

# STATES OF JERSEY

## OFFICIAL REPORT

**WEDNESDAY, 20th MARCH 2013**

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[9:30]

**The Roll was called and the Greffier of the States led the Assembly in Prayer.**

## **COMMUNICATIONS BY THE PRESIDING OFFICER**

### **1. The Bailiff:**

Members will be aware that a delegation from the Government of Madeira is visiting the Island this week. The delegation is led by Mr. Manuel Correia, the Minister for Agriculture and Natural Resources. He is accompanied by 2 officials, Dr. Antonio Trinidad, the Chief Officer to the Minister and Mr. Gonalo dos Santos, the Director of Immigration. Mr. Correia, the Minister, is in the public gallery with his delegation and I am sure Members would like to express in the traditional way. **[Approbation]** Members may also have noted that there has been a T.V. camera filming the proceedings so far. When the Madeira delegation arrived last night a request was made as to whether Madeiran TV could film the opening of today's ceremony. As it was not possible in the usual way to obtain the Assembly's agreement, I took it upon myself, as a courtesy, to agree that they could do so until Public Business begins, in the way that we do agree to our local companies filming us on other occasions. I trust Members are content with that decision, and when we move on to Public Business, the filming will stop. Very well, so we do now move on to Public Business. We are in the midst of the debate, but I have been informed the Chief Minister wishes to make an urgent statement. Would Members agree it is convenient to take the statement and any questions at this stage, and then revert to the debate? Very well, I invite the Chief Minister to make his statement.

## **STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY**

### **2. The Chief Minister made a statement regarding the United States Foreign Account Tax Compliance Act**

#### **2.1 Senator I.J. Gorst (The Chief Minister):**

I am making a statement about negotiations on the U.S. (United States) Foreign Account Tax Compliance Act and on related negotiations with the United Kingdom. There will be reference to these matters in the U.K. (United Kingdom) Budget today. As Members will be well aware, F.A.T.C.A. (Foreign Account Tax Compliance Act) seeks to limit the evasion of U.S. tax by placing reporting requirements on foreign financial institutions. Consultations with industry were completed last Friday and it is clear that industries' preference is for Jersey to enter into a F.A.T.C.A. intergovernmental agreement with the U.S. We have sought to negotiate such an agreement. This is similar to the one that the U.K. signed with the U.S. last year and to some 50 other agreements that are still being negotiated. It is generally accepted that there are real benefits for financial institutions in reporting through an intergovernmental agreement, as opposed to reporting directly to the U.S. Internal Revenue Service. Guernsey, the Isle of Man and the Cayman Islands are among the jurisdictions to share this view. Our negotiations have progressed well and we recently initialled an agreement with the U.S.A. (United States of America). The only outstanding matter is a jurisdiction-specific annex on which a response from the U.S. is awaited. Therefore, financial institutions can be assured that they will be operating under the umbrella of an intergovernmental agreement and can plan accordingly. We hope to be able to sign the full agreement, including the annex, shortly. The agreement will then be presented to the Assembly for ratification and the required regulations will be presented for adoption. When the U.S. agreement is in force, financial institutions will have until 30th September 2015 to report information relating to calendar years 2013 and 2014. The U.K. indicated to us, to the other Crown Dependencies and to the U.K. Overseas Territories, that they wished to match the position being negotiated with the

U.S. That is, they were seeking a F.A.T.C.A.-type agreement exchange on an automatic basis. They found it difficult to accept that we would be giving more information to the U.S. than the U.K. in the fight against tax evasion. We were concerned that there would not be a level playing field, globally. The U.K. clarified that they regarded F.A.T.C.A. as setting the new standard in international tax transparency. We understand that the U.K. will be pressing for this at the G8 meeting in June and at meetings of the O.E.C.D. (Organisation for Economic Co-operation and Development). We, along with Guernsey and the Isle of Man, also have concerns regarding those U.K. residents who are non-domiciled for tax purposes, the so-called “res non-doms”. An alternative reporting arrangement for this category of taxpayers was sought because there were concerns about the potential loss of business to competitor jurisdictions. Such a loss would affect not only Jersey, but also the U.K. economy. There was also a concern regarding the internationally-accepted view that jurisdictions should seek the same information from their own taxpayers that is being asked of another jurisdiction. At all times we have emphasised to the U.K. that we are committed to supporting them in the fight against tax evasion. We emphasised our good track record, with tax evasion having been included as an offence under our anti-money laundering legislation since 1999. We mentioned our public statements, agreed with the finance industry, that Jersey neither needs nor wishes to accommodate those engaged in tax evasion. As a vice-chair of the O.E.C.D. Global Forum Peer Review Group which assesses compliance with the international standards, we seek to lead by example. Members will be aware that Jersey has an internationally-recognised reputation which has been confirmed in assessments by international organisations such as the I.M.F. (International Monetary Fund). Having balanced all these factors, I am announcing to Members today that we have agreed a package with the U.K. similar to those committed to by the Isle of Man and Guernsey. This agreement will be referred to in the U.K. Budget today. The package is as follows: an intergovernmental agreement that, apart from certain annexes, closely follows the agreement with the U.S; financial institutions will have up to September 2016 to exchange information relating to 2013 and 2014; an alternative reporting arrangement for the ‘res non-doms’, which will be included in an annex to the agreement. This will be finalised to the same timetable as the agreement currently being negotiated with the U.S; disclosure facility, full details of which will be published shortly, which will allow investors with assets in Jersey to come forward and regularise their past tax affairs. In addition to this package, the U.K. have indicated that they are happy to consider a possible renegotiation of our current Double Taxation Agreement. The package of measures will put beyond doubt Jersey’s ongoing commitment to the fight against tax evasion. We have also recognised the special relationship that we have with the U.K. We will watch with interest the efforts being made by the U.K. to promote a new global standard based on F.A.T.C.A. Should such a standard be adopted internationally we will respond appropriately. For our future as an international finance centre, it is important that the international community continues to recognise Jersey as a jurisdiction that has high levels of compliance. Increasingly, the best financial institutions and investors will only want to be associated with such a quality jurisdiction. By reaching agreement with the U.S. and the U.K. on enhanced information exchange, we are making an important contribution to the future success of Jersey as an international finance centre. We intend to continue engaging positively with the U.K. and other countries in the pursuit of the global objectives of transparency and international co-operation.

[9:45]

Studies commissioned from Capital Economics and McKinseys have both shown how we contribute to the U.K. economy and to world financial markets. Ministers are at present completing an update of the Island’s financial services industry strategy. This strategy is designed to continue to ensure the industry innovates, prospers and continues to be regarded as one of the world’s financial centres. I have absolutely no doubt that, working together, we in government, the

regulator, and the finance industry will ensure the continuing success of Jersey, to the benefit of all Island residents. Thank you.

**The Bailiff:**

Very well. There are 10 minutes in which Members may ask questions. Deputy Baudains?

**2.1.1 Deputy G.C.L. Baudains of St. Clement:**

I wonder if the Chief Minister would clarify for me with regards to this outcome whether that affects the level playing field that apparently we were waiting for before entering into agreements with one or 2 countries. I thought we were waiting for a level playing field across all.

**Senator I.J. Gorst:**

Hopefully, as I explained in my statement, they are exactly the arguments that we made to the United Kingdom, but we do have a special relationship with the United Kingdom and therefore we made that point, I hope persuasively, that the U.K. are absolutely committed to ensuring a global level playing field and that is why they have set their agenda for the G8 later this year. But this is an agreement about tax evasion, and we have been absolutely committed to ensuring that Jersey is not used for tax evasion, as I said, since 1999. Therefore, in light of that special relationship and of that commitment to fight tax evasion, we have agreed to this package.

**2.1.2 Deputy G.P. Southern of St. Helier:**

Could the Minister give some details at this stage of the disclosure facility he refers to in the second page. Is it, for example, more or less stringent than the Swiss disclosure facility?

**Senator I.J. Gorst:**

It will be, as I said in my opening statement, published shortly and it is based largely on the Isle of Man disclosure facility which, as I am sure the Member knows, does have differences from the Swiss facility.

**2.1.3 Deputy R.G. Le Hérissier of St. Saviour:**

Despite the comforting words that have been placed here about our compliance with tax evasion, would the Chief Minister not acknowledge that in fact political sentiment is also running against tax avoidance? We have seen the issues in Cyprus with Russian money, no doubt we will see this afternoon further statements from the Chancellor. Can he tell me how he intends to deal with it, because the issues, in the public mind, are increasingly merged issues?

**Senator I.J. Gorst:**

Be in no doubt, we are absolutely committed to the fight against tax evasion and Members will be well aware of previous statements and comments I have made in the public domain and in this Assembly with regard to aggressive avoidance. The Deputy is right that in some media representations those 2 have been merged. They are different but I am also on record as saying that aggressive tax avoidance has no place in our future either. The world is changing; we must continue to show, as we have historically, that we are a quality, well-regulated jurisdiction, we have got independent reviews that prove that, and by signing-up to and agreeing to this package today, that should, I hope in Members' minds, put beyond doubt our commitment to ensuring that we are not used for tax evasion, but we have also committed to ensuring that when businesses are taking on new business, they have regard to the reputation of Jersey at large.

**2.1.4 Deputy M.R. Higgins of St. Helier:**

There are 3 little things that I would like the Chief Minister to clarify. On page 2, around the bullet points, on the first one it says: "An international agreement that, apart from certain annexes, closely

delivers the agreement with the U.S. F.A.T.C.A.” Can you explain what they are? That is number 1.

**The Bailiff:**

You can only have one question.

**Deputy M.R. Higgins:**

A pity; I would have chosen another one, thanks.

**Senator I.J. Gorst:**

I do recall a previous occasion where the Deputy has asked this question, and I answered him then, therefore it is in the public domain. As I have quite clearly said, we have initialled the U.S. intergovernmental agreement but there are annexes to that agreement which the U.S., and of course the U.K. as well, are, I use the word “negotiation”. Perhaps the Deputy was more comfortable with “considering together” and that is where we are. And as I said in my opening statement, we are still waiting to hear back from the U.S. in regard to that annex.

**2.1.5 Deputy M. Tadier of St. Brelade:**

On the eighth line of the second page the Chief Minister says: “Jersey seeks to lead by example in the fight against tax evasion.” However, on the first page and on previous occasions he has said that Jersey: “Desires to see a level playing field globally before Jersey would be put in the position to have to sign up to F.A.T.C.A. with the U.K.” Which position is correct? Do we want to lead by example or do we want to wait until there is a level playing field before Jersey starts to play ball?

**Senator I.J. Gorst:**

I am not sure they are necessarily mutually exclusive. We will, I believe, start to hear a term referred to as “fast followers” and that is a position that I think Jersey has historically been in for a number of years. Now, we recognise that our future, and our future as a provider of financial services, is where we show that we are a quality jurisdiction; that we are complying with relevant international standards - there is no change there - but also, that we are a fast follower. So they are not necessarily against each other, those 2 positions. In actual fact, I would say that they work together.

**2.1.6 Deputy M. Tadier:**

A supplementary: so the Chief Minister is essentially saying that we lead by example by following others. Is that perhaps a personal way that he runs his own Council of Ministers that he is applying to the international relations?

**Senator I.J. Gorst:**

I think the term I used was: “fast follower”.

**Deputy M. Tadier:**

Yes: “Follower”.

**2.1.6 Senator S.C. Ferguson:**

None of us here agree with tax evasion, but is this, effectively, yet another instance of political bullying by the U.K. Government arising from their own inability to apply and [Approbation] simplify their own tax codes of which there are 11,000 pages?

**Senator I.J. Gorst:**

The Senator will have heard me say in my opening statement that one of the points that we made to the United Kingdom was that we would expect them to be collecting the same information from their own taxpayers, and in that regard she makes a very interesting point. In Jersey we have a transparent and clear tax code; other jurisdictions do not enjoy that, and I think they are rapidly realising that perhaps a simplified tax code is one way of ensuring and delivering economic growth.

#### **2.1.7 Connétable D.W. Mezbourian of St. Lawrence:**

The third bullet point on page 2 refers to: “Allowing investors with assets in Jersey to come forward and regularise their past tax affairs.” Will the Chief Minister explain what is meant by the words: “Regularise their past tax affairs.”

#### **Senator I.J. Gorst:**

I just thought it was quite straightforward: exactly that. We, as I said, have had anti-money laundering legislation which meant that tax evasion has been an offence in Jersey since 1999. We are confident in that, but we believe that by agreeing to this package whereby a disclosure facility would allow, if people have not been compliant, to contact H.M.R.C. (Her Majesty’s Revenue and Customs) and regularise their tax affairs. We have already been doing that for a number of years through our legislation and making tax evasion an offence, and this therefore puts beyond doubt that we are absolutely committed to dealing with tax evasion.

#### **2.1.8 Connétable P.J. Rondel of St. John:**

Has Jersey gone along with the Isle of Man and Guernsey and capitulated, as we did over the fulfilment? This looks to me as a one way street. Since the Island got involved with the British-Irish Council and these regular meetings where supposedly exchange of information is happening at a certain level, a Ministerial level, will the Minister agree that sometimes our Members sitting around the table might be too free with local information to be passed across, which is, in turn, turned on its head and worked against us in the long run?

#### **Senator I.J. Gorst:**

Unfortunately, once again today, I cannot agree, with the Connétable of St. John. I do not believe that he can describe the way that this Government responded to the changes in low value consignment relief that the United Kingdom announced when we sought to have the decision judicially reviewed, as capitulation to them. Far from it; we are robust in our negotiations, we stand up for Jersey and we fight our corner as we think is best, in the interests of every individual and the economic interest of Jersey. This is a package about tax evasion. As I keep saying, we have been committed to ensuring that Jersey is not used for tax evasion since 1999. In fact, our legislation is far stronger than many jurisdictions around the world. I believe we have a record that we can be proud of and that these agreements today, borne out of our special relationship with the United Kingdom, should put that beyond doubt in anybody’s mind.

#### **2.1.9 Deputy T.M. Pitman of St. Helier:**

Could I just refer to the line under the 3 bullet points, and if I can try and get 2 for one ...

#### **The Bailiff:**

No, only one.

#### **Deputy T.M. Pitman:**

Where it says: “Happy to consider a possible renegotiation of our current Double Taxation Agreement” could the Minister explain what that would involve and really why, precisely?

#### **Senator I.J. Gorst:**



We have not gone into any detail yet with a renegotiation of the Double Taxation Agreement, but as the Deputy will know, the current agreement in place is many years old and therefore needs to be brought up to date and made perhaps more fit for purpose.

**The Bailiff:**

That brings questions to the Chief Minister to an end.

**Connétable D.J. Murphy of Grouville:**

Sir, a point of order. I pushed my light on immediately after the statement was made, and I think I was probably one of the first, and I did try and draw attention to the fact that my light was on but obviously you either missed me or ... well, I hate to say it, but you did not ignore me, I am sure. **[Laughter]** But I am quite disappointed because I did have a relevant question here which I am now not allowed to ask.

**The Bailiff:**

Connétable, I can only apologise. Blame it on the head of the Chairman on your Comité **[Laughter]** which obscured ...

**The Connétable of Grouville:**

I can assure you he ducked.

**The Bailiff:**

One moment. I can only apologise, Connétable. Certainly, the Chair, as it sees Members' lights, does it strictly in order, so I am sorry if you had your light on and I did not see it, and I can only apologise.

**The Connétable of St. John:**

Sir, on a similar point of order, I noted that all the questions in the early part of the questioning came from that side of the House and it was not until it got to Centenier ... sorry to Senator **[Laughter]** Ferguson that you moved across here, so possibly you might want to look around the Chamber and pick them around, Sir. **[Members: Oh!]**

**The Bailiff:**

The Bailiff does his best to look all around the Chamber.

**Deputy M. Tadier:**

It might be of assistance. On behalf of P.P.C. (Privileges and Procedures Committee) these are issues which we are considering and will be considering in an ongoing manner, so I do not think it is the Chair's fault, but it perhaps a technical problem which we need to resolve in the Assembly.

**The Connétable of Grouville:**

Perhaps I could ask the Deputy the question, Sir?

## **PUBLIC BUSINESS - resumption**

### **3. Beach House, Green Island, St. Clement: grant of a right to access through the sea wall (P.16/2013) - resumption**

**The Bailiff:**

Very well. I am sorry for those Members who have not had time to ask their questions. Now we return to Projet 16. Before we do, I am going to leave the Chair now to welcome the Minister and

receive him in my Chambers and I will return later, so I will ask the Greffier to take over, but the next Member to speak is Deputy Baudains.

### **3.1 Deputy G.C.L. Baudains:**

I believe most Members have been invited to visit this particular site and yesterday we heard the Assistant Minister for Treasury and Resources give his explanation of the situation. Shortly after that, Senator Le Gresley spoke and what he said was, basically, this has dragged on for far too long and the owners of The Beach House have been treated poorly, with which I cannot disagree. However, I believe also that what my Connétable said yesterday does have some merit because I have to ask: does the fact that this has dragged on for so long mean that we must now overlook possible safety issues in a final, but albeit overdue, rush to conclude the matter? I hope not. In a moment I am going to suggest what I think is possibly a better way forward. But first of all, I would like to start by addressing the flooding issue which has been raised.

[10:00]

I have to say, I am more relaxed about this issue than my Connétable because the way I look at it, if there is flooding there - and I am sure there will be at some time when there are high winds on top of a spring tide - it is the owner's own property that will suffer. If their garden is washed away or their property damaged, it is on their own heads. So I do not think it is for us to worry about that, it is more so for the applicants. But I have to contradict the Assistant Minister when he uses, or as I understood it attempted to use, the breach in the wall that exists further to the west as some sort of precedent to back up what he is proposing. I would refer Members to page 2 of the document which the Connétable of St. Clement circulated yesterday where, I think, Members will see that the other entrance which has been spoken about is not, in fact, on the slip, it is on to the beach and it is not a particular entrance, in fact, it is not an entrance at all, it is a recess of the wall. So to infer that this is a precedent for what we are being asked to approve today is simply, in my view, invalid. The major worry I have about this proposal is, as my Connétable so eloquently said yesterday, pedestrian safety. This does concern me because as a member of the Planning Applications Panel I am fully aware of the need for accuracy and taking all material considerations into account. It is a heavy responsibility, yet here we are being asked, effectively, to be planning experts for the duration of this debate. As I said when I started, quite a number of Members will have seen this property recently but, of course, for those that may not be familiar with the area, I would remind them that they saw it in the winter months, but I can advise them that during the summer months the slipway is always full of people and people want to relax safe in the knowledge that their children can run up and down the slip, get an ice-cream and so forth. My concern is if this entrance is allowed, any vehicle exiting the property, we know, will have zero visibility and to make matters even worse it will be exiting right next to the back of a kiosk, where presumably there will be children and others running around anyway. Of course, then the vehicle would have to drive right across the slip in order to drive up and out. That, of course, assumes the entrance is not blocked by vehicles. To me, that does raise concerns. But, of course, the whole reason why we are even discussing this today is because the application did not go through the normal channels. The original planning application did not include this access and so Public Services and others did not object, the Parish was not consulted. The access was applied for by way of an amendment to the original application which was approved by planning officers, as the Constable said yesterday, 3 days after submission and, crucially, as I said, no one was consulted. Because under normal circumstances for an application of this type there would be consultation and, as we were told yesterday, if Public Services, for example, were asked, they might have had a negative opinion because they have consistently in the past opposed this particular breach in the wall. As a member of the Planning Applications Panel, I have no doubt that the Historic Buildings Officer might have an opinion on the visual aspect and no doubt the Constable would have wanted to state his case as

well. Planning themselves may have had an issue about the possibility of setting a precedent, because I was just scanning my mind this morning, and I am unable to come up with another example in Jersey where there is a private vehicular access on to a slipway, maybe there are around Bouley Bay, Grève de Lecq, all the way along St. Clement and La Rocque, thereon in. So if we set a precedent, where does that leave us in the future? Unfortunately, because of the way this issue has been handled, and it has been handled disastrously over the years, none of these issues was put into the equation, none of this happened. Due process was not followed because if it had we would not be here today, we would not be discussing it today. I am also somewhat unhappy about the fee the Treasury proposes to charge for the right to breach the sea wall and here, in complete contrast to my Constable - I am watching his reaction ... oh yes, there it is **[Laughter]**, apparently this is calculated on the basis of being half of the increase in value that will accrue to the property. But why half? Why not two-thirds or half of two-thirds or four-fifths divided by the rate of inflation? Who decided on £70,000 and why? I do not know. But, to be brief, when I started, I said there was a better way to resolve this and what I am suggesting is that the due process that was bypassed in the first place should now be put in place, should be put in train. That way all relevant parties would have the input, a fair resolution would be arrived at, just as would happen were the application made today. Naturally, the only way I can see that being achieved would involve a fresh planning application which, of course, would be unusual. But then again the whole case was extremely unusual; in my years in politics I have never come across another one like it. I would further suggest that because this is all due to the failure of government to provide an acceptable service, any application fee should be waived. I would also suggest that, should the decision be in the applicant's favour, the Treasury fee should either be substantially reduced or perhaps, except for the legal cost, cancelled altogether. This has been unfair to the owners of that property for some time because this is, in my view, a mess that nobody can be proud of. But we are not an Assembly of 51 planners, so I do not believe we should be making yet another departure from process by making a decision without the benefit of advice from Transport and Technical Services, Historic Buildings officers and others. So really, what I would like to do is invite the Assistant Minister to withdraw the proposition and let this be resolved through the normal channels.

### **3.1.1 Deputy R.G. Bryans of St. Helier:**

I think many of the arguments have already been covered to some degree, so I will be brief. I, like many States Members, took the opportunity to meet the couple who own the property. They seem reasonable, empathic caring individuals who simply want to gain a decent vehicle access to their property, but this is not their right, as the Constable described yesterday. I was equally concerned that I would find something different, that there would be strong reasons to prevent them achieving what they had set out to achieve: a breach in our historic sea defences. But what I found, to be fair, was the opposite. I will just deal with each point that is written in the letter by the Constable: (1) Lack of consultation. I think to some extent that this is right, possibly, but these people were new to the environment, new to the process and, equally, once they realised that you need to communicate with all parties, including the Parish and T.T.S. (Transport and Technical Services) they did so. (2) Integrity, which refers to the wholeness of the design, in other words, the hole in the wall. Those that took the opportunity to visit the site will have seen the integrity has already been compromised, and we have already discussed when is a breach not a breach but a *coche*. I am not sure what a "*coche*" is, to be fair, I did try to look yesterday but I could not find anything on it. But there are breaches, as Senator Le Gresley said, all along the sea wall, clear breaches in the wall considerably lower than that of the proposed entrance, and so far no problem, having weathered extremely high tides. (3) refers to risk of flooding. Equally, Deputy Baudains has already made reference to the fact that the first property that would suffer would be the owner's own Beach House. Why would you build in a potential risk for flooding? It does not make any sense. They have done their homework. Existing records prove the risk is non-existent. (4) Impact on

pedestrian safety. Pedestrian safety is already compromised by allowing parking on the slipway, but there is a wide access proposed, allowing strong peripheral sightlines. Once again, the onus rests with the owners of the property to be diligent in exiting their premises. I think they would do that. Who would not? (5) The beach concession is just that, a concession, it has no rights but, that said, the owner of the concession has agreed to move her trailer further down the slip. (6) Policing is an issue. The Parish is duty-bound to some extent (I do not know the underlying laws related to this) to police a designated parking area. That said, The Beach House owners have confirmed they will not - I repeat will not - contact the honoraries should an obstruction occur. They are well aware of the potential problems the breach creates and are happy to accommodate all that it will take to ensure that they get decent access to their property. Lastly, we get to the aesthetics of the area. Aesthetics are quite subjective: what is to one man a breach of integrity is to another a sympathetic design of a gateway. So lastly, here we have it, the neighbours are happy - I have spoken to them - T.T.S. are happy in reference to pedestrian safety, the concession owner is happy, Jersey Property Holdings are happy, the Crown gives its consent. The only person unhappy is the Connétable, and I sympathise with his concerns, but I will be supporting this proposition.

**Connétable L. Norman of St. Clement:**

Sir, could I ask the speaker for some clarity? One of the last things he said was that the neighbours are happy. I know he cannot say in this Assembly, but I have numerous letters from immediate neighbours and people in the area objecting, so I do not know what possible ...

**Deputy R.G. Bryans:**

Yes. I am quite happy to explain. I tried to contact the neighbour on the left-hand side, looking at the photograph that you have supplied, and was not able to do that, but if you do look at the photograph that you have given the Assembly, you can see that in terms of risk of flooding, the actual flooding would be contained on both sides. I spoke to the restaurant owner who is on the right-hand side, and he was quite happy with the design.

**The Connétable of St. Clement:**

There was one neighbour, then.

**3.1.2 Senator L.J. Farnham:**

I am pleased that Deputy Bryans has covered some of my points, which will make my contribution slightly shorter, but I really want to follow on from the speech of the Constable of St. Clement yesterday, and I do enjoy listening to the Constable, he is good; there is no doubt about it. He knows his way around the Assembly and, yes, it was good to listen to, and I always enjoy listening to what he has to say. Yesterday we had a good delivery from the Constable, we had a bit of history and we learned about the Victorians knowing their stuff when it came to building sea defences and we had some drama when the steps were washed away, and we had a little bit of creative input as well when we were told that the proposed gap in the sea wall was to be directly behind the small trailer in the picture provided by the Constable, which of course it was not, it was to the right of that. We had a short lecture on safety issues and were warned of the calamity of global warming and rising sea levels should we allow this local family to create an entrance in the wall to provide vehicular access to their home. In conclusion, we were told that the proposition to facilitate this was so ridiculous you could not make it up. So I simply do not know why the Constable of St. Clement is so against this, given the considerable amount of work and research carried out over the years and expert opinion provided. I will take issue with what the Constable said in relation to this and, regrettably, the Constable was rather dismissive of the reports provided by the reputable experts engaged by the owners of The Beach House by insinuating that they would not say, or would be unlikely to say, anything controversial and were therefore not truly independent. I think it was wrong for the Constable to impugn the professionalism of these

advisers in this way from his seat in the Assembly. I was going to address a number of the same points that Deputy Bryans addressed, so I will deliver an abridged version of that. I believe the Parish have been sufficiently consulted and 2 key areas of consultation were the meeting in 2007 between the applicant's advocate and the Parish Roads Committee and a meeting in 2009 between the Constable himself and senior officers from T.T.S. and Planning, at which the Constable requested that the Ministers for T.T.S. and Planning agreed for the arrangements for the breach in the sea wall between themselves.

[10:15]

So I think 2 examples there of the good consultation that has taken place over this. The impact on the proposed works and the integrity of the sea wall were well covered in the expert reports. T.T.S. is happy with the proposed engineering solutions and the wall is not a primary sea defence. Risk of flooding to nearby properties due to this breach, I think, would be non-existent. Again, T.T.S. has approved the engineering solution and I believe is prepared to oversee the works. The engineering solution also calls for an incline ramp to be created from the slip into the property which, at over 50 metres, will meet the height of the existing sea wall and the ramp will be watertight and will be effectively a sealed gulley. So this is really a belt and braces in case there was any water coming up there at any stage in the future, there is little chance of it doing any harm other than being diverted straight back on to the beach. I do not think there have been any reports of flooding; I know the sea around our Island gets rough from time to time but, as far as I am concerned, there have been no serious reports of flooding arising from this breach and the Parish does not appear to have any concerns with the lower and more exposed breach further along, otherwise they could have rebuilt that defence at any time. Now, I think the impact of pedestrian safety is being over-exaggerated slightly here. If you go to Green Island, I know Green Island very well. I cannot remember how many times, but I think I was brought up on that beach in the summer as a child, and it does get very busy, the car park is extremely busy. In actual fact, the café itself, you buy an ice-cream and you walk straight out on to the road. For goodness sake, I mean, you might be too busy looking down having a lick of your ice-cream to walk straight in front of a car, but I have not heard that one brought up yet. I hope I have not set any hares running with that. So it is largely a very safe area. Vehicles currently reverse up the slip, and this can only be considered more dangerous, due to the poor view a driver would have compared to a slow exiting car from any driveway. In fact, in October 2012, the Parish had the opportunity to address any pedestrian safety when legislation for parking on the slipway was changed to allow for only 12 hours in any 24. Why at that stage then did the Parish not raise these safety issues and ban parking on the slipway altogether? Cars drive in and out and up and down and round and round, but the Parish were not prepared to do anything then. Another comment made: there is no other sensible location for the beach concession. Well, when you look at the beach concession, the little trailer there with wheels that can be rolled up and down the slip and placed conveniently literally at any site on the slipway, depending on the state of the tide, and whether that is another red herring ... Of course, we have heard that the concessionaire and Economic Development are perfectly happy with this arrangement. One thing I just wanted to raise for the Assistant Minister to consider is the fact that the onus for part of the arrangement with them will be to have to sign an agreement in relation to the access, as the Parish is refusing to potentially police it. Now, I think it is ludicrous that Planning would allow for an access to be made to somebody's house and then refuse to put a bit of yellow line in front of it or refuse to stop people parking there. Let us take, for example, a tourism destination area ...

**The Connétable of St. Clement:**

Sir, I wonder, would the Senator give way for a moment?

**Senator L.J. Farnham:**

I am not giving way, Sir.

**The Connétable of St. Clement:**

Sir, the Senator was saying that we would refuse to police it; that is absolute nonsense. It is the Economic Development Department who have made it quite clear that they object to this breach because it is a 12 in ... Sir, the Senator has said that the Parish would refuse to police it; that is simply not true, the Parish has no authority to police it.

**Senator L.J. Farnham:**

Thank you. I am pleased the Constable has no objection to the slipway being policed [Laughter] and I would ask that the Deputy then considers putting a small strip of yellow line in front of this driveway to avoid potential problems for the owner. If we look at a tourism destination, at St. Aubin Bulwarks where many driveways and garages exit on to the road, there is a small yellow line in front to avoid people parking there, and I think to expect the owners not to have that facility would be, quite simply, ludicrous and I would ask the Assistant Minister please to consider that as part of the arrangement, if the Assembly do, of course, favour this proposition.

**Deputy G.C.L. Baudains:**

I wonder if the Senator would give way for just a moment - I will be very brief - because several times he has alleged that this is endorsed by Transport and Technical Services, and yet they were never consulted on the first application. Two months later they opposed the entrance and in November 2008 they said that the application must be considered afresh. So could the Senator advise ...

**The Greffier of the States (in the Chair):**

Deputy ...

**Senator L.J. Farnham:**

I have not given way, Sir.

**The Greffier of the States (in the Chair):**

I think, Deputy, there is a solution. I am sure other Members have noted the Minister for Transport and Technical Services shaking his head at some point, I am sure he will want to speak at some stage.

**Deputy G.C.L. Baudains:**

I did ask if he would give way and he sat down, Sir, so now he is interrupting me. I would like to know if he could make up his mind. [Laughter] What I am seeking is clarification from the Senator as to where he gets his information that Transport and Technical Services endorses, because he is in danger of misleading the House.

**Senator L.J. Farnham:**

Hopefully the Minister for Transport and Technical Services will be able to clarify any points in relation to this. Moving swiftly on. Senator Le Gresley referred at the beginning of his speech to Shakespeare's comedy *Much Ado About Nothing*, which leads me to share briefly some interesting history which Members might find sounds familiar. During the Elizabethan era, the Globe Theatre used coloured flags which were displayed to advertise which play was to be performed that day. Because there was limited planning involved in respect of production, the owners and actors had to ensure a fast turnaround of business. A play would often be performed as soon as it had been written and the actors had to learn their scripts quickly or rely on cues or prompts from other actors, and some actors could appear in as many as 9 different plays in one day. A raised flag was the

signal that a play would be staged that day and continued to fly until the end of the performance. Different colours were used which depended on whatever play the play was to be: a white flag was flown for a comedy, a black flag was flown for a tragedy, a red flag was flown for a historical play. I could not help but think that we might introduce a similar concept here, notwithstanding that we would be rather hard-wearing on the white and black flags and may even have to fly them together on occasions such as this. I know it is an important issue for those involved, but I do find it disappointing that it has taken so long and required a debate in this Assembly to resolve. **[Approbation]** I therefore urge Members to support this proposition quickly so we can crack on with the real business and debate the reinstatement of the number 18 bus route in Le Squez. **[Laughter]**

### **3.1.3 Connétable M.P.S. Le Troquer of St. Martin:**

There is not much I can say now to add-on. I was expecting to speak first this morning. I would like to advise the Assembly before I start that I do not believe I am conflicted, but I know the current occupants of the property, having known them about 10 years ago - not recently, but I do know them - and I also know the 2 authors of the reports that were prepared for them during this long 15-year saga. I am not related to any of the parties concerned. Although I know the owners, I also know and like to think that I am a very good friend with my colleague, the Connétable of St. Clement, for whom I have a great deal of respect, and with the former St. Clement Connétable, Mr. Stan Le Cornu, who I read within the bundle has also been involved in this matter. I congratulate the Constable of St. Clement on his passionate speech yesterday afternoon; it is very difficult to follow 2 good speakers like him and Senator Le Gresley before him, and I thought I was going to have to follow the 2 of them. Fortunately, we have had the overnight break. I would have found it very difficult to speak today on this matter if the wall and slipway had belonged to the Parish of St. Clement and was a parochial matter, however, as we all know, the wall does not belong to the Parish but belongs to the public, and hence this debate. I saw the first report regarding the slipway and the objections to it in the newspaper and I read it before I had a chance to read the proposition. Reading the newspaper and the editorial lead, I immediately formed the view of this sea wall being opened up for a driveway by a new homeowner with a chance of flooding whenever fierce southerly gales coincided with the spring tides, and that it was a foolish idea and should never be supported. On reading the proposition, I realised that there was much more to this than I had read in the newspaper. I believe that a number of Members like myself have since taken the time to visit the site and look for ourselves. During my visit, I again expected to find a situation that would result in the property being somewhat along the beach with a need to open up this thick granite retaining wall that would allow the tide into the property and a further need for making a new drive across the actual sand along the beach before reaching the existing slipway. For those Members that have not been, this is not so. As we all know, the section of wall requested to be opened is near the very top of the slipway and just a matter of yards from a change in the surface, and one would presume, if this is the case around the Island, the start of different legislation and a different authority. I have looked for other possible similar slipways and there is a house at the top of the slip at Rozel, but the weather last week prevented me from getting to the west of the Island to look for others in the far west. Many departments other than the Parish seem to have some involvement. The slipway falls under the control of the Minister for Economic Development with the policing of beaches legislation, and I would say to the Constable of St. Clement that police officers, as they have on any of the Policing of Beaches Regulations offences, other the authorised officers for beaches, be they States or Honorary Police, do have powers to police the Policing of Beaches legislation. The Green Island Car Park falls under the authority of the Minister for Transport and Technical Services and his public places legislation and, of course, today's proposition comes from yet another Minister, the Minister for Treasury and Resources through the Assistant Minister. I took a number of photographs not knowing that we were to be bombarded with photographs of the

site. I walked westward along the beach and found, I think, 8 sets of private steps leading from the beach up to private properties, private homes. I accept these steps do not breach sea defences but are to private homes, however, like others who have also visited, I found a large hole already there, an opening in the sea wall already at a point further down towards and closer to the beach to that of the proposed site and much lower than the proposed opening will be. If there is any risk of breaching, then surely any risk of flooding will start at this opening. Again, I thank the Constable for his explanation of that lower hole yesterday afternoon and to Deputy Baudains who has explained it again this morning. The proposed entry gap in the wall would be considerably higher than the existing breach of the sea defence. I also thought, as one does when in a plane, there can be tense and anxious moments, but the pilot is flying the plane, he knows, or he should know what he is doing and is not going to put the passengers at risk or himself. Is the applicant wishing now to break the sea defences and allow sea water to flood their own new home, their own basement, car parking area and their cars? No, they are not going to do that. They must be satisfied all is safe and have even commissioned their own reports on it. As Senator Le Gresley clearly stated yesterday afternoon, this has turned into a pretty sorry state of affairs for the current owners and even the previous owners before that. How on earth it has ever managed to go on and take officers' and Members' time for 15 years is unbelievable. We have learned and read that apart from the initial encouragement to allow the opening that was subsequently withdrawn, planning permission has since been given to the application as far back as 2002 and that it could have probably been achieved at a minimal cost at that time yet, 10 years later, the owners are still waiting and trying. I am not sure what else the current owners can do; they want to remove their cars from the public car park, and that will subsequently free up spaces for members of the public to use when they visit the area, and for the concessionaire for deck chairs, who is happy to move from his usual location. All the relevant States departments and the Crown have accepted that the entrance proposals are now feasible and apparently all support the proposition, albeit with some conditions. The owners have agreed a sum of money as well as waived their need to call the Honorary Police and the States Police if anyone blocks the entrance, and that would be a selfish driver who would park on an opening to somebody's driveway anyway, the 12-foot opening being less than the length of most cars; it is not the length of an artic. lorry or a bus.

[10:30]

Although there appears to have been some concerns for the lost one car space for the slipway parking, I think there are 73 parking spaces in the 12-hour maximum parking in the car park at Green Island with the approval of the scheme. The plan would allow at least another 2 spaces to be freed-up, because the occupants will be able to park in their own parking spaces at their home, and of course, the public is better off by £63,000. I think the Assistant Minister for Treasury and Resources beat the Connétable yesterday afternoon in their reasons, for which I think the Assistant Minister came forward with 10 good reasons for the proposal, and the Connétable unfortunately submitted 7 against. All in all it was a good opening debate. However, there seem to be 2 main reasons why this opening should not be allowed: the possibility of flooding and the danger to pedestrians using the slipway. I think both have been covered with an agreement to disagree with each other. In conclusion, and probably for another day, but I am not convinced that there should be any parking on slipways in any case for those who cannot bother to walk from a car park or find somewhere else to park when going to the beach with the family or just exercising their dogs. What greater danger than a motorist losing control of his or her car on the long west side of the slipway; in fact, on either side of the slipway, while trying to park, driving over the edge on to a family on a beach having a picnic? I have seen and dealt with such accidents on slipways while people are trying to park. Some years ago I dealt with a fatality just a half a mile up the road at Pontac slipway in the same Parish of St. Clement, when a motorist trying to help a friends tried to move a car on the slipway as the tide came up one evening and accidentally drove over the side into



the sea, and was unable to get out of the car in time and died in his car. I recall removing that man's body from the car with ambulance officers. Surely someone coming out of his own private driveway knowing the possible dangers on the slipway is likely to cause less danger than someone who may have driven up the slipway before, as they drive down and try to park, reverse back up or turn on the slip or even on the beach, those that attempt parking as close as possible to the side of the slip or as close as possible to the beach. I am sorry for the Connétable of St. Clement, but I will be supporting the proposition and hope the Connétable and other Members will agree that this is not the start of widespread requests to open up sea defences, it is not setting a precedent but is something that needs to be finally resolved after 15 years of discussion, effort and frustration for everyone concerned.

#### **3.1.4 Deputy J.H. Young of St. Brelade:**

Like many Members, I visited the site and met the family (very lovely people) and I listened carefully and read their papers. I went there wanting to find a way to help them. Of course, having read the papers, my initial reaction was: "Well, I am really unhappy with the idea of what I would call States participating in ransom strips trying to extract money for a right" and £70,000 is a lot of money. I was not comfortable with that, but I wanted to look at the underlying issues. The whole process is a procedural mess-up and it illustrates, as was said yesterday, why we need an ombudsman. Apart from them paying us money, I think it should be the other way round, because they have been messed around for 10 years and spent money and frustration and still do not know where they are. But we have a solution on the table: "Okay, go ahead and allow access on to a slipway on to a very popular beach." That is not a usual thing to do. I read through the comments of the Constable of St. Clement and listened carefully to his speech and I concluded that there is a procedural issue about consultation when the planning process clearly was far from ideal - and that puts it mildly - but I do not think there is anything in the issue of sea wall flooding and so on. We are talking about a property which sits at a very high level above the beach, well up to the level of the car park, and I think those issues are not material. The one issue that troubles me really, and since my visit I am still dwelling over it, is pedestrian safety. I have 3 grandchildren under 5 and, like all young children when they go to the beach, they are excited in the summer, they run back, their attention is not on looking out for vehicles, and I do not think young children coming off that beach would expect to see vehicles exiting from a property on the left, in any event. Of course, we have got a difference in levels here, so a vehicle coming out of that would be partially concealed for quite a long part of its exit. So I said to the owners: "Look, I would like to see some visuals here. I think there is an issue about pedestrian safety" they said: "What do you think?" I said: "I think there is a problem. I do not think the reports we have got in the paperwork are good enough." A lot has been said about T.T.S. issues, but of course, this is not a standard visibility splay issue, visibility splay is about normal roads, traffic travelling at normal speeds. This is about vehicles coming into a pedestrian area where it is a leisure area which is very busy and congested. When I looked at the visuals, I am afraid they did not entirely reassure me because the edges of the new rebuilt granite wall will conceal the car for quite a bit of that period and so somebody sitting in that car would not necessarily see young children at a low level in height running up that slip way. Of course, I did not realise at the time when I made the visit that Constable Norman said yesterday, and it is in his drawing, we have got a concession there as well and so you have got parked cars. So I think that is going to increase the potential for pedestrian risks. So where do we finish up? There are pedestrian risks. In a perfect world this whole business would never have got off the ground, planning consent would never have been given for this until some way... I wanted to find a way. I have no doubt that the owners of that property, if this is allowed, will take extreme care themselves, but you cannot control their visitors, accidents do happen. So it is a balance of risk. For me, I do not think 2 wrongs make a right and therefore I feel that taking money for it does not eliminate the

risk. There is a risk there and for me the balance of risk is not acceptable, so I am not going to support the proposition.

### **3.1.5 Deputy M. Tadier:**

Yesterday we heard the value of process. Not wanting to drag-up former debates that we have had, with the minimum wage - I think many of us have our own personal opinions - we are told that there is a group that is set up to look at that, and they come back with a decision, whether we like it or not, and there is no point in micromanaging these decisions. That is what we are doing today. I am certainly not a Member who is best placed to make these kinds of decisions, I do not think anyone here in their capacity as a States Member is, although we do have a Planning Applications Panel. We have got at least one of the owners upstairs listening to this, I imagine getting very frustrated. I imagine Constable Norman is getting very frustrated because essentially he is bringing a rescindment motion; under other circumstances he would have brought an amendment, which means that he could have summed-up at the end and we could have a balanced argument. That simply means that this is definitely not the best form to do that. You would normally expect these things to be done at a panel level where people can come and make their objections, expert advice would be done on safety. It seems to me that there are 3 reasons of concern which one should have, and these have been looked at for the last 10 years and they have been resolved, I think, in the various reports, although there are still some contentions. The first one which is of paramount importance is: is it safe? By passing this decision today is it going to create pedestrian danger for those pedestrians? Will it create a precedent? I think that is a consideration: it is not necessarily the most important consideration, first of all because you have to question how many properties there are in this specific kind of context where they will require a vehicular access via a slip, which does not already have other access to the property. The other question which has been raised is: is the price right? Let us look at that quickly. If we are saying that the price is not right, we are saying that we do not trust the figures coming from Jersey Property Holdings and the Minister for Treasury and Resources. Of course, that would not be the first time, but we seem to let these things go anyway because of political deference. But if we are really saying that the price is not right, as a political issue, we have to take that up with the Assistant Minister and the Minister for Treasury and Resources, and if we do not have confidence in their capabilities and their staff, we do something about it, either by bringing a vote of no confidence or making sure we have a change of personnel there. But that is what they are saying and that is the political solution. It is not the owners' fault, that price. We also have to consider in 10 years, what is the actual increase to the owners of this development? If they had been able to do it 10 years ago, how much money would they have saved? So this is the price that has been put on the table, it is not fair to go back and squabble about that, it is not the prime consideration. Yesterday we learnt that we have a new evangelist in the Assembly for the impending perils of climate change and rising sea levels in the Constable of St. Clement. So he will be leading the fight for the promotion of awareness of climate change and the likelihood of threats in the Island. He will also be leading the fight, I hope, to safeguard all of our sea defences around the Island, not just one on a slip in his Parish which may appear to be a breach, he will no doubt want to make sure that the breach, very close and towards the west of the property, is filled in as soon as possible. Because, of course, that is much lower, that breach, I have seen it with my own eyes, and there are several breaches. The Constable, who is very concerned about the risk of flooding, will no doubt be getting on the phone Monday morning and making sure that is filled in and also other defences. Now, when it comes to road safety, I also expect he will be giving consideration not just to his Parish but La Haule Hill, which is a danger in our area because there is part of the road where accidents are waiting to happen. Pier Road; of course, we all park up there. We see cars coming on the wrong side of the road. I am not sure if Transport and Technical Services are keen on that. I had it flagged-up by a taxi driver, who I am sure is known to both of us, about the issues on there, accidents waiting to happen. St Aubin's

Inner Road, accidents are just waiting to happen. We allow cars to drive on the other side of the road because the parking issues are never resolved in Jersey. So we are completely oblivious to that. Of course, that is not a reason in itself to pass this, we are just saying we must be consistent, and it is amazing more accidents do not happen, I think, in this area. That is perhaps because drivers and pedestrians know of the impending dangers and they generally take the relevant risks, and parents also make sure they look after their children so that they are not running around. The other thing is that these people already have planning permission. Now, the question is if that planning permission is wrong, then where do we go from that? Are we going to overturn a decision that has been made because, if we are, that is significant and I think it is not usually done at an Assembly level, it is usually done through an appeals process. So these are the considerations that I have flagged-up. It is interesting to note the Constable said he received letters from the residents of the area; I would have thought that is a material consideration that the Assembly should be aware of and that he could or should circulate anonymised copies of those letters so that we could at least verify them, because we have Senator Farnham or other people standing up saying: "I have spoken to residents and they are happy about it" (I think it was Deputy Bryans) and we are told that other letters exist. So that would be useful to see. So, in my mind, I am likely to favour the approval of this. I think the owners have been through far too long a period of uncertainty. We certainly do not cover ourselves in glory with these kinds of debates, I do not think it is what we are elected to do, it is not the best use of our time and there are other experts who should be doing this in a completely different context but we are here today to make these decisions. So, really, I think, it boils down to safety. If it can be shown that there is not a risk of safety... and there are lots of vehicles already on the slip turning round: tractors, people delivering boats, *et cetera*. Boats are perhaps even more dangerous when you are doing U-turns, knife-jacking, *et cetera*, on a slipway. I think generally one has to be aware of the safety issues, and certainly our slipway down at St. Brelade is probably a lot more choc-a-bloc than this slip may be. So I think we just have to put this in context, not an ideal solution either way, but I am certainly minded to support this proposition.

### **3.1.6 Deputy T.M. Pitman:**

Into the breach once more. I had to say that. There are few things really left to say, because I think the points have all been made, so I will only be a couple of minutes. I think we could have really stopped this debate after we heard Senator Le Gresley, because I know he is very familiar with the area, I often see him down there when he is dogging or dog-walking or whatever the term is - I had better correct myself - and I am very familiar with the area too, not for dogging, I should point out.

[10:45]

People talk about the safety issue, but let us be quite honest: there are cars parked there all the time, cars reverse up there and the 2 vehicles which are probably going to be moved at the moment if this happens are the vehicles belonging to the people. What is the problem? We are saying that there is a big safety issue; well, I would suggest that there is very little in pulling out slowly from their premises than in someone trying to manoeuvre when they are parked bumper to bumper on the slip. It is not going to be a huge difference. Perhaps the Assistant Minister will clarify when he sums-up, but is there not a speed limit on the slip? I think there is, but I may be wrong. Can that be enforced? We have heard about these visitors that are all going to be there, you know, how realistic is it to say that the safety issue is going to be greatly increased, because I certainly cannot see it, and I have spent a long time on that beach. I think it has been really unfair that people have been muddying the waters by going on about the cost and the benefits to the people and their property by this being allowed to happen. Well, I do not think we should be making profits from people just for opening up an access to parking at a premises which the people have owned for many years and for which, as we have heard, they have been waiting more than a decade to get this resolved. We really should not be discussing this in the States, I do not think. They have been treated

appallingly. The flooding issue, well, I think that has is completely overstated and, again, there are many openings all the way round there, right round back to La Mare slip itself. If anyone does get flooded, well, that is going to be the people who own this property, the costs will be down to them, and I really cannot see that it is going to affect anyone else, to be quite honest, there are walls around the property. The time saga, really, as others have said, it is completely unacceptable. It seems to be something about St. Clement. I know this, my parents ... well, I have only got one of them left, lived in the same Parish, were told that they could not put a wall around their property because it would obstruct the view, but they could put a fence. Now, what an irrational decision that was but, of course, 20 years later, it has changed and they are allowed to put a wall; the trouble is it will cost about 20, 30 times, and my father has died since that. Where is the logic in some of these decisions, how can things go on for 15 years? It is absolute madness. I think the Constable has got every right to object to this, but are these problems really going to manifest? Most of us will not park across an entrance, I believe. What is to stop the people putting up a sign saying "Access needed 24 hours a day"? What is to stop them on their own land parking on a yellow line? It is not going to have any meaning in law, but there is nothing to prevent them. Most people will look at a yellow line and common sense will prevail. I think it will; obviously, the Deputy here regularly parks across entrances and yellow lines. I will not name her; it is Deputy Vallois, by the way. I say let us go back to what Senator Le Gresley said at the beginning: these people are not really asking a lot. If it puts a bit of value on their house, the fact of their parking, well, so what. They have to park somewhere now, they are taking up spaces that could be taken by members of the public. If you go down to that Green Island Car Park, you will find the biggest danger is in the car park itself where people, especially some young people, drive round there like absolute lunatics. It is not the slip. I am sure the Parish, somebody, polices that on occasion, especially in the summer when it is busier, so I would urge all Members: let us put an end to this saga and let us get on with discussing some serious issues, whether that is the number 18 bus route, I am not sure, although it is a very important issue for people in the St. Clement area, but it is not what Government should be talking about. So let us just bring this to a conclusion, vote, and let the people get on with enjoying their lives and their property.

**The Greffier of the States (in the Chair):**

If I could just add from the Chair, this matter has been going on for some considerable time so I am sure Members who have got something to add will be relatively brief. Senator Maclean?

**3.1.7 Senator A.J.H. Maclean:**

Sir, I thought it was rather unfair just before I rise that you made that comment.

**The Greffier of the States (in the Chair):**

Purely coincidental.

**Senator A.J.H. Maclean:**

I can assure you I have no wish to prolong this painful debate any longer than absolutely necessary. I do, however, feel it is incumbent on me just to make a few remarks on the basis that Economic Development, as has already been mentioned, has responsibility for the Policing of Beaches Regulations which, for absolute clarity, includes the slipways. Therefore, there have been a number of concerns raised by officers of the department with regard to this proposal; I just thought I would bring it to the attention of Members. I do not think, frankly, there is anything particularly substantive. The access, once opened, would not provide an ability for the owners to ensure clear access to their property, but of course, as far as I am concerned, that would be a matter for them to deal with. It could, indeed, at times become frustrating if they find vehicles parked across the entrance, but again, it is an issue that they would have to manage themselves. The department is concerned about the deck chair concessionaire having suitable storage. Again, I do not think it is

necessarily a critical issue, but there is a lack of space typically on the slipways and indeed a similar point of access for emergency vehicles down the slipway is a problem when more and more vehicles and other storage facilities are included. It is a problem in other parts of the Island that emergency services do not always have access and, clearly, it is absolutely essential that they do. It does not, in my view, impact directly on this particular decision. I listened to the comments yesterday by the Connétable of St. Clements and I have a great deal of respect for him, particularly as he has just walked in through the door [Laughter] and is standing behind me, but I would just simply say that from a pragmatic point of view and from the point of view of making an observation, 15 years to make this decision, the hour or so that we have now spent discussing it is quite extraordinary. It is not an example of good government at all. [Approbation] If we wish to grow our economy to have these types of debates really does not give us a great deal of hope to achieve that particular objective, we should be concentrating on far more critical issues, particularly in this very difficult economic climate. I would, having taken all into consideration, and despite my regard for the Connétable of St. Clement, urge Members to support the proposition that is before us. It seems to me pragmatic, it seems to me reasonable, let us put this to bed and let us move on to more important matters.

### **3.1.8 Deputy S. Pinel of St. Clement:**

Most of my points have already been covered, notably by Senator Le Gresley and Deputy Bryans. I too went to visit the owners and the site. I have not met them previously. I was concerned mainly about the precedent of breaching sea wall or sea defences. There are apparently 118 of these precedents around Jersey's coast with one being just to the west of the proposed breach. As for safety, the proposition is for vehicle access to a private home, not a commercial enterprise. It is notably a secondary sea defence wall. As other speakers have said, recently Deputy Tadier, this is not a good use of States time and I also believe that after so many years of frustration and enormous expense incurred by the owners, they should be compensated for their legal expenses accumulated through the prolonged inefficiencies of the decision or non-decision making of this government, previous committees and Ministries.

### **3.1.9 Connétable S.W. Rennard of St. Saviour:**

During this debate we have been having the Deputy in charge of T.T.S. shaking his head. Could we not hear from him if he does have any worries, because he is the expert [Laughter] or is it "the buck stops here"? But I would just like to hear from him and possibly from Planning, who is just walking out [Laughter] because, theoretically, they are the ones who have been handling this.

### **The Greffier of the States (in the Chair):**

I am sure they have heard your request. Connétable of St. John.

### **3.1.10 The Connétable of St. John:**

I have been listening in the Members' room and one or 2 things came to light. When I see this photograph produced by the Connétable with the conveniently-parked burger van, or whatever it is - refreshment van - on the slipway, I think back to my youth and at other times when I have taken my children in earlier times up to Green Island. This additional refreshment kiosk, in fact, was on the far end of the car park, as there was another kiosk where the little café or restaurant is now. So therefore because it is on wheels, it is a moveable feast and that can go anywhere. We notice that there are already steps directly behind it, so that knocks the argument of certain Members about safety out of the window, because people are using those steps to come out on to the slipway anyway. Further to this, we, the States of Jersey, as has been already said, should not really be debating this, this has been around for so long. I came into the House in 1994 and there were issues being discussed about this back in the late part of last century and we are in 2013 going into 2014 and it is still not resolved. What I would ask - and I am hoping that this is going to go through -

that anything that is done in opening-up that entrance is done in the local granite, not as we see in the new town park, all imported granite, which is not of the quality or colour that we are used to within the Island. I see that there is a variety of different granites here, but there is plenty of local granite on-Island and that must be stipulated, not to import things from outside the Island to carry out the works. I sincerely hope that the States themselves in their wisdom use local materials just to save on our carbon footprint, and I am looking at T.T.S. who are probably one of the biggest users of imported materials. When we have got our own quarries, it helps our own labour force instead of helping labour forces in other parts of the world. So I sincerely hope that in supporting this, that the new entrance, once made, is done in all local granites, including the cobbles that will go up into the driveway.

**The Greffier of the States (in the Chair):**

There has been on 2 occasions this morning some ringing sound from the Senatorial benches. I do not know if anybody is going to own up.

**Senator A.J.H. Maclean:**

Yes, to avoid embarrassment for Senator Farnham, I will admit that it was unfortunately my iPad I think was making a squeak. [Laughter]

**Senator L.J. Farnham:**

I thank the Senator for rescuing me, Sir, considering it was his iPad after all.

**The Greffier of the States (in the Chair):**

Does any other Member wish to speak? Minister, do you wish to address the Assembly?

**3.1.11 Deputy K.C. Lewis of St. Saviour:**

I thought I would come in at the end because there is always a lot of misinformation and the States would not be the first people to know what I am thinking. Regarding this proposition, I think we would all agree it is a complete and utter mess and should not be allowed to happen again because due process was not followed. The couple concerned are a very nice couple. I have met them. The good Constable of St. Clement is a very nice man and the money being asked, to me, is all irrelevant. T.T.S. were asked whether this was possible from an engineering point of view and T.T.S. agreed in principle that technically the opening could be created but would require details to be submitted to T.T.S. prior to any construction taking place - that is still to happen - and agreed that any application would need to go through the normal consultation phase which would allow the Parish to express their concerns regarding the application. The application was approved without any consultation so the Parish, T.T.S. and others could not make comment. That is something that must not happen again. I am supportive of the proposition. I think the couple has been messed around for far too many years but I would not say I am happy with the process.

**The Greffier of the States (in the Chair):**

I call on the Assistant Minister to reply.

**3.1.12 Deputy E.J. Noel of St. Lawrence:**

Firstly, I would like to thank Members for allowing me to amend part (a) of this proposition by deleting the reference to Drawing Number 1. I would also like to thank those Members who have spoken in this debate but I would particularly like to thank those who have not. [Laughter] I appreciate that some of the Members feel that this should not have come to this Assembly. However, Standing Order 168 and the 15-day rule is an important one and has to be respected.

[11:00]

Without being able to broker a compromise between the parties, I had little choice but to bring this to this Assembly. I will not be referring to everyone who has contributed to this debate but I will attempt to cover the main points raised. As requested by Deputy Le Fondré, to clarify on how the consideration has been calculated, I would briefly like to outline the process that was undertaken. It is a shame that the Deputy is not here to listen to it. Property Holdings appointed independent valuers, as did the owners of Beach House. Both firms used and agreed the same method of calculation, albeit with slightly different assumptions. Both parties agreed that the independent valuers should liaise with the aim of coming up with an agreed evaluation for both parties. The result was that the net uplift in the value of the property was estimated at £140,000. It was also agreed, fairly early on, that this uplift would be divided equally between the States and the owners of The Beach House. I am advised that this is common practice to split such an uplift between the parties on this basis. Deputy Baudains made a suggestion of referring this back to the Planning Applications Panel and although it was with good intentions, that suggestion is simply not possible. The Constable of St. Clement raised a number of issues. Property Holdings did not rely on the reports commissioned by the owners with regards to the integrity of the sea defences or indeed the safety aspects. Property Holdings relies on T.T.S. expertise. T.T.S. would not have stated that they are satisfied with what is being proposed if indeed the opposite was correct, although they do have the caveat in there that they do need to see the technical drawings of the proposed slipway entrance. I am grateful to the Constable for clarifying that the breach in the seawall some 18 metres to the west of the proposed entrance is in fact some 200 years old. He obviously has a longer memory than I have. Add to that a breach some 18 metres away is in effect constructed in such a manner to prevent flooding and that is exactly the same as proposed for this new entrance. It will be constructed in such a manner to prevent flooding and it will be effectively a sealed slipway initially rising upwards to protect the property. If by some chance flooding did occur, then Members should ask themselves who will be affected. The simple answer is that the only property to be affected is The Beach House itself and no other properties. However, the Constable's main concern was that of pedestrian safety and we agree. Where we differ from the Constable is that Property Holdings and T.T.S. consider that the safety issues have been adequately addressed and that the proposed entrance has been designed to comply with current regulations concerning visibility splays. It is my understanding that the regulations do not differ between a busy or non-busy junction. They all have to be safe. Other minor reports were raised by the Constable such as the wooden steps being washed away. The tide can wash away a set of wooden steps but it cannot wash away an extension to a slip. The tides will have an effect on the mobile deckchair concession. On a spring tide, the mobile concession will have to be moved, as it does now, but if I can suggest to Members that if the tide is up, people will not be sitting on the beach in their deckchairs. The owners have accepted that the entrance will not be policed. They are willing to confirm this in the actual contract so there is no need to adopt Senator Farnham's suggestion that a yellow line needs to be put in place. As I concluded yesterday, the owners of The Beach House have approached the public with a proposal to create an access way to their property over land leased to the public by the Crown. All the necessary statutory consents are in place. T.T.S. have confirmed that subject to the engineering drawings, the project is technically feasible and will not damage our sea defences. The contract will incorporate the necessary consents and safeguards to address the issues that have been raised. Again I recommend to Members that this proposition is accepted, that this long drawn-out saga is brought to an equitable conclusion and that access is granted. I maintain the proposition and ask for the appel.

**The Greffier of the States (in the Chair):**

Very well, the appel is called for. If Members would return to their designated seats.

**Senator L.J. Farnham:**

Could I just ask a brief point of clarification from the Assistant Minister? Did he say he would consider the possibility of placing a short yellow line in front of the entrance?

**The Greffier of the States (in the Chair):**

No, he said he would not.

**Senator L.J. Farnham:**

Sorry, okay.

**The Greffier of the States (in the Chair):**

Very well. The vote is for or against the proposition. The Greffier will open the voting.

<b>POUR: 38</b>		<b>CONTRE: 4</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. Clement		
Senator A. Breckon		Connétable of St. Saviour		
Senator S.C. Ferguson		Deputy G.C.L. Baudains (C)		
Senator A.J.H. Maclean		Deputy J.H. Young (B)		
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Lawrence				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				



#### **4. Draft Residential Tenancy (Jersey) Law 2011 (Appointed Day) Act 201- (P.19/2013)**

##### **The Greffier of the States (in the Chair):**

Very well. We come now to the Draft Residential Tenancy (Jersey) Law 2011 (Appointed Day) Act 201- and I will ask the Greffier to read the citation of the Act.

##### **The Assistant Greffier of the States:**

Draft Residential Tenancy (Jersey) Law 2011 (Appointed Day) Act 201-. The States, in pursuance of Article 26(2) of the Residential Tenancy (Jersey) Law 2011, have made the following Act.

##### **4.1 Deputy A.K.F. Green of St. Helier (The Minister for Housing):**

The Draft Residential Tenancy (Jersey) Law was approved by this Assembly in July 2009, sanctioned by the Privy Council on 7th November 2012 and registered in the Royal Court on 23rd November last year. This Appointed Day Act simply brings the law into force on 1st May 2013 such that it applies to new tenancies and varied tenancies from that point on. This date is proposed following the engagement with Citizens Advice Bureau, a number of letting agencies and other interested parties and will be supported by way of advice to the public on the new law. The law will introduce a modern framework of principles which will provide a legal basis for fair, transparent and well-regulated agreements between landlord and tenant introducing, for example, the requirement to have a tenancy agreement and specifying what that agreement must contain: minimum notice of periods; the eviction procedures and the ability to bring Regulations and Orders dealing with various matters under the Law. In particular, Regulations to introduce the deposit scheme and these have been drafted and are now with the Law Officers for their review and I will lodge them fairly shortly; and Orders requiring the condition reports at the outset of tenancies and preventing landlords from profiting on the recharging of utilities will be made shortly. I was rather hoping that I could have brought the first Order today around the charging of utilities but we are not quite there yet but we will be fairly shortly. Finally, by virtue of the Control of Housing and Work (Jersey) Law 2012, these provisions will also extend to registered persons entering into leases on self-contained units on registered accommodation. In my view, this is an overdue extension of basic protections. Overall, then, this is a major piece of social policy legislation. I maintain the proposition.

##### **The Greffier of the States (in the Chair):**

Is the Act seconded? [**Seconded**] Does anyone wish to speak on the Act?

##### **4.1.1 Senator A. Breckon:**

Yes, just to congratulate the Minister on finally getting this to the House and I say that because over the years, probably the former manager of the Citizens Advice Bureau spent hours, days, weeks, months on rent control tribunals, eviction processes and things like that and it is good that finally something is going to come on the statute because in doing so, landlords and tenants will know the rules and something will be agreed and written down. It has been a long time coming and hopefully the deposits law will follow on this because it has taken its toll really on people over the years because both of the laws, the eviction law and the rent tribunal, I think are both over 60 years old and are not fit for purpose anymore. So it is a modernisation of law and it is an example I think this House can take that if there are still things in the system that are archaic, then it is perhaps these things that need to be looked at and I congratulate the Minister on getting this far.

##### **4.1.2 Deputy G.C.L. Baudains:**

I appreciate that this is an Appointed Day Act and not the time to re-debate the principal issues. I wonder if the Minister could clarify for me whether this is the actual document which brings into effect the notice required between landlords and tenants because I am concerned about the issue of

‘unqualified’ where the tenant is required to give one month’s notice but the landlord 3 months and I think that is unfair.

**4.1.3 Deputy R.G. Le Hérissier:**

I know one of the constant complaints about housing laws has been the lack of enforcement that, fine, things are put into place... but I do congratulate the Minister. Could he tell us what the enforcement process will be underlying this law?

**4.1.4 Deputy G.P. Southern:**

Yes, the Minister is to be congratulated for steering this through the minefield that appeared to be present to get this into law but I would just like briefly to ask him when he sees rental deposit protection being up and running and in place because I think that is a critical element of this law?

**4.1.5 Senator P.F. Routier:**

This is a really important day for people to be able to celebrate that this is eventually coming into place. The point I would just like to emphasise is that in conjunction with the new Control of Work and Housing Law, registered people - which has been identified by the Minister - will have this added protection. I just would like to add that it is intended that the Chief Minister will be lodging the Appointed Day Act for the Control of Housing and Work legislation this week and it will be coming into force at the end of April so that is when that would come into effect.

**4.1.6 Deputy M. Tadier:**

Obviously to echo the congratulations insofar as this is long overdue but at least it is what we should be doing. I would like the Minister in summing-up to perhaps address the issues about whether or not in the future all properties and units that are rented out will be covered and this scheme will extend to those, including all non-qualified properties which may be rented on a per room basis, whether he thinks that is important and also to acknowledge the fact that we have to do lots more work when it comes to the quality of accommodation, not simply to do with deposits, *et cetera*, but to make sure that there is a way to ensure and safeguard that all properties that are being rented out in Jersey, in whichever sector, meet basic standards to do with health and safety and a minimum quality of living is assured for those who are subjected to having to rent in perpetuity without the possibility or the desire to buy properties.

**The Connétable of St. John:**

Yes, just to declare an interest, being a landlord.

**The Greffier of the States (in the Chair):**

Thank you. I call on the Minister to reply.

**4.1.7 Deputy A.K.F. Green:**

I thank all Members that have spoken. It is an important day and I will try and pick up all the points that have been raised and if I miss any, I am sure the Members will advise me but before doing so, I am pleased that Senator Breckon mentioned the Citizens Advice Bureau because they have worked with me and have been extremely helpful in forming this law and informing my thinking on the Orders that need to follow, and I am very grateful to the Citizens Advice Bureau and all those that have helped me, but particularly the Citizens Advice Bureau for their help. While I am handing out bouquets, I would also like to thank Deputy Southern because it was his amendment that has resulted in the deposit scheme. I know he wants to know when I am going to bring it forward but it was his amendment that resulted in us bringing this forward at the same time. My answer to the Deputy on when am I going to do it, it is with the Law Officers now. It has been more complex than I thought it would be. It has been more complex in terms of the procurement of

the service provider as well. There is a little bit of work to be done. I think the little bits around where the money is kept separately is fairly simple but it is where there is a dispute resolution when the landlord has one version and the tenant has another. Of course, condition reports will help with some of that but someone at the end of the day has to sort that out and decide whether the deposit is returned in full, not at all or in part and that is the bit we are working on at the moment but fairly soon.

[11:15]

Again, the Citizens Advice Bureau were the ones primarily that brought to my attention the fact that electricity, in particular, but utilities in general are sometimes charged for at a much higher rate than the utilities are paid for by the landlord and I intend, as I say, to bring that Order in to change that and also part of the Order, where a meter exists but not in the premises, would be to give the right of the tenant by appointment to view the meter because I have had discussions with tenants that just receive a bill without any access to what is on the meter so the right of the tenant to see that meter. Picking up on notice periods, the notice period will normally be 3 months but with the tenant having the right to give a lesser period but that can be specified in the contract. I, as the Minister or the Minister whoever the Minister is, have the right to vary that in certain conditions. It might be right to vary that, short-term leases or whatever, and that can be varied to one month and if Members remember, that was one of the prime reasons why it took so long to get through Privy Council because the way the law was drafted initially. If the Minister was so minded, he could have varied the order to zero notice and that is why it took so long to come to that and I had to bring an amendment back to the House. I was asked about enforcement. It will be enforced through what is currently the Population Office and the officers that work on housing law there. Deputy Tadier asked a very important point about would I be extending this to all accommodation. That has to be an aspiration. There is not a plan in place yet for that but that has to be an aspiration but equally he picked up on the quality of unqualified accommodation, I think he was particularly thinking of, and he hopefully is aware that with my colleague, the Minister for Health and Social Services, we are working ... her department has gone out on a consultation on the quality of accommodation and there will be some new regulations and legislation coming in there so that everybody has a minimum standard of accommodation that is enforceable, so we are working on that. I think I have covered most of the points.

**Deputy G.C.L. Baudains:**

Thank you, Minister. Just to save me coming in at the end, could the Minister just clarify the rationale behind the difference between one month and 3 months and why it is not an equal period of time?

**Deputy A.K.F. Green:**

Yes, the standard is to be 3 months but I would envisage bringing variation to, for example, people in, as I say, short-term lets, winter lets and that sort of thing. That is the sort of thing I think you would go away from 3 months to a one month but that is open for discussion with the landlords on a one by one basis, but I have the right to vary that. With that, I call for the appel.

**The Greffier of the States (in the Chair):**

Yes, the appel is called for on the Act. Members are in their seats. I will ask the Greffier to open the voting.

<b>POUR: 29</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier				Connétable of Grouville
Senator A. Breckon				
Senator S.C. Ferguson				

Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of Trinity				
Deputy M. Tadier (B)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

## **5. Draft Amendment (No. 20) of the Standing Orders of the States of Jersey (P.29/2013)**

### **The Greffier of the States (in the Chair):**

Very well, we come now to a related matter, the Draft Amendment (No. 20) of the Standing Orders. I ask the Greffier to read the citation to the amendment.

### **The Assistant Greffier of the States:**

Draft Amendment (No. 20) of the Standing Orders of the States of Jersey. The States, in pursuance of Article 48 of the States of Jersey Law 2005, have made the following amendment to the Standing Orders of the States of Jersey.

### **5.1 Connétable A.S. Crowcroft of St. Helier (Chairman, Privileges and Procedures Committee):**

This very simple amendment to the Standing Orders follows from the adoption by the States just now of the Appointed Day Act for the Residential Tenancy Law. Under the current Standing Order 168(4), there is no need for the usual 15-day report to the States for any tenancy that is terminable on giving one month's notice or less. The Housing Department tenancies have up until now been terminable on one month's notice and the current exception to the normal 15-day reporting requirement was put in the Standing Orders in 2005 to ensure that every single one of these tenancies did not have to be reported to the States before the tenancy was finalised. With the coming into force of the Residential Tenancy Law, the Housing Department will be giving tenancies that are terminable by 3 months' notice and this amendment to Standing Orders brings the Standing Order 168 exception into line with the new 3-month period. I am advised that Housing states there are just under 500 new tenancies every year and I am sure Members would agree that it

would be quite ridiculous for every one of these 500 tenancies to be reported to the States in a report for 15 days. I am sure all Members will therefore wish to support this very straightforward amendment to Standing Orders. I would also like to mention, as it states in the projet, that P.P.C. is currently considering other amendments to Standing Order 168 and will consider it further at its next meeting. This is not, however, about other changes that may be made to that Standing Order. That is for another day. The amendment will come into force on the same day as the Residential Tenancy Law which the Assembly has just agreed will be on 1st May 2013. I make the amendment.

**The Greffier of the States (in the Chair):**

Is the amendment seconded? [**Seconded**] Does anyone wish to speak?

**Senator I.J. Gorst:**

I am not sure whether I should make a declaration in that I am party to a tenancy agreement which would be covered in this way should this amendment not be approved.

**The Greffier of the States (in the Chair):**

Very well.

**5.1.1 Deputy J.H. Young:**

I just want to ask a question. This amendment is obviously designed to amend the Standing Order to deal with the residential tenancies. Could the Chairman of P.P.C. tell us what will be the position of non-residential matters, the effect of this change from one month to 3 months on this particular rule?

**The Greffier of the States (in the Chair):**

I call on the Chairman to reply.

**5.1.2 The Connétable of St. Helier:**

As far as I am aware, there will be no effect on non-residential tenancies. However, these are, as I said in my introduction, part of the Privileges and Procedures Committee's review of Standing Order 168 and we will certainly be looking at that point raised by the Deputy when we come to it. I maintain the amendment.

**The Greffier of the States (in the Chair):**

All those in favour of adopting the amendment to Standing Orders, kindly show? Those against? They are adopted.

## **6. Draft Companies (Amendment No. 7) (Jersey) Regulations 201- (P.20/2013)**

**The Greffier of the States (in the Chair):**

We come now to the Draft Companies (Amendment No. 7) (Jersey) Regulations 201- and I will ask the Greffier to read the citation.

**The Assistant Greffier of the States:**

Draft Companies (Amendment No. 7) (Jersey) Regulations 201-. The States, in pursuance of Articles 85A and 220 of the Companies (Jersey) Law 1991, have made the following Regulations.

**6.1 Senator A.J.H. Maclean (The Minister for Economic Development):**

This amendment makes changes to the Companies (Jersey) Law 1991 to clarify that a foreign company may be a corporate director of a Jersey company. The changes also specify what records must be kept of details of corporate directors. The Companies Law was amended some time ago to allow Jersey companies to appoint corporate directors. When the original amendments were made, however, Article 73(4) of the law required that, among other things, the corporate director should be a company. Article 1(1) of the Companies Law, however, defines the word “company” as referring to a Jersey company. As a result, under Article 73(4), only Jersey companies can act as directors of Jersey companies. As a matter of policy, there is no reason why a foreign company should not act as a director of a Jersey company. This is comparable to the position regarding directors who are individuals as natural persons ...

**The Greffier of the States (in the Chair):**

I am sorry to interrupt you, Minister, but the Assembly has become inquorate. I ask Members to return. Very well, you may continue, Minister.

**Senator A.J.H. Maclean:**

I know this is only a minor matter but nevertheless... This is comparable to the position regarding directors who are individuals as any natural person may be a director of a Jersey company regardless of their country of residence. The Draft Regulations are based on the policy regarding corporate directors adopted in the Companies (Jersey) Law and is deemed appropriate and legitimate for the jurisdiction. This amendment has been fully consulted and has the support of the Jersey Financial Services Commission. This is a small but pragmatic amendment to the Companies Law and I ask Members to support it. I propose the principles.

**The Greffier of the States (in the Chair):**

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles?

**6.1.1 Deputy J.H. Young:**

I just have one query. Will there be any requirement that the directors of companies, where they are established in what is referred to as foreign company jurisdictions as a corporate director, will there be a requirement that the corporate directors of that company are registered in a compliant jurisdiction in compliance with all the F.A.T.F. (Financial Action Task Force) A.M.L. (Anti-Money Laundering) rules and so on. I could not see that there was any test in these documents anywhere that means that we would not get Jersey companies owned by non-compliance corporate directors elsewhere.

**6.1.2 Deputy M. Tadier:**

It follows on the same theme. This has been presented to us as a very minor amendment, one for which we have trouble holding a quorum in the Assembly. Nonetheless, it potentially is very significant insofar as questions have to be asked about how it sits with our general policy of moving towards greater transparency and it is perhaps apt that it comes today when we have just had a statement from the Chief Minister about not wanting to encourage tax evasion, *et cetera*. Deputy Young is quite right in the sense that this is very different from the comparison with companies which have natural directors which may be foreign-owned because what happens if the company that is a director in Jersey is registered in a secrecy jurisdiction or if they, in turn, have directors who are owned by companies in a secrecy jurisdiction which do not have the same levels of transparency that Jersey has? It seems to me it is a strong risk that this could be used for greater secrecy and not for transparency purposes because it will be impossible to trace back in many occasions exactly who the directors of these companies are, which is completely different if it is a natural person and it is completely different if it is a Jersey company to the point where we will have companies registered in Jersey where we do not know who the beneficial owners are. How

does that sit with the general policy of moving towards greater transparency? I do not think that does sit with it or certainly it leaves great scope for potential abuse so I would like to know what has been done about that and I would want to hear from the relevant Scrutiny Panel who looks at these issues because this is potentially very significant and it is sending out the wrong message. It could have easily slipped under the radar today, of course, but I think it is important that this is flagged-up. I would like to hear from those involved as to what the potential risks are for Jersey's international image in sending out mixed messages to do with transparency and secrecy.

### **6.1.3 Deputy R.G. Le Hérissier:**

Very quickly. I wonder if the Minister could say why it has arisen at this point in time and I am totally confused. He kept talking about natural persons yet in his report, the penultimate sentences, it says: "To enable foreign companies to act as directors of Jersey companies." Could he elaborate?

### **The Greffier of the States (in the Chair):**

Does anyone wish to speak? I call on the Minister to reply.

### **6.1.4 Senator A.J.H. Maclean:**

Deputy Young's question was with regard to the corporate directors. For clarity's sake, the same rules apply to all corporate directors. They must be registered under the Financial Services (Jersey) Law 1998 for the J.F.S.C. (Jersey Financial Services Commission) to act as a director and they may not themselves have corporate directors. So the same rules apply as is the case elsewhere. I should add also, and this runs into Deputy Tadier's question, that Jersey is not moving out of line with anybody else. In fact, in some respects, we are slow to have and to allow within our Companies Law corporate directors of this nature and this is simply regularising the situation. He is right, though, to ask the question about compliance and, in fact, it feeds into what Deputy Young has just said. Are the J.F.S.C., our regulator, the Jersey Financial Services Commission, satisfied with this proposal? Yes, they are. They are perfectly satisfied that they have the necessary controls and indeed as is the same condition within an individual or a natural person that I referred to earlier, they have to meet the necessary standards in order to be a director. If indeed a corporate director does not meet the standards and satisfy the Jersey Financial Services Commission, then of course they will not be allowed to take up that particular post and that particular role. Deputy Le Hérissier asked the question about a natural person. Well, quite simply, at the moment, I have referred to natural persons or individuals because they can be directors. We can have foreign individuals, natural persons, who can be directors of Jersey companies. That is currently allowed. The only difference here is we are making it a corporate. We allowing or extending it to corporate bodies who can be directors of Jersey companies as well as natural persons. I think that answers the question and I maintain the proposition.

[11:30]

### **The Bailiff:**

The appel is called for in relation to the principles of Projet 20 and I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 28</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy M. Tadier (B)		
Senator A. Breckon		Deputy G.C.L. Baudains (C)		
Senator A.J.H. Maclean				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator P.M. Bailhache				
Connétable of Trinity				

Connétable of Grouville				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**The Bailiff:**

Is the Deputy Chairman of the Economic Affairs Scrutiny Panel present? Constable of St. Brelade, do you wish this matter referred to the Economic Affairs Scrutiny Panel?

**Connétable S.W. Pallett of St. Brelade (Vice-Chairman, Economic Affairs Scrutiny Panel):**

No, Sir. [Laughter]

**The Bailiff:**

Why am I not surprised by that answer? [Laughter] Very well. Then do you wish to propose the Regulations together?

**6.2 Senator A.J.H. Maclean:**

Yes, Sir, if I could *en bloc*. There are, in fact, 7 regulations. They are relatively straightforward. I would suggest them *en bloc*. I do not think there is anything I need to particularly add and I am happy to answer any questions if Members should have any further questions.

**The Bailiff:**

Very well. So you propose Regulations 1 to 7? Are they seconded? [Seconded] Does any Member wish to speak on any of the individual regulations? All those in favour of adopting Regulations 1 to 7, kindly show? Those against? They are adopted. Do you propose the regulations in Third Reading, Minister? Are they seconded? [Seconded] Does any Member wish to speak in Third Reading? All those in favour of adopting the regulations in Third Reading, kindly show? Those against? The regulations are adopted in Third Reading.

**7. Channel Islands Lottery: allocation of profits for 2012 (P.21/2013)**

**The Bailiff:**



Very well. We come next to Channel Islands Lottery: allocation of profits for 2012 - Projet 21 - lodged by the Minister for Economic Development and I will ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to agree, in accordance with the provisions of Regulation 4(5) of the Gambling (Channel Islands Lottery) (Jersey) Regulations 1975, that all monies standing to the credit of the Channel Islands Lottery (Jersey) Fund which have not already been set aside by the Minister (representing 100 per cent of the total Jersey portion of the profits of the Channel Islands Lottery for 2012) should be paid to the Association of Jersey Charities for the benefit of the community and the charitable needs of the Island.

**7.1 Senator A.J.H. Maclean (The Minister for Economic Development):**

I would also hope that this is a particularly straightforward matter. I would like to just briefly, if I may, thank Islanders for continuing to support the Channel Islands Lottery and, in particular, the Jersey element of it. I would like while I am giving some thanks, to also thank the media for continuing to promote in the way that they do the lottery which obviously contributes towards its success. For many years, Members will be aware that the Channel Islands Lottery has been a main source of support for local charities undertaking vital work in the community and this year, of course, has been no exception in that regard. The Association of Jersey Charities is the beneficiary of the proceeds, the profits from the lottery, as has been the case in recent years. The profit from all lottery sales in 2012 is a total sum of £401,702 which, subject to the approval of Members today, will be awarded to the Association of Jersey Charities for onward distribution to their members to allow them to continue the vital efforts to support the community here in Jersey in the many valuable ways in which they do. I would therefore ask for Member support for this proposition. I maintain the proposition.

**The Bailiff:**

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition?

**7.1.1 Senator A. Breckon:**

A number of years ago, I was directly involved with this when it first started out and the Association of Jersey Charities do an excellent job. I have attended a number of their meetings and they are very democratic. If somebody has a proposal, they have to present it and others have to agree and it does filter down into the community. It does a great deal of good but I do have some concerns for the Minister and I hope he will take this on board. On 15th March, the Public Lotteries Report was lodged for 2012 - that is R.22 - and what it said in there: "Should the States adopt P.21/2013 unamended, the grant due to be paid to the Association of Jersey Charities for the year is £401,702, a decrease of £17,800 on 2011." Yesterday I asked a written question of the Minister and I wanted to know because in the lead-up to Christmas with the Christmas draw, I received a thing from a public relations company saying how much the first prize has gone up. What I would ask the Minister is surely someone in the department can do this. This is good news if it has risen from £350,000 to £380,000. You do not need a public relations company to do that, and my reason for saying that is what the Minister said in his answer is that in 2012 we paid a public relations company to do this and the cost was £23,546. Now, this is Janet and John stuff. You do not need a public relations company to do that and he should really, I would suggest, be more careful because this is money that is going to charity. It is not to be frittered away on what I believe is an extravagance because if that money had stayed in the fund, there would have been £6,000 more paid to the Association of Jersey Charities than there was the year before. There would not be nearly £18,000 less, there would be more money paid. So I would ask the Minister to take that on board and, more than that, do not do it again this year because it is not necessary.

There must be somebody in the department that could issue a press release that says the prize money has gone up. We do not need spin doctors to do that.

#### **7.1.2 Deputy M. Tadier:**

Just 3 points. The first one is that it is necessary to acknowledge the good work that charities do, including the Association of Jersey Charities. The second point to make is that gambling has been said to be a tax for people who are bad at maths and I think it is important to remind ourselves that certainly, I believe, that a lottery is an indirect form of regressive taxation. Because what it means in a kind of low-spend economy like Jersey, we rely on the charitable sector quite a lot and the people who buy lottery tickets generally are those, from my experience, on below the average wage. It is a way of the poor subsidising the poor and we should be aware of that, which leads me on to the third point, that we have to be careful in times of austerity or, in Jersey's case, in times of imposed austerity, of an over-reliance on the charitable sector because the charitable sector themselves become under more duress, less able to cope insofar as more people are having to work in paid employment and therefore have less time for voluntary employment and also as the general public become pinched in their purse by the fact that we continue to impose regressive socioeconomic policies and tax measures on them, they will also in turn have less money to give to these charities. So we need to be aware of that in future because it is going to become unsustainable.

#### **7.1.3 Deputy J.M. Maçon of St. Saviour:**

Very briefly, I join with those Members who congratulate the work of those charities that do take part. On a slightly different tack, though similar to Deputy Tadier, things like this do show the level of need in the community. A lot of work does go on, and in some cases where government funding is shortfall and where better provision from government should be as well, and that is something which I think we should bear in mind as well but I will be supporting this.

#### **7.1.4 Senator F. du H. Le Gresley:**

I would be grateful if the Minister, when he responds, could advise me what the department proposes to do with the reserve, I am still trying to clarify the amount but I think it is in the region of £585,000. My understanding when the reserve was set up, it was at a time when the department were negotiating whether they could join the English National Lottery and it was felt that going forward, there may be less money available for the Association of Jersey Charities and therefore we should build up a reserve to protect the income that the Association receives. I believe that we are no longer pursuing the National Lottery route and I would question why the States of Jersey need to hang on in excess of £500,000 as a reserve when it could be distributed to charities at this important time.

#### **The Bailiff:**

Does any other Member wish to speak? Then I invite the Minister to reply.

#### **7.1.5 Senator A.J.H. Maclean:**

I thank all Members for their comments. Senator Breckon, just to clarify, he mentioned that a sum, I think he quoted, of £23,400 a moment ago which was used for P.R. (Public Relations) as he described it for promoting the lottery. In fact, the sum was £15,000 and it was over a 2-year period and yes, there has been some P.R. used to promote the lottery in order to increase the number of ticket sales and, in fact, ticket sales have increased and so in that respect, it has been profitable and successful. It is not intended to continue in this way with using particular agencies in order to promote the lottery and I have already made the point and extended thanks to the media who do a valuable job alerting members of the public to the increasing prize fund and the prize draws, and so on. But through the transitional period - and the lottery has gone through a transitional period - we

felt it appropriate that there was some appropriate P.R. put in place to ensure that we maintained the level of ticket sales and indeed grew them. It is, I should add, our intention to grow the lottery pot for the benefit of good causes. We have had some lengthy discussions with the Association of Jersey Charities. What we want to do is to ensure that we, at the very least, maintain the revenues that they have had in recent years but, by growing the pot, we have been discussing the opportunity of getting lottery funding into other areas, other good causes, maybe art, maybe heritage, maybe sport and if we can grow the pot sufficiently, then those are the sorts of areas that, in due course, the wider community could benefit from. Members may be aware that the Association of Jersey Charities has around about 280 members currently. Of course, there are very many other worthy organisations that in these difficult economic times could do with support but cannot be beneficiaries of lottery funding and that is an area that we would like to address if indeed we possibly could, and that was incidentally one of the reasons why we attempted last year the Summer Draw to increase revenues. It was not successful. We believe that it is something that probably should be pursued further and indeed we need to trial it for a greater period and promote it to a greater extent in order to get buy-in from the public. Senator Le Gresley raised a relevant point about the reserve. The reserve is currently sitting at around about £500,000. It is in there but the relevant point here is that this proposal this year for the distribution of £401,000 to the Association of Jersey Charities represents the entire distribution of profits this year. There is no further retention for the reserve. It is the view of ours that the reserve has reached a level that no longer needs to increase. We have discussed that with the Association. They are content and so we are distributing all the profits from this particular year. As to what will happen with the reserve in the future and the purpose for having it, again we have discussed this with the Association of Jersey Charities and indeed we could distribute it but it is felt at the moment while the lottery goes through continual evolution, it is wise to have that reserve there in the short term and that is the reason, in agreement and conjunction and discussion with the Association, that we have left it at the level that it is at. I hope that answers the questions that Members have raised and I maintain the proposition.

#### **The Bailiff:**

The appel is called for in relation to the proposition of the Minister for Economic Development. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 31</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator F. du H. Le Gresley				
Senator P.M. Bailhache				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy S. Pitman (H)				
Deputy M. Tadier (B)				

Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**The Bailiff:**

I can tell Members that the Connétable of St. Helier has lodged a proposition, Projet 40, entitled Parish Rates: the States' liability.

**8. Ratification of the Agreement for the Exchange of Information Relating to Tax Matters between the Government of Jersey and the Government of Brazil (P.22/2013)**

**The Bailiff:**

We come next to Projet 22, Ratification of the Agreement for the Exchange of Information Relating to Tax Matters between the Government of Jersey and the Government of Brazil lodged by the Chief Minister. I ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to ratify the agreement between the Government of Jersey and the Government of the Federative Republic of Brazil on the exchange of information relating to tax matters, as set out in the appendix to the report of the Chief Minister dated 30th January 2013.

**The Bailiff:**

Senator Bailhache, are you presenting this matter?

[11:45]

**8.1 Senator P.M. Bailhache (Assistant Chief Minister - rapporteur):**

The Chief Minister has asked me to act as his rapporteur in relation to this proposition and in relation to the 2 subsequent propositions. The proposition is another in the sequence of propositions which follows the decision of the States in 2002 to give a political commitment to the O.E.C.D. (Organisation for Economic Co-operation and Development) tax initiative on transparency and information exchange following which the Government has negotiated a number of agreements with different countries. The proposition before the Assembly seeks the approval of the Assembly to the ratification of the agreement between the Government of Jersey and the Government of Brazil and I move the proposition and would be happy to answer any questions.

**The Bailiff:**

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition? All those in favour of adopting the proposition, kindly show? Those against? It is adopted.

**9. Ratification of the Agreement for the Exchange of Information Relating to Tax Matters between the Government of Jersey and the Government of Latvia (P.23/2013)**

**The Bailiff:**

We then come next to Projet 23, Ratification of the Agreement for the Exchange of Information Relating to Tax Matters between the Government of Jersey and the Government of Latvia lodged also by the Chief Minister. I will ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to ratify the agreement between the Government of Jersey and the Government of the Republic of Latvia on the exchange of information relating to tax matters, as set out in the appendix to the report of the Chief Minister dated 30th January 2013.

**9.1 Senator P.M. Bailhache (Assistant Chief Minister - rapporteur):**

Like the agreement which the Assembly has just ratified in relation to Brazil, this is a proposition which seeks the Assembly's approval to the ratification of an agreement with the Republic of Latvia whose Ambassador you, Sir, were gracious enough to receive a day or so ago. The agreement follows the usual format of the agreements on the O.E.C.D. model and I move the proposition.

**The Bailiff:**

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition?

**9.1.1 Deputy R.G. Le Hérissier:**

While in no way disparaging, I am sure, the very fine Government of Latvia, I wonder if the rapporteur could indicate is there any logic as to how these countries are approached? Will we eventually sign-up to all countries in the world?

**9.1.2 Deputy G.C.L. Baudains:**

In a similar vein, and I am quite happy to approve this proposition, but these arrangements now seem to be spreading a bit like a rash. I wonder if the rapporteur could advise if he has any concerns that these increasing number of information exchange agreements would inevitably lead towards some type of global database enabling the banking dynasties that rule the world to eventually apply a 10 per cent levy on people's deposits worldwide?

**9.1.3 Senator S.C. Ferguson:**

I wonder if the rapporteur could give us an idea of how many requests for information we have had under agreements and where the bulk of the requests for information come from?

**The Bailiff:**

Does any other Member wish to speak? I now invite the rapporteur to reply.

**9.1.4 Senator P.M. Bailhache:**

The policy of the government at present, in answer to the question of Deputy Le Hérissier, is to negotiate tax information exchange agreements with all members of the O.E.C.D., all members of

the European Union and all G20 member countries and, as the report in relation to the Latvian T.R. (Taxation Ruling) discloses, we have to date signed or completed negotiations with 25 of the 27 E.U. (European Union) Member States, 33 of the 34 O.E.C.D. members and 17 of the 19 G20 countries. So the rash to which Deputy Baudains refers will probably spread not much further than it has already spread. The purpose of the policy is to ensure that there is transparency between all democratic countries operating under the rule of law and the policy so far has been that if countries fall within one of these major groupings, the European Union, the O.E.C.D. or the G20 group, then that definition is satisfied. It may be that it will be thought prudent to negotiate agreements with other countries in the future but the policy at the moment is to restrict the negotiations to those groups of countries. Senator Ferguson asked how many requests had been received and from where. I am afraid I cannot give her a very specific answer to that because no request of course can be made until the T.R. or Double Taxation Agreement has been ratified by this Assembly and the number of requests varies from country to country. One of the countries with which our relations are particularly important is France and I can say that quite a large number of requests have been made by the Government of France, all of which of course have been considered and a number of which have been completed and dealt with. If the Senator wishes to have more specific information than I am able to give at the moment, then of course I should undertake to do so and I move the proposition.

**The Bailiff:**

Very well. All those in favour of adopting the proposition, kindly show? Those against? The proposition is adopted.

**10. Draft Taxation (Exchange of Information with Third Countries) (Amendment No. 6) (Jersey) Regulations 201- (P.24/2013)**

**The Bailiff:**

We then come to the Draft Taxation (Exchange of Information with Third Countries) (Amendment No. 6) (Jersey) Regulations 201-, Projet 24, lodged by the Chief Minister and I will ask the Greffier to read the citation.

**The Greffier of the States:**

The States in pursuance of Article 2(1) of the Taxation (Implementation) (Jersey) Law 2004 and following the decision of the States, taken on the day these Regulations are made to adopt Projet 22 of 2013 and Projet 23 of 2013, have made the following Regulations.

**10.1 Senator P.M. Bailhache (Assistant Chief Minister - rapporteur):**

These Regulations are designed to give effect to the 2 decisions that the Assembly has just made in ratifying the tax information exchange agreements with Brazil and Latvia. The Regulations amend the schedule to the 2008 Regulations to include Brazil and Latvia and I move the principles of the Regulations.

**The Bailiff:**

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? All those in favour of adopting the principles, kindly show? Those against? The principles are adopted. Senator Ferguson do you wish this matter to be referred to your Scrutiny Panel.

**Senator S.C. Ferguson (Chairman, Corporate Services Scrutiny Panel):**

No.

**The Bailiff:**

Do you wish to propose the Regulations *en bloc*, Senator?

**Senator P.M. Bailhache:**

With the leave of the Assembly, I move Regulations 1 and 2 together.

**The Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak on either of the Regulations? All those in favour of adopting Regulations 1 and 2, kindly show? Those against? They are adopted. Do you propose the Regulations in Third Reading?

**Senator P.M. Bailhache:**

I propose the Regulations in Third Reading.

**The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Regulations in Third Reading, kindly show? Those against? They are adopted in Third Reading.

## **11. Independent Planning Appeals Tribunal: establishment (P.26/2013)**

**The Bailiff:**

We come next to Projet 26 - Independent Planning Appeals Tribunal: establishment - lodged by Deputy Young and I will ask the Greffier to read the proposition.

**The Greffier of the States:**

(a) The States are asked to decide whether they are of opinion to agree that an Independent Planning Appeals Tribunal should be established with full jurisdiction to determine appeals against decisions of the Minister for Planning and Environment made under the Planning and Building (Jersey) Law 2002 entirely on their planning merits, with the exception of deciding points of law arising from such appeals, with the new Tribunal to replace the present provisions in the Planning and Building (Jersey) Law 2002 which require all appeals to be decided by the Royal Court; (b) to request the Minister for Planning and Environment to bring forward for approval by the States detailed proposals for the establishment of the new Tribunal by the end of June 2013 and to further request the Minister, if the proposals are adopted, to bring forward for approval the necessary amendments to legislation to give effect to the proposals by the end of 2013 with a view to enabling the Tribunal to be operational by June 2014 at the latest; (c) to request the Minister for Treasury and Resources to assess the relevant budgets of the Planning and Environment and Law Officers' Departments, and those of the Bailiff's Chambers and the Judicial Greffe, in relation to the existing resources allocated to these departments to deal with planning appeals with a view to reallocating these existing resources to the operation of the Independent Planning Appeals Tribunal in 2014, with the Tribunal then being accountable to the Chief Minister for public finance and manpower purposes.

### **11.1 Deputy J.H. Young:**

I bring this proposition which certainly draws upon the experience that I had as a civil servant in planning for many years in the past, 5 years in a law firm working with lawyers, working with the planning law, as a former reserve member of Guernsey's Appeal Panel for Planning and in the last 18 months as a politician helping people grapple with the system. I have said that because I do not believe I am conflicted because the arrangements I am seeking to change were brought in subsequent to my having left the States. It was for me and is for me a major matter. It was

therefore one of my manifesto commitments personally when I stood for election that I believe there is work to be done on improving our planning system. The proposal today is to establish an Independent Appeals Panel which will provide for an appeal to be made on the basis of the planning merits of the case and by a body of people who have full jurisdiction to make decisions. That jurisdiction, it is proposed, would no longer be the Royal Court, if the proposal is adopted. Now, the Minister for Planning and Environment has a tremendous amount of power. Not only are all decisions of planning made in his name, even though the vast majority of them are delegated to the Planning Applications Panel and to planning officers, but they are all the Minister for Planning and Environment's decisions. There are all sorts of other decisions to do with listed and historic buildings, enforcement notices, even down to permission whether you can bring caravans into the Island. Thankfully most of these are non-contentious. But, of course, the big issues are planning applications, where there are a lot of outstanding issues remaining to be dealt with, which my proposition seeks to help us solve. My proposition has 3 parts. The first part is seeking the States approval in principle to the Independent Planning Appeals Commission. All the words there are important. They say Planning Appeals Tribunal, full jurisdiction. That means they are able to make their decisions, which are binding. Also, they would be determined on the planning merits. The one exception would be - this does not happen in every case, but it happens - where points of law are involved in an appeal and the mechanics I have set down here allows, of course, the Royal Court to deal with points of law, which it is there for. The second part of the proposition sets out an arrangement to help the Minister prepare his detailed proposals. I draw the line at saying there should be a tribunal and I have set the task of it in paragraph 43 of my report, which I am sure Members have read: the membership of it and so on, that kind of detail, who is on it, what their qualifications are, I believe has to be subject to consultation and I will draw on that later. The third part of the proposition is to provide a solution to the resource issue, which has plagued this issue of the past, probably for the last decade. I have tried to put to the Assembly a whole package, as I say, to help the Minister for Planning and Environment, to give him an implementation approach and a timetable. A timetable is important. Certainly it is for me and I believe it is for other Members and our community, because this issue has been on our desk for around 20 years. As you will see in a moment, I have a little bit of history, we had false starts. But, I think we do need to get this in place by the end of 2014.

[12:00]

The Minister for Planning and Environment made commitments on his election in November 2011 that there would be an improved procedure. I looked this up on Hansard, the Minister told us: "I will pursue the concept of an Appeals Commission using independent experts to bring rigour and challenge into the appeal process and reduce the time and cost of appeals." I think certainly I really bought into that and I supported the Minister and still do, because his heart is in the right place. But I feel that he does need a little bit of help in bringing those commitments into practice and reality. I am delighted to see, even though it is in the last couple of days, we have some signs of progress, which is very encouraging. I have maintained my proposition because I think there are some aspects of it which are so important that require us to proceed with my proposition. I will cover that in a minute. Now, I am going to start the history. I am going to cover a bit of this because of the comments being made. The States in 2002, the President of the committee of the day - Senator Qu  r  e - revised the legal basis of the Planning Law. That went to the States and was approved, albeit with the amendment of the introduction of third party appeals. Third parties are, if you like, the other side of applications. They are people that make objections to applications because they believe developments that are being allowed are prejudicing their property. This was the most controversial part of the debate that took place then, whether or not to extend the rights of appeal to applicants, which have always been there, because obviously the decision to prevent somebody from doing a development interferes with their natural property rights. Therefore, there



has to be a proper appeal process. In 2002 the States extended that to third parties and in 2005 that was restricted in a way. But, that was a major issue. In preparation for today I listened back to the old tapes of the debates. This is before we had Hansard. It was very interesting. I was absolutely struck with the passion and vision and commitment that was made to that debate and to the changes that were made. This was a real visionary piece of work. I think the debate went on for several days. I must admit I really did enjoy listening to that. One particular quote I have picked up from that period from the late Senator Christopher Lakeman. In that debate he said that an administrative procedure rather than a judicial review without all the baggage and costs ... they would rather see that every day. Planning is the biggest single neighbour grievance. He said he wanted to see a shift from the legal processes to administrative processes. He was committing himself, as a practising lawyer, that that was the right thing to do. Now, we got to the point, but something went wrong. I have to cover back... that element of that change made at that time was to introduce for the first time the appeal based on planning merits of the application. Whether or not it was the first or third party, it was the planning policies and the merits that mattered that was the basis for a decision on an appeal. Of course, that is different to what we have had since 1964 and what we still have now, which is this concept of unreasonability. I am sure we may hear later from those better qualified than I am who will tell us what that is. It is a very difficult concept, in my book, to understand unreasonability. It brings in other things other than the planning policies. The law at the moment ... despite the States having approved originally a change to planning merits, then it is a concept ... the appeals are based on unreasonability. It is a legal construct and quite probably the place where that is decided is in the Royal Court. Of course, when one looks at planning systems elsewhere - in my report I gave you all the web links and I am sure Members will have checked them all up - it is the only place in the British Isles where we have this. All other British Isle jurisdictions have planning appeals based on their planning merits, with expert people, people who know what they are talking about, with knowledge and experience of property and land matters, making those judgments and not bringing other factors into account. Of course, ordinary appellants do not understand it. They do not understand how if the planning policy decision was wrong - there are a number of cases that have happened like this - the court still finds against their appeals. In 2002 the decision was taken to have an expert Appeals Commission with full jurisdiction to renew cases, what the lawyers call *de novo*, which means made a fresh look, where, of course, the unreasonability thing says: "Let us have a look at what went on when it was done. It does not matter whether it was wrong or right. Let us have a look at what went wrong." The commission in 2002 would have been able to insert their own decisions. I could not resist this, in 2004 when Senator Ozouf was President of the Environment and Public Services Committee, I looked it up in the minutes, he said: "The Royal Court had a deterrent effect on appeals. The cost of employing an advocate, having costs awarded against them is likely to put off applicants and exceed the cost of the development." That was our own then Environment and Public Services Committee President, Senator Ozouf. Why that is important is because Senator Ozouf was also having the task of having to get the proposals funded. That is where the problem was. The law did not get approved so it took until 2004 and 2005, so that was already 3 years with no implementation of the law. Of course, without the law, no planning; there were no resources for the Independent Appeals Commission, which meant no planning merits, no experts. Therefore, it stayed with the Royal Court. Of course, that was done, there was discussion, and the minutes record this, with the Bailiff and Judicial Greffe of the day, who advised that the Royal Court test of unreasonability would have to stay. It was the inability to fund the costs of the Commission where things floundered on. When I look back I certainly think that the costs then were overestimated. The costs being predicted were nearly £800,000 a year for the Commission plus departmental costs. Now, I am not surprised that Members of the day and the Finance and Economics Committee found that impossible. But they were overestimates, in my view. I have looked back and they were based on an unrealistic number of appeals, 400 appeals. Also, a very expensive and over-the-top payment

for the appellate. It was a grand plan. What I am proposing here is a much more low key practical affair. In the paper I have suggested that the number of appeals would be expected to rise under this arrangement from their current level of about 11 a year to 100, which would be made out of 50 first party appeals and 50 third party appeals, as a maximum. Of course, the costs of such a body, and this is based very much on the Guernsey experience, can be contained to a much lower figure - I will return to that later - and certainly with the level of resources that we have already allocated to departments to deal with this. There should be no additional financial costs. But when that happened and Senator Ozouf had to accept that despite all the vision we could not have this reform, we would have to stay with the Royal Court for financial reasons, it was not a free good. Those Members were persuaded by promises. Again, I have listened to the hours of tapes of States debates and I have gone all the way through the minutes and it is quite clear that there were important commitments made that there would be improvements to the Royal Court system. For example, a mediation procedure was planned that was thought capable of resolution by negotiation. That is referred to in the minutes of 7th October 2004. As it happens, no. Although the Royal Court will remain an option for serious cases, it was envisaged that the Royal Court would operate as a non-adversarial tribunal whenever appeals were brought solely on planning grounds. Has that happened? No. Another one: "This would leave the way clear for affected parties to litigate-in-person complex cases and those which raise legal issues were to be handled by the court in the usual way." Well, the reality of it is all appeals are handled by the court in the usual way, with the complications for the Royal Court. The last one: "A more flexible approach to appeals would be introduced to allow them to be dealt with in a non-adversarial manner. We would not involve the award of costs against the parties." To that last point there has been some change. I will come to that shortly. Where are we now? With that the law was introduced: first parties in 2006 and third parties in 2007. Limited rights: there was a small debate, but quite an important one at the time, because Members were worried about having unlimited rights for third parties to object. For example, you could have people living in Australia, say, putting in objections and running appeals against a property in Jersey. That was thought to be unreasonable. The idea of a restriction to people who live within 50 metres of the application being able to appeal and also there is a requirement that they have to have an interest in the land and they have to have made representation. That was debate and we got those restricted rights, which I do think have worked well. In terms of the qualifying criteria, we have not seen excess numbers. The limitation of the Royal Court system were recognised and understood. It was recognised clearly that appeals were not accessible to the public. They were too expensive, too bureaucratic and too intimidating. I will come to that. But, the one thing was, by leaving it with the Royal Court costs were reduced. Instead of the £800,000 the good news was it was only going to be £155,000 a year. Has that been the case? No. What are the current costs? According to my report, £321,000. What happens after that? I look through. There were 2 reports of Committees of Inquiries following the introduction of those laws into the workings of third parties appeals. There was also an independent review of planning run in 2010. All of those reports recommended that it was a matter of urgency that the appeal system, the Royal Court system be replaced back to an Independent Planning Tribunal as was originally planned, intended, accepted and approved, but not implemented by the States. What was done about it then? Well, it was thought to be too early to change: "Let the system settle" was the decision. What I have tried to do in my report, as the Committee of Inquiry has asked us to do, is to say: "Well, okay, what is the situation 6 years on?" Well, yes, the court did make a serious attempt and full marks for this. They changed Royal Court Rule 15 and all the extra things and introduced a modified procedure. That does allow people to represent themselves, it allows people not to have advocates. It allows people to have appeals on the papers. It protects them as to costs. But it is interesting when you read those rules. I will save boring you with details of the paperwork procedures were required. To my way of thinking, there is a real difference between what a layman would regard as a simple set of requirements for papers to be produced and what was clearly

considered in the Royal Court rules as being simple. I am afraid, having witnessed 2 appeal hearings and worked with 3 appellants myself, it is expensive, it causes long delays, up to a year, causes incredible stress for people involved with them, the decisions are not understood by applicants and the end result is that this system is still not accessible. I will not go through the detail. I will say this, if Members want me to expand on that I will do in summing-up. But, I can give you the details of a case where a person ended up massively out of pocket, spent a lot of money, the States spent £30,000 and ended up with a decision that frankly could have been easily sorted by negotiation.

[12:15]

It was one of those cases where it was suitable for negotiation of alternative solutions. Now, we have seen in Guernsey, you have the figures in the report, how they have been able to do it. I am not putting this forward as an absolute model to follow. Firstly, they do not have third party appeals. They deal with round about 40 appeals a year. They deal with first party appeals in an ordinary room. People do not sit at a high level. They sit in a room and there is simplicity of procedure. They listen to each other. It is based on the policies. The planning officers come in, they tell the panel why they made such-and-such a decision. The applicants get to get their say. Objectors can have their say. The body of people that sit in the room are a mix of professional and local lay people. There are some lawyers, some surveyors, but they all bring some sort of experience in there. It is value for money. Their figures, which they have published, are less than £100,000 a year, which is obviously very good value and seems to have settled well in Guernsey. Now, I have taken soundings. Obviously I did not bring this off the top of my head, although people know exactly how I feel about this. For example, I spoke to the president of the Association of Jersey Architects yesterday and asked him what their current position was. He has written an email, which I have here. He says they are absolutely behind it. They think that the push for a merit-based appeal system is long overdue. There is a lot more in this email. I do not want to bore Members by reading the details of it. It has been okayed that I can make this available if Members want it. But they clearly say that this is long overdue and this reform should go ahead. Also, there is the Jersey Construction Industry Council, which myself, Deputy Luce and the Minister attended. The 100 or so professionals, planning officers, and the Panel even, everybody concluded that there should be an Independent Appeals Panel; that was the way forward, unanimous nobody against. I think and the feedback I have had individually is that this is well overdue and common sense. I had to go into that detail because I have been very disappointed. I thought this would be straightforward. To me the case was so clear cut. I see ... I got them late on Friday night, but I had commitments over the weekend, so I could not do responses for 2 of them until Monday. I am sorry you did not get my responses. But we got a response from the Minister which sets down a whole series of questions on which basis he says my proposition should be rejected and delayed in favour of a consultation, which I am sure is well meaning, but in my view I think is excessive and raises issues which should not be raised. He raised, for example, third party appeals, again. This is an issue that is settled. Are we going to re-open it? Those issues are majorly agreed and settled. We just cannot even think, in my view, of taking those rights away 6 years later. I can imagine what would happen, by those Members - and some are present in the House today - who supported that, if we went that route. I certainly understand that he has concerns. Perhaps from the Council of Ministers, I do not know, I have not had any comments from then. I see the Law Officers' comments there. I am really disappointed with that, because what I have tried to do is set down a way where the consultation would be on the tribunal, details of membership, professional appointment, lay members, U.K. members, all the sort of stuff that I put my thoughts in in the note that I sent round to you. I am not going to detail those, to save time. I am going to respond to Members' points in summing-up, if you want me to do so. Of course, the Minister's points really boil down (on page 3 of the Minister's comments) to 2 key questions, apart from the 20 questions

in detail, to only one question: “Should the legal basis of appeals for planning be changed to full planning merits?” Now, clearly, if yes that means we have to have an extra expert tribunal. It boils down to only one question. His report also says: “On its own this seems an easy question to answer.” I agree. Yes, yes, every time yes. I ask, why do we need to re-open that? With respect, I respectfully disagree with the Minister who is saying that my proposal is the wrong one and that instead the comments that he has made and the documents that he distributed, not just at the eleventh hour, but 30 seconds to midnight, after 18 months of a commitment, I cannot accept that that is the right way. I really would ask the States ... Before I close I have one final page. I have spoken for 25 minutes and I set out to try and contain this to half an hour. Costs, as I said, the spectrum of costs has really made it impossible to progress this subject and I hope I can nail it. The £800,000 forecast years ago was over the top. The target of £155,000 was exceeded. The actual costs declared by departments are £321,000, which is for 11 appeals a year, which is £30,000 per appeal. That I do not believe is good value for money. My proposal is that we should work within the £321,000, use those existing resources and reallocate it to set up and run the tribunal. Now, I saw the comments: “We cannot do that”, comes the plea: “We cannot take resources from the Law Officers. We cannot take resources from the Judicial Greffe, the Planning Department, because we are going to have to do legal documents, *et cetera*.” Not true. There will be a dramatic reduction in the amount of paperwork required, the formalities and the costs if this goes ahead. I will also put this question: yesterday in the questioning the Chief Minister was asked about reshaping our model of government and how we work. That answer, that we cannot take existing resources and reallocate things to do things better, differently and cheaper, is classic silo thinking. Silo thinking, writ large. I have set out the mechanics here for the resources that are in budgets now, within the Minister for Treasury and Resources’ power to change the structure of those budgets for 2014, within the M.T.F.P (Medium-Term Financial Plan) figures we have agreed to make those changes and adjustments to put the resources to match the needs for the running of the new tribunal. I believe that can be done. I think that will be the task of the Minister for Treasury and Resources. I am not saying I can prove it. I am saying that the third proposition... the Minister for Treasury and Resources should do that. Obviously if he cannot achieve it he is going to come back to the House and say so. I think if we cannot do this sort of thing here, reallocate resources for a perfectly better way of doing things, then what chance have we got with major change within government, I ask myself. This is a reform. I ask, please, Members to see through all the talk of delay and holdups, cut through it. The proposition is 3 elements, frugal in principle. Implementation is planned for the Minister to do his consultation and come back to us with the mechanics and the details, timetable and law by the end of the year, and then finances introduced so we can get this thing done before we are all out of office in this House and we have another one. Then the public, I think, will thank us. I will stop at that point, Sir.

**The Bailiff:**

Is the proposition seconded? **[Seconded]**

**Deputy A.K.F. Green:**

Sir, can I just seek some advice. I am feeling slightly uncomfortable here today as I have a live third party appeal in at the moment. I am just wondering if I should be taking part in this debate.

**The Bailiff:**

I would not have thought so, Deputy. Even if adopted, it is going to be a while yet and then no doubt your ... **[Laughter]**

**Deputy R.G. Le Hérissier:**

On similar lines, could I clarify that members of the Planning Applications Panel will be allowed to speak?

## **The Bailiff:**

I can see absolutely no reason why they should not be allowed to speak. Yes, Deputy Duhamel.

### **11.1.1 Deputy R.C. Duhamel of St. Saviour:**

I think it is right that the Minister for Planning and Environment should speak first. I will keep my comments fairly short and to the point, hopefully, and resist the urge to go on. There is not a great deal of difference between myself and Deputy Young in this respect, in terms of wanting to do something that is better than what we have at the moment. Indeed in the Deputy's report, at item 3 on page 3, he does state: "In Jersey our Minister for Planning and Environment announced on 6th December 2011 that he would introduce a fairer planning appeal system. The Minister promised to consult on a new merit-based planning appeal system that is less expensive for appellants [absolutely right] than the current Royal Court based system. This he told us was to ensure greater equity in the planning system and offer greater independent challenge on the planning decisions. Those are the 2 key items, equity and fairness in terms of the decisions that would be taken and a measure of independence of the decisions and the decision makers." In essence, it was not necessarily that I would set up an Independent Planning Appeals Tribunal with lots of bells and whistles that might well turn out to be expensive, even in terms of producing the legislation, in order to bring that about or indeed providing a second tier or third tier of challenge to the decision making than we have at the moment. Or indeed kind of placing further requirements on the Planning Law to take the Minister completely out of the loop in terms of his overall responsibility for decision making in planning regard. With that in mind, the officers were instructed after 6th December to go away and do the job, to begin to come forward with documents which would assess the extent to which we needed to go to the full Independent Appeals Tribunal or whether or not there was a hybrid system somewhere not quite at the end of the rainbow, so to speak, which would deliver all of the things this Minister and Deputy Young and others wish. It has taken a little bit longer than I thought. I have itemised in my comments from the department reasons why it has taken a little bit longer. I did have questions to this House that I replied to suggesting that I would be coming forward with a Green Paper by the end of the last quarter of 2012. We were slightly delayed in that regard, due to further consultation not necessarily having taken place at the right times and the difficulties in that regard. But, we are where we are, as other Members have stated in the past. That Green Paper has been published and indeed goes to the heart of the system to try in a very short period of time, not a delaying process by any means, to assess and ascertain whether or not we are moving in the right direction and in order to bring forward concrete proposals to install or seek the permission of the House to come forward with a system that will introduce a fairer planning appeal system, not only for first party applicants, but for third party applicants as well. The paper is out. It was published on 15th March and the closing date for comments is 7th June. Some people might suggest that it is unreasonable for me to be suggesting that Deputy Young's proposition is a little bit premature. I appreciate the nudging that some Members might think has taken place to bring us to the position that we are in. But, notwithstanding that, we are where we are. I think it is vital that all parties, in particular the 2 parties that not only Deputy Young has spoken to when he read out some of the emails, but they have also spoken to me. They have said perhaps different things to both parties. The A.J.A. (Association of Jersey Architects), for example, have indicated that they would, before bringing forward to this House any legislative changes, want to be more intimately engaged in a proper consultation process in order to discuss the type of system that they do have a great measure and interest in, likewise the construction forum. Why am I mentioning this? Any consultation process has to be as open and as fair as possible.

[12:30]

That indeed is the protocol under which one would expect all Ministers in coming forward with legislative changes or indeed policy changes to this House would be expected to abide by. That is

what this Minister is seeking to do. That is what the Minister is doing. On those grounds, I think that Deputy Young's proposal is well-meaning and supportable in its generality, but it is just a little bit too early. I do agree with him that perhaps as a single term politician, if that is his long-term intention, having come forward ... depends what he delivers, he has told me. But, if indeed he is only going to be in the House for one term then obviously the importance of delivering his long-term aim of a fairer appeals tribunal must be pretty high on the list and I will support him in his aims to do it. That said, I would not support any Member coming forward to bring forward straightjacket-type propositions, which take away the flexibility of any Minister's abilities to not only consult as widely and openly with the public as possible, in order to achieve the best solution that collective brains can put together, but to end up with something which perhaps does not hit the mark. That is why I am recommending that Deputy Young withdraws his proposition or indeed if he is unable to do that then for this House to vote accordingly to disregard his proposition and to allow the Minister for Planning and Environment and department to do their job. I know that, again, some Members might think that empty promises have kind of emanated from the Department of Planning and Environment, but you do have my assurance, and all those Members do, that the process is on track and following 7th June we will be in a better position to come forward with a plan of action, which might offer, perhaps for the first time, other alternatives to allow a fairer appeals tribunal to be implemented. As I said, in order to do that we need to speak to as many of the parties who are involved as possible and that is what I intend to do. It is unwise, I think, to confuse the debate and to go on to discuss the individual kind of comments that make up the Green Paper or indeed the comments on the comments from the department which, again, go down to too low a level of detail and which necessarily should not be discussed by this House, because we do not have all the full facts available at our fingertips. In essence, my position is absolutely straightforward and simple. I think the jury, so to speak, is still out. We are in a consulting phase. That phase will be terminated at 7th June, following which there will be a period of reflection and a list of proposals, as indeed the Deputy is asking for, will come to this House to be discussed. One last point, Item 42 of the Deputy's report does suggest that he proposes that this House allow the Minister - which is me - to come forward to the States for approval and to bring details of the best structure to establish an Independent Appeals Tribunal for planning appeals for Jersey. I thank the Deputy for allowing me to do my job. I hope the Assembly will also feel the same way if we come to a vote. Thank you.

#### **11.1.2 Senator S.C. Ferguson:**

The Minister has talked at length of the difficulties and the number of professionals wanting to be consulted. I am sorry, that is quite the wrong way to look at it. This revision is to improve things for the public, who pay the bills for the professionals, the consultants and the department. I appreciate that I may well be a little biased **[Laughter]**, but I have been through the system, so I can identify the problems. Firstly, the original intention of Deputy Scott Warren's proposal was a simple process which would provide an affordable means of appeal. It would also concentrate on planning aspects. The current system is overly legalistic. I have the greatest respect for the Law Officers, the Royal Court, the Jurats, the Commissioners, the Bailiff, the Deputy Bailiff and so forth. Their competence, though, lies in matters legalistic. Planning matters are rather more than that. Matters legal are part, but the finer points of planning are not matters which are perhaps familiar to the legal mind, with the greatest respect. For example, on occasion, the Attorney General - and I cannot remember which Attorney General it was - has stated that zoning is both a legal and a material consideration. I have no problem with this. But it is a problem when the court does not understand the meaning of such terms as Green Backdrop Zone. The Minister says that there must be a case for reasonableness. That is fine. But, if the court does not appear to understand the meaning ...

#### **Senator I.J. Gorst:**

Would the Senator give way?

**Senator S.C. Ferguson:**

I did try to explain this 2 or 3 times to the court and also in affidavits [Laughter] and they really did not get the message.

**Senator I.J. Gorst:**

Sir, I realise you cannot come to your own defence.

**The Bailiff:**

Well, it was not me. [Laughter]

**Senator S.C. Ferguson:**

I will happily discuss the offending phrases in the judgment with the Bailiff afterwards, if you like, Sir. But we have this sort of problem. It is not just the material considerations as the proposer says. It is the sheer volume of material required and the sheer work. There is the original appeal. Then there is the skeleton case with hard copies to the Bailiff's office, the respondent and the applicant. Then there is the full case with hard copies, which are big thick files usually, with copies to the respondent, the applicant and 3 copies to the Bailiff's office, all this with specific time limits, with instructions, which are not as clear as they might be. I have spent some time over the years writing guidelines which you could possibly call *Idiot Guides* or, with respect, *Guidelines for Dummies*, in various subjects. I would be delighted to assist in translating the instructions [Laughter] for people like me who would need to understand where we are going with this and who have not had the legal training. We also have the Architecture Commission, which is jolly good at considering a single building, but not how well it fits with the surroundings. It does not keep proper records of its meetings, but is used as an expert source for the court. Interestingly, there are only 3 Jersey members out of 8 and only 2 of these local members have architectural qualifications. What is more, none of the members of the Commission are members of the Royal Institute of Town Planners. This body, I admit, was put in place by the Minister's predecessor, so I merely make this point so that he can improve the membership. Frankly, the reason that there are so many appeals against planning decisions is the fact that people are feeling put upon. I have the greatest respect for the Minister. He is one of the best qualified and intelligent Members of this Assembly and he has a first class understanding of economics and is probably ahead of most of us in this Assembly in this respect. But, in this area, I must disagree with him. I appreciate

**Senator L.J. Farnham:**

Sorry, which Minister is she ...

**Senator S.C. Ferguson:**

No, I am not giving way.

**Senator L.J. Farnham:**

I just wondered which Minister she could be talking about. It could be any of them. [Laughter]

**Senator S.C. Ferguson:**

For the avoidance of doubt, I am talking about the Minister for Planning and Environment and not the Assistant Minister for Home Affairs. I appreciate that his department is working on the third party appeal system and so on, but as one who has ploughed through the rigours of the system, I must ask him to bring the matter further up the list of priorities. For this reason, I welcome the Green Paper and I will certainly be making a submission. I did the grunt work on my appeal myself, with a certain amount of input by such luminaries as the proposer of this proposition. But I

am told on good authority that if the appeal had been conducted using a lawyer I would have been in for a bill of around about £75,000. This is not what Deputy Scott Warren wanted. This is why she originally brought her third party appeal with amendments. I am not generally in favour of spending money, but it is essential that we have an appeal system which is fit for purpose. Currently this system is not fit for purpose. The simplest thing would be for the Minister for Planning and Environment to accept the proposition and incorporate it in the development of his Green Paper. We have been waiting for this. We have been talking it for a considerable amount of time. It is about time that we did something about it. I said at the time of the conclusion of my appeal that planning matters should be dealt with by a planning inspector. Now, even the managing director of my opposition agrees with me, which must be the only thing we agree on, but it does say that there is something in this proposition that needs to be attended to. I ask Members to support the proposition.

**The Bailiff:**

I think next is Senator Bailhache. Does the Senator wish to commence now or does the Senator wish to adjourn?

**LUNCHEON ADJOURNMENT PROPOSED**

**Senator P.M. Bailhache:**

I am sure you would understand that I have some difficulty in agreeing with Senator Ferguson that the Royal Court is not fit for purpose and my speech will certainly go on a little while. I wonder if this might be a convenient time to move the adjournment.

**The Bailiff:**

Very well. We agree to adjourn. We will reconvene at 2.15 p.m.

[12:43]

**LUNCHEON ADJOURNMENT**

[14:15]

**The Bailiff:**

The States has now become quorate after lunch. Very well. Senator Bailhache.

**11.1.3 Senator P.M. Bailhache:**

Deputy Young has been a proponent of a Planning Appeals Tribunal for a long time. I acknowledge that he has considerable relevant experience as a former chief officer of the Department for Planning and Environment. I have different experience, but I think that I too can claim relevant experience in relation to this proposition, because I have presided over numerous planning appeals over the last 15 years or so and advised the Department of Planning and Environment as a law officer for another 15 years or so before that. It is true that I was instrumental, I think, in persuading the previous Minister for Planning and Environment, in 2006, that the proposal for a Planning and Building Appeals Commission (I think that is what it was called) was misguided and should be abandoned. I am on the other side of the fence to Deputy Young. I accept, however, and I would not argue that everything is perfect in the field of planning appeals, nor indeed in the planning process itself. But that does not necessarily mean that it is wise to throw the baby out with the bath water. I want to address 3 separate aspects of the Deputy's proposition. The first relates to procedures. The second relates to the legal test to be applied in considering an appeal. The third concerns the question of whether a tribunal is preferable to the Royal Court as the body to decide a planning appeal. I make the point at this stage that in relation to those first 2 areas to be addressed, procedure and the legal test, the Assembly is perfectly



competent to change either of those if it wishes without necessarily setting up a tribunal. What is the current procedure? If an application is refused by planning officers there can be a review by the Planning Applications Panel. If that fails there can be an appeal to the court. At that stage there is a determination by the Master of the Royal Court as to whether the issues are straightforward or not. If the issues are straightforward, the Master makes a determination that the Royal Court should sit in tribunal mode in the so-called modified procedure. If it is not a straightforward appeal, then it goes to the court for a standard court hearing. A practice direction was issued by the Master of the Royal Court in 2006. I will just read to Members what paragraph 4 says in relation to the modified procedure, the tribunal mode: "The expectation is that in appeals under the modified procedure, parties will not ordinarily be legally represented. It is the court's intention that the proceedings should be conducted with as much informality as is consistent with the proper administration of justice. Members of the court will not be robed and would not expect any advocate appearing before it to be robed. Earlier in the practice direction, it is made clear that in appeals under the modified procedure the Royal Court will only make an award of costs in such an appeal in exceptional circumstances, whether the party is legally represented or not." The court sits as a tribunal in the modified procedure. It is the same whether it is a first party appeal or a third party appeal. In my experience, costs are never awarded in the modified procedure appeal. It is true that the court retains a discretion to award costs and costs can be awarded in the Court of Appeal, although I do not think that has ever happened. I do not believe that the fear of an order of costs, to pay the costs of the other side, is often, if ever, a deterrent to bringing an appeal. But, if it is, there is a remedy. The Assembly can enact a provision to prevent the Royal Court from making any order from costs in a planning appeal, so there would never be an order for costs. I would personally oppose such a proposition because I think it is better that the court should be left with the discretion to deal with the unusual case. But it is a possibility which is open to the Assembly. The Attorney General's note is very helpful, because he makes it clear that a lot of money often rides on the outcome of a planning decision and a planning appeal. Wherever there is a lot of money riding on an appeal, the litigant who stands to make or to lose a lot of money will generally seek the services of a lawyer to advance his cause. Senator Ferguson is not here and she recently lost an appeal, but I hope that she was not ordered to pay the legal costs of the developer. Deputy Young suggests that litigants should be free to choose whom they want to represent them in planning appeals. In the modified procedure there is a certain amount of freedom, but that is a fair point perhaps and is another matter that could be dealt with by the Assembly if it chose to make a legislative provision to that effect. I turn to the legal test. This, I think, is the kernel of Deputy Young's argument. Again, I repeat that so far as the legal test is concerned, the planning merits of the appeal is really the legal test to be applied. If the Assembly is persuaded that the legal test should be changed then it is open to the Assembly to make a change, to amend the provisions of the Planning and Building Law. This is, I think, the heart of Deputy Young's case. It really does need some careful thought. The Deputy wants, I think, a technocratic tribunal, capable, in effect, of replacing the Minister and replacing the Planning Applications Panel as the planning authority. I find it rather ironical that the kind of people who would effectively balance the conflicting demands of the environment and developers in Deputy Young's brave new world are experts, like the planning inspector in the Plémont inquiry, who, according to Deputy Young, got it completely wrong and misapplied the provisions of the Planning and Building (Jersey) Law 2002. In relation to Plémont I agree with Deputy Young **[Laughter]** but that is another matter. In order to have these new technocratic masters who will apply not common sense to the outcome of the appeal but their own expertise, we need a new legal test to do away with any powers of the Minister or the Planning Applications Panel. Deputy Young sets it out at paragraph 20 of his report. He says: "The Planning and Building (Jersey) Law 2002 sets the appeal test as being unreasonable, having regard to all the circumstances of the case. This is an unnecessarily high bar. It should be sufficient only that the decision was wrong to succeed in the appeal." But who says it is wrong and

on what basis? In the Island Plan there are numerous principles which nevertheless give some discretion to the decision maker. Is this development, for example, too large for the site or not? It is a judgment call and different people can take different views on the answer to the question. Decision makers must obviously try to be consistent, but there is room for legitimate differences of opinion. I think that building houses on the wild open spaces of the north coast at Plémont is completely wrong, and so, incidentally, does Deputy Young. But his technocratic expert, the planning inspector, disagrees. So, if in the new tribunal world the Minister had refused permission for development at Plémont and an appeal had gone to the new tribunal, it would be perfectly possible for the tribunal to say this is wrong and to allow the appeal.

[14:30]

There should be development at Plémont. Under the current test that would not happen. Unreasonable: to succeed in an appeal, the appellant has to show that the decision of the Minister or the Planning Applications Panel is unreasonable, having regard to all the circumstances of the case. The court has explained that tests in judgments that make it clear that the Minister has a margin of discretion and, although I am afraid it is quite a long quotation, I wonder if I might read out what the court said in a leading case: “The test to be applied by the court in determining appeals under the Island Planning (Jersey) Law 1964 was settled by the Court of Appeal in *Island Development Committee v Fairview Farm*. Sir Godfrey Le Quesne stated: ‘The Royal Court, as an appellant body, must consider not merely whether the inferior body has followed the correct procedure, but also whether its own view is that the decision was unreasonable. It may allow whatever weight it thinks proper to the experience and knowledge of the inferior body, but it cannot escape the responsibility of forming its own view. The duty of the court on an appeal, under Article 21, is not merely to consider whether any reasonable body could have reached the decision which the committee did reach, but to decide whether the court considers that the decision was, in its view, unreasonable’.” The judgment then continues: “The Solicitor General submitted that the decision in *Fairview Farm* did not entitle the court to find that the committee’s decision was reasonable but quash it because the court had reached an equally reasonable but different decision. We agree. The court might think that a committee’s decision is mistaken, but that does not, of itself, entitle the court to substitute its own decision. The court must form its own view of the merits, but it must reach the conclusion that the committee’s decision is not only mistaken but also unreasonable before it can intervene. There is an element of semantics here, but there is, nonetheless, a qualitative difference between finding that a decision is unreasonable rather than simply mistaken. To put it another way, there is a margin of appreciation before a decision which the court thinks to be mistaken becomes so wrong that it is, in the view of the court, unreasonable.” So, the court must consider the merits of the decision. There is, therefore, at present, a spectrum of wrongness. At the one end of that spectrum the court will find that a decision was so wrong that it is unreasonable, and in that case the decision will be overturned. At the other end of the spectrum is a decision which the court thinks is mistaken. In other words, the court would not itself have made that decision, but the court thinks that it was a decision, nonetheless, at which the Minister could reasonably have arrived. That seems to me to be a reasonable position. The decision maker, the Minister or the Planning Applications Panel, should have a margin of discretion within which to operate. If there is no margin of discretion, which seems to be what Deputy Young is suggesting, why bother to have a decision by the Minister or the Planning Applications Panel at all? Why not go straight to the Appeals Tribunal, because in most cases that is exactly what will happen? The number of appeals would certainly rise. If one looks at it from the point of view of a disappointed applicant, there is no reason not to appeal. One might have lost the argument before the Minister but why not have a crack at the same arguments before a different tribunal, and you might succeed? In the scenario of Deputy Young, the final arbiter is the Appeals Tribunal. Finally, what is the advantage of a tribunal over the Royal Court? It seems to me the important thing is that people

should feel justly treated and, furthermore, the public has confidence in the planning process. I am not surprised that architects, the building community and the engineers are in favour of a tribunal because their feeling would probably be that the balance would tip rather more in favour of developers with a technocratic tribunal. That may not be right, as a matter of fact, but it will probably be their assumption that professionals will think in the same way they do, and they are more likely to get their own way. What is important from a public perspective is that the Island Plan, which this Assembly has adopted after days and days of debate, should be respected and applied. I should be very surprised if the judge in Senator Ferguson's case did not understand the Island Plan. Perhaps Senator Ferguson was unfortunate. Certainly she was unsuccessful, and the trouble with any appeal, whether it is to a tribunal or a court, is that 50 per cent of your customers are going to be unsatisfied at the end of the process. What is the difference between a tribunal and an appeal to the court? There would obviously be a cost of a tribunal, and Deputy Young fairly makes the point that perhaps the figures are open to discussion. But there is no doubt that the Royal Court is there. You do not need to pay anything for an appeal to the Royal Court at the moment because the structure is there, the officials are there, the judges are there and they have to be there whether they deal with planning appeals or not. A planning appeals tribunal will be a new institution, there will be an expense in establishing it and they will be additional costs. In terms of other costs, I am not going to go to the figures but I think Deputy Young has been a little disingenuous in his arithmetic, because the fact of the matter is that in appeals which involve a lot of money, people will employ lawyers, whether the appeal is to a tribunal or a court. It makes absolutely no difference at all. The planning authority, the Planning Department, at the moment, uses the services of the Law Officers' Department. It may be that before a tribunal that would change, but I doubt it. If the Planning Department knew that on the other side of the argument was a highly respected advocate being paid a lot to represent the interests of the developer, I should be very surprised indeed if the Planning Department did not see fit to continue to have the services of the planning lawyers in the Law Officers' Department, so the costs of the lawyers will be the same. What seems to me to be important at the end of the day is that there is a judicial body which is respected and is capable of doing justice between the citizen and the state. Sometimes in planning appeals technical issues are involved but they are never, in my experience, incapable of comprehension by a judge or jurors. But in most of the cases in which I have been involved, the issues are much more matters of judgment. Would this building be too large for the site and would it impact unfairly upon a neighbour? Was the Minister right to issue a remedial notice to clear up a particular site which might put someone out of business? These are not technical issues. They involve an appreciation of fairness in accordance with the provisions of the law. I am sure that many matters could be improved, and the Minister for Planning and Resources is no longer here but he expressed some of his concerns about the procedures. But I am sure that these issues can be resolved in discussion with you, Sir, insofar as they concern the procedures before the Royal Courts. Complaints have been made that huge mounds of paper are necessary for a modified procedure appeal. I must say that is contrary to the Royal Court direction on planning appeals, but on the other hand the court must be in possession of all the material documents and material information. I hope that the Assembly will not throw the baby out with the bathwater and I invite Members to reject the proposition.

#### **11.1.4 Deputy M. Tadier:**

Wearing another hat as the chairman of the Jersey Human Rights Group, we are very pleased (and I will contextualise this) next Monday to be welcoming a speaker from the firm Hanson Renouf who, as we know, had a seminar about the cost of justice in Jersey. They are coming to talk to the group and I extend an invitation to any States Member who wants to come along and listen. There will not be a £25 fee as there was for the last one at the Radisson. This will be absolutely free and may be of interest. The reason I bring this up is because one of the key themes that Mr. Hanson was

developing in his talk was the need for reform of the legal system, and some of the areas where things currently end up going to the Royal Court which could be done in a different way, save money and perhaps not tie-up the Royal Court with certain transactions or whatever going through them. It could be done in a different way and therefore free-up time and costs for both government and individuals. I think this is one of those areas. It is only one small area which one of the other deputies for St. Brelade is concentrating on today. I listened very intently and clearly the last speaker knows what he is talking about in terms of the Royal Court; it is a very technical issue. But what does it mean for the real people on the ground? When I heard Senator Ferguson speaking, I think she really hit it on the head. It is that this is something for our own constituents, wherever they live. They are using the system and when they are up against a machine, how do they get justice? When we talk of the spectrum of wrongness and the reasonableness of decisions, and even if a decision is wrong, as long as it was arrived at in a reasonable way, then that is all right. How does somebody who has been aggrieved, perhaps as a third party, feel when they say the decision was wrong but we think it was a reasonable wrong decision? If I go to a shop and give them a £50 note and they give me change for a £20 note, and I say: "Where is the rest of my change?" and they say: "What do you mean?" Then we get somebody else involved and they say: "Yes, you did give them a £50 note, but it was a reasonable mistake for that person to make because it was an English one and it looked like a £20 note you were giving him, so I am afraid you still only get your £20 change." Not the perfect analogy, I admit, but telling somebody that the decision was wrong but was arrived at in a reasonable way does nothing to enhance justice. Is it a good use of time and resources to use the Royal Court with high costs? It does not matter whether advocates are wearing robes or not to sit around and listen to these issues.

[14.45]

I would suggest that the expertise of the Royal Court does not lie specifically in planning areas. It lies presumably more so in criminal matters and other civil matters that are brought before them. But if we did have a tribunal as exists elsewhere, and Deputy Young was quite right to point out that Jersey is unique in not having this kind of planning appeal system in the British Isles; every other jurisdiction does have something comparable. That body, technocratic or otherwise, would be able to develop specific expertise in those areas. They would be able to judge specifically on these areas and there might be a time initially when there would be lots of appeals. But when things bed down people would know what to expect and it would make for better decisions being made, making sure that planning law was applied to the guidelines as it should be, notwithstanding the fact, of course, that there is interpretation. So, I can only think that this is a good thing. There is nothing in the proposals, which Deputy Young is asking, which is unreasonable. I think we can all aspire to this and I think it does simplify things. It does mean, of course, a big shake up in the way we do things in Jersey, but we know that shake-ups have to come and this is about access to justice, not simply for developers but for third party appeals, *et cetera*, which would be able to use this system in a much more user-friendly way. Irrespective, though, of whether this gets through today, I think some of the points made by the previous speaker show there are things that can be tweaked, and I would encourage Deputy Young, even if he is not successful today - although I hope he is - to come back and make sure those tweaks to the system are put in place.

#### **11.1.5 Deputy S.G. Luce of St. Martin:**

I would like to thank the proposer, Deputy Young, for bringing this proposition to our Legislative Assembly because it is going to make a pleasant change in between talking about knocking granite blocks out of sea walls and the colour of the number 18 bus. As you stated, this is his specialist subject and a commitment he made personally in his manifesto. Members who listened to his proposal have heard what I think is a well-reasoned proposition and contains examples which I think we can follow. Most importantly, I think there is a possibility of making a positive step

forward here; a step which I fully intend to support because I want to be part of a government which takes bold steps and makes progress. As much as I would like to be supportive of the Minister for Planning and the Environment, he does not fill me with confidence and there is a reason for that. Senator Bailhache mentions that the Island Plan should be respected and applied, but very early in the term of the Environment Scrutiny Panel we tackled the Minister for Planning and Environment on Policy H3 and also on the appeals process. In March 2012, one year ago, on Policy H3 the Minister told us we are hoping to lodge before the summer, so most of the work has now been done. We are yet to see anything on H3. On appeals, in March last year, 12 months ago, the Minister told us it is a job for this year. But in October, when he also told us that he imagined he would have something early in the New Year, we pressed him and asked him if he would make the new appeals system a priority, a top priority. His response was that it was a difficult one because his job obviously had multiple numbers of balls that had to be juggled and he has to juggle those balls accordingly. In my view, the Minister has had his opportunity. He has had plenty of opportunity to come to the Assembly with new proposals and he has had the opportunity, as he says, to do his job. Unfortunately, for me it is a little bit late, and I do not believe he has shown enough priority to this particular subject. He tells us it is in a consulting phase, but I would put it to this Assembly that we seem to have been consulting on this issue now for years and years. I will be supporting Deputy Young.

#### **11.1.6 Deputy J.M. Maçon:**

As a member of the Planning Applications Panel I think it is useful to speak on this particular matter in the sense that sometimes we ourselves do get matters which are dealt with at officer level referred to us. In a sense we do ourselves work as an appeal board looking at different matters. First of all, for any Member who has not sat on Planning, I know the Chairman, Deputy Power, and other Members would encourage any Member who wants to sit on Planning to come and take part. It is certainly not an easy role at all, especially when you know you would be making a decision on something where potentially you could be turning something worth £100,000 into a certain amount of millions of pounds, depending on your decision. Something I do want to point out to them, when talking about the reasonableness of the decision-making process, it is not as if, as of course Members will know, we just sit down and look at a proposal and say “Yes” or “No”. We do have the Island Plan that we have to work to and that is our rule book. It is not quite as free to make a decision as perhaps some people like to portray it. Within that, because it is a written document, there are levels of interpretation and how one interprets a certain policy and juggles those policies against each other can be quite difficult. For example, some policies will say very clearly that they should be put in the highest regard, and the Coastal National Park Zone, again, is one of those that say this is the top one; this is one you have to pay most attention to. Again, something like the Green Zone also has a high level of presumption against development, and that is written into the policy. The problem is when you start getting a little bit lower and into design, amenity spacing, minimum spaces, visual impact, employment. All those types are different policies but the problem we and the officers have when we are looking at these types of things is, in that ranking order, which one takes precedence above another? That is when the planning process becomes less of a science and more of an art, because it is about how different individuals reach those different decisions. I will, obviously, bring this to what is being proposed here. So, in that process, it is very difficult to then say what was a correct decision, and I think this is one of the benefits of the Planning Applications Panel in that if you have multiple Members looking at a certain application collectively, when you are weighing-up all those different things you probably get a more rounded approach than if it was just one individual alone. That is a personal perspective and I do not think everyone will agree with me, but that is what I think, especially on planning terms. One of the problems, especially when it comes to appeals, is you have that problem of ranking and interpreting, and how you place policies. That is always going to cause dispute and will lead to a

legitimate ground of appeal where an applicant feels that “X” policy should have been given greater weighting than it was given during the process, and that is a perfectly legitimate ground to appeal something on. I have to say, unfortunately, sometimes when we are on planning, the Planning Applications Panel is not dealing with planning matters; often we are dealing with neighbour disputes. We are dealing with issues where one party was able to do something and another party was not able to, or they had fallen out and do not want their neighbour to be able to do something else. It is not always the nicest part of the Island and the community that we have to deal with, but often that is what we are given. In those circumstances, as has already been said, no matter what decision is arrived at, one party is always going to be upset no matter what you do or how reasonable or how you work through those particular decisions. Therefore, you will always have this element who will be dissatisfied and will feel their arguments were not properly listened to or taken into account, and will therefore always want an appeals mechanism, just to explain that. But would extra appeals be bad for helping ongoing policy? When we talk to the planning officers about how they reach their decisions and how it compares to different jurisdictions, what they inform us is if you compare the system we have here with the UK, where there are many more applications and many more appeals going through the system, that helps to form the interpretation of the different policies because they know what has been judged as an appropriate application of policy or, conversely, an inappropriate application of policy. One of the problems here in Jersey, as the proposer alluded to, is cost. One of the biggest deterrents to people lodging an appeal to a third party planning application is the issue of cost, and I think the Deputy, when proposing this, is quite rightly trying to address that. I think that is perfectly laudable. Although we have had some explanation of how the Royal Court process works, I think still ... and I am talking about an ordinary person who has a mortgage and a family to take on something like an appeal to the Royal Court is incredibly daunting and the question of cost is going to be one which is going to really hang over someone’s head, and is one of the biggest deterrents, quite legitimately so. If you have understanding about the planning system you have access to people. Yes, of course, that will make it easier for you. But if you are an ordinary person you do not always have that at your disposal. Again, it is something which we need to bear in mind when we are thinking about how individuals have to go through these processes, I think. But the point is: if you have more appeals does it help your planning system? Again, what the officers tell us, if you compare that with the U.K. because they have so many more going through, it helps them mould and shape and give advice on the planning policies to their members. Because there are comparatively so few in Jersey, they do tell us that they struggle when we ask for clarification or interpretation of policy, about how it should be applied in different situations. They do sometimes point out that contrast and how when they do receive, now and again, the Royal Court judgments on the application of policy they do analyse it and they do give new guiding notes about how different policies should be interpreted. In that sense it is helpful for the planning system. I think there has been an argument that more appeals is a bad thing and what I am trying to say is actually that is not necessarily so. There is just one final point which I do want to pick up. I have to say Deputy Young - though he did point out to me in the rooms afterwards that he has left open to the Minister to explore who would sit on this tribunal - I have to say that I would strongly disagree with having an architect on that particular panel making that type of decision. We have, as you would expect, very many architects with all different types of backings, and qualifications, and abilities and, do not get me wrong, I am not saying they are incompetent at all. They are very qualified, they are absolutely brilliant in what they have to do, but the things that they will come towards us on planning and say: “This is a great example of wonderful Jersey architecture” and would hope that we would follow their interpretation of policy to what may be our interpretation of policy, is incredibly different at times. Therefore, I really have to say that I think while they should absolutely play an advisory role if the tribunal is to go down, I do not think it is right that they should be making the decision, in my humble opinion. Therefore, I am not quite convinced on this proposal at the moment. I am going to wait for the Deputy to sum

up because I think the element of cost for an ordinary person is very laudable in this. But I hope that I have provided an understanding for Members who may not sit on Planning to have a better understanding about what type of issues, when Members of this Assembly have to sit on Planning, the type of things which we have to consider when going through those processes.

#### **11.1.7 Deputy E.J. Noel:**

While understanding the good intentions behind this proposition, which is that there needs to be a review of the planning appeal system, I am afraid I cannot support it. I also have much sympathy in the points raised by the Deputy of St. Martin. I know from my own discussions with the Planning and Environment Chief Officer back in July 2011 that we should be much further along the road than we currently are.

[15:00]

However, the Minister for Planning and Environment has finally published a Green Paper for consultation on this very issue. This proper process needs to be followed so that the changes that we do make produce the best outcomes. This means that any proposed changes need to be consulted on, well understood, appropriate, deliverable, and fully costed. To act on this proposition ahead of the outcomes of the work already undertaken, even though it raises some important issues and ideas, is not the best way for this Assembly to proceed. The proposition as drafted does not presently have the level of detail or evidence needed to override that work that is currently in progress. I do hope, however, that the lodging of this proposition has brought greater urgency and impetus to the review of the planning appeals system, and in fact other planning matters. From a Treasury point of view, Deputy Young proposes that the existing financial resources used on planning appeals by various departments would be consolidated and redeployed to serve the Independent Planning Appeals Tribunal. I do not believe that this is a realistic assumption. For example, costs identified for the Planning Department are some £231,000 of which £167,000 relates to 2 equivalent full-time planning officers, plus managerial input. A further £38,000 is allocated for overheads. Is it realistic to assume that these costs and the work involved will cease? I do not think so. It is highly likely that a similar level of planning staff and overhead costs would be incurred in preparing information for tribunal, as it currently would for court hearings. Planning officers might also be required to attend tribunals which, when combined with the likelihood of an increase in appeals, will only increase the cost pressures, not reduce them. Similarly, as the costs that the Deputy highlights for the Law Officers' Department and the Judicial Greffe, which are effectively apportionments of individuals' time and general overheads, are these capable of being transferred elsewhere? I am afraid that in reality that they are not. At this point I would just like to draw Members' attention to the Attorney General's written comments which confirms this. Indeed the Deputy, in his proposition, states that under the tribunal system points of law will still be dealt with by reference to the Royal Court. If this proposition were to be approved the reality is that we would be creating a new appeals panel infrastructure, the costs of which are not quantified and cannot be funded from existing resources. In conclusion, it would be wrong to approve this proposition at a time when the Minister for Planning and Environment, and his department, are partway through the process to develop and implement a new planning appeals system. My appeal to the Minister for Planning and his department is to put their work on steroids and to shorten the timeframe that they are working to, so we get to a new appeals panel far quicker.

#### **11.1.8 Connétable J.L.S. Gallichan of Trinity:**

I just really want to follow on from Deputy Maçon. I think most possibly I am the longest serving member of the Planning Applications Panel and over the years it has changed quite dramatically, I must say. When I first started there was very few R.F.R.s (Requests for Reconsideration). I must say most of our meetings now - I would say more than 50 per cent - are people who have had

applications refused and come to the panel for their view on whether this was reasonable or not. I think it is fair to say, I think at the last meeting we overturned 5 of the officers' recommendations. This is a sort of first past the post... this is a bit of an appeal and I think that we have to be very careful. A lot of these were minor things like a window overlooking somewhere else, or a neighbour's dispute; it is not major. I know we have heard of Plémont, that is a major different sort of planning. There are a lot of little things that come to Planning where I think if the Planning Applications Panel members use their common sense if they can, they should say well: "Is this unreasonable?" and in a lot of cases it is not unreasonable. Of course there is a fixed time span of trying to get everything done within the 3 months so that the percentage of applications are dealt with in a certain time as they wish to do. Sometimes the application is refused because there is a lack of information, just a minute lack of information. The other good thing about anyone who comes on the Planning Applications Panel is we site visit. Site visiting is essential. Sometimes you say: "We are going to put 3 houses in this garden" or whatever, when you see the size of these areas of building it is quite staggering what sometimes they want to fit in there. I am going on a bit but what I am trying to say is there has to be a level or a bar before we get to appeals. I must say, it is good to hear that the Deputy of St. Brelade has put this forward, if ever you want to have someone come to the Planning Applications Panel and give you a real going over on what we should be doing with planning, well it is Deputy Young and we have to sit there and take it in. To be fair, he knows his planning stuff and he puts a very good case to the panel. Sometimes he wins, sometimes he loses, but at least if there is a panel, if you put the bar too low for appeals I am afraid you will be inundated with minor appeals. This is what I am concerned about. The way we do it now with the R.F.R.s that we get at the Planning Applications Panel, I think it is a fair way to sort out some of those who have a dispute and think the refusal unreasonable. Obviously, even if we do approve them, there is still nothing to stop the person from appealing the neighbour or whatever they wish to do. But I just get a bit nervous that it is going to make everything too easy in life. There should be a bar. I think the panel does a good job on looking at those which could be slightly borderline or a little bit contentious. I cannot support this at the moment but I think Deputy Young has a point that it needs to be a consulted a little bit more widely before we make this decision today.

#### **11.1.9 Deputy R.G. Le Hérissier:**

I thought Senator Ferguson and Senator Farnham were being modest when they said they were not within the intellectual nearness of who they thought was the most intelligent Member in the States. But what I would advise, if they were to add the combined sum of their 2 IQs they might well get within reach. **[Members: Oh!]** If I could carry on. They are people with broad shoulders. **[Laughter]** Also, like the Constable of Trinity and Deputy Maçon, I think they both made some very good points. There has been a bubbling issue, which I know the Minister for Planning is going to shoot me for, which came up in questions yesterday from Deputy Young about this whole issue of the role of the panel in its *de facto* role, as the Constable of Trinity mentioned. What has been worrying me is the panel does a lot of work, it visits the site, it has good discussions, it does a lot of reading, and there are some incredibly diverse people there. It is a great pleasure and privilege and learning experience to be there because of the way it works and the way it resolves its internal conflicts and so forth. My view is it has acted as a *de facto* Court of Appeal, it is a cheap one, and it helps what I might term the little people because we do not see the really big applications. That, to me, is the paradox of Ministerial accountability, that ultimately all the big stuff goes to one person and it puts an enormous pressure on that one person. There is no doubt it led to issues with the former Minister for Planning and Environment who did - it has to be said - set up a panel under Deputy Duhamel to look at the role of the Minister, the powers of the Minister, and so forth. The paradox is that under our Ministerial accountability system the Minister allegedly is responsible for absolutely every decision, as is the Minister for Home Affairs about not operational issues that the police deal with - he is not responsible for every parking fine that is



administered, blah, blah - but I think he gets the gist of what I am saying, and the Minister for Planning and Environment similarly. I think what this does, it puts far too much on the shoulders of the Minister for Planning and Environment, it draws him away from policy development and, not intentionally I should add, I think it weakens the role of the Planning Applications Panel. Because there is a strange form of appeal which is now buried in the system under the protocols that the Minister mentioned yesterday where if an officer does not agree with the overturn of the planning applications they, not the applicant, have the right to go to the Minister and the Minister then holds a formal hearing where there is no statement made on behalf of the panel as to why it reached this decision, because it does not reach these decisions lightly. There is no statement made, so what there simply is at this solo hearing is a simple restatement of the applicant's position and most importantly, because it is initiated by the officer, of the officer's position. Some people have said why do we not just accept the officer's view, get rid of the panel, and everything will be hunky dory, because that is some of the logic that seems to be at work. As I said, the panel does not make these decisions lightly, it makes them often with a lot of argument and a lot of well-managed conflict, so to speak, and I have no problem with that, that is how it should be. It should be seen that there is a healthy process, it is all carried out in public, as people like Deputy Young know, and he can follow the arguments. Indeed, the arguments - and this is where it switches from being science, I am not sure to art as Deputy Maçon in his very magisterial presentation said - as said in the officer's very well written, I should add, Planning and Environment's report on the matter: "Planning can be complex with a multitude of factors needing to be balanced. There can legitimately be wholly different but equally plausible conclusions on the same situation." Do we not know that? Meeting after meeting, that certainly is the general conclusion we reach that we could have gone in one or 2 diverse directions, either through the vote or through the balance of the arguments or balancing-up all these different criteria that come to bear, and which often do not come with weightings, they come as equal criteria, it would be so much easier if they came with weightings because decisions could be made in that sense almost robotically. But that is how the balance is struck. So what is happening is you have this strange system now operating where the officers get 2 bites of the cherry, so to speak, and the public are saying: "Well, I thought I had one and argued my case." We have to tell them in terms of how the informal appeal system works and in terms of how Ministerial accountability works: "No, you are only on a journey, often a very long and tortuous journey, but you are only on a journey." I feel, along with Deputy Maçon, if there was a proper appeal system or there were more appeals going to the modified procedure the panel would be much better informed, either if we can re-energise the modified procedure or we reach the stage of a merits-based appeal system. Undoubtedly there will be a flood of appeals, as the Constable of Trinity said, but I suspect it could calm down. I suspect it could calm down as trends were noted, as more decisions were given, people would start to draw conclusions. The sad thing at the moment is a lot of people will not put their head above the parapet, some because of the money issue and some, in the architectural and developers community. It seems strange taking their side, they feel if they push it too much or if they have one application and, for example, they seem to have got the application but all of a sudden the big issue is conditions, where they think they are going to lose the battle on conditions which may, in effect, mean they lose the war. They are not prepared to put their head above the parapets. There is an awful lot of inhibition there and I feel if we had a proper appeal, or a more widely used appeal system, it would settle down. If I may, Senator Bailhache made some very good points and I am swaying on this, although I do not think there is any dispute with the general thrust of Deputy Young saying that there needs to be a look at this issue. I would have hoped he and the Minister for Planning and Environment could have sat down because they are, as the Minister for Environment said in his speech, essentially on the same road in the sense that the matter has to be looked at; it is the speed, the urgency, and the thoroughness that may be an issue. But I thought Senator Bailhache did not stress enough that the modified system is essentially about straightforward cases and the more complex cases are very

much the domain of the full Royal Court, and I think that makes it very difficult. The other issue is I think he overplayed the whole issue ...

**Senator S.C. Ferguson:**

Will the Deputy give way for a moment?

**Deputy R.G. Le Hérisier:**

Yes.

[15:15]

**Senator S.C. Ferguson:**

There is not that specification at all for the modified procedures. Certainly my case was a modified procedure and that was fairly complex so I am not quite sure where that came from. Unfortunately I had a meeting at 2.15 p.m. so I missed the first part.

**Deputy R.G. Le Hérisier:**

I may in fact have to refer to the Solicitor General because as I understand it Senator Ferguson went to the modified procedure, which applied to third party appeals, whereas I am talking of the modified procedure applied to planning appeals in the broader sense. I may be confused there in which case at the end I may ask a question of the Solicitor General. The other issue, Senator Bailhache made continuing reference to “technocratic” and clearly he was drawing some learning from the way that the Plémont inspectors report had been compiled. The issue I would make, if you read Deputy Young’s paper, of course he does see a role for laypeople and my view is again if you were to look at how the Planning Applications Panel works - which is essentially laypeople informed by planning officers - we are very capable, as indeed Senator Bailhache said. One of the big issues about the case, which I think was alluded to in Deputy Young’s question yesterday, was that we were struggling with policy advice, and our interpretation of how this advice was going to work was very different to the interpretation of the officer who was applying a massive number of tests to a situation and people were saying: “You cannot apply those tests” or: “Once you have applied the initial tests that is it. If you cannot move it beyond those initial tests, why are you applying this fantastic range of broad tests?” In other words, unworkable policy was our conclusion. We have been criticised for that, all well and good. But those were not the findings of technocrats, those were the findings of people saying: “Does this policy make sense to us, as explained to us and as we are trying to apply it?” Decisions were reached about that which I thought were very sensible, were very well thought out, and merit consideration because the conclusion might be that the policy is a mess and it needs sorting out. It might well be that and I think that is exactly what we should do. I think those are some of the issues that need looking at. I think it is broader than a Planning Merits Panel, I think there are broader issues but those are some. I wonder if the Solicitor General could clear up my confusion about what kind of planning case can be brought forward to the Royal Court, either a general planning case or a third party planning case; what are the type of criteria that apply to the nature of that case?

**Mr. H. Sharp Q.C., H.M. Solicitor General:**

The modified procedure is typically used in cases where there is one or 2 relative - and I use the word “relative” - relatively straightforward issues that the court feels able to determine within a relatively short period of time.

**11.1.10 Senator A.J.H. Maclean:**

It is very right that we have this type of debate and I think it is appropriate that we thank Deputy Young for bringing it. I think it is absolutely right that we look at something that is so fundamental

to so many people in the Island. From my perspective it is fundamental to the economy and the success of the economy. We need, clearly, a well-oiled planning process in order to ensure that we have a healthy and growing economy. It is essential from an economic point of view that the planning process is accessible, cost effective, consistent, and timely. These are all measures that we need to keep very clearly in mind and I know that the Minister for Planning and Environment shares my view on that. I think it is also right that I should make reference to this document, the proposition that Deputy Young has produced. It is probably the best proposition that I have seen put together since I have been in the States from a Back-Bencher, there is a great deal of detail in here. **[Approbation]** I think he should be congratulated on it. Also, while I am in my congratulatory mood, I would like to congratulate the Planning Applications Panel. The Connétable to my left stood a moment ago: I know he and his other colleagues have an extraordinarily difficult job. It is great courage to put your name forward to be on the Planning Applications Panel, it is not an easy job and I think they should be congratulated. I certainly would not like to do it. But what the Connétable said, which I thought was of particular interest, I am not sure if it was at the last sitting or the last couple of sittings, he said that the panel turned over 5 recommendations by officers. I am heartened to hear that. That is encouraging that the panel are doing that. I know they do it, this is not an exception, I know it does happen on a fairly regular basis. But I think the point here is that the panel overturns the recommendation but of course the ability still exists - and I know it happens - for the Minister to pull in such decisions of the panel and review them and then change them, again leading to a certain amount of uncertainty. That in itself is perhaps not healthy when one is considering the overall process of planning. As far as I am concerned, this report probably encapsulated the key to it in point 1 of the introduction and I will read it if I may because it is very short but it gets really to the heart of the issue: "Jersey is the only jurisdiction in the British Isles not to have a planning appeal system which is accessible to ordinary people at low cost, which judges appeals on their planning merits, and where decisions are made by people with relevant specialist experience." I think that is something that we perhaps should consider as we move forward and always look for better ways of operating services that the public sector has to deliver. Moving on from that particular point, I think it is also interesting to reflect on what Guernsey have done. I think we should never shy away from looking at other jurisdictions when they come up with ways of operating. Clearly they are not alone, as I have just said, many other places - in fact, just about everywhere - has a planning application appeals process. The Guernsey Independent Appeals Panel is interesting from the point of view of the number of applications that it deals with. I should preface that by saying that planning applications as per this report indicate that in Jersey and Guernsey in the final quarter of 2012, I think it was, were broadly similar. I think there were 1,630 in Jersey and 1,540 in Guernsey, so the islands were dealing certainly in that quarter with very similar numbers of planning applications. In Guernsey, their Independent Appeals Panel dealt with 4 or 5 times more appeals than were handled going through the Jersey system and the Jersey system appears at face value to be 3 times more expensive. I think the cost is one of the key barriers that we need to keep very much in mind. It is not just the cost of delivering the service from a public sector perspective, but it is the cost for the applicant to make and have their appeal heard. We have heard a very good description from Senator Bailhache as to how the court system works, all of which is - as one would expect - extremely efficient. However, getting there is a matter that the applicant would require in most cases, albeit the exception being Senator Ferguson as we heard earlier, although her case was not successful, but in many cases it will require legal expertise that can run into tens of thousands of pounds in order to get a hearing at the Royal Court or have one that has a chance of success. That is a considerable barrier to many and we have to keep that in mind. In summary, my view is that although it has been slow in coming forward and there are often many reasons for this, there is a consultation that has started. The Minister has undertaken to do that and the paper has now been published and I understand it is going to conclude in June. I would certainly expect - and I know the Minister will do his level best

to deliver on this -that we get action as a result of that consultation. There are clearly some areas where improvements are needed. I think the idea of an improved appeals process is something which is fundamental. I have certainly been lobbied in my role as Minister for Economic Development on numerous occasions on this particular point, and I think it is something that we can no longer ignore. It is a problem, it does need to be addressed, but I think we need to go through the due process and that process is the consultation that the Minister has started that does conclude in June, but I will certainly be looking for action when that concludes, and for swift action in order to get an appropriate remedy. It is in the economic interests of the Island, make no mistake about that. It is certainly something that the Chief Minister focuses on when he talks, quite rightly, about the Council of Ministers' focus on jobs, jobs, jobs. If we are going to deliver on that we need a smooth, well-oiled planning process of which this is an integral part.

#### **11.1.11 Deputy M.R. Higgins:**

As a Deputy I have spent a great deal of time while I have been in the House trying to help people who have been unjustly treated by States departments and, I could even argue, by the courts. I might add that this is far more common than people realise. Senator Bailhache, as a former Bailiff and, therefore, Chief Judge, naturally will defend the Royal Court, the legal system, the lawyers, and so on. I will come back to that in a moment, but I do believe there is much wrong with our present system. Essentially though he is a supporter of the *status quo*. He also stressed in his speech, the role of big money developers. But he did not talk much about the ordinary man in the street, or the ordinary woman in the street who have felt that they have been wrongly treated and have not, in my view, had proper decisions made and have not had justice through the system as it is at the present time. He also said he did not think that people were deterred by costs. I totally disagree. There is the cost, first of all, of employing lawyers because if you are going to go to the Royal Court, you need lawyers and we know that they are not cheap. Some of the people I have spoken to have spent £20,000, £30,000 and some of the people I have spoken to have got absolutely appalling assistance and advice from the lawyers that they employed. Many of them turned to become litigants in person, taking it on themselves. Many others have relied on people with expertise, whether they be architects, whether they be former planning civil servants or others, to try and help them through the process. The process is daunting. First of all, we know that the Planning Law is not the easiest to follow, so many twists and turns that you have got to go through. So, it is first of all getting your head around the whole of the planning system and the rules that apply. Then you have got the problem of trying to deal with the Royal Court rules or the process you have got to go through, the documents you have got to produce and we are talking about voluminous documents. We are not talking about small ones, even for the modified process. These are very considerable documents. I am going to criticise here the Law Officers in this respect who represent the Planning Department. In a recent case, for example, the Crown Advocate who was representing the department was denying a particular person who wished to appeal, who had a heart condition and had to go to a hospital in the United Kingdom for treatment, an extension of time to try and get the papers in on time. Now, this person was unbelievably stressed by this whole experience, as you would be if you were a litigant in person, trying to do it and then by being denied time to get the documents together. That is one thing. You might say: "Well, maybe they should not help." But the same Crown Advocate was 3 weeks late in getting his own documents in and late on other times of getting documents into the court. Now, why is it good that the lawyers and the Crown Officers can get away with this type of thing but ordinary individuals cannot? Now my argument against the system at the present time is the equality of arms, for an individual. I am talking about ordinary people, not the developers as they can afford to employ the lawyers but ordinary people do not have the knowledge, do not have the skills, it is a stressful thing, they do not know the process, they do not what their rights are. They are at a disadvantage when the department is represented by the Law Officers' Department who use every trick in the book to get

the case dropped because they realise that if there is so much pressure on people, they will drop the case and not pursue it. If they do go forward, then it is going to cost them money anyway and if they lose, then there is the cost, there is the fear that the court may impose costs on them. If they go to appeal, there is the fear that the cost will become so great that they might even have to sell their own properties in order to pursue it. How many people in this Island first of all can afford lawyers who are going to be engaged for let us say, 50 hours, 100 hours, who are then going to go through the whole process and then go to appeal? It would bankrupt virtually every one of us. So people do not take on these matters lightly and that is why an awful lot of them fall by the wayside. The system is broken and needs to be fixed.

[15:30]

Now, Senator Bailhache also said that the Island Plan should be respected and applied. Well to be honest, the planning officers themselves do not apply the Island Plan. The court: I have read some of the transcripts, and to be honest, I have been appalled by what I have read in those transcripts in these cases. You have judges who on the one hand are saying that they happen to agree, they are critical of the Planning Department and so on and then before they do their judgment, they come out with a totally different view and you are left wondering, who did they speak to in the meantime? So again, I am concerned about the process and the way it is done because what was criticism beforehand were valid statements made in the court and why did they not appear in the judgment? Now, I happen to believe that the court as it stands at the moment does not overrule the Ministers all that often. We know we have got the test of reasonableness which was based on the Wednesbury Rules but the court also gives too much margin of appreciation or whatever to the officers and their delegated powers and the Ministerial Decision. I would also say, and this is on a wide-ranging one, I happen to think that the Planning and Environment Department is not fit for purpose. I will just make it quite clear, that is not a criticism of the Minister **[Laughter]** and I will tell you why it is not a criticism of the Minister, because 2 previous Ministers told me the same thing. To give you an example, Freddie Cohen, when he was the Minister, told me a story coming back on a flight from the United Kingdom of how he used to give instructions to his officers. He said to me, before he left the office going out the door, his Chief Officer was on the phone to the Chief Executive saying: "Should I do this? Shall we do it a different way?" So, they were trying to undermine him, he felt. A previous Minister for Planning and Environment said exactly the same thing: he had no confidence in his officers and what they were doing. There is a fundamental problem in that department which needs to be rectified and I have issues certainly with the enforcement department, so much so that... and also other members of the office. Do not be surprised if you read in the press shortly that I am going to be accusing them of lying and perjury and other things coming forward. I have been gathering the evidence and I shall be presenting it to the Attorney General and I hope he will prosecute them for what they have been doing. No civil servant should ever lie in court.

**The Bailiff:**

You are going to come back to the appeal process, are you?

**Deputy M.R. Higgins:**

Yes, I am showing the abuse of everything at the moment that is going on around that department. I am having my little rant. Sorry, Sir, I just want to get it out of my system. Just again, criticisms of, there has been a recent planning decision where documents were approved by the department with no dimensions or things on the drawings. How could a Planning Department approve things without having proper information and then later adjust all the documents because it is pointed out to them that all these things were missing. So they do not reject it; they just modify it later and approve these things. Crazy. Also, we have had talk about the Planning Applications Panel. Yes,

they do a good job. I think it is good what they do. How many of their decisions have been overruled within a day or 2 of the ones they make? There was one recently where the individual went in front of the panel, I think there were about 6 different points raised as to why they supported this person, and first of all, the director concerned beforehand told the person whose application was overruled: "Oh, it will sail through." When it got before the panel, it did not, so what happened? Within days, he was telling him to re-submit, change the height by 500mm, forget all the other things and did not insist on any of the other changes or even address the issues that the panel had said. So, I begin to wonder how effective the panel is in following through on the decisions that it has made because if officers can, under delegated powers or whatever, change things, then you are wasting your time. Alright. Sorry, this was not a prepared speech, as you can tell. Okay, just going back to a point again, most ordinary people in this Island cannot afford to bring actions and to deal with these matters. A litigant-in-person is almost bashing their head against a brick wall. They have not got a hope in hell. So what we do need is a friendlier system, a more straightforward system to give these people the opportunity to air their grievances and we should try to minimise the disadvantages that they are under. We have got to get away from, and I do believe that we do have a cartel among the lawyers and the charges that they charge and, to be perfectly honest, we have got to find other avenues for people to get justice in this Island. Now I know that Senator Bailhache... I mentioned earlier how he supported the system and he is opposed to this tribunal. Well, he would be opposed to other propositions I am going to bring forward in the not too distant future which I have been working on: a parliamentary ombudsman, or a legal services ombudsman to have a look at the lawyers and the fees and their actions. I think when those come before this House he will be opposed to them again. In principle, he is opposed to tribunals or ombudsmen; he wants to preserve the role of the court. I can understand his position because he has been through it and he supports it. Deputy Noel, when he spoke, talked about the cost of setting up a tribunal. Well, he is an accountant, he knows the cost of everything but not the real cost of justice, for example. Although I must say, I did support him this morning with The Beach House because that was unjust what had happened previously and it had to be rectified. I have already made the point about the Constable of Trinity and how you turned over 5 decisions. Well good, I am pleased, but I wonder how many of them were reversed immediately afterwards. Please check and see. Finally, I would just like to say that we have to change the system if the ordinary man and woman in this Island is going to have any confidence in this House and in Government and in the legal system. We have to find new, more cost-effective and easier ways for people to get justice. I shall be supporting this proposition.

#### **11.1.12 Senator B.I. Le Marquand:**

We all want to have a rapid, fair and cheap system of making decisions on planning matters and of appeals. We all want to have a rapid judicial system which is very cheap and produces excellent decisions very quickly. In reality, all of us who have worked in this kind of area know that in practice this is much harder to achieve than to say. But I think that the vast majority of us here today would probably agree that there is a need for change in the areas that we are looking at and for this debate; I do also want to thank Deputy Young for bringing the matter forward. I think it is an important debate; these are important issues to look at. But matters are complicated, I think, by the fact that he has now come up with a specific number of proposals, and I am going to comment on some of those and demonstrate some of the side issues and perhaps weaknesses of those. I am not going to be able to support him although I do very much welcome the debate we have had today because of the fact that we now have a Green Paper which is in even more detail and offers even more options, and I think we should go through the process of that coming out hopefully with clear options or a clear option which we can then make decisions on. So, I am not proposing no change here. I think we do need to have change and that is going to be very important. But I do want to point out very rapidly some of the consequences of the particular proposals which are being put

forward by Deputy Young. Firstly, by making the appeal process a re-hearing, that makes the appeal body senior to the Minister or senior to the Planning Applications Panel, whoever has done that. That may be right but that is a major departure from what has been the previous situation in which we have recognised that although these are what I call quasi-judicial decisions, nevertheless there is a political element required. So, I find that a strange option and looking at it, although there are other jurisdictions that have a final appeal to a body that is non-political, it is more common I think from the Green Paper that ultimately the final decision in big matters becomes political and it goes the other way. So, I point that issue up firstly. Secondly, it has somehow been proposed that this will become a much quicker process, a much simpler process and therefore somehow the log jam of applications being dealt with will be speeded-up and the bottleneck will come to an end and so on. If we are not very careful, we will create an even longer, more tortuous process because if, after the initial decision, the first appeal is a complete re-hearing, there will still be a right of appeal to the Royal Court, not just on law but also on fact under the principles of judicial review. Now, if we were going to go down that road, it would be necessary I think to avoid lengthening the process, the number of procedures, to then say that there will not be judicial review in any such case. That would leave a situation in which the second decision might be downright unreasonable and who is to say why the second decision is always going to be better than the first decision in any different case? If the argument is: "Well, that is because it is by a tribunal, rather than an individual" let us have a tribunal the first time, to get the decision right the first time. So what I am saying is, if we are not very careful, the process will be lengthened: initial decision, appeal by re-hearing, judicial review, appeal against the judicial review. So, I would counsel the Members to be very careful of jumping, as it were, at the first option that is put before us in this - which is Deputy Young's option - because it has consequences and side effects which we have not been able to fully comprehend today. For those reasons, and because I genuinely believe that the process of the Green Paper is a better way forward, I will not be able to vote with Deputy Young.

#### **11.1.13 Deputy G.C.L. Baudains:**

I am intrigued by the fact contained in the report that Jersey has fewer appeals than elsewhere but as a member of the Planning Applications Panel, I can only assume that is because we and the Minister are doing our jobs better than the people elsewhere. **[Laughter]** However, to be serious, like other speakers I am concerned about the accessibility of an appeal system to members of the public who are dissatisfied with a planning decision, but I would like the person who is summing-up to clarify for me because it just seems to me that most of the costs involved in the present appeals system, albeit the modified procedure, is in preparing for the case and it seems to me that the costs in preparing for a tribunal might themselves be similar. There is surely going to be a similar amount of paperwork because all the information will need to be made available, people that are not familiar with the planning process may well feel it necessary to employ a lawyer, so I am not sure that it would save those people wishing to go to an appeal system a great deal of money. So, I would appreciate the proposer's thoughts on that in his summing-up. Thank you.

#### **11.1.14 The Connétable of St. John:**

As a former chairman of the Environment Scrutiny Panel and current member of the panel, I have concerns. Under the former Minister for Planning and Environment and under the current Minister for Planning and Environment, we seem to get delay after delay after delay in any reports and I am not blaming the Ministers because I know it is from within the department. We see it at our hearings. The whole department needs a root and branch review. This is just part and parcel of the problems that the Minister inherited. I saw it all with the previous Minister and, like my colleagues, Deputy Lewis and Deputy Young, we are exasperated that yet again this might be delayed. We have thought seriously of doing a full review on the department but knowing how this Chamber take little notice, in particular the Ministers, of reports issued by Scrutiny Panels, we

suggested to the Chief Minister that a root and branch review be done from off-Island. Unfortunately, it appears that he does not want to go down that road and has come up with a watered-down version of things which, as far as I am concerned, I would not want to be party to. We are told today that Planning will bring out a response with this Green Paper by June but we know through experience - our own panel knows through experience - is it June this year or will it be June next year? This is the problem that we are receiving continually. Whatever we look at within the department, there are delays after delays after delays. I could give you experiences wearing another hat in another area where we have seen delays after delays and obstacles put in place.

[15:45]

As I say, I am not blaming the Minister one bit but there is something wrong within the department that we are not getting joined-up thinking and I will be looking to the Chief Minister, and I have been looking to the Chief Minister, with the Minister for Planning and Environment, to sort it out and I do not think ...

**The Bailiff:**

You are going to come back to the appeals ...?

**The Connétable of St. John:**

Yes, I am just going there at this very moment, Sir. I do not think that what is being proposed by the Minister at the moment to come back in June will happen. It might come back in September or in December and then it will not be dealt with until next year. Honestly, the Island is at a crossroads. We have problems within our department and nobody, but nobody, wants to deal with it. As I say, you speak to the Chief Minister. He wants to do a watered-down approach. That is not acceptable, not to me anyway. We do the job properly. We cannot do it from on-Island. We have got to bring people in, I say, from off-Island, with planning experience of how to run a planning department. The Deputy, in bringing this proposition today, is trying to just put part of this in place but it is something that is better than nothing, something better than nothing. We cannot keep on lurching. Our Island is crying out for good planning decisions and I am not criticising the members who sit on the Planning Applications Panel. They do a good job but this total department needs a restructure, a total restructure being led by the Ministers. But the will does not appear to be there. So, Deputy Young is trying to help in some way and by you, boys and girls, Members here today, talking about rejecting this particular proposition is going to create more delays yet again, no matter what comes out in June or whether it is September or December, it will be a States of Jersey fudge, as we have seen so many other fudges happen in certain reports. Nobody wants to listen and very few of you read Scrutiny Reports of which a lot of work gets put into these reports and they are just put on a shelf and not read. There is something fundamentally wrong within that department that we need a full review to happen. But I am sure today, you are going to yet again fudge the issue and wait for the report to come out that may come out in June, it may come out in September or December, and it will be next year, which is election year. It will fall by the wayside for another House to deal with after the end of 2014. I ask Members today to go along with Deputy Young's proposition because I believe there is merit in putting something in place and trying to put pressure on the Council of Ministers to look at the whole department and this might be the catalyst that does it because we need - and the building industry in Jersey, the people who put in for planning applications need - a way forward. We have seen issues with the North of Town Masterplan, with other big developments in the past, falling by the wayside because of the type of bureaucracy that is in place, the culture that has been allowed to develop over the last few years, within a department. We need to be able to have some... when the Minister says: "I am doing this" we need the whole team to fall in behind him, not to be pulling from different



directions. I am definitely going along with Deputy Young on this because I have been listening to the debate next door quietly and sitting over on the other side of the Chamber, and seeing the expressions on different people's faces and the way they want to support Deputy Young but: "Oh, we will go for the easy option. Let us wait for the report to come out." I do not want to wait for any more reports. Let us get things moving, let us support Deputy Young and hopefully, that in itself will kick the Chief Minister and the Minister for Planning and Environment and his colleagues into doing something about getting this department working so that the Island can benefit right across the board. We need to get this Island going. We are in the middle of a recession and this 'triple-dip' that people are talking about looks as if it is happening. Let us do our bit here in this Chamber and move things forward.

**The Bailiff:**

Does any other Member wish to speak? I invite Deputy Young to reply.

**11.1.15 Deputy J.H. Young:**

I would like to thank every Member that spoke, because every one of 15 Members I think has added to the subject and it is quite clear that that debate has been a long time coming. Lots of things came out in that debate which I would hope that we can channel into getting the planning system improved, both at the front-end in terms of the things that other Members have said about the decision-making process, the panel; and at the back-end, as it were, the appeal system. The only paper on the table today, of course, is my proposal for the back-end of the system which is the Appeals Panel. I think it is desperately important that we get this in place as fast as possible because, as Members have said, if we get that in place, it will act as a discipline, and it will act as a motivator to make sure that the problems that Members have spoken about that happen at the Planning Applications Panel and issues between officers and the Planning Applications Panel, that the Minister's situation where he is being used to have a kind of crazy appeals arrangement in between those matters going shuttling between the Minister, all that ends. I recognise that it is not people's fault. I never want to assign personal blame. We are all struggling with, I think, planning policies that are over-complex. One of the things that I know, that we have spoken with the Minister about at our quarterly hearings, is the desperate need to get this reviewed, sorted out. I certainly share, as the chairman of the panel, immense frustration that the Constable of St. John and Deputy Lewis spoke of, about the delays that the Minister has told us about. The Minister has said he has not got resources, he cannot do things, the Council of Ministers do not back him, they do not give him the resources, it is not there. We hear this again and again: "I bring a proposition for more resources to do these things." What happens? Withdraw it. Does the Minister get the resources? No, he does not. So I think really what I am wanting to do here is, I do not believe that the proposition I put on the table is in conflict in any more than detail. We are going in the same direction and I think it is really, and I ask Members to maintain that because the whole essence of this is I am asking the States to make decisions of principle but the Minister will then come back and do the consultation he needs to do. It may be that there needs to be some, I do not know. I think that his paper at the moment, which we only got a couple of days before and frankly, as a means of Government working, is atrocious. How a Back-Bench Member puts a proposition in, and then like how many emails have I sent to the department? Where are the comments? Can I have them? I stand up in the States last week. Where are the comments? I do not get them. I get them what, a day before? Now, this is no way to treat Back-Bench Members and if there is to be progress between the way the Council of Ministers work with ordinary Members, that is not satisfactory. It has got to be sorted out. I do not understand why you get a complicated story: "Oh, the comments have to go to the Chief Executive, they have to go to the Council of Ministers and then we have got to wait for the minutes and then we have got to come back" and eventually, you poor Minister, you get pages of reports. Now, I am really delighted that the Minister has produced

a paper. I wish there was a White Paper as he said it would be, but it is a Green Paper. A White Paper is what he said. No. There is 76 pages of it and when I looked through, it is very well written but half of it is appendices which is just regurgitating stuff, and when I look at the questions, there are one or 2 important questions in there, which I am really pleased for the States debate because I think today was an excellent debate and I thank all Members. There are some points in particular. I kept notes, copious notes throughout and I try not to answer them all but I think a couple of things I have to say. Let us start with Senator Le Marquand. I have to admit a mistake. I re-read my proposition and the report and he is right. I did say that if the appeals panel operates and makes decisions *de novo*, as it were, that is what I said. I have read through my report and my report does not say that and I think, re-reading it, I have been guilty of getting carried away on the spur of the moment debate. I am not proposing *de novo* decisions. The whole basis will work similar to the Guernsey decision where the Planning Appeals Tribunal reviews the decision. That is what happens in Guernsey. So I see the Minister for Home Affairs shocked but there is nothing in my report under paragraph 43 that says those things that he said apart from what I said when I spoke, then it is a slip of the tongue.

**Senator B.I. Le Marquand:**

If I could intervene, without making a second speech, I drew that conclusion from the proposition itself, the wording of the proposition, the combination of words there. First of all: "... full jurisdiction to determine appeals" and lower down a reference to an appeal decision being made entirely on their planning merits. The combination of those 2 things drew me to the view, plus the speech, that this was a *de novo*, a re-hearing and that is a very important issue as to what the proposition means and we may need to ask you to say what it does mean.

**The Bailiff:**

I must confess, Deputy, because you also disapproved of the unreasonability test so the natural inference was you wanted a full hearing, a *de novo* hearing.

**Deputy J.H. Young:**

I think what I was trying to say is that the issue will go forward to the tribunal and then the tribunal would look at all the issues and evidence that was before the first decision-maker and so that, effectively, they would not go and seek new evidence and new information and so on. That is what was intended.

**The Bailiff:**

All right, but I think that is a *de novo* ...

**Deputy J.H. Young:**

Thank you for clearing that up. I have proposition (b). It says: "To bring forward for approval by the States detailed proposals." Now, I would ask, is it possible that at the time the Minister does bring detailed proposals as a result of the work he is going to have to do anyway, whether or not my proposition is passed, if there does need to be any adjustment, to qualify that wording he can bring it in his proposition at the time. I think, therefore, I would still like to carry on if I may. The second area I would like to speak about is obviously Senator Bailhache's comments because I have got so much respect for the Senator and, of course, what the Senator ably demonstrated is a lifetime's experience as a litigation advocate, as a judge at the highest courts, and, boy oh boy, what we heard is a speech that really demonstrated those skills brilliantly. I am not surprised that a number of Members are wavering after hearing Senator Bailhache's speech. He did say that everything was not perfect, and I am grateful for that, and that therefore there did need to be improvements in procedures, but I think when we started to speak about the court processes and the court process could be made informal. I was thinking: "Well, if it looks like a duck and quacks like

a duck, it is a duck,” and I think that is what the court is and it is how people perceive it. They are intimidated and feel concerned and scared about court processes where they do not feel that way about, for example, going to the Planning Panel. I think the kind of model the tribunal have in mind and have proposed is one where people can have their say in front of ordinary people sitting at their ordinary level, being able to interact with them under a kind of managed arrangement, a process, and there will be a mixture of laypeople and professionals. I think Senator Bailhache acknowledged the fact that I had always said there should be laypeople there and, of course, in my view they are providing a parallel role to the Jurats in the Royal Court. They are giving that balance. Their role may not be exactly analogous but in the tribunal I do see that there will need to be a mixture of laypeople and professionals. That is where, again, there is a massive area of consultation, where my proposition asks that the Minister does that. Deputy Maçon said about architects. I tend to suggest that we could start the war with the architects all arguing: “Who is on the panel and who is not and what about the conflicts of interest?” I think there is a tough task about structuring that tribunal which the Minister has to do, and I think it is going to help him if we made a decision in principle that then he has not got to, for example, re-open all of the issues of third appeals and so on that the very eloquent papers that were delivered yesterday re-opened.

[16:00]

We do not need to have those re-opened. The key issues are on the table and we can discuss them today. I would like to refer now to the Minister. The Minister says: “We want lots of bells and whistles in this process and it is going to be expensive.” Absolutely not. We certainly do not want that. We want it simple. Then the Deputy criticised me for saying I wanted to get this done by 2014 and then he said: “Well, if you are not going to be around that is you just ...” Well, I am sorry, Deputy; you are not getting rid of me that quickly if I am going to have a say in it, but I think it is important that when Members put themselves forward for election you set out your manifesto about what you are seeking to do and you put it forward and you do it and you account to the public for having done it. **[Approbation]** Okay, I am criticised because I had 4 candidates and I won by 33 votes out of 1,200, because we were all very close. Now, those people might have been influenced by those things, which is why they voted for me and not somebody else. If I sat here and I do not bring those things forward to the Assembly I am criticised for it. So I do not accept that. I think people vote for us to come and speak for them - that is what they expect us to do - and make their arguments; give it our best shot. The Minister also spoke about a straightjacket-type proposition. I hope not. If he is going to bring back proposals and there are things to amend or change or adjust, I would hope he and his department - he has got an army of civil servants there, I am just one person doing this on my own - can bring those proposals forward. He says the jury is still out. Well, I think, having listened to the debate, the jury is not out. Everybody is agreed, we absolutely want improvements to this system. I am grateful very much for Senator Ferguson’s comments. Obviously Senator Ferguson has experienced the huge difficulty, without reminding her of it, but it was a very complex case and, frankly, because the original hearing in that case, which had not been done on the modified procedure because the appellant with the money decided: “Oh, I am not going to have a modified case.” They were entitled to do that. They had a hearing but, of course, then Senator Ferguson obviously had to opt for the modified process because of the costs issue. Then what happens? Instead of getting a 2-day hearing you get 2 hours. So those things Senator Ferguson said she has seen first-hand and knows how people feel about them, the passion they feel about the difficulty in getting justice. Senator Bailhache said the kernel of this issue was about the planning merits, about the legal text, and it was open to the Assembly to make a change, but then he went on to make a very cogent case for not changing and leaving it where it is. He gave a very erudite and expert explanation about the unreasonable principle and Wednesbury Rules and so on and made a very convincing case that has caused a number of Members to wobble on this. He was saying: “Well, who is to say it is a wrong decision?” Well, one case I can

remember clearly in St. Aubin. I do not think I will name it but there is a house in St. Aubin where the Royal Court had a third party appeal and the court - because in this case the Minister gave a decision to approve it and yet he did not go on site - did go on site, to its credit on this occasion, and they said in the judgment they would not have approved this. It was absolutely clear cut. St. Aubin is a crowd of buildings, built on a slope, and this was a proposal to insert a building on that slope and there was an appeal. People feel difficulty with how to understand that an appeal process says: "This decision was not right," and yet it stays. That is the kind of result that people are having real trouble with. That is why I agree that we want laypeople in this process and we have got common sense. I very much hope the points are made by the members of the Planning Applications Panel, Deputy Le Hérissier and Deputy Baudains and the Constable, that we would have this on the appeals ... and Deputy Maçon, I do apologise. That is exactly what we need, but I think the missing ingredient in the Planning Applications Panel - and I am not advocating, please, reinventing the panel - is that we have not got any of Senator Bailhache's technocrats and we need a couple of technocrats, I think, because otherwise we have not got ... you have got the planning officers but we want some technocrats. Now, that is again the type of task that the Minister has to do: work that formula out, have the consultation and come back to the House with the mix right. Please, I am not looking for this technocratic 'Masters of the Universe'-type of planners court, as it was referred to, that sort of thing. That is not what is being sought, but I think this question of ... There is a spectrum it was said, a spectrum of wrongness - I like that - and a thing called a margin of appreciation. I think when I listened to the Senator I thought: "What a shame that the Senator, with his brilliant skills, was not the judge in all the cases of the third party appeals that we have had." **[Laughter]** I do not know. What I have tried to do is to avoid challenging judicial decisions and it is a really fine line, but I think I am allowed to just say I think the Senator shows ... those judgments are difficult. They are really difficult and I find it difficult that those judgments could be made, for example, by a Royal Court appeal body that does not even go on site. It does not even visit the site and there have been such cases. I am very pleased that this recognised that changes need to happen and I think other Members ... Sorry, I am trying to avoid taking up too much time here. Deputy Maçon is absolutely right. I think I am probably going to get lost if I try and pick up all the other issues and I think I have made my best job as I can of this proposition. I think we should approve it. It does not conflict with the Minister's task. I still support him, but I ask you please to give support to this proposition and to give some backing so we get the good result. I make the proposition and ask for the appel, Sir.

#### **The Bailiff:**

The appel is asked for then in relation to the proposition of Deputy Young, Projet 26. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 21</b>		<b>CONTRE: 18</b>		<b>ABSTAIN: 0</b>
Senator S.C. Ferguson		Senator A.J.H. Maclean		
Senator F. du H. Le Gresley		Senator B.I. Le Marquand		
Connétable of St. John		Senator L.J. Farnham		
Connétable of St. Brelade		Senator P.M. Bailhache		
Connétable of St. Martin		Connétable of St. Helier		
Connétable of St. Saviour		Connétable of Trinity		
Deputy R.G. Le Hérissier (S)		Connétable of St. Clement		
Deputy G.P. Southern (H)		Connétable of St. Lawrence		
Deputy of Grouville		Connétable of St. Mary		
Deputy J.A. Hilton (H)		Deputy R.C. Duhamel (S)		
Deputy S. Pitman (H)		Deputy of Trinity		
Deputy M. Tadier (B)		Deputy K.C. Lewis (S)		
Deputy T.M. Pitman (H)		Deputy E.J. Noel (L)		

Deputy T.A. Vallois (S)		Deputy A.K.F. Green (H)		
Deputy M.R. Higgins (H)		Deputy J.M. Maçon (S)		
Deputy G.C.L. Baudains (C)		Deputy of St. John		
Deputy J.H. Young (B)		Deputy of St. Mary		
Deputy S.J. Pinel (C)		Deputy R.J. Rondel (H)		
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

## **12. Liberty Bus: reinstatement of Route 18 to Le Squez and Le Marais (P.28/2013)**

### **The Bailiff:**

Very well, we come next to Liberty Bus: reinstatement of Route 18 ... One moment, please. May we please continue? Order. Liberty Bus: reinstatement of Route 18 to Le Squez and Le Marais, Projet 28, lodged by Deputy Baudains. I will ask the Greffier to read the proposition.

### **The Greffier of the States:**

The States are asked to decide whether they are of opinion to request the Minister for Transport and Technical Services to take the necessary steps to reinstate the No. 18 bus service to Le Squez and Le Marais as soon as possible.

### **12.1 Deputy G.C.L. Baudains:**

Where do I start? When I did start out on this journey - not by bus I have to say - I never realised quite how far it would go. As Members will have read in the report and proposition, the No. 18 bus used to run a circular route from the bus station along St. Clement's Inner Road, into Marina Avenue, through Le Squez Estate, on to Le Marais and back to the station. Many people living in those 2 estates were either elderly, infirm or both and to them the No. 18 was a lifeline. As I said, it was a circular route. It was reliable; convenient not only for residents of those estates but also for surrounding estates: Marina Avenue, Manor Court, Samarès Avenue, Green Road, *et cetera*. The No. 18 also stopped at Snow Hill, especially appreciated by elderly residents catching the bus to get back home again. The replacement service - the No. 15 which I will come to in a moment - does not stop at Snow Hill on its way to Le Marais. So those people now either have to walk to Liberation Station to catch the bus or catch a different bus and then change at the station. I have been in politics for a number of years and I know if a politician gets to 3 or 4 representations then it is usually an issue that is worthy of looking at. In this case, however, I have had more representations than in the rest of my political career; at least a dozen phone calls, more than that in letters, even more emails and personal approaches, all angry at the discontinuation of Route 18. Some parishioners feel so strongly they were minded to start a petition. I suggested they should wait the outcome of this debate before going to that trouble. However, I did have one complaint about the No. 18 from a person at Le Marais who was sometimes unable to get on it because it was full. Well, the new operators cured that problem. They axed it. Before I go into detail I feel, because of the representations I have had, that I need to touch on the bus service generally because clearly the problem is an Island-wide one. Apart from my parishioners complaining about the loss of the No. 18, I have had calls from across the Island and there is a general theme running through those complaints: constantly changing routes and timetables, buses never on time so travellers miss their bus, bus drivers getting lost or leaving out stops, tickets issued that never show the correct destination or even the right embarkation point. So, as a result, on 1st March I had a meeting with the bus operator and officers from Housing and T.T.S. (Transport and Technical Services). I also attended the bus meeting at St. Clement's Parish Hall on 5th March and a common theme there seemed to emerge as well, that of platitudes. Time and again instead of parishioners getting

tangible solutions to their problems we heard phrases of: “We are listening” and: “We will look at it” and: “Going forward” and so on. I came away with the distinct impression that the new company simply intended to continue juggling routes and timetables. To use a Max Bygraves phrase, I would like to tell a story: Le Marais. Now, the replacement bus is No. 15 to pick up Le Marais residents. A person got on to the No. 15 at Le Marais. The driver suggested he should get off and get on to the other No. 15 behind because that was running half an hour late and would be leaving first, which he did. Then when he got to Liberation Station he needed to go on to St. Brelade. So, as the driver advised him, he would now have to get off the bus he was on and get on to the one he got on in the first place, which would take him to St. Brelade. Unhelpful I would say. Another of my residents got on the bus - the wonderful No. 15 - at Le Marais and he was going towards town. He thought: “This is unusual. We do not seem to be stopping anywhere.” So he moved up to the front and said to the driver: “You are not stopping at any of the stops.” The driver said: “I do not have time for those. I am going straight to the station.” Another passenger - it is always the Le Marais area - coming back to Le Marais on the No. 15 along the coast road. The route has been changed now so that it goes up School Road and around to touch the bottom of Le Squez Estate and then back to Le Marais. The bus went straight past School Road, so the passenger asked the bus driver: “Well, you have just missed your turning.” The driver said: “I am not bothered about that. I am going to Le Marais.” He said: “But you have missed your turning. How do I get to my bus stop?” The driver said: “Well, tough; you will have to walk.” A friend of mine lives in St. Mary.

[16:15]

I do not know how long it should take a bus to get to St. Mary, but I would say an hour and a quarter going via St. Martin is not the normal way to do it. He now uses his car instead because it is obviously more reliable. The 1A bus which sometimes picks up some of the passengers that would have used the No. 18 is supposed to go to Gorey from the station via St. Clement’s Inner Road, only this driver decided to take it along the coast road all the way; so 4 people waiting for the bus on St. Clement’s Inner Road would have had a further 2 hours to wait for the next bus. Others tell me of having to wait an hour for a bus that is due every 20 minutes and a number of problems by some of the drivers who are apparently unable to speak English. It truly is a disaster. As I said a moment ago, the No. 18 was a circular service between the station, Le Squez and Le Marais and the No. 15 that purports to replace it is the airport bus, which is extended on to Le Marais. This, of course, means that it has to suffer the variable traffic conditions in town on its way through which means, of course, it is never on time. While it covers the southern tip of Le Squez, as I said, going via School Road, it does not cover the northern part of Le Squez nor Green Road or the Inner Road as the No. 18 did. The nearest bus for these people is the 1A, providing it does not go on the coast road, but if you live in Green Road you have a problem. Previously you could catch the No. 18, but now only the 1A goes through Green Road and the first bus is 11.06 a.m. but that only goes to Gorey. There is no bus going from Green Road to town because the 1A on its return journey follows a different route. So if you live in Green Road and you want to go to town what you really need to do is catch the 11.06 a.m. to Gorey, get off at St. Clement’s Church and get on the one that is coming back the other way in order to go to town. This is the truly wonderful service we have. By the way, the No. 1A does not run on Sundays, but really it gets better because, in keeping with their tradition of stability, the new company are about to change the routes and times of the 1A. They have also decided the airport bus will no longer go to Le Marais. The No. 1 which serves St. Clement and goes every half hour for as long as I can remember is due to be changed as well, not to mention the whole raft of changes we saw in the *J.E.P. (Jersey Evening Post)* last night. You could not make it up. It seems to me that any sensible company taking on a new service would have continued the existing one without change to routes or times at least until they understood the service required. Instead the new company chose to take on a service they knew nothing about and

make wholesale changes simultaneously. That is the cause of the problem. How much of that was their fault and how much that of T.T.S. officers I have no idea. However, when one looks at the new company's record in Guernsey, because they are the same operator, where bus usage has apparently dropped like a stone since the company took over, I have to say I have little confidence for the future over here. When I asked the company why they did not take over the existing routes, the company mumbled about the benefits of hindsight being wonderful. Well, in my view, it is lack of foresight. Connex's routes and timetables were in the public domain. So even with the problematic computer system that they did suffer when they started, all they had to do basically was get the drivers out of a blue bus and put them into a white one. I cannot see what is too hard about that. Even the Minister agrees with me it was a huge mistake to make substantial changes concurrent with taking over an unfamiliar service. Bus passengers need stability and reliability. If they are going to catch a bus to go to work they need to know it is going to be there on time. They cannot organise their lives around an unreliable service where routes are discontinued or modified, bus stops are moved all over the place, buses arrive at any time other than the correct one and the timetables belong in the archive as soon as they are printed. As a result people are leaving buses and getting back in their cars. When I was told that the No. 18 Le Squez-Le Marais service had been axed I asked the Minister for Transport and Technical Services why. His reply was that the roads through Le Squez would soon be closed for redevelopment of the Le Squez Estate and therefore there was no point in continuing the service, which was a perfectly reasonable statement to make. However, I thought this was a bit odd and, being the sort of person who never believes what I am told, thought I would ask Housing why they were closing the road, which I thought was a perfectly reasonable question. Well, it transpires they are not. They wanted the bus to continue going through Le Squez. If I may, I quote in an abbreviated form Housing's reply to my query. It says: "We agree and always have thought not having a bus service coming on to Le Squez is unsatisfactory." I thought that was fairly clear: "It has always been our plan throughout the redevelopment of Le Squez to allow the No. 18 bus to still come up Marina Avenue, pass through the estate and go on to Le Marais. Until very recently, our plans have always made provision for the bus to come through north to south from Marina Avenue to Le Marais." Then they say: "Given all of that, I find the comment from the Minister from Transport and Technical Services a little confusing." That is when he said that Housing was closing the road. I continue with what Housing told me: "When the change in bus operator was known about and that a double-decker might be utilised on the No. 18 route, our architect and one of our officers met with Transport and Technical Services on 6th September 2012. At the meeting Transport and Technical Services made it clear the proposed double-decker bus intended for that route could not make the turn off the Plat Douet Road on to Le Grande Route de Saint-Clément, let alone the turn from that road into Marina Avenue. This posed a problem for us as we needed the bus to come on to Le Squez if we were to avoid adding yet more parking into our scheme. Throughout the redevelopment one of the concepts has been to reduce the impact of the car and, where possible, to have cars out of sight." I thought that was fairly clear. So now we see the real reason for axing the No. 18 bus. Nothing to do with Housing; it was because Transport and Technical Services thought the double-decker bus could not turn into the Inner Road at the tennis courts and then would not be able to enter Marina Avenue. The remedy to this nonsense is quite simple. Bringing the bus down Green Road, as it did before, removes the first obstacle. If the bus cannot turn into Marina Avenue then perhaps it should not be on the road because clearly it does not comply with construction and use regulations. Alternatively, as I hold a heavy goods licence, perhaps I could show them how to do it. Another remedy, of course, would be not to use a double-decker. After all, Connex and the JMT before them have been successfully driving that route for around 40 years or maybe longer using a single-decker bus, so I do not see what the problem is. Reinstating the No. 18 is not a problem. Indeed Housing would prefer it. The only impediment appears to be Transport and Technical Services and, let us face it, given the latter's success with the incinerator, Victoria Avenue resurfacing and

the harbour cycle track, I suppose a bus fiasco should not come as a surprise. As I said when I started out, I was only aware of the No. 18 Le Squez-Le Marais issue and so the proposition I lodged reflected that. Since then I have been contacted by many people from across the Island, all critical of the service as it affects them. Clearly this is an Island-wide issue with the bus. Some have suggested my proposition should return all services to what they were at the point that Connex left. Well, I have to admit that seems a sensible option but my proposition does not go that far. Of course, there is no reason why the Minister could not, while he is reinstating the No. 18, instruct the bus company to reinstate all services to what they were before until they know what the routes are and how well they are used. Then they can make the adjustments. If they keep making adjustments all the time you have got an unreliable service and nobody will go on the buses, which is exactly what is happened in Guernsey. Talking of the Minister, I must seriously thank him for taking an interest in the problem and writing to me. However, his suggestion I should withdraw my proposition and wait to let the present arrangements settle down is not something obviously I can accept and my reasons are threefold. Firstly, the present route does not provide the service my parishioners need and constantly tinkering with routes and timetables only exacerbates the problem. Secondly, the suggestion of letting the service settle down is not an option either because, as we now know, Transport and Technical Services and the company have no intention of reinstating the service through to Le Squez. Why else would they mislead their Minister over the real reason for not continuing that service? The third and probably the most important reason that we need a bus back on that old route is because not only do the residents of the estate, present and future, need it but if it is not reinstated then Housing just might redesign the development in a way that would preclude the bus serving the estate for ever. Buses have served those 2 estates for, in my knowledge, at least 40 years and it would be unconscionable if we allowed a situation to develop which meant future residents were denied that service and encouraged to use their cars instead. I think that adequately explains the real reason why the No. 18 was not continued by the new operator and why the No. 15 airport bus was extended to Le Marais and is an unsatisfactory replacement, because that airport bus going to Le Marais doubles up an already adequate No. 1 route, which is the coast road bus, yet it fails to service the northern part of Le Squez, Marina Avenue, Samarés Avenue, Manor Close, as well as Green Road, as I said earlier. I have a letter from the Manor Close Property Owners Association which, like many others, asks the Minister to reinstate the No. 18 and, sadly, as far as I am aware, in keeping with the other, it has not been replied to. We simply must reinstate the service and if I could just conclude by reading part of a mail sent to me. It says: "As a senior citizen with a disabled husband, I very much valued the service offered by the No. 18 bus into town which allowed me time to do some swift shopping and return from Snow Hill. As an aside, I have to say the drivers were much more friendly and would often have a joke with the passengers, but this is by the way. The main issue here is that several of us oldies really do resent our bus route being taken away from us and that is why I have promised several of my fellow travellers I would write to you on behalf of us all." That is one letter covering the thoughts of several people and I have in my office a dozen or more letters like that; as I said, probably more than a dozen emails and other people have contacted me. I have never known so much concern from so many people about a single issue. I think I have adequately explained it, so I thank Members for their patience and will answer any questions to the best of my ability.

**The Bailiff:**

Is the proposition seconded? **[Seconded]**

**12.1.1 Senator L.J. Farnham:**

**[Aside]** I think there is general disappointment at the start of the bus company, because I am sure the Assembly is prepared to give them the benefit of the doubt and ample time to try and iron things out. I would just be keen to hear from the Minister for Transport and Technical Services when he



speaks, which I am sure he is going to, hopefully, next, that he does have the authority to take the steps requested of him in this debate. There is, in my opinion, no point in having a debate asking the Minister to take the necessary steps to reinstate the service if indeed he cannot.

#### **12.1.2 The Connétable of St. Martin:**

I wish I had taken the bus when I went down to the Green Island slipway because I am more confused now than anything, but I think what we have heard this afternoon has identified not a single bus route problem but an Island bus route problem and I hope the Minister will be able to explain something. This is just an isolated route that we are talking about. I am a frequent bus user. I use it every week, but I think it is a greater problem that should not be discussed in this Assembly but elsewhere and sorted out there.

#### **12.1.3 Deputy K.C. Lewis:**

Apparently no one else to speak. Hopefully it will be a short debate. I am sure Deputy Baudains has brought this proposition with the best of intentions. However, I would like to explain to the Assembly why this is just not the right way to go. To assist Members I have sent around a before-and-after map of the routes we are talking about. Liberty Bus are operating under a new contract that started on 1st January this year; a contract that has been very carefully prepared to deliver a better bus service for Jersey; a commercial contract which balances risk and reward; a contract that is aligned with the requirements of the Sustainable Transport Policy approved by the States; a contract that provides for increasing bus mileage by 12.5 per cent with more frequent services to meet proven demand; and a contract that equates to about a £1 million improvement in value for money against the previous contract; a contract that should not be meddled with.

[16:30]

I think it would be helpful for Members if I started by explaining the process involved in bringing about the timetable changes. Members may recall that last year Liberty Bus conducted an all-Island general consultation exercise, undertaking meetings in all the Parishes. They reviewed ridership figures of the different routes. Patronage of the No. 18 had declined by 25 per cent between 2010 and 2012. In conjunction with T.T.S., they came up with proposals that would make improvements across the network. These specific proposed timetable amendments then went out to consultation. Members of the public were invited to comment via a media release, a *J.E.P.* advertisement and a website. In all, 60 comments were received and, where appropriate, the proposals were altered accordingly. Only 3 comments related to Le Marais. It is a robust process and an enhanced version of the same process that has been used successfully over the past decade. This proposition seeks to circumvent this process. How can this be fair? How can this be sustainable if it were to set a precedent? What would the repercussions be? Bus scheduling is complex. Liberty Bus must make the best use of the resources it has and the timetable is worked out to provide optimum bus miles. Altering or adding routes has a knock-on effect on other services Island-wide. Deputy Baudains has stated in his proposition that there might be a saving from withdrawing the extended 15 service and replacing it with the old 18. This is not right. It would either mean withdrawing services from elsewhere to resource the change or an additional cost of £180,000 to the States. I am sure you will not be surprised to hear I do not have a spare budget. Would the representatives of the areas that lose their services as a consequence of this proposition then come back to the States with their own propositions? Reinstating the 18 service would have a considerable effect on the Le Squez development, ultimately increasing infrastructure costs and reducing the number of homes provided. The Liberty Bus new routing benefits Housing's Le Squez development project by in the region of £1 million, I believe, and I am sure the Minister for Housing will correct me if I am wrong on this. Deputy Baudains has made no mention of the people who are pleased with the change. Consultation with the Constable revealed that some

residents revealed that some residents of Marina Avenue had expressed dissatisfaction with large vehicles such as buses coming along their roads because there was not much space for parked cars. So you see, although reinstatement of the 18 may be what some people want, there are others who do not want it. Liberty Bus has certainly received comments from bus users who are very happy with the new scheduling. At a St. Clement's Parish Hall consultation meeting a fortnight ago, reinstating the No. 18 was only raised by Deputy Baudains and one other person. What the public were concerned about was the punctuality of the Le Marais service and so Liberty Bus acted upon these concerns and has rectified the problem within their Easter timetable published yesterday. The Easter timetable will run until the summer schedule starts in May. Liberty Bus has said further improvements can then be made to the frequency of both the 1 and 1A service and would consult on the introduction of better services to Green Road, possibly using the 1A, for the forthcoming summer timetable. Also, Liberty Bus would investigate structuring the timetable to allow boarding at Snow Hill for services to Le Marais. Allowing Liberty Bus the freedom to implement these improvements allows them to collect the reliable ridership and customer feedback data it needs to make an informed decision as to what future service changes will provide the greatest overall benefit to residents. I am sure everyone knows there have been teething problems in the initial phase of the contract. Issues are being resolved. Things are getting better. Liberty Bus has clearly demonstrated their commitment and customer focus last week by keeping as many buses running as possible in the terrible snow conditions and I commend them for doing so. In summary, I urge Members to reject this proposition on the following grounds. Do not tamper with a robust commercial bus contract. Do not circumvent and nullify a good listening consultation process. It will cost to reinstate the 18 to the detriment of other services. Homes will be lost on Housing's new development and there are alternative options to reinstating the 18 which can provide greater overall benefit and these should be given a chance. In conclusion, if the 18 were to be reintroduced Le Marais and Le Squez would lose their evening 7.00 p.m. to 11.00 p.m. and Sunday 6.45 p.m. to 11.00 p.m. bus service, which was never part of the original Connex contract. I shall leave it there and look forward to Members' comments.

**Senator L.J. Farnham:**

Sir, can I seek a point of clarification from the previous speaker? I did ask a specific question: if the States request the Minister to take the necessary steps to see this service is restored, is he able to do so, yes or no?

**Deputy K.C. Lewis:**

It would be extremely difficult. We would incur a great penalty in doing so.

**12.1.4 The Connétable of St. John:**

I had a meeting, along with colleagues, on Monday afternoon with Liberty Bus and others and, like the Minister for Transport and Technical Services said, there is a cost implication of approximately £185,000. I put several questions as to how far from the centre of the estates to both bus stops on the 15 or on the 18 and I was told approximately 300 metres. I thought: "Well, if you have got to walk right across it is only 600 metres to a bus stop." Surely that is not a great distance when in the Parish of St. John I have got people who have to walk in excess of a mile to a bus stop and there is very few of ours, not every 15 or 20 minutes. To spend £180,000-odd to reinstate this particular route I think would be folly when other parts of this Island have got limited services. I think this particular proposition should not have come to the States. This is my view. I think we have got lots more important things to do than be discussing a bus route, given that there are buses every 20 minutes or thereabouts on the 15 and on the 18, but if the Minister is minded to spend the £180,000, possibly he could include the 18 route, as I suggested on the 15 route on an earlier occasion, that it go through St. John as well because if money can be found ... and I sincerely hope the Assistant

Minister for Treasury and Resources will not support this because if money can be found for people who have only got to walk 300 metres to a bus stop when we have got people walking miles, and in excess of a mile if you live at Sorel, it is totally unacceptable. Having spoken to the bus company, as I say, I cannot support this.

**12.1.5 Deputy A.K.F. Green:**

I just want to pick up on the costs and I know I will be accused of shroud-waving, but on the understanding that the bus stop did not want to go through the estate we were prepared when we were developing the estate to put a bus-only route. We are trying to stop people using the estate as a rat run, so we were going to make it impossible to go right the way through the estate, with most vehicles to come in one side or the other, but we were prepared to put a bus-only route for this bus. On the understanding that it was not required, we have made other plans and I am not exaggerating in saying not only the cost of reinstating the bus service but it would cost my department over £1 million.

**12.1.6 Senator F. du H. Le Gresley:**

I just have got a couple of observations. In Deputy Baudains' report he makes comment that the residents of Green Road now have to walk as far as the White Horse Inn, presumably to catch a bus. I do know the area because I live in the area and a number of temporary bus stops had been created by Connex and there is one at the junction of Green Road and Coastlands Avenue. So they do not have to walk as far as the Whitehorse Inn at the moment anyway. The other observation is on the maps that the Minister for Transport and Technical Services has kindly provided... and we heard from him that the residents in Marina Avenue have been complaining because their roads were not wide enough to take a bus, let alone a double-decker bus. I just wondered if the department have renamed the road, because it is now called "Le Squeezing." [Laughter]

**Deputy K.C. Lewis:**

I believe that was taken off the computer, off the mapping system, not a T.T.S. fault.

**12.1.7 Deputy T.M. Pitman:**

We are going to have to shrink the Deputy of St. Martin in front of me, I think. I just think it is a shame that some people when they bring propositions ... and, yes, ideally something like bus routes should not be discussed in the States Assembly, but it is a shame that some people have the attitude of ridiculing what are huge issues to some people. I can assure some Members who seem to live on some kind of alternative planet that a lot of people could not walk 300 metres if they tried. I know 2 who live down there now. The bus has certainly gone down there for at least 40 years. I was brought up there for a large part of my life. I know it is hard to believe, I look so young, but it is true. People need it. Why has the percentage dropped? Well, it might have something to do with the fact that the estate has been half an estate for years after it was just abandoned by former Ministers for Housing and totally neglected, which this one certainly is not doing. So if you have not got the same amount of people living there then I think it is quite reasonable, a businessman would say, that your uptake and footfall might drop. The estate is being rebuilt. So, hopefully, the people wanting to get on those buses will go up and there are an awful lot of older people. I know 2 just first-hand and I spoke to them yesterday. We were talking about the cars, stopping them going through the estate. Well, I watched 4 just drive down there like a rat run yesterday. You know, we are completely hearing this rubbish, these red herrings and this shroud-waving. If it worked for 40 years it might have been a fair assumption that it would carry on working. The fact of the matter is that when we hear nonsense like: "Well, why do we need to waste this kind of money because we have not got it at St. John", if it is not good enough for St. John let us make it better in St. John. Let us not take it away from St. Clement. It is a ridiculous argument and it is about time some people started thinking a bit more about older people. The people moaning about

the cars in Marina Avenue, they are car owners. The people who are upset about this, most of them are not car owners. That is why they are upset, because they are even more isolated now. What this all comes down to is we have got a third-rate bus company who cannot do the job. That is not down to their staff, who did a brilliant job. I have been among a few of us who have met regularly with the drivers. The problem with this firm is they are arrogant. They will not listen to people. I do not think they have had a single staff meeting since they have taken over. They are a disgraceful advertisement of a business in Jersey and that is a fact. I think the Minister should talk to a few of the staff like some of us have done. What is Jersey now? Is it all about getting cheaper and cheaper services and worse and worse services? The old are a key part to the community and we should look after them and we should not hear these glib comments that are dismissing their needs. If Members think it is okay for someone who cannot walk 300 yards to stay in their home and rot then I am glad I am not in the same party they are. I am definitely going to support Deputy Baudains. Okay, this might not be the ideal Assembly to have to bring this, but at the end of the day he is doing what he was elected to do. He is trying to represent those constituents. Clearly he is trying to represent some constituents who are very vulnerable and isolated people. That is to be applauded not dismissed and have all these jokes about renaming the road. Fair play to the Deputy, he deserves some support. I do not think he will get it but I hope he keeps the pressure up because this bus company, if they do not up their act within the next month, they need to be dumped. They are that bad.

#### **12.1.8 Deputy R.G. Le Hérissier:**

Given the frustration about trying to deal with this issue, I was wondering - because it was very apparent the chasm that there is between the Minister for Transport and Technical Services and Deputy Baudains' comments - is there any way we can get some kind of mediation going where a well-respected States Member, and there are such people around, could sit with Deputy Lewis, the bus company and Deputy Baudains?

[16:45]

I was going to nominate that very much respected St. Clement resident, Senator Le Gresley, if he would be prepared to sit with them, because I know he has done this in previous instances, perhaps not when he has been in the States, but this is ridiculous because I do sense Deputy Baudains is going to lose the vote, but it does seem a pity that we cannot engage with the issue. I think it is much better that we engage with the issue and try and be seen to resolve it.

#### **12.1.9 The Connétable of St. Lawrence:**

I do not always or indeed often agree with Deputy Trevor Pitman, but I must endorse some of the words he has said this afternoon about us needing to take notice that there are many elderly people who live at Le Marais and who have been used to this regular service for many years. My understanding is that one of Housing's policies, when families have grown up, is to move the parents from the homes that they may have lived in for 20, 25 or 30 years and dump them at Le Marais. I say "dump" ...

#### **Deputy A.K.F. Green:**

We do not dump anybody anywhere.

#### **The Connétable of St. Lawrence:**

I use the term "dump" advisedly because it is an area where those people are moved to. My parents were moved there and my mother now still lives at Le Marais. It is the Housing policy to move people from the homes that they have lived in for many years and put them to Le Marais. The point I am trying to make is it is a densely populated area, populated by older people; people who often do not have a choice about where else they could live. Here we are saying, it seems to me -

because Deputy Le Hérissier has said that he thinks Deputy Baudains is going to lose this proposition - that the bus service that has served that area very well for many years should remain removed as Liberty Bus have done. It just seems to me that we should be considering those many elderly people who live in that area, not just in Le Marais. There are elderly people living in other estates around it and we know that there are families with children living in Le Squez. The Constable of St. John made a comment about people living at Sorel and that may be a pertinent comment. However, I believe there are fewer people living at Sorel who would want to use the bus than there are living in the Le Squez and the Le Marais area. I believe those people who have not had any choice about where they live in their later years should have the services of public transport available to them. Perhaps I used the wrong term when I used the word “dump” and I would like to withdraw that. However, I do feel that, for those people who do not have the choice as to where they live in their later years, we do tend to place them in the same area and that area is Le Squez or certainly Le Marais. I just feel that the Deputy has done exactly what he should do as an elected representative, which is to bring this matter to the Assembly and ask that we support him on this. He did say that he had met with Liberty Bus and I think he also said officers from T.T.S. were there and it is extremely disappointing to me that a compromise has not been able to be found on this. I look to the Minister for Transport and Technical Services because I certainly do feel we have got to show that we have social regard in this Assembly and that we have a social conscience for our elderly who I think are suffering enough in these difficult economic times without having the worry inflicted upon them of losing what has been until now a very good workable bus route. I think Deputy Pitman made the point quite well that Le Squez has, for a number of years, been undergoing much needed restoration and so, therefore, a number of the houses and flats there have not been occupied. I think that must have impacted upon the bus usage. It surely must have done. When we have statistics waved at us, as the Minister for Transport and Technical Services did earlier, statistics can be slewed and I think perhaps it was not taken into account that Le Squez had been under-occupied for some years. As I say, endorsing what Deputy Trevor Pitman said, let us show our social conscience here. Let us recognise that Le Marais is social housing provided by the States and that people there ... there are many of them in the high-rise blocks there, they are mainly elderly people who have had no choice as to where else they live in the Island when they are near the end of their lives and their families have grown up and left and they are forcibly told that they have to leave the homes in which they have grown up for many years, which they have brought their families up in. I am quite emotional about it because it is something that I have seen happen in my own family and, as I say, both my parents were placed at Le Marais with no other choice and they are not the only ones. Now we have removed their bus services, which has been a good service for many, many years, and I do applaud Deputy Baudains for bringing this to try and reinstate something. I think he is trying to right a wrong.

#### **12.1.10 Deputy M. Tadier:**

I would like the Minister when he sums-up to ask ... sorry. I was looking at the internet for previous articles that have been done on the buses and I raised several things back in 2009 about the need for a bus card which is electronic, about transfers, and I have been told that these were going to come in ... well, it said in Easter. Is that date still to be maintained or not? The Minister can perhaps nod his head because he is not going to be able to sum-up. I suspect that is not going to be the case. My question is: why was this not all done before CT Plus came in? They knew they were coming to Jersey. They have got maps. They have got access to timetables that existed at the time. They knew in advance that they were supposed to have electronic cards. They knew that they should have had transfer systems because it is not possible to have routes that run from every part of the Island. You cannot have, for example, a route from the airport to St. John or to St. Mary or to Grosnez, but you do have interchange points and you should be able to have a ticket that takes you through for an hour. We have not even done those kinds of basic things and it seems to me that

we have discussed lots of ideas about hubs. You do not necessarily need very large buses running on all of the Island's roads. That cannot work. It does not work. We have got some flexibility now with smaller buses and it seems to me, although I think there is some merit for having a bus service that runs right from the airport to Le Marais, you could argue, if it is going to help Deputy Baudains and his constituents in that particular area, why not just have the small buses which can go through all those small roads - we know the nature of those areas - that run to the town bus station, which have changes that are timed so that you can get buses to anywhere in the Island that do not cost you any extra because it is a transfer system. Why are these kinds of things not being looked at? I know it is fair enough to say: "Well, why should he have it when in St. John we have not got a very good bus service?" Tongue in cheek, although I think it is a serious point, I would say to the Connétable of St. John: do you want low taxes for millionaires or do you want high taxes in society where buses run every 20 minutes to an area where nobody is going to use them or potentially one or 2 are going to use them? I have been in St. Lawrence opposite the church and got the circular route and I have used that to come down the hill when the bus driver who is going quite fast sees me, slows down - he was not speeding incidentally, he was just doing the 30 because the faces were there ...

**The Connétable of St. John:**

Will he give way, Sir, please?

**Deputy M. Tadier:**

I will give way.

**The Connétable of St. John:**

The Member who is sitting in front of you, do you think he is a millionaire?

**Deputy M. Tadier:**

I cannot comment on another Member's state of affairs financially. It is not correct under Standing Orders.

**The Bailiff:**

You are quite right, Deputy. **[Members: Oh!]**

**Deputy M. Tadier:**

I am talking about our tax policy here. I know the Constable of St. John feels very strongly about giving tax breaks to the most wealthy in our Island and all I am saying is if you do not have the money to pay for gold-plated public services you often get bronze-plated public services and, therefore, we have to spread the butter very thinly when it comes to those who use the buses, although I am quite happy to have buses all over the Island if they are going to be used. That is the point I was making. I think there is a strong case for this to be reinstated. I think the costs are far too high, because it really depends on what the alternatives are. Clearly if we maintain the current bus that runs there and reinstate an 18 which is duplicating the routes, then of course that is going to be a stupid and inefficient use of money, but if we reinstate the 18 and also look at the times that it runs and look at the stops that it does, we can make this work in a more sensible way. I think it is key that we have a bus service which is democratic for the users of that bus service and that we have a very effective way of highlighting the areas that need to be changed. I will be pursuing with the Minister, for example, to make sure that we have bus stops at the hubs in Overdale at the hospital, where people can get out that have mobility issues so that they can be used from all over the Island. So I think this does need to be supported. I think that frankly CT Plus, although I am sure they have the best intentions, they do need to get their act together very quickly and the Minister needs to convey these points to them. The other point I was going to make, we do need to

think outside the box. We are a small island; we know that in some ways there is a duty to be played with all the jeeps that run up St. John's and up Queens Road, perhaps when they see somebody standing at a bus stop for a bus which is not coming, maybe they could just pull over their jeep and give the passenger seat to somebody who is waiting with their shopping at a bus stop. There are lots of ways to deal with these issues as a community, but certainly I will be intending to support this proposition and I think the fine detail can be thrashed out by the Minister and by the Deputy for the Parish.

**Deputy K.C. Lewis:**

May I have a point of clarification? I have been inadvertently misled. From 16th March 2013, there a compromise intended to restore punctuality. It is the eastern half of the current 15 still penetrates Le Marais and Le Squez every 20 minutes, 7.00 a.m. to 7.00 p.m. The Constable of Lawrence seems to have missed the point. We have not withdrawn buses from Le Marais. We have improved and increased capacity.

**12.1.11 Senator B.I. Le Marquand:**

I think there is an issue in relation to people who live closer to the Inner Road and particularly elderly people, and I am going to suggest an alternative solution, which was already hinted at by Deputy Lewis. It appears to me the financial ramifications of what is proposed, particularly in light of what the Minister for Housing said, it means that this proposition is going to fail. But it seems to me there is an alternative solution. That is the 1A, because the 1A goes right past there, and that is not a very frequent bus route. It seems to me that what I would suggest be looked at is in fact running the 1A more often and perhaps running the coastal route not quite as often. They do, after all, I think, end up at the same place, at Gorey, and that would produce a bus route that would service the north side, as it were, Marina Avenue and so on, and indeed St. Clement Gardens and so on much more often, so I do suggest that as a compromise solution.

**12.1.12 The Connétable of St. Clement:**

I was not going to speak, but I really must say something, and I hope you will allow me to.

[17:00]

I know the Constable of St. Lawrence, and I know she did withdraw the word “dumped”, but I just want to say that I know many, many people who live in Le Marais and the area and they are in the main the most positive, pleasant and kindest people that you could come across. **[Approbation]** Many of them are grateful to live in God's own Parish and many of them are thankful that they live in God's own Parish. **[Laughter]** I make that as a serious point, because many of them recognise and value the service that they get with the dozens of volunteers in St. Clement who give up their time to serve the Community Support Team and to help members in our community who have got transport problems, who need companionship, who have got mobility problems and have got social needs. As I say, dozens of volunteers in St. Clement put themselves out to help other people in the community who are not so fortunate. As to buses, there are going to be significant changes to the layout of the roads in Le Squez over the next months and years, so there are going to be significant changes for all traffic in the area, and that is already happening since the States have decided to build far too many houses in the Parish, and we have seen the infrastructure now collapsing, so no vehicles can use Rue du Maupertuis at the moment because of that reason, so there are going to be changes and nobody likes changes, but sometimes we have got to adapt and embrace these changes. Certainly, all is not well with the bus service; far from it. But I think to make one change in a small part of the Island is not going to help the overall picture, but I do appeal to the Minister for Transport and Technical Services to work with the new bus company to get things right and get things right quickly, please.

### **12.1.13 Deputy J.H. Young:**

I am really troubled by the course of this debate, because Deputy Baudains is absolutely right to bring issues of his constituents, but equally, the proposal that we have got on the table is an expensive one and it looks, from what I have heard, far from the ideal one. I am really troubled we have got this gulf between the Minister for Transport and Technical Services and the Deputy. I would like to feel at least if maybe Deputy Baudains could withdraw, if we could have some assurance from the Minister for Transport and Technical Services that this is going to be looked at, otherwise I am tempted to suggest that the Environmental Scrutiny Panel - and my colleagues will punish me for this, I feel sure... but before I propose that, I would like to feel that the proper answer, the real place to sort this out is the Minister for Transport and Technical Services and the Deputy, so if the Deputy could agree to withdraw, because after all, if we do not get a solution, then it can come back, but I feel it is wrong just to kick out a Member trying to do things for their constituents because things are not right. We are in a bedding-in period in the bus service. I think we have got a good company that is doing a good job and doing its best, but they are suffering from a lot of disadvantages and I think they have made mistakes, they have agreed it. The run-through from the 15 was not a success; it was a failure. That has now been put right. We have changes on the Explorer route. They have conceded now that those routes are going to be corrected. I myself raised the issue about the 12 and 12A, which has also been taken on board and I think the Constable of St. John, a member of our Scrutiny Panel, is also under discussions for improved buses on the north coast, and we heard that there is going to be a north coast route and also if we can get through this year, because this is year one of what is a massive change of an improved bus service which is still not there, that in 2014 we were told there is the spectrum of being able to get community routes within the Parish districts using hubs from the current bus networks, having hubs, using many buses, possibly volunteer drivers, all these sort of things to serve the different satellites on the network, but I think it is a real problem because T.T.S. has got the issue of money. I think we were told there is a massive cost just to make the crew change we have got here and it is for that reason that I feel I cannot support it, but I want to support the whole drive towards improving transport links, not just in St. Clement, but all other isolated areas, and it is going to be important ... sorry, I withdraw "isolated." All areas out in the country where, as people get older and they have got more leisure time, and we were told about Constables having to withdraw driving licences from people, because they ... you know, failing health, but we cannot have that now. But please, can we have a dialogue on not having to sit around and trying to have a planning debate on buses. So I invite the Deputy to please withdraw, but if not, if he is not going to respond, I shall propose we go to Scrutiny rather than kick it out.

### **The Bailiff:**

Deputy, are you proposing then that the ...

### **Deputy J.H. Young:**

I was hoping the Deputy might stand up and ask me to give way.

### **Deputy G.C.L. Baudains:**

I wonder if the Deputy would give way? **[Laughter]** I appreciate what he is saying and the Minister for Transport and Technical Services did ask me the same question, would I withdraw my proposition. I thought I made it clear in my opening speech that much as it might look like a way forwards, the problem with that is if there is any delay then the chances of reinstating the No. 18 will be lost for ever, because the estate will be redeveloped in a way that the bus will not be able to get through, so we cannot afford delay.

### **The Bailiff:**



Deputy Young, are you making your proposition?

**Deputy J.H. Young:**

No. I think what I have heard, the real motivation is not to establish the bus service, but to change proposals for the development of Le Squez and I am not content with that, and I certainly do not want the Environmental Scrutiny Panel to have to look at that one, so I am going to finish my speech ...

**Deputy G.C.L. Baudains:**

For a second time, Sir ...

**The Bailiff:**

I am sorry, Deputy Baudains, you cannot have another speech now. You will get your chance in reply.

**Deputy G.C.L. Baudains:**

I will do that then.

**The Bailiff:**

But you have said at the moment you are maintaining your position. Very well. Does any other Member wish to speak? Deputy Le Fondré.

**12.1.14 Deputy J.A.N. Le Fondré:**

I was hoping I did not have to speak, but on the basis I am the Assistant Minister for Transport and Technical Services I think I had better say a couple of comments. For point one, I absolutely endorse the right of Deputy Baudains to bring the proposition to the States. A lot of us have been in the position of Back-Benchers or whatever, that there are certain issues that come up, whether it is constituency matters or other matters or whatever or a policy we do not agree with. It is the absolute right for someone to bring it to this Assembly. It is the right place for it. It is difficult when it is something like a bus route, because it is getting close to a planning application, but that is the way it goes. I think what I would like to say is we have got to accept that CT Plus have had some difficult starts, definitely, and we all know the issues. There are people who will disagree fundamentally, certainly where I come from, with how CT Plus have handled things. Personally, I think they have done very well. So they are recognising they have had some difficulties; they are recognising the maintenance and some mistakes. In fact, that is why I am a little bit leery coming after Deputy Young, because I think he has stolen about half my speech. Effectively I endorse his comments. I think CT Plus in the longer term are going to be, I hope, a good operator. Their motivation appears correct. We meet with them on a regular basis now. They are talking and they are open to listening and I think that is what we want. Certainly the whole principle about whether it is a hub operator, I do not like using the word “dead zones”, I do not want to go there, but there are ...

**The Bailiff:**

Deputy, I am sorry to interrupt. This is not a discussion or a debate about the whole bus service. It is merely ...

**Deputy J.A.N. Le Fondré:**

No, no. The point is that the impact of the proposition has an impact on the network. It is not an isolated decision and that is where I was getting up to, Sir, but I was also trying to correct some of the other comments that have been made about the capacity or the quality of the operator, and I think that is right to correct. It is recognising that there have been some difficulties, as I have said,

but I believe they are being recognised. Some have been internal ones. Those have been dealt with, so there will be differences of opinion there and some of those are external ones on the routes. What I was going to say, again the point about the quality of the operator, looking forward to the future, this is 2½ months into a long contract, it is that there will hopefully be areas where services do not exist at the moment, we have them in our own Parish, and I am hoping that there will be some form of operation that will come through there at some point if we can. But that is about ... they started a consultation process last year and that will keep going. Right, in terms of the routes and the network: the network overall, the proposals are that there is an overall increase in bus mileage by a reasonable amount, it is 12.5 per cent overall. It is certainly true that on the face of it, the 18 route has dropped in capacity by something like 25 per cent. I have just had the number re-emailed to me. It is about 6,000 or 7,000 user trips per 4-week period. It is about 6,000 down between 2010 and 2012. So that is a case, yes, the nature of the estate has changed, but if any operator is going to look at that and say: "What do we do about the service?" I think it is also reasonable to say we are taking account in particular of the comments of the Constable of St. Lawrence that the service to Le Marais itself and Le Squez, if you look on the maps, appears - or the bus operator would claim - that they have been improved, because the route goes in differently. The difficulty is the north end of that estate, and that, as we know, there is a big impact on the plans by the Housing Department in that area. The Minister for Housing has disagreements on all sorts of matters, but on that instance, I think it would be fair to say that what Housing are looking to do is to improve the nature of the area, and one of those impacts is on the route and that is a physical thing. If we want to change that, that is in the hands of the Assembly, but there is a consequence of that, and that is about the number of units. I think really I do not want to get into too much detail on that. I think that is the general principles. It is a network. If one tweaks on this strand, there are other strands that are impacted and whether it is the impact on routes that go up to St. Mary, St. Lawrence and St. John or other parts of the area or whether you have to drop a Sunday service, for example, as a consequence of this, there is no easy decision as a result. That is a matter for the Assembly as to whether they say: "We want to take those impacts and we want to reinstate the 18" in which case you support the proposition. I would rather urge people not to; see if we can keep going for the incremental improvements and give the operator a chance, and with that point, I would like to request Members to reject the proposition.

#### **The Bailiff:**

Does any other Member wish to speak? Then I call upon Deputy Baudains to reply.

#### **12.1.15 Deputy G.C.L. Baudains:**

I am glad that the tone of the debate improved as it went along, because I was becoming concerned with some of the earlier speakers making flippant comments as if the people that travel by bus: "Well, it does not matter, you just walk down here and stop and if the bus does not turn up, well, get used to it" type of attitude. I wonder if they show that attitude at election time? I doubt it. But as I say, we improved as we went along. Now, the Minister for Transport and Technical Services, I can understand where he is coming from, but of course he and I, and other Members mentioned later on - and I will come to - are some distance apart, but then again... he is advised by his officers and we know that his officers did not tell him the correct facts about why the No. 18 that used to go through Le Squez and Le Marais ceased to do so. They said it was because there would no longer be a road for the bus to do down to the estate. I am not going to read out that whole reply from Housing again, but we know that simply is not true. If the Housing Department want a bus running through Le Squez, it is Transport and Technical Services and/or a combination with the bus company who have said they are not going to take a bus down there. They cannot get a double-decker bus down there, so therefore you do without your bus. That is the truth of the matter. I dispute the cost of £180,000, which I know some other Members have been concerned about, and I

would be as well. If a bus that is usually nearly full most of the time is costing £180,000 a year to run then we have got a pretty inefficient bus service, which I think at the moment we have, but that is beside the point. Of course, that would not take account of the savings by not extending the No. 15 on to Le Marais and other alterations. They are trying to bodge-up the No. 15 and the number 1A to cover the area that the No. 18 used to do and it is not working properly. So it would be a more efficient service. Now, the Minister suggested that - and I believe my Constable touched upon it - in Marina Avenue, some residents there expressed dissatisfaction.

[17:15]

I expected, when I started out on this, to receive one or 2 complaints from people in Marina Avenue, because I know some of them were not happy about buses going down there, but there was an arrangement made with them at the very beginning when Le Squez Estate was first built that buses would go down there and they always have done, for the last 40-odd years. I have to say, no one from Marina Avenue contacted me to say: "We do not want the No. 18 going down there anymore." In actual fact, 3 people from Marina Avenue contacted me saying they wanted the bus down there, because they now have to use their car, whereas they used to use the bus before. The Minister said the bus meeting in the Parish Hall was focusing on times and all the rest of it. I can assure him the reason they were all there was because of the lack of the No. 18 bus. I know, because they all contacted me about the meeting in one way or another. The Minister also wanted us to allow Liberty Bus to improve their service. Well, if they improve it as well as they have improved their service in Guernsey, I think we had better all buy some more cars. He finished by saying that if the No. 18 was reinstated, Le Marais would lose their Sunday service. I would remind him that the Inner Road, the 1A does not have one either, it does not have one now. The Constable of St. John said that spending £180,000 is unjustifiable. I would entirely agree with him, but that is not what is going to happen. I think that is another red herring that is thrown into there, because that assumes that the bus will be running empty; that will assume that you still run the other buses that are trying to cover the route at the same time. I am convinced it will save ...

**The Bailiff:**

I am sorry, Deputy. There is a lot of background talking and it is courteous to listen.

**Deputy G.C.L. Baudains:**

I will just speak louder, Sir. That, as I said, assumes the bus will run empty and the other services are going to continue to run as well. I believe it will be more efficient and people only have to walk 300 metres to a bus stop. Well, some people have to walk quite a bit further than that and some people have got a job to walk 5 metres, let alone 400 or 500 metres. There are a lot of elderly people living in that area and Le Squez and Le Marais really, though they have different names, they meld together. They are really one estate and it is the largest estate in the Island, a great number of people living down there. The Minister for Housing saying that a bus-only route: well, it has been a bus-only route for quite some time now. It will cost £1 million to change plans. It might do if you had already made plans to do away with the bus route, but I am sure the Minister will recall in my opening speech when I read out his own department's reply to me that they want the bus to run down there. They did not tell me that they had changed the plan and that it was at the time that I lodged my ...

**Deputy A.K.F. Green:**

Will the Deputy give way? What they said, I believe, was they were happy for the bus to run there, but having been told it would not be, then our plans have changed.

**Deputy G.C.L. Baudains:**

I appreciate they might be thinking about changing the plans, but they cannot have done so yet. They do not work that quickly. I was discussing this with them about 5 weeks ago. Is the Minister seriously telling me they have changed plans and lodged them in 5 weeks? I do not now think so. I could delay and look for the time of the communication I had from the officers of the particular date of that. Yes, it was 5 weeks ago that I had that message from the department. Senator Le Gresley tells me there is a bus stop at the junction of Green Road and the coast, so yes, I know there is a temporary bus stop there. In fact, there are so many temporary bus stops along there it is somewhat confusing. That assumes that you live at the western end of Green Road and it assumes you are not elderly and fairly immobile. I have had quite a number of people complaining to me that they live in Green Road and their bus service is no longer fit for purpose, and what I am driving at throughout this, they have said, as so many other people have said: "I now have to use my car." Now, I thought we were trying to get people on the buses, not off them. The marina residents are complaining. As I say, no Marina Avenue resident has complained to me. I must admit, as I said, I probably thought I would have one or 2 people saying: "Well, we have had buses through here for 40 years. It would be nice not to have them." No one did. I had I think it was 3 residents who contacted me who live in Marina Avenue and said: "Yes, we want No. 18 back." Deputy Pitman: the system has worked for 40 years and why not carry on? I entirely agree. I mean, what we are seeing here is a bus company and the Transport and Technical Services Department - where to apportion most blame, I do not know - who have just decided that they will not run the No. 18 bus. They came up with the idea that: "We will use a double-decker and we cannot get it around the corners." I was not joking when I said is it not strange that the No. 15 bus, which is a double-decker, can go along the coast road and turn left into School Road, yet it cannot go along the Inner Road and turn in from Marina Avenue, which is the other side of the road, because they have got a greater turning circle? I mean, what I am thinking about is what comes out of the east end of the western-facing bull. What do you do with things like this? Deputy Le Hérisier asked if there was any kind of compromise. When Deputy Young kindly gave way to me, I think I explained that ... and the comments that the Minister for Housing has made, there is no time to lose here. If I withdraw the proposition, then people can be referred to the Scrutiny Panel, people can talk about it and in 6 months or a year's time, will say: "Yes. It would be a good idea to reinstate the No. 18." The only trouble is it will now cost £2 million to rewrite the plan for Le Squez because we have now gone ahead and cut the road out altogether so it will not happen. It is either now or never. I am thankful for the Constable of St. Lawrence agreeing with Deputy Pitman and I thought: "Focus this back on what we really should be thinking of is the elderly people that live in the estates." If you are not familiar with Le Squez and Le Marais, the vast number of people there are the elderly or infirm. They do rely on their bus service. They have relied on it for a number of years. Now the residents of Le Marais have an unreliable No. 15 because it is the airport bus extended into Le Marais, which of course by the time it comes through town, its timetable is all awry. I know that is due to be changed, but as I said, it is funny that some Members have said: "You must not change one part." Well, I am afraid the bus company is changing one part on a daily basis, so I just do not understand that argument. I was thinking that Deputy Tadier was talking about a gold-plated service and a bronze-plated service and I was thinking that ... well, no, I will not say what I was thinking. **[Laughter]** He also queried the £180,000 which, as I say, I would not believe a word of it. I have to say that anybody who can say that the reason why the bus service is not running down there is because the road is not going to be there and mislead people to that extent. How accurate is the information about £180,000? My Constable rightly pointed out that we lived in God's own Parish, but unfortunately God's own Parish is not as well served by the bus company as it used to be. Significant changes to Le Squez over the years... and nobody likes change, I appreciate that, and of course one of the changes they did not like was removing the bus, which is completely unnecessary. But he does say that certainly not all is well with the bus service. I do not think anybody across the Island would disagree with that. Deputy Young spoke of an

expensive option and I think he has been taken in by the price tag of putting on the No. 18. I mean, for a start, if you have got a bus that is virtually full most of the time, it has got to be more efficient than buses trundling around partly full, and as I said, that assumes you are still going to run the other buses which are duplicating the service, which is nonsense. You would no longer run the No. 15 to Le Marais. You would no longer make the alterations to the 1A. Then he intimated that this was more about the redevelopment of Le Squez than the No. 18 bus, but it is not. I think I have explained the fact that the bus has always gone through Le Squez and on to Le Marais, so the 2 estates are treated as one, and they can still do so at the moment, and if we decide to reinstate the No. 18 bus, it will continue to do so. If we do not decide to do so, it will not and it will never again. In other words, to put it more plainly, what the bus company decides to do, the Housing Department will follow. That is quite clear by meetings with the department, and the bus company says it does not want to run a bus down there anymore, and they will say: "In that case, we will take advantage of the space and build more houses." I also mention the hub system. I do not want to get side-tracked on to that, but that is an idea that has been around for a number of years and I hoped Connex would look into it, but they did not get round to that. I think the new company has got enough problems without looking at that at the moment. Deputy Le Fondré said that CT Plus had a difficult start. I have to say it was a self-inflicted problem. Any company that did not know the Island should have come in and run Connex's routes at Connex's times and when it had found sufficient information as to which routes were needed more service and which perhaps needed less made the change in 2 or 3 months' time, not made significant changes at exactly the same time as it took over the franchise and then continues to make changes on an almost daily basis. What is happening is that people are leaving the bus. They cannot rely on it. You never know if the bus is going to turn up, if it is going to be late, cannot afford to miss work: "Right, I will not bother with the bus anymore. I will take the car." The number of people that have said that to me is quite amazing, and I am told you can see the difference. In fact, fortunately I was not stuck in this traffic jam, but I was told on I think it was last Thursday that the traffic jam down Mont Millais, if you work up the hill, it started at the traffic lights that are down the road, went up past Victoria College, past the Girls' College, past St. Saviour's School, past the island at Five Oaks, past the *J.E.P.* (*Jersey Evening Post*). Why? Because people cannot rely on the bus to take their children to school.

**Senator L.J. Farnham:**

I am getting tempted to propose the adjournment, Sir. [Laughter]

**Deputy G.C.L. Baudains:**

This is what I meant when I started summing up. I think it is entirely inappropriate that people make a joke out of something which is affecting a great deal of members of my Parish and they treat it as ... perhaps they should go around and tell the people at Le Marais that: "We do not care that you do not have a bus, get stuffed" and we will make a joke. Do not make a joke out of it to me, make a joke out of it to them and see how well you get on, because it really does irritate me. It shows a complete disregard for the public of Jersey. People need a bus service that arrives where the bus route is stable, where the bus time is stable, that the bus arrives on time, because if it does not, how can you arrange your business? How can you rely on the bus to get you to work, to take your children to school and to keep an appointment? You cannot, so people are using their cars instead. In Guernsey, they have left the buses in droves to move in to their cars. The same company. Today is an opportunity to deliver our sustainable transport strategy. We know, we have discussed housing and redeveloping Le Squez. They want the bus to continue servicing that estate. Now, I forget which Member it was said earlier, or a couple of Members said that the usage of the No. 18 had dropped 12 or 20 per cent. Yes, but of course in recent times a lot of or a fair

proportion of Le Squez has been decanted out of there, because they have already started the redevelopment, so it is in 5 phases, or it used to be in 5 phases. It keeps changing.

[17:30]

But the point is in the future, there are going to be many more people living in Le Squez than were 5 or 10 years ago. The bus service will be even more required than it was previously, so a small downturn at the present time merely reflects the occupancy rate at Le Squez at the present time or in the previous few months. I have often wondered that what the real reason was for deciding not to run the No. 18 through Le Squez. We have been given excuses, this nonsense about the bus not being able to get down it. I wonder if there is an ulterior motive, because there is a lot of elderly people round there and most of them would have been using bus passes, and I wonder if the company perhaps did not like that. I demonstrated in my opening speech how extending the No. 15 airport bus has left large areas to the north with virtually no service at all. So surely the proper solution, if we are serious about getting people out of cars and on to buses is to realise that Le Marais and Le Squez are large estates, and together with the surrounding areas, not only Green Road, but Marina Avenue and Samarès Avenue and all around that area, they require a dedicated bus service and the way to do that is to reinstate the No. 18 because it all really boils down to the issue of whether we want to encourage people out of buses or out of cars. **[Laughter]** I meant what I said, because that is what is happening, or do we want to encourage people out of cars and on to buses? That is what the Sustainable Transport Policy says. At the moment, the opposite is happening. I make the proposition, Sir.

#### **The Bailiff:**

The appel is asked for then in relation to the proposition of Deputy Baudains. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 12</b>		<b>CONTRE: 26</b>		<b>ABSTAIN: 0</b>
Connétable of St. Lawrence		Senator S.C. Ferguson		
Connétable of St. Brelade		Senator A.J.H. Maclean		
Deputy R.C. Duhamel (S)		Senator B.I. Le Marquand		
Deputy G.P. Southern (H)		Senator F. du H. Le Gresley		
Deputy S. Pitman (H)		Senator L.J. Farnham		
Deputy M. Tadier (B)		Connétable of St. Helier		
Deputy T.M. Pitman (H)		Connétable of Trinity		
Deputy M.R. Higgins (H)		Connétable of St. Mary		
Deputy J.M. Maçon (S)		Connétable of St. John		
Deputy G.C.L. Baudains (C)		Connétable of St. Martin		
Deputy S.J. Pinel (C)		Connétable of St. Saviour		
Deputy of St. Mary		Deputy R.G. Le Hérissier (S)		
		Deputy of Grouville		
		Deputy J.A. Hilton (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy of St. John		
		Deputy J.H. Young (B)		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		

		Deputy R.J. Rondel (H)		
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**The Bailiff:**

There are 3 matters which have been lodged, Members will find in their pigeon holes,: Projet 41 - Draft Leasing of Parks (Amendment No. 5) (Jersey) Regulations- lodged by the Minister for Transport and Technical Services; Projet 42 - Draft Control of Housing and Work (Jersey) Law 2012 (Appointed Day) Act - lodged by the Chief Minister; and Projet 43 - Draft Register of Names and Addresses (Jersey) Law 2012 (Appointed Day) Act - lodged also by the Chief Minister. So we come finally then to the Arrangement of Future Public Business and I invite the Chairman of P.P.C. to speak to it.

**ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**13.1 The Connétable of St. Helier (Chairman, Privileges and Procedures Committee):**

The future business is as set out on the Consolidated Order Paper under M, with the addition of the 3 items for 30th April which have just been read out; P.41 - Draft Policing of Parks, P.42 - Draft Control of Housing and P.43 - Draft Register of Names and Addresses. They are all set down for 30th April, and 2 additions for 16th April, which is the next sitting: P.39 in the name of Deputy Maçon - Referendum on States Reform: minimum turnout threshold, and P.40 in the name of the Constable of St. Helier - Parish Rates: the States Liability, which cannot be debated before 17th April, which is the Wednesday. Could I also remind the Assembly that the Annual Youth Assembly takes place next Tuesday here, Tuesday, 26th March at 1.45 p.m. Members are encouraged to either attend in the gallery or listen on Radio Jersey to hear our young parliamentarians' debate and questions.

**The Bailiff:**

Does any Member wish to say anything on future business?

**13.1.1 Deputy R.G. Le Hérissier:**

If, for the sake of argument, Deputy Maçon's proposition were to be successful, what will it do to the referendum?

**The Connétable of St. Helier:**

I do not think it will affect the referendum, merely how the States treated its results.

**The Bailiff:**

Do Members agree to take future business then as proposed by the Chairman of P.P.C.? Very well. That concludes the business of the Assembly then, so we will reconvene at the next meeting on 16th April.

**ADJOURNMENT**

[17:35]