framework, having taken full account of responses to the Call for Information and the Draft Decision, and having carried out further research to ensure it has fully addressed respondents' points and to develop its own assessment.
- 3.9 CICRA reserves the right to revisit its Decision at a later stage in the process to introduce a pricing framework, on the basis that further and more detailed information may be provided.
- 3.10 The second stage of the process for setting a long term pricing framework for PoJL is for PoJL to submit its proposed pricing framework, based on CICRA's Decision, in which it will set out its suggested financial model, explain the implications of its proposal for its stakeholders, including on prices, and put forward a mechanism for assessing compliance with the control.
- 3.11 The third and final stage of the process for setting a long term pricing framework is the Statutory Stage during which CICRA will give Initial Notice of its intended statutory decision, seek responses and having taken into account any responses received, it will issue a Final Notice which is binding on PoJL.

## 4. Process for setting a long-term pricing framework

- 4.1 This process for setting a long-term pricing framework has three primary stages:
- a) Pre-statutory assumptions stage
  - b) Pre-statutory pricing framework stage
  - c) Statutory stage
- 4.2 The intention behind the three stages is to ensure that interested parties have an opportunity to comment separately on PoJL’s assumptions (the Assumptions stage) and the actual requirements derived from the assumptions (the Pricing Framework stage) before the final Statutory stage that will bring the framework into effect.
- 4.3 CICRA is following the process set out below, which is based on its standard Regulatory Consultation Process<sup>5</sup>.



<sup>5</sup> CICRA 18/29

## **5. Structure of this Decision**

- 5.1 This Decision is the third part of the process outlined in Section 3 above. It sets out the conclusions that CICRA has reached, having taken full account of responses to the consultation and draft decision and having carried out further research to ensure it has fully addressed respondents' points. The document contains summaries of particular points raised to illustrate CICRA's reasoning.
- 5.2 This document is organised around the questions asked in the Call for Information.
- 5.3 A summary of next steps is in Section 7.
- 5.4 The legal framework, on which CICRA's determination of a pricing framework is based, is in Appendix 1.

## 6. Decision on the Assumptions to be used to underpin a pricing framework

CICRA is adopting a proportionate<sup>6</sup> and pragmatic approach to the development and implementation of the pricing framework for PoJL, by relying, whenever possible, on the information already used by PoJL, subject to an ongoing assessment of the effectiveness of this approach.

PoJL made its submission to CICRA detailing the assumptions proposed by PoJL that underlie its business plan, on which it suggested that the pricing framework should be based. CICRA presented these assumptions in its Call for Information, seeking the views of interested parties on those assumptions. CICRA then issued its Draft Decision in which it presented each of the assumptions proposed by PoJL, repeated the question that was posed in the Call for Information, summarised respondents' comments and provided CICRA's analysis and conclusion.

CICRA is following the same approach for its Decision, taking into account the respondents' comments from both the Call for Information and the Draft Decision together with CICRA's analysis and the Decision it has reached.

### 6.1 Starting Point

Category	PoJL Proposed Assumption	CICRA Draft Decision	CICRA Decision
<b>Starting Point</b>	<i>Long term foundation and business philosophy are established with the Case for Incorporation documentation and the Air &amp; Sea Ports Incorporation (Jersey)</i>	<p>Appropriate starting points for the assumptions to be used for a long-term pricing framework are</p> <ul style="list-style-type: none"> <li>• The Air and Sea Ports (Incorporation) (Jersey) Law 2015;</li> <li>• The Air and Sea Ports Incorporation (Transfer) (Jersey) Regulations 2015;</li> <li>• The report and proposition 'Incorporation of Ports of Jersey' (P.70/2012); and, to a lesser extent,</li> </ul>	<p><i>No change</i></p> <p>Appropriate starting points for the assumptions to be used for a long-term pricing framework are</p> <ul style="list-style-type: none"> <li>• The Air and Sea Ports (Incorporation) (Jersey) Law 2015;</li> <li>• The Air and Sea Ports Incorporation (Transfer) (Jersey) Regulations 2015;</li> <li>• The report and proposition 'Incorporation of Ports of Jersey' (P.70/2012); and, to a lesser extent,</li> </ul>

<sup>6</sup> [The UK's better regulation framework suggests that 'You should ensure that the resource you invest in understanding an impact assessment is proportionate. Some of the factors that should be considered when deciding what level of analysis would be appropriate include: the scale of the expected impact, and the cost of doing further analysis relative to the benefits this analysis may yield. http://regulatoryreform.com/wp-content/uploads/2015/02/UK-better-regulation-framework-manual-guidance-for-officials-July-2013.pdf](http://regulatoryreform.com/wp-content/uploads/2015/02/UK-better-regulation-framework-manual-guidance-for-officials-July-2013.pdf)

<i>Category</i>	<i>PoJL Proposed Assumption</i>	<i>CICRA Draft Decision</i>	<i>CICRA Decision</i>
		<ul style="list-style-type: none"> <li>• Evidence and assurances provided to Scrutiny Committees;</li> <li>• CICRA principles for regulation of PoJL; and</li> <li>• The Case for Incorporation</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence and assurances provided to Scrutiny Committees</li> <li>• CICRA principles for regulation of PoJL; and</li> <li>• The Case for Incorporation</li> </ul>

## 6.2 Summary of responses to CICRA's draft decision

Of the three consultation responses received, one from PoJL responded directly to this question.

- PoJL stated in its response that it 'agrees with the Draft Decision'

## 6.3 CICRA analysis

On the basis that no evidence has been presented that suggests CICRA's Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision.

## 6.4 CICRA Decision

CICRA has considered the proposal put forward by PoJL in its submission and the consultation responses received.

CICRA's Decision is that appropriate starting points for the assumptions to be used for a long-term pricing framework for PoJL are

- The Air and Sea Ports (Incorporation) (Jersey) Law 2015;
- The Air and Sea Ports Incorporation (Transfer) (Jersey) Regulations 2015;
- The report and proposition 'Incorporation of Ports of Jersey' (P.70/2012); and, to a lesser extent,
- Evidence and assurances provided to Scrutiny Committees
- CICRA principles for regulation of PoJL
- The Case for Incorporation

## 'Business Planning and Forecasting Assumptions'

### 6.5 General Inflation

<i>Category</i>	<i>PoJL Proposed Assumption</i>	<i>CICRA Draft Decision</i>	<i>CICRA Decision</i>
<b>General Inflation</b>	<i>Modelled at 3% per annum</i>	A figure for general inflation of 3.0% per annum is appropriate for modelling purposes, with the exception of existing	<i>No change</i>  A figure for general inflation of 3.0% per annum is appropriate for modelling purposes, with the exception of existing

<i>Category</i>	<i>PoJL Proposed Assumption</i>	<i>CICRA Draft Decision</i>	<i>CICRA Decision</i>
		property leases which should reflect the terms of the agreements in place.	property leases which should reflect the terms of the agreements in place.

### 6.6 Summary of responses

Of the three consultation responses received, one from PoJL responded directly to this question.

- PoJL stated in its response that it ‘agrees with the Draft Decision’

### 6.7 CICRA analysis

On the basis that no evidence has been presented that suggests CICRA’s Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision.

### 6.8 CICRA conclusion

CICRA has considered the proposal put forward by PoJL in its submission and the consultation responses received.

CICRA’s Decision for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL is that a figure for general inflation of 3.0% per annum is appropriate for modelling purposes, with the exception of existing property leases which should reflect the terms of the agreements in place.

### 6.9 Business Volumes

<i>Category</i>	<i>PoJL Proposed Assumption</i>	<i>CICRA Draft Decision</i>	<i>CICRA Decision</i>
<b>Business Volumes</b>	<p><i>Long Term business volume growth:</i></p> <ul style="list-style-type: none"> <li><i>Air Passengers: 0.8% per annum long run</i></li> <li><i>Sea Passengers: 0.0% per annum long run</i></li> <li><i>Freight &amp; Fuel: 0.53% per annum long run</i></li> </ul>	<p>Long term business volume growths of</p> <ul style="list-style-type: none"> <li>2.7% for air passengers,</li> <li>1.25% for sea passengers; and</li> <li>0.53% for freight &amp; fuel</li> </ul> <p>are appropriate.</p>	<p><i>Revised decision</i></p> <p><i>Long Term business volume growth:</i></p> <ul style="list-style-type: none"> <li><i>Air Passengers: 0.8% per annum long run</i></li> <li><i>Sea Passengers: 0.0% per annum long run</i></li> <li><i>Freight &amp; Fuel: 0.53% per annum long run</i></li> </ul> <p><i>With a pass-through for variances from growth assumptions</i></p>

### 6.10 Summary of responses

Of the three consultation responses received, two (from PoJL and SoJ) responded directly to this question.

In respect of the airport

- PoJL reiterated its proposed assumptions, presented additional information to support its position and challenged the basis on which CICRA has reached its Draft Decision.
- SoJ commented that it considered CICRA's assumption to be 'very challenging'. It considered that, *'the independent research carried out by PoJL is a robust and credible basis for air passenger volumes for the pricing framework. However, the Shareholder will be challenging the company to achieve higher growth, particularly given the stated ambition of Visit Jersey'*.

#### 6.11 CICRA analysis

CICRA notes that business volumes are a central element in calculating the price cap. They affect various components of the regulatory 'building blocks' simultaneously.

In relation to setting a longer-term price control for PoJL, CICRA's stated ambition is to take a pragmatic approach. Consistent with that approach, it has not sought to acquire expert advice to critique the basis for POJL's projections but rather considered a number of other airports to test the credibility of POJL's forecasts against those. There is inherent uncertainty around future volumes and CICRA could adopt a number of different approaches, from commissioning its own independent research, to 'waving through' PoJL's proposed assumption. To fulfil its duties CICRA has considered approaches that balance the risk and incentives presented to customers, and to PoJL. In that context neither of the options contemplated above appears appropriate. POJL has, however, provided no margin of error for its forecasts though it is reasonable to anticipate this would be wide. If, as suggested, volume predictions are influenced by factors unique to Jersey Airport it is all the more likely that the margin for error for any forecasts are that much greater.

A pragmatic way forward for this first comprehensive pricing framework is therefore through the use of a regulatory pass-through type mechanism in treatment of volumes. As an approach this is generally applied to situations where regulated businesses face significant costs that are both uncertain and largely outside of its control. CICRA does not regard volumes to be outside PoJL's control given Jersey has an 'open skies policy', PoJL is responsible for its network and it can incentivise new routes (air and sea), while adjustments to pricing and quality of service will play a role in the extent to which its facilities are utilised. It also works closely with Visit Jersey which is tasked with raising visitor volumes to the island. Rather than continue to challenge volume assumptions it appears sensible to base pricing assumptions on PoJL's forecasts using a pass-through type mechanism. This will aim to ensure a level of regulatory protection that addresses the likelihood of actual volumes higher or lower than forecast and that the associated risks of lower or higher than anticipated revenue are then borne appropriately between POJL and its customers. In relation to PoJL volumes a pass-through mechanism could be applied to volumes, balancing the risks and rewards as follows:

- a) To the extent that PoJL exceeds the volume targets that it has proposed, then the benefit would pass directly through to its customers either in the term of the price control or in the next price control period as appropriate. No benefit would be retained by PoJL.
- b) To the extent that volumes fell below that PoJL has proposed, then the costs would pass directly through to PoJL's customers and be directly borne by them either in the term of the price control or in the next price control period as appropriate. No dis-benefit would therefore arise for POJL.



## 6.12 CICRA conclusion

CICRA has considered the proposal put forward by PoJL in its submission and the consultation responses received.

For the reasons set out above, CICRA's Decision for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL is that long term business volume growths of

- 0.8% for air passengers,
- 0% for sea passengers; and
- 0.53% for freight & fuel

should be adopted, however that these should be subject to a regulatory 'pass-through' type mechanism such that any differences between proposed and actual volumes increases are passed directly through to customers.

### 'Investment Assumptions'

## 6.13 Master Plans contained within the LTCP

<i>Category</i>	<i>PoJL Proposed Assumption</i>	<i>CICRA Draft Decision</i>	<i>CICRA Decision</i>
<b><i>Master Plans Contained within the LTCP</i></b>	<p><i>Airport: £42m for Integrated Terminal and associated regulatory investments</i></p> <p><i>Harbour: Phase 1 only @ £27m</i> <i>(Please note that further phases are being developed)</i></p>	<p>The amount included as the assumption for the airport Master Plan during the proposed five year price control period should be £34.05m (based on a total investment of £40m), and that the decision on the amount to be included as the assumption for the harbour Master Plan should be deferred until the next pricing framework period to allow more time for plans to be developed.</p> <p>In demonstrating compliance with the price control PoJL will be required to demonstrate delivery of the project at, or below, the cost allowed to CICRA. In the event of a cost overrun, PoJL will be required to</p>	<p><i>Decision clarified</i></p> <p>The amount included as the assumption for the airport Master Plan during the proposed five year price control period should be £34.05m (based on a total investment of up to £42.6m over a period extending beyond that of this pricing framework), and that the decision on the amount to be included as the assumption for the harbour Master Plan should be deferred until the next pricing framework period to allow more time for plans to be developed.</p> <p>In demonstrating compliance with the price control, PoJL will be required to demonstrate</p>

Category	PoJL Proposed Assumption	CICRA Draft Decision	CICRA Decision
		demonstrate how it intends to 'make good' the overrun.	to CICRA delivery of the project at, or below, the cost allowed. In the event of a cost overrun, PoJL will be required to demonstrate how it intends to 'make good' the overrun which must be funded through generating additional commercial, i.e. non-regulated, income. PoJL will not be allowed to recover any cost overrun through regulated income.

#### 6.14 Summary of responses

Of the three responses received all responded to this question.

In respect of the airport

- PoJL proposed a total cost for the Airport Masterplan of £42.6m compared to £42m in its original proposal. It suggests the figures provided by the SoJ are erroneous having been prepared for a different purpose. PoJL also asked CICRA to *'explain what making good means in the context of PoJL's ownership'*.
- SoJ responded that 'a further review of information held by SoJ confirms that the amount required for the Airport Terminal Master Plan between 2018 and 2024 is £42.45m

In respect of the harbour

- Condor stated a concern that harbour infrastructure investment *'is being worryingly deprioritised'* and *'Condor is more concerned with there being a fair and balanced capital funding allocation to the harbour as well as for the airport'*. It believes that there will certainly be *'some major projects that emerge within this five year period which simply shouldn't wait or be deferred'*.

#### 6.15 CICRA analysis

PoJL proposes both £42.45m and £42.6m in its submission as the cost of delivering the Airport Master Plan. SoJ has clarified its original response and suggests a figure of £42.45m. Given the discrepancy between the two figures is now less than half of one percentage point, CICRA has accepted the higher figure of £42.6m.

Concerning the comments by Condor set out in 6.14 above, as explained in CICRA's Draft Decision SoJ considers and approves PoJL's strategic business plan. CICRA considers that, given the pragmatic and

proportionate approach it is taking, it can place reliance on the fact that, in order to approve PoJL's strategic business plan, SoJ would have assured itself that the plan was appropriate, both in terms of the activities contemplated and the costs associated with those activities. CICRA suggests that, in the first instance, Condor should raise its concerns with PoJL and SoJ as to the appropriateness or otherwise of such strategic plans.

#### 6.16 *Making good*

In its response to the Draft Decision, PoJL asked CICRA to 'explain what making good means in the context of PoJL's ownership'.

CICRA has concluded that the amount to be included as the assumption for the Airport Master Plan during the five year price control period should be £34.05m and that the total cost of the project should be £42.6m.

CICRA expects PoJL to deliver the Airport Master Plan at a cost of no more than the minimum amount of money needed to deliver the project which PoJL has submitted as £42.6m.

In the event that the cost of the Airport Master Plan exceeds the £42.6m, CICRA will require PoJL to demonstrate how it intends to 'make good' the cost overrun, which must be funded through generating additional commercial, i.e. non-regulated, income. PoJL will not be allowed to recover any cost overrun through regulated income.

#### 6.17 *CICRA conclusion*

CICRA has considered the proposal put forward by PoJL in its submission and the consultation responses received.

CICRA's Decision for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL is that the amount included as the assumption for the airport Master Plan during the proposed five year price control period should be £34.05m (based on a total investment of £42.6m), and that the decision on the amount to be included as the assumption for the Harbour Master Plan should be deferred until the next pricing framework period to allow more time for plans to be developed.

CICRA reminds PoJL that, in demonstrating compliance with the price control it will be required to demonstrate to CICRA that delivery of the project has been at, or below, the cost allowed.

In the event that the cost of the Airport Master Plan exceeds the £42.6m submitted by PoJL, CICRA will require PoJL to demonstrate how it intends to 'make good' the cost overrun, which must be funded through generating additional commercial, i.e. non-regulated, income. PoJL will not be allowed to recover any cost overrun through regulated income.

6.18 Long Term Capital Programme (LTCP)

Category	PoJL Proposed Assumption	CICRA Draft Decision	CICRA Decision
<p><b>Long Term Capital Programme (LTCP)</b></p>	<p><i>£286m (uninflated) over 25 years of investments just to keep facilities open to current standards, last reviewed June 2018. It is the LTCP that is required from core business revenues.</i></p>	<p>£73.562m over the period of the pricing framework with the requirement that PoJL</p> <ul style="list-style-type: none"> <li>• demonstrate that it has engaged fully and meaningfully with stakeholders, reflecting the views expressed by stakeholders during that engagement process, or state why particular feedback has not been reflected;</li> <li>• demonstrate how its capital expenditure has / will meet the current and future needs of its customers; and</li> <li>• demonstrates that it has delivered those projects at a cost of no more than the minimum amount of money needed.</li> </ul> <p>In the event of a cost overrun, PoJL will be required to demonstrate how it intends to 'make good' the overrun.</p>	<p><i>Decision clarified</i></p> <p>£73.562m over the period of the pricing framework with the requirement that PoJL</p> <ul style="list-style-type: none"> <li>• demonstrates that it has engaged fully and meaningfully with stakeholders, reflecting the views expressed by stakeholders during that engagement process, or state why particular feedback has not been reflected;</li> <li>• demonstrates how its capital expenditure has / will meet the current and future needs of its customers; and</li> <li>• demonstrates that it has delivered those projects at a cost of no more than the minimum amount of money needed.</li> </ul> <p>In demonstrating compliance with the price control, PoJL will be required to demonstrate to CICRA that delivery of the project has been at, or below, the cost allowed. In the event of a cost overrun, PoJL will be required to demonstrate</p>

Category	PoJL Proposed Assumption	CICRA Draft Decision	CICRA Decision
			how it intends to 'make good' the overrun which must be which must be funded through generating additional commercial, i.e. non-regulated, income. PoJL will not be allowed to recover any cost overrun through regulated income.

#### 6.19 Summary of responses

Of the three responses received, one response (from PoJL) directly answered this question.

- *PoJL requested an explanation of what 'making good' means in the context of PoJL's ownership'.*

#### 6.20 CICRA analysis

On the basis that no evidence has been presented that suggests CICRA's Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision.

Expenditure over the period 2018 – 2022 can be summarised as follows

	£
Air Traffic & Navigation	4,600,000
Airfield, Aircraft and Security	9,325,000
Corporate	2,850,000
Fire Service	1,300,000
Harbour Equipment	950,000
Marine Leisure	4,140,000
Marine Services	1,450,000
Airport Masterplan	34,050,000
Navigation Aids	340,000
Passenger Handling	1,685,400
Piers, Quays and Commercial Ops	5,392,000
Property	5,150,000
Runway, Taxiways and Apron	2,330,000
	£ 73,562,400

Which, on an annual basis, can be broken down as

Year	£
2018	8,232,000
2019	18,265,000
2020	16,140,000
2021	15,775,000
2022	15,150,000
<b>Total £</b>	<b>73,562,400</b>

#### 6.21 *CICRA conclusion*

CICRA has considered the proposal put forward by PoJL and the consultation responses received. For the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, the decision of CICRA is that the amount included as the assumption for the LTCP over the proposed five year price control period should be £73.562m.

CICRA reminds PoJL that in demonstrating compliance with the price control it will be required to

- demonstrate that it has engaged fully and meaningfully with stakeholders, reflecting the views expressed by stakeholders during that engagement process, or state why particular feedback has not been reflected;
- demonstrate how its capital expenditure has / will meet the current and future needs of its customers; and
- demonstrate that it has delivered those projects at a cost of no more than the minimum amount of money needed.

In the event of a cost overrun, CICRA will require PoJL to demonstrate how it intends to ‘make good’ the cost overrun, which must be funded through generating additional commercial, i.e. non-regulated, income. PoJL will not be allowed to recover any cost overrun through regulated income.

#### 6.22 *Commercial projects*

<i>Category</i>	<i>Assumption</i>	<i>CICRA Draft Decision</i>	<i>CICRA Decision</i>
<b>Commercial Projects</b>	The contribution to be included as the assumption for commercial projects should be £17.998m.	£17.998m contribution over the period of the price control framework.  PoJL must separate commercial from non-commercial projects. Commercial projects should be included on the basis of an appropriate contribution, and non-commercial projects should distinguish between revenues, costs and capital required.	<i>Clarification</i>  £17.998m contribution over the period of the price control framework.  PoJL must separate commercial from non-commercial projects. Commercial projects should be included on the basis of an appropriate contribution, and non-commercial projects should distinguish between revenues, costs and capital required. Commercial projects

Category	Assumption	CICRA Draft Decision	CICRA Decision
			are defined as those projects that fall outside areas where PoJL has previously been found to be dominant.

### 6.23 Summary of responses to CICRA's draft decision

Of the three consultation responses received, one from PoJL responded directly to this question.

- PoJL stated in its response that it *'agrees with CICRA's approach to commercial projects and the allowance of £17.998m.'*

### 6.24 CICRA analysis

On the basis that no evidence has been presented that suggests CICRA's Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision.

### 6.25 CICRA Decision

CICRA has considered the proposal put forward by PoJL in its submission and the consultation responses received.

CICRA's Decision is that, for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, the contribution to be included as the assumption for commercial projects should be £17.998m.

Commercial projects are defined as those projects that fall outside areas where PoJL has previously been found to be dominant.

## 'Debt Assumptions'

### 6.26 Net Debt on Core Activities

Category	Assumption	CICRA Draft Decision	CICRA Decision
<b>Net Debt on Core Activities</b>	<i>Limit set to 2.5-3.0x EBITDA, or currently £40m, until a regulatory long term price mechanism is established and proven.</i>	No limit set	No limit set

### 6.27 Summary of responses

Of the three responses received, two (from SoJ and PoJL) responded directly to this question.

- SoJ *'agrees with CICRA's assessment that PoJL will fund its investments using a mixture of debt funding and retained income'*. As the sole shareholder SoJ states that it *'will assess the level of PoJL's debt capacity and associated risks on a regular basis'*. SoJ further states that *'it should not therefore be assumed that PoJL has unlimited access to debt funding for the purposes of*

*the pricing framework, but as an interim measure we feel PoJL's assumption is appropriate for the purposes of the pricing framework.*

- PoJL reiterates its proposed assumption that a limit of 2.5-3.0 x EBITDA should be used until a long-term price mechanism is established and proven. It considers that *'a debt:EBITDA ratio of 2.5-3.0 x is the maximum that we could raise prudently before hitting concerns over the finance-ability of that debt'*.

#### 6.28 *CICRA analysis*

CICRA has considered the arguments put forward by PoJL in its response to the Draft Decision, in particular that 'there is a limit on the amount of debt that PoJL can fund from its earnings'. CICRA acknowledged this to be the case in its draft submission noting that 'CICRA would not seek to force PoJL to use debt funding above the level which it can negotiate to achieve an efficient use of resources'.

In its submission PoJL does not provide any substantive additional argument in support of its proposed limit.

On the basis that no substantive evidence has been presented that suggests CICRA's Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision.

#### 6.29 *CICRA conclusion*

CICRA has considered the proposal put forward by PoJL in its submission and the consultation responses received.

CICRA's Decision is that, for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, it is not appropriate for CICRA to set a limit for net debt on core activities.

#### 6.30 *Net debt on Commercial Projects*

<i>Category</i>	<i>PoJL Proposed Assumption</i>	<i>CICRA Draft Decision</i>	<i>CICRA Decision</i>
<b>Net debt on Commercial Projects</b>	<i>As available from institutions and partners on a project specific basis.</i>	Debt on specific projects should be assessed on a project by project basis.	<i>No change</i> Debt on specific projects should be assessed on a project by project basis.

#### 6.31 *Summary of responses*

Of the three responses received, one (from PoJL) responded directly to this question.

- PoJL stated that it *'agrees with CICRA's approach'*.



### 6.32 *CICRA analysis*

On the basis that no evidence has been presented that suggests CICRA’s Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision.

### 6.33 *CICRA conclusion*

CICRA has considered the proposal put forward by PoJL and the consultation responses received. CICRA’s Decision is that, for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, debt on specific projects should be assessed on a project by project basis.

### 6.34 *Cost of Debt*

<i>Category</i>	<i>PoJL Proposal</i>	<i>CICRA Draft Decision</i>	<i>CICRA Decision</i>
<b><i>Cost of Debt</i></b>	<i>5% Long Term, 3% Medium Term</i>	3% pre-tax nominal cost in the medium term  5% pre-tax nominal cost in the long term	<i>No change</i>  3% pre-tax nominal cost in the medium term  5% pre-tax nominal cost in the long term

### 6.35 *Summary of responses*

Of the three responses received, one (from PoJL) responded directly to this question.

- PoJL stated that it *‘agrees with CICRA’s approach’*.

### 6.36 *CICRA analysis*

On the basis that no evidence has been presented that suggests CICRA’s Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision.

### 6.37 *CICRA conclusion*

CICRA has considered the proposal put forward by PoJL and the consultation responses received. CICRA’s Decision is that, for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, a cost of debt of 3% pre-tax nominal cost in the medium term and 5% pre-tax nominal cost in the long term is appropriate.

## 'Cost and Cost Pressures Assumptions'

### 6.38 Operating Cost Efficiency

Category	PoJL Proposed Assumption	CICRA Draft Decision	CICRA Decision
<b>Operating Cost Efficiency</b>	<i>A target to reduce the cost base by 0.2% per annum in real terms against Jersey's general and activity specific inflation levels.</i>	1.0% in real terms per annum	<i>No change</i> 1.0% in real terms per annum

### 6.39 Summary of responses

Of the three responses received, two (from SoJ and PoJL) responded directly to this question.

- SoJ's response states *'We acknowledge that a portion of PoJL's cost base is determined by regulatory requirements which have an impact on the ability to make efficiency savings. A 0.2" saving on costs (...) equates to only £69,396 in monetary terms which appears conservative. We note Condor Ferries also made a similar observation in their response'*.
- PoJL's response reiterates its proposed efficiency savings of *'0.2% in real terms per annum excluding Public Service Obligations'*.

### 6.40 CICRA analysis

CICRA acknowledges that PoJL has a number of 'regulatory requirements' imposed upon it. However there is an important distinction between the regulatory requirements imposed upon PoJL in terms of 'what' and 'how' PoJL discharges its obligations. For example, there are security search obligations imposed on PoJL, that PoJL cannot control. What PoJL can control is how they discharge those obligations.

The reasonable assumption is that a newly commercialised monopoly would be in a position to identify material cost efficiencies. Evidence of a systematic and in-depth review of its operations would be anticipated and opportunities to reduce costs, work more efficiently and either pass those savings onto customers or deliver greater quality service provision would reasonably be expected. CICRA has been provided with no evidence of any comprehensive review. Given its pragmatic approach at this stage of the regulatory cycle it has chosen not to undertake such a review itself.

PoJL's submission suggested that the evidence CICRA used on which to base its Draft Decision was flawed and provides information compiled to show the 'Average Operating Cost per pax – British Isles Airport'. PoJL suggests that this demonstrates that the *'average operating costs per passenger at Jersey airport (excluding PSO costs) are almost exactly at the average for British airports and therefore there is no evidence for significant catch-up opportunity'*.

CICRA disagrees. The graph shows that Jersey's average operating cost per passenger is above the weighted average cost per passenger of the airports selected by PoJL for its benchmarking study. CICRA recognises that while the data as presented by PoJL doesn't suggest there is a significant catch-up opportunity, an efficiency assumption of 1% in real terms is not, as PoJL suggests, unrealistic.

In its response PoJL's shareholder, SoJ reiterates that it considers the 0.2% efficiency saving in real terms and does not suggest that it considers CICRA's Draft Decision to be unrealistic.

#### 6.41 CICRA conclusion

CICRA has considered the proposal put forward by PoJL and the consultation responses received.

For the reasons set out above, CICRA’s Decision, for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, is that a target of 1.0% in real terms per annum for operating cost efficiencies is appropriate.

#### 6.42 Depreciation of Fixed Assets

Category	PoJL Proposed Assumption	CICRA Draft Decision	CICRA Decision
<b>Depreciation of Fixed Assets</b>	<i>Determined by the ‘Jersey Financial Reporting Manual’ accounting standard as in the SoJ published accounts.</i>	<p>PSO assets - the expected cost of purchasing PSO assets should be allowed in the calculation of revenue, if necessary, but depreciation should not be taken into account.</p> <p>For all Business Assets (those which generate revenue directly or indirectly, including substantial infrastructure such as runways and harbour ramps) depreciation should be allowed over the full anticipated useful life of the asset, based on its actual cost or FRS102 value.</p>	<p><i>No change</i></p> <p>PSO assets - the expected cost of purchasing PSO assets should be allowed in the calculation of revenue, if necessary, but depreciation should not be taken into account.</p> <p>For all Business Assets (those which generate revenue directly or indirectly, including substantial infrastructure such as runways and harbour ramps) depreciation should be allowed over the full anticipated useful life of the asset, based on its actual cost or FRS102 value.</p>

#### 6.43 Summary of responses

Of the three responses received, one (from PoJL) responded directly to this question.

- PoJL’s response suggests that *‘the proposed methodology would not recover the historic or replacement cost of the relevant assets. Requires further explanation and should be finalised in Phase II once the implications are fully understood’*. PoJL’s response provides no further explanation or detail to support its view.

#### 6.44 CICRA analysis

Based on the limited response provided by PoJL, CICRA is unable to comment beyond the explanation and analysis provided in its Draft Decision, although it notes that the historic cost of assets is allowed by means of the depreciation methodology in the Draft Decision, to the extent that it is appropriate to do so.

On the basis that no evidence has been presented that suggests CICRA’s Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision. Elsewhere in this Decision CICRA notes that it reserves the right to revisit its Decision at a later stage in the process to introduce a pricing framework, on the basis that further and more detailed information may be provided.

#### 6.45 CICRA conclusion

CICRA has considered the proposal put forward by PoJL and the consultation responses received. CICRA’s Decision, for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, is

- PSO assets do not usually generate a material return, and constitute a cost at purchase from a regulatory perspective. Those assets already purchased were paid for from past revenues and those to be purchased need to be purchased from retained earnings. The expected cost of purchasing PSO assets should be allowed in the calculation of revenue if necessary, but depreciation should not be taken into account.
- For all Business Assets (those which generate revenue directly or indirectly, including substantial infrastructure such as runways and harbour ramps) depreciation is an expense which should be allowed over the full anticipated useful life of the asset, based on its actual cost or FRS102 value.

#### 6.46 Public Service Obligations (PSOs)

Category	PoJL Proposed Assumption	CICRA Draft Decision	CICRA Decision
<b>Public Service Obligations (PSO)</b>	<i>PoJL will provide identified obligations, such as maintenance of Historic Harbours and provision of Coast Guard Services that would not normally be the responsibility of a commercial business.</i>	The cost of the PSOs should be assumed at the current (2018) level in real terms less the efficiency assumption set elsewhere in this decision.	<i>No change</i>  The cost of the PSOs should be assumed at the current (2018) level in real terms less the efficiency assumption set elsewhere in this decision.

In total, the PSOs provide a contribution to fixed costs. The PSO associated with the airport, the CICA is revenue-generating and the PSOs associated with maritime activities are not revenue-generating.

#### 6.47 Summary of responses

Of the three responses received one (from PoJL) responded directly to this question.

- PoJL’s response suggests that *‘the costs of the PSOs should be funded at the actual cost incurred with no efficiency adjustment’*. It further suggests that *‘there is no reason to suppose that PSO efficiency (if achievable at all) should be identical to that for the rest of the business’* and suggests that *‘it would be more appropriate to treat PSO costs (and revenues as appropriate) as a pass-through’*.

#### 6.48 CICRA analysis

The PSOs are set out in the Law and, as SoJ’s response confirms, these are unlikely to change in the medium term. It is PoJL’s responsibility to provide these services, which generate some revenue and incur some cost, and therefore it is appropriate that CICRA takes this into account when establishing a long-term pricing framework.

CICRA acknowledges PoJL’s responsibilities in Law in respect of the PSOs. The Law determines the PSOs that have to be provided, but PoJL determines how the PSOs are provided. Its choice of how to provide the PSOs will have cost implications. The efficiency assumption contained elsewhere within this Decision is modest at an annual saving of 1% in real terms. PoJL has not provided any evidence, either in its original submission or in response to the Draft Decision which suggests that the provision of PSOs is 100% efficient and that it is unable to deliver an annual saving of 1% in real terms.

Pass-through terms are generally used in situations where regulated businesses face significant costs that are both uncertain and largely outside its control. A common example is purchases of gas by a gas distribution utility that are indexed to local oil prices, and therefore effectively tied to world markets. In respect of PoJL and PSO costs, these are not uncertain, PoJL has been providing these services for a number of years, and they are within its control.

On the basis of the reasons set out above, CICRA confirms its Draft Decision as its Decision.

#### 6.49 CICRA conclusion

CICRA has considered the proposal put forward by PoJL and the consultation responses received. For the reasons set out above, CICRA’s Decision for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, is that the cost of the PSOs should be assumed at the current (2018) level in real terms less the efficiency assumption set elsewhere in this decision.

#### 6.50 Community Support

<i>Category</i>	<i>PoJL Proposed Assumption</i>	<i>CICRA Draft Decision</i>	<i>CICRA Decision</i>
<b>Community Support</b>	<i>PoJL will continue to support various community activities in the same manner as before Incorporation.</i>	The cost of community support should be assumed to continue at the current (2018) level in real terms less the efficiency assumption set elsewhere in this decision.	<i>No change</i> The cost of community support should be assumed to continue at the current (2018) level in real terms less the efficiency assumption set elsewhere in this decision.

#### 6.51 Summary of responses

Of the three responses received, one (from PoJL) responded directly to this question.

- PoJL’s response suggests that *‘there is no reason to suppose that efficiency gains on Corporate Social Responsibility (if achievable at all) should be identical to that for the rest of the business,*

however we agree that a fixed amount equal to 2018 levels in real terms should be incorporated into the pricing decision. I.e. that ‘the cost of community support should continue at the current (2018) level in real terms with no efficiency adjustment’.

#### 6.52 CICRA analysis

In its Draft Decision CICRA suggested that community support should be agreed with the shareholder and that a specific determination by the shareholder has not been made. The SoJ, as shareholder has responded to CICRA’s Draft Decision, but has not expressed a view in relation to the specific issue of Community Support.

In the absence of evidence to the contrary, and given the shareholder has raised no objection to CICRA’s Draft Decision in its response, CICRA confirms its Draft Decision as its Decision.

#### 6.53 CICRA conclusion

CICRA has considered the proposal put forward by PoJL and the consultation responses received. CICRA’s Decision is that, for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, PoJL should assume that community support will continue at the current (2018) level in real terms less the efficiency assumption set elsewhere in this decision.

In the context within which PoJL operates CICRA considers the matter of community support to be one for PoJL to determine in discussion with its shareholder, SoJ, given it will ultimately impact on any financial return received in the future. CICRA acknowledges that other benefits beyond financial return, e.g. wider benefit to the island, will form part of SoJ’s considerations.

### ‘Dividend to Shareholder’

#### 6.54 Dividend to Shareholder

<i>Category</i>	<i>PoJL Proposed Assumption</i>	<i>CICRA Draft Decision</i>	<i>CICRA Decision</i>
<b><i>Dividend to Shareholder</i></b>	<i>No cash dividends until the company is financially self-sustainable.</i>	Nil	No change Nil

#### 6.55 Summary of responses

Of the three responses received one (from PoJL) responded directly to this question.

- PoJL stated that it ‘agrees with CICRA’s approach’.

#### 6.56 CICRA analysis

On the basis that no evidence has been presented that suggests CICRA’s Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision.

6.57 *CICRA conclusion*

CICRA has considered the proposal put forward by PoJL and the consultation responses received. CICRA’s Decision is that, for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, PoJL should assume that it will not be required to make a financial return to the shareholder for the period of the price control.

*‘Funding Philosophy’*

6.58 *Funding Philosophy*

<i>Category</i>	<i>PoJL proposed assumption</i>	<i>CICRA Draft Decision</i>	<i>CICRA Decision</i>
<b><i>Funding Philosophy</i></b>	<i>Funding for the capital investments will come from a combination of cash generation from core operations and commercial projects, as well as debt raised without SoJ guarantee. We envisage a single till for all CICRA economic regulated activities.</i>	<p>Funding for investments will be from a combination of retained capital and debt raised without SoJ guarantees and from retained capital.</p> <p>PoJL should assume the use of a single till based on CICRA’s definition that ‘all activities (both regulated and non-regulated ‘commercial’ activities) are taken into consideration when determining the level of charges’.</p> <p>PoJL should not explicitly separate harbour operations from airport operations or make any other possible divisions such as separating public service obligations for the purposes of determining this pricing framework.</p> <p>In the longer term PoJL should generate revenues from investments and operations which cover the actual cost of those investments and those</p>	<p><i>No change</i></p> <p>Funding for investments will be from a combination of retained capital and debt raised without SoJ guarantees and from retained capital.</p> <p>PoJL should assume the use of a single till based on CICRA’s definition that ‘all activities (both regulated and non-regulated ‘commercial’ activities) are taken into consideration when determining the level of charges’.</p> <p>PoJL should not explicitly separate harbour operations from airport operations or make any other possible divisions such as separating public service obligations for the purposes of determining this pricing framework.</p> <p>In the longer term PoJL should generate revenues from investments and operations which cover the actual cost of those investments and those</p>

Category	PoJL proposed assumption	CICRA Draft Decision	CICRA Decision
		revenues should be linked closely to costs.	revenues should be linked closely to costs.

#### 6.59 Summary of responses

Of the three responses received, one (PoJL) responded directly to this question.

- PoJL stated that it 'agrees with CICRA's approach that funding should be from a combination of retained capital and debt raised without SoJ guarantees and from retained capital'. PoJL also states that it '*does not agree with CICRA that if it is not possible to fund new investments from the revenues derived from then, then it suggests that the project is inappropriate*'. PoJL gives example such as its new finance system and the ports operational database to support its argument.

#### 6.60 CICRA analysis

CICRA confirms that the wording in its draft decision that '*In the longer term PoJL should generate revenues from investments and operations which cover the actual cost of those investments and those revenues should be linked closely to costs*' does relate to all investments and suggests, when preparing a business case for the funding of new investments, PoJL considers the counterfactual as a basis on which to make a comparison. This could result in respect of non-revenue generating assets that consideration is given to costs avoided by taking a certain decision.

On the basis that no evidence has been presented that suggests CICRA's Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision.

#### 6.61 CICRA conclusion

CICRA has considered the proposal put forward by PoJL and the consultation responses received. For the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, the decisions of CICRA are that

- a) PoJL should assume that funding for investments will be from a combination of retained capital and debt raised without SoJ guarantees and from retained capital;
- b) PoJL should assume the use of a single till based on CICRA's definition that 'all activities (both regulated and non-regulated 'commercial' activities) are taken into consideration when determining the level of charges' and
- c) PoJL should not explicitly separate harbour operations from airport operations or make any other possible divisions such as separating public service obligations for the purposes of determining this pricing framework.

In the longer term PoJL should generate revenues from investments and operations which cover the actual cost of those investments and those revenues should be linked closely to costs.



### 'Term of Regulatory Period'

#### 6.61 *Period of Pricing Mechanism*

<b>Category</b>	<b>PoJL Proposal</b>	<b>CICRA Draft Decision</b>	<b>CICRA Decision</b>
<b>Period of Pricing Mechanism</b>	<i>PoJL seeks to establish a 10 year regulatory framework, which will encompass major investment in both the Airport and Harbour.</i>	5 years with the possibility of extension following a detailed review	<i>No change</i> 5 years with the possibility of extension following a detailed review.

#### 6.62 *Summary of responses*

Of the three responses received, one (from PoJL) responded directly to this question.

- PoJL summary to its response reiterated CICRA's draft decision of '*5 years with the possibility of extension following a detailed review*', and made no other comment.

#### 6.63 *CICRA analysis*

On the basis that no evidence has been presented that suggests CICRA's Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision.

#### 6.64 *CICRA conclusion*

CICRA has considered the proposal put forward by PoJL and the consultation responses received. CICRA's Decision is that, for the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, RA is to set a pricing framework for 5 years with the possibility of extension following a detailed review.

### Completeness and Further Comments

<b>Category</b>	<b>PoJL Proposal</b>	<b>CICRA Draft Decision</b>	<b>CICRA Decision</b>
<b>Completeness and further comments</b>	<i>n/a</i>	In its next submission, PoJL will be expected to explain how it proposes to utilise its existing cash reserves.	<i>No change</i> In its next submission, PoJL will be expected to explain how it proposes to utilise its existing cash reserves.

#### 6.65 *Summary of responses*

Of the three responses received, one (PoJL) responded directly to this question.

- PoJL stated that 'PoJL's submission will include utilisation of our existing cash reserves'.

#### 6.66 *CICRA analysis*

On the basis that no evidence has been presented that suggests CICRA's Draft Decision should be revisited, CICRA confirms its Draft Decision as its Decision.

#### 6.67 *CICRA conclusion*

CICRA has considered the proposal put forward by PoJL and the consultation responses received. For the purpose of determining assumptions to be used in establishing a pricing framework for PoJL, the decisions of CICRA is that CICRA does not require PoJL to generate further high-level assumptions at stage, although a number of more detailed assumptions will be required in the course of setting the pricing framework including how its proposes to utilities its existing cash reserves.

## **7. Next Steps**

- 7.1 The second stage of the process for setting a long term pricing framework for PoJL is for PoJL to submit its proposed pricing framework, based on CICRA's Decision in which it will set out its suggested financial model, explain the implications of its proposal for its stakeholders, including on prices, and put forward a mechanism for assessing compliance with the control.
- 7.2 The third and final stage of the process is the Statutory Stage, the result of which is binding on PoJL.

## Appendix 1 – Legal Framework

The States of Jersey enacted the Air and Sea Ports (Incorporation) (Jersey) Law 2015 (the **Law**) on 2 June 2015. This requires that any person carrying out Port Operations (as defined in Article 2 of the Law) must have a licence issued by the Jersey Competition Regulatory Authority (JCRA) (which is one of the two entities which together form CICRA).

The following extract from the Law shows the duties of the JCRA, in the context of which CICRA will set a pricing framework:

### *26 Duties of both Minister and JCRA*

*(1) In relation to port operations, the Minister and the JCRA shall each have a primary duty to perform their respective functions under this Law –*

*(a) so as best to protect and further the interests of users of port operations, in the short and long term, and to do so where appropriate by promoting competition in the provision of port operations; and*

*(b) so as best to ensure –*

*(i) that provision is made to satisfy all reasonable demands, both current and prospective, for port operations, Article 27 Air and Sea Ports (Incorporation) (Jersey) Law 2015*

*(ii) that port operations are provided efficiently and effectively, and*

*(iii) that a company (in particular including PoJL), to the extent that it is or is to be licensed under this Law, has sufficient financial resources to discharge its liabilities under securities issued by the company to the States.*

*(2) In relation to lifeline services, the Minister and the JCRA shall each have a primary duty to perform their respective functions under this Law so as best to ensure that such services are provided–*

*(a) efficiently, effectively and without interruption; and*

*(b) so far as consistent with sub-paragraph (a), with due regard to –*

*(i) any relevant policies of the States,*

*(ii) the interests of persons using or likely to use such services, and*

*(iii) the special needs of persons who are disabled.*

*(3) So far as consistent with paragraphs (1) and (2), the Minister and the JCRA shall each have duties to perform their respective functions under this Law –*

*(a) so as best to encourage sustainable growth in the economy of Jersey in the medium to long term;*

*(b) so as to impose a minimum of restriction on persons engaging in commercial activities;*

- (c) with due regard to any relevant policies of the States;*
- (d) with due regard to preserving and maximizing the benefits of Jersey's resources;*  
*and*
- (e) with due regard to the special needs of persons who are disabled.*

CICRA issued a Principal Port Operator's Licence (the Licence) to PoJL on 1 November 2015, licensing it to carry out Port Operations in Jersey (the "Licence"). Article 15(1)(i) of the Law provides that the Competition Authority may impose licence conditions including requirements for "*the levels of prices, premiums and discounts which may be charged or (as the case may be) allowed by a licensee having a dominant position in the conduct of port operations*".

Under Condition 22.2 of the Licence, the JCRA may determine the maximum level of charges that PoJL may apply for Port Operations within a relevant market in which it has been found to be dominant.

Condition 22.2 of the Licence provides that:

*The JCRA may determine the maximum level of charges the Licensee may apply for Port Operations within a relevant market in which the Licensee has been found to be dominant. A determination may:*

- (a) provide for the overall limit to apply to such Port Operations or categories of Port Operations or any combination of Port Operations;*
- (b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*
- (c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.*

In its Final Notice 'Ports of Jersey – Assessment of Market Power' issued in October 2016 (CICRA 16/41), CICRA made determinations as to market definitions and market power regarding a number of markets within which PoJL operates, finding them dominant in five separate markets. Full details of the determinations can be found in the above document. Given that PoJL is dominant in these markets, and under the licence condition noted above, CICRA may impose a pricing framework on PoJL.

The pricing framework which is anticipated to result from this process will not apply either to PoJL's Public Service Obligations (as defined in Article 6 of the Law) or to services which are not Port Operations. The issue by CICRA of a decision regarding the levels of charges by PoJL is considered to be the exercise of a regulatory function under Article 23 of the Law.

This Decision constitutes part of a preliminary process which is intended to make the exercise of a regulatory function by CICRA as appropriate as possible by soliciting the views of interested parties in advance of the determination of the content of the Initial Notice required by Article 23(2) of the Law. It does not, however, constitute Initial Notice. The position of CICRA is liable to change until such time as Final Notice of the pricing framework has been given. Any statements or decisions related to this process issued up to that point will not be binding on either CICRA or PoJL.