

# STATES OF JERSEY



## DRAFT PLANNING AND BUILDING (AMENDMENT No. 6) (JERSEY) LAW 201-

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Lodged au Greffe on 20th May 2014  
by the Minister for Planning and Environment

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STATES GREFFE





Jersey

## **DRAFT PLANNING AND BUILDING (AMENDMENT No. 6) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Planning and Environment has made the following statement –

In the view of the Minister for Planning and Environment, the provisions of the Draft Planning and Building (Amendment No. 6) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy R.C. Duhamel of St. Saviour**

*Minister for Planning and Environment*

Dated: 19th May 2014

## REPORT

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### Summary

On 11th September 2013 the States Assembly approved [P.87/2013](#): “Planning Appeals: revised system”. The Proposition set out a model for the consideration of appeals by independent inspectors who would then report to the Minister for Planning and Environment to make the final decision. The inspectors would be allocated appeals by the Judicial Greffe, who would administer the process and appeals would be considered either by written submissions or by the interested parties appearing at a hearing chaired by the inspector. The process involved the withdrawal of the Minister from considering applications or actions that could be appealed.

### Background

The current appeals process has its roots in the Island Planning (Jersey) Law 1964. This allowed an appeal to the Royal Court against action taken by the (relevant) States Committee on the grounds of such action being unreasonable with regard to all the circumstances.

In 2001, in the report accompanying the first version of what was to become the Planning and Building (Jersey) Law 2002 ([P.50/2001](#)) the then Planning and Environment Committee stated –

#### “Articles 106 to 117: Appeals

The provisions in the proposed Law for appeals are a significant departure from those contained in the existing Laws. The Committee has found that the system of appeal against a planning decision to the Royal Court is invariably a slow and expensive process which effectively denies a right of appeal to those of limited means, or makes an appeal unworthwhile where the cost of the works to be undertaken are significantly less than the exposure to costs in an appeal to the Royal Court.

Accordingly, the Committee proposes the setting up of a Planning Appeals Commission. This will be a panel of expert Commissioners, one of whom will be appointed by a Chief Commissioner, to conduct an appeal into a Planning and Environment Committee decision, either through the method of written representations or by public hearing. It is felt that this system will allow swift access to an independent tribunal, which will be able to assess the merits of a case, taking such expert advice as is necessary, and adjudicate. Appellants would not necessarily be required to appoint professional representatives and could expect a final and binding decision within three or four months depending on the way in which the appeal is heard. The Commission will be able to determine appeals on the merits of the case.

An appeal to the Commission would be available against refusals of permission, against conditions subject to which planning permission has been granted, against the revocation or modification of permission, against the service or terms of certain notices and against certain listings.

The Commission would be required to take into account the purposes of the Law and the policies contained in the Island Plan but it would have the power to find differently to the Committee on the planning merits of the case. It will have full jurisdiction under the Law and its decisions would be binding on the Committee.

The provisions do not alter the right to appeal under the Administrative Decisions (Review) (Jersey) Law 1982, or to seek judicial review by the Royal Court.”

At the stage of P.50/2001, the Planning and Environment Committee decided not to recommend to the States the introduction of appeals by third parties against the granting of planning permission. The Committee was concerned that allowing third parties to appeal against decisions could prejudice legitimate development proposals. They were also concerned that the cost of allowing third party appeals estimating that the workload of the suggested independent Planning Appeals Commission could nearly double.

Notwithstanding the concerns of the Committee, States Members accepted an amendment to the Law to introduce third party rights of appeal ([P.50/2001 Amd.\(3\)](#)).

Discussions continued as to how to service the appeals process to include third party rights and a compromise was suggested. The proposal for a Planning Appeals Commission was dropped, and appeal to the Royal Court for both first and third parties was introduced ([P.210/2004](#)). At the same time, the rules governing Royal Court appeals were simplified and the process made more accessible. To keep costs down, appellants would be allowed to represent themselves in the Royal Court.

Soon afterwards, further changes to the Law were introduced ([P.47/2005](#)) that changed the proposed test of an appeal from merits based to that of unreasonableness of the decision. The same amendment introduced restrictions on who could pursue a third party appeal. The Law was then brought into force.

In 2005 there was a review of the Planning system by Chris Shepley, former Chief Planning Inspector for England and Wales. In his report, Mr. Shepley recommended that a proposal for a separate independent appeals tribunal should be revisited in due course.

Since March 2007 there have been 3 formal considerations of all or part of the planning applications process. Of these, 2 reports were presented to the States –

- “Committee of Inquiry to examine the operation of third party planning appeals in the Royal Court (up to 31st March 2008): final report” ([R.14/2009](#)); and
- “Committee of Inquiry: Reg’s Skips Ltd. – Planning Applications – Second Report” ([R.38/2011](#)).

There was also a report commissioned by the Minister for Planning and Environment –

- The Development Control Process Improvement Programme (PIP) (November 2010).

All of these reports in some way investigated and considered the planning appeals process and all of them recommended that an alternative to the Royal Court Appeal be introduced.

The reports found that pursuing appeals through the Royal Court has proved to be unsatisfactory to those who experience the processes controlled by the Planning and Building Law. In many cases there had not been an appeal, as the complexity and expense of bringing the appeal through the Royal Court was too much of a barrier. Modifications to the process to allow appellants to represent themselves in the Court have not resulted in the accessibility of the process that was anticipated to improve the system.

With the concerns over how appeals could be pursued in mind, a Green Paper was published by the Minister for Planning and Environment in March 2013 – “Planning appeals – can we improve the process? Green Paper March 2013” ([R.24/2013](#)) seeking views on the potential for reforms to the appeal process.

Just prior to the publication of the Green Paper, on 12th February 2013, Deputy J.H. Young of St. Brelade lodged a Proposition ([P.26/2013](#)) “Independent Planning Appeals Tribunal: establishment” and the States agreed to the establishment of a tribunal approach as adopted in Guernsey. In Guernsey the appeal process is handled by a tribunal of independent people, led by a professional Town Planner, and the tribunal has full jurisdiction to determine appeals against decisions of the Department of the Environment. Appeals are considered entirely on their planning merits. The Proposition requested that the Minister for Planning and Environment bring forward detailed proposals for the establishment of the new tribunal.

Notwithstanding Deputy Young’s Proposition, the Green Paper consultation continued, and views and comments were gathered relating to how appeals could be dealt with.

On the basis of Deputy Young’s Proposition and responses to the Green Paper, on 2nd July 2013 the Minister for Planning and Environment lodged a Proposition ([P.87/2013](#)) outlining his model for an appeals process that would apply to decisions taken under the Planning and Building (Jersey) Law 2002. This was debated on 11th September 2013. The recommendation in the Proposition was for an independent inspector – chosen from a Panel of suitably qualified and experienced inspectors recruited via the Jersey Appointments Commission (JAC) – to consider each appeal case and then make a recommendation to the Minister for Planning and Environment. The Minister would make a final decision on the basis of the recommendation. The Minister would not be bound by the recommendation, but would have to explain any variation from it. The process would be administered by the Judicial Greffe as an independent body remote from the Department of the Environment. Appeals could be pursued without the prospect of costs being awarded, and a reasonable fee would be payable towards the cost of administering the process.

The States Assembly agreed that the suggestions of the Minister for Planning and Environment would provide for an independent merits based consideration of an appeal that is accessible and affordable.

The model suggested by [P.26/2013](#) was investigated but felt to lack democratic accountability for decision-making, and would involve people without the necessary technical skills and experience to make judgements that could be considered wholly impartial. Also considered was giving full decision-making powers to an independent inspector, but this model also lacked accountability and would not be able to fully reflect the particular circumstances of Jersey’s environment.

Deputy R.G. Le Hérisier of St. Saviour lodged a successful amendment to the Proposition that retained the Request for Reconsideration (RfR) process. This involves applicants who have received a refusal of planning permission determined by officers under delegated powers asking the Planning Applications Panel (PAP) to review the decision. PAP can either overturn the decision subject to the Minister not wishing to intervene or endorse the original decision.

## **Amendments to the Planning and Building (Jersey) Law 2002**

The following decisions will be subject to the revised appeal process –

1. The refusal to grant planning permission.
2. The refusal to approve or amend an application for planning permission for development which has already taken place.
3. The refusal to vary a previously approved application for planning permission.
4. The refusal to grant a certificate of completion (confirming a development has taken place in accordance with a previously approved planning permission).
5. The refusal to grant building bye-laws approval.
6. The refusal to grant permission to undertake particular activities on/in/under a site of special interest.
7. The refusal to grant permission for the importation or use of a caravan in Jersey.
8. The imposition of a condition on any permission previously granted by the Minister.
9. The revocation or modification of a planning permission.
10. The service of notices requiring actions.
11. The inclusion of buildings/places/trees on relevant lists for their protection.
12. The granting of planning permission – appeal by a third party.

In order to facilitate the new appeals processes, there have to be some changes within the Law. Some of these changes will be consequential if the proposed amendments are adopted and will be addressed through Regulations.

### **The role of the Minister, the Department and the Planning Applications Panel (PAP)**

The Planning and Building Law currently in place gives the Minister the power to make decisions and to delegate those decision-making powers as appropriate. The Law also enables the Minister to form a Planning Applications Panel (PAP) – made up of fellow States' Members – to consider applications for planning permission and other matters. If PAP wishes to deviate from a recommendation made to them by officers, then the Minister must be consulted on the matter prior to a decision being made. At that stage, the Minister can intervene and make the decision instead of PAP.

In order that a new appeals system can be introduced, the fundamental process of decision-making will have to be altered. This is to ensure that the Minister is not involved in the first tier decision-making process prior to being asked to consider an appeal. The Minister will still have the power to make policies – including the Island Plan – and issue guidance. PAP will be formed independently of the Minister, and the amendments will allow PAP to be constituted by the States Assembly under Standing Orders. Consequential Regulations will re-assign decision-making roles to officials/ the Department.

### **Route of Appeal**

All appeals will be considered by an independent inspector – chosen from a Panel of suitably qualified and experienced inspectors recruited via the Jersey Appointments Commission (JAC) – who will gather evidence and then provide the Minister with a written report and recommendation on the case. The amendments will allow an inspector to recommend to the Minister that a Public Inquiry, with its more formal processes, may be the best way for issues to be considered.

The Proposition identified that the simplest of appeals would be determined by the submission of written representations. The amendments to the Law identify these as appeals by applicants against Building Bye-Laws decisions, the listing of a building, place or trees, certificates of completion, works on Sites of Special Interest, decisions over the control of caravans and for the refusal of planning permission, or the imposition of a condition on a planning permission where no representations have been received in connection with the application. An inspector may determine what is normally a simple appeal could be considered with a hearing if the circumstances warranted such a process.

All other appeals would be considered by the route of a hearing with an inspector leading a debate of the issues with the relevant parties. This involves leading discussions in a structured manner, allowing all parties to make their case and ensuring anyone not accustomed to presenting a case is not intimidated or overawed. The amendments to the Law will make sure the inspectors have the appropriate powers and authority to conduct such hearings. Inspectors will need to demonstrate experience of conducting appeals by hearings in order to be included in the list of approved inspectors.

Amendments to the Law will not prevent the Minister deciding, without prejudice, that a Public Inquiry would be the best route by which to consider an application prior to any decision. Applications determined by way of a Public Inquiry identify the Minister as the first decision-maker. A Ministerial Decision following a Public Inquiry could not use the revised appeals process.

#### **Deputy R.G. Le Hérissier's amendment and Requests for Reconsideration (RfRs)**

A successful amendment was brought to the Minister's Proposition ([P.87/2013](#)) to allow the continuation of the current practice of PAP reconsidering refusal of planning applications where the first decision was made by officers, known as a Request for Reconsideration (RfR). Although this process is well established, it has no basis in current legislation and was introduced because of the inaccessibility of the formal appeals process.

The proposed amendments legislate for this process, and allow applicants to ask PAP to review a decision to either refuse an application or attach conditions to an approval if that decision was made by officers. PAP will be able to overturn a decision without reference to the Minister. The review must be requested within 28 days of the decision and will not prejudice pursuing an appeal through an inspector.

#### **Fees**

Amendments will make provision for a fee to be charged for an appeal. Fees will be set by Order.

#### **Administration of the appeals**

The appeals process will be administered by the Judicial Greffe (JG). The JG will be the recipients of appeals in the first instance and then receive all subsequent submissions. The JG will distribute information appropriately to all relevant parties.

The Law amendments will set the timescale for all appeals, which must be received by the JG within 28 days of the decision. The Law sets this deadline so as to ensure certainty for all parties who may be involved or potentially involved in an appeal. This is particularly important in relation to potential third party appeals against the grant of planning permission, to ensure an applicant can proceed if an appeal is not duly made.

Submitting an appeal in the first instance will be in a prescribed form and will not require full grounds of appeal. Further details of the grounds of appeal can follow on if



required and be appropriately distributed by the JG. There will be a structure for submission of information but this need not be stipulated in the Law.

After gathering the evidence, the inspector will prepare a report for the Minister summarising the case and setting out a recommended decision and reasons for that recommendation.

A feature of the revised appeal process is that all parties will bear their own costs and there is no provision to award costs to parties who lose an appeal.

### **The decision**

On receipt of the inspector's report and recommendation the Minister will make a decision. If the decision varies from the inspector's recommendation, either in reason or in substance, the Minister will make clear the reasons for that variation.

The Department will be able to assist the Minister in consideration of the inspector's findings, provided that any officers involved had no influence or involvement in the original decision.

There is a provision in the Law to allow an appeal to the Royal Court, but this will be specified to enable an appeal only on a point of Law rather than the merits of the case.

### **Secondary legislation**

Secondary legislation will follow by way of Regulations. The Regulations will include ensuring that the Minister is not involved in the decisions which are appealed to the Minister, and will re-assign roles to officials/Department.

### **Financial and manpower implications**

The financial implications of the new appeals process are difficult to gauge as it is not clear what the take-up rate for appeals will be. However, using the Isle of Man as a template (who also have first and third party rights of appeal over applications for planning permission), and on the basis of 200 appeals each year, the Proposition identified the requirement of £148,000 to cover Inspectors' fees and expenses. Added to this are the requirements of the Judicial Greffe to administer the process, estimated at £44,200 – 0.5 FTE administrative post, 0.2 FTE of a managerial oversight, and a contribution to the rental paid for the premises where the Tribunals currently sit.

A fee is proposed to make an appeal, but as indicated above this structure has not yet been settled upon. There will be a fee income to offset the costs, but it will not be full cost recovery, probably 25% at this stage. This may change in the future depending on the level of take-up of appeals.

As such, the currently predicted cost of the process will be £192,000 minus fee income (25%).

The Minister for Treasury and Resources supported this resource when the Proposition was debated and confirmed the estimated associated costs. The Minister confirmed that funding would be allocated from Central Contingency for 2015 if required and as appropriate.

Funding beyond 2015 has been included as a potential growth bid in the emerging Medium Term Financial Plan (MTFP).

### **Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### Human Rights Notes on the Draft Planning and Building (Amendment No. 6) (Jersey) Law 201-

The proposed system of appeals is one whereby any initial decision can be appealed to an independent Planning Inspector, who will conduct a hearing and make recommendations, with the Minister making the final decision. That appeal process is subject to an appeal to the Royal Court on a point of law.

The Law Officers are of the view that the House of Lords decision in ‘R (Alconbury Ltd.) v Environment Secretary’ represents clear persuasive authority that that the system is compatible with the European Convention on Human Rights. It is noted that a similar system was held by European Commission of Human Rights (by a very clear 25 votes to 2) to be compatible in the decision of ‘Verey v United Kingdom’ – indeed, given the independence of appointment guaranteed by draft Article 107, the proposed system is on an even stronger footing than the one considered in that case. The system provides for an independent hearing, but also provides for democratic oversight. The Minister will be able to decide issues that belong to democratic decision-making, that is the issues of public policy, subject to the ordinary oversight of the courts on judicial review principles. The decision as to whether planning decisions should be vested entirely in experts or subject to democratic oversight is one for the elected legislature, not one for judges or lawyers. The point was made by Lord Hoffmann, speaking after the Alconbury decision:

*“One could hardly have a question which was more a matter of public rather than individual interest than whether, for example, it is a good idea to have a large hypermarket built outside an old market town. Of course one could take the view that politicians lack expertise, are more likely to be swayed by political passions and that it would be more in the public interest if such questions were decided by independent experts. This is an argument that goes back to Plato’s Republic. But the argument about who should decide is itself an argument about what would be in the public interest in a society which, contrary to Plato’s views, has committed itself to democracy, that is question within the competence of the elected representatives of the people. It is not for judges to tell them to adopt a different system.”*

However, if the Minister were to use the power to determine matters which had everything to do with technical expertise and nothing to do with broader public interest, it is difficult to see how this could be done in most cases without committing an error of law. Should the Minister step outside policy issues regarding the broader public interest, then he or she will most likely be corrected by the Royal Court unless the Royal Court itself took the view that the Inspector’s decision required correcting on an issue of fact or law. Whilst the Minister could in theory overrule the Inspector’s conclusions on matters of fact, there would need to be a rational basis for the use of that power – and a rational basis for the Minister not using the power to remit the matter to the Inspector to deal with any points that the Minister finds unsatisfactory.

In respect of points of detail, the Law Officers believe that there is no incompatibility in the Inspector having the power to decide to hold a hearing on the papers. This is the case in the United Kingdom. This is an ordinary case management power, and if unreasonably used would represent an appealable point of law.

As the draft Law stands, it would still be the case that the Minister will be the first instance decision-maker against which the appeal will be to the Minister. This does not represent an incompatibility problem. Setting aside that it is anticipated that the Regulation-making power will be used to make consequential amendments to prevent the Minister from being involved in such first instance decisions, and setting aside that P.87/2013 anticipated that the Minister must be involved in such decisions, any actual involvement at first instance would represent an error of law. The Minister would need to remedy that error, possibly by delegation to an Assistant Minister, and a failure to do so would be an appealable point of law. Also, conduct by a Minister such that they could not lawfully carry out their functions under the Law would be a matter for the States and political accountability.

## Explanatory Note

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This draft Law would further amend the Planning and Building (Jersey) Law 2002 (“the principal Law” by virtue of *Article 1*) to institute a new system of appeals against a wide range of first instance decisions (but perhaps most notably, decisions relating to applications for planning permission) under the principal Law. It would do so by substituting the whole of Part 7 of the principal Law (*Article 7*).

The new appeals provisions would take effect without prejudice to the right of an applicant to seek a review by a Planning Applications Panel (draft new Article 106(4) of the principal Law, to be substituted by Article 7) of initial decisions refusing to grant planning permission, or granting planning permission subject to conditions (as set out in draft new Article 22A of the principal Law, to be inserted by *Article 6*), where such decisions were not taken by the Panel itself under its powers as set out below.

A definition of “Planning Applications Panel” would be inserted into the interpretation provision of the principal Law by *Article 2*, and *Article 3* would set out further detail of the Panel’s role. The establishment of the Panel would be effected under standing orders so for this purpose *Article 8(2)* would insert new provision into Article 48 of the States of Jersey Law 2005 to create the relevant enabling power.

Under *Article 3*, the Panel would be empowered to take first instance decisions, as follows. First in respect of Part 3 of the principal Law the Panel could take decisions to grant planning permission either for new development or for development already undertaken; decisions to remove or vary conditions of planning permission, and as to the nature and content of such conditions; and decisions to terminate, revoke or modify planning permission. In respect of Part 5 of the principal Law, the Panel could make decisions to serve, vary or withdraw enforcement notices, and to serve stop notices. The Panel would also be able to take decisions as to permission to display advertisements and to erect, station or use moveable structures, where such permission is required by Orders under Articles 76 and 81 of the principal Law.

Other new provisions relating to decisions at first instance would be inserted by *Articles 4* and *5*. A new paragraph (8) would be added to Article 19 of the principal Law, by *Article 3*, to provide that where representations have been made in relation to an application for planning permission, a decision to grant that permission does not take effect for an initial period of 28 days so as to allow any appeals against the grant to be registered.

*Article 4* would insert a new Article 21A into the principal Law, conferring on the Minister power to prescribe time limits for determination of certain applications at first instance, and enabling applicants whose applications are not determined within the prescribed limits to request determination within 28 days (or any longer period as agreed) from the request. A further failure to determine would then be deemed to be a refusal of the application against which an appeal would lie.

The new system of formal appeals in the proposed Part 7 would encompass first instance decisions by both the Panel and any other person authorized to take such a decision (a definition of the “decision-maker” would be introduced by new Article 106(2); Article 106 would be the interpretation provision for the purposes of the new Part 7). Under new Article 107, a number of inspectors would be appointed as States employees by the Minister, on recommendations as to their capability by the Jersey Appointments Commission. Such inspectors would have the powers conferred by new Article 115 to conduct appeals in accordance with Part 7. Following

consideration of an appeal by an inspector, and the inspector's written report to the Minister, the Minister must determine the appeal under new Article 116 giving effect to the inspector's recommendation unless satisfied that there are reasons not to do so. No further appeal would lie to the Royal Court from the Minister's determination, except on a point of law arising from the appeal.

The right to appeal would be conferred on a "person aggrieved", and the definition of such a person would vary according to the nature of the provision against which an appeal is brought. Under new Article 108, appeals would lie against decisions to grant planning permission (whether new, or for development already undertaken) or to refuse such grant; to amend planning permission already granted so as to remove or vary a condition of that permission; to refuse the issue of a certificate of completion; to refuse to grant building permission; to include a building or place on the List of Sites of Special Interest, or to refuse to remove a building or place from that List; and to refuse permission to undertake an operation or make a change of use in relation to a site of special interest; and against decisions of a similar nature relating to protected trees, and to caravans. Paragraph (3) of Article 108 would list the persons who would be entitled to bring an appeal in each of the cases specified.

New Article 109 would confer a right to appeal against certain types of notice, including enforcement notices and stop notices, on the person on whom the notice is served. Such an appeal could be brought on specific grounds which would be listed in paragraph (2) of that Article. New Article 110 would confer a right of appeal in respect of a condition attached to the grants of planning permission, building permission, or permission to undertake restricted activity on a site of special interest, and in respect of a condition attached on the importation or use of a caravan. Again specific grounds of appeal would be listed in Article 110(2) and the appellant would be the person to whom the relevant permission had been granted. New Article 111 would confer a right of appeal on a person on whom a dangerous building notice had been served under Article 71 of the principal Law.

Procedures for the making and hearing of an appeal under the new Part 7 would be set out by new Articles 112 to 114. Article 112 would set out requirements for a notice of appeal (to be prescribed under paragraph (2)(a) of that Article) to be duly given to the Judicial Greffier and to be accompanied by a fee (similarly prescribed under paragraph (2)(b)). Paragraph (3) of that Article would specify time limits for the receipt of the notice by the Greffier and paragraph (4) would give the Greffier a discretion to reject a late or incomplete notice or to invite the appellant to remedy a minor defect.

The initial administrative matters relating to registration of an appeal, and to notifications and circulation of documents to relevant parties, would be carried out by the Greffier under Article 113. In particular, the Greffier would nominate an inspector to conduct the consideration and determination of the appeal (from the list of persons appointed as inspectors under new Article 107) (new Article 113(2)(a)).

Article 114 would set out the 2 different routes by which an appeal would then proceed further. The initial presumption would be that appeals against refusals to grant planning permission or building permission, against conditions attached to a grant of planning permission or building permission, against refusals to issue a certificate of completion, and against certain decisions under Part 6 of the principal Law in relation to sites of special interest, protected trees, and caravans, would all be heard by way of a written representations procedure, provided that no representations (except by statutory bodies) had been made at the stage of the first instance decision. Under paragraph (3) of that Article, the parties and the inspector could, nevertheless, decide

that a particular appeal of such a nature should more appropriately be determined by way of a hearing. All appeals other than those listed in paragraph (1) of Article 114 would normally be determined by hearing. An inspector would also be empowered to recommend to the Minister that any issue in an appeal should be addressed in a public inquiry, though the Minister would not be bound to accept such a recommendation.

Article 117 would make provision setting out the effect of any appeal on the matter appealed against. Thus, for example, an appeal against a grant of planning permission would prevent development taking place until the appeal had been determined (i.e. either determined by the Minister under Article 116, or withdrawn).

*Article 9* of the draft would provide that any appeals awaiting hearing by the Royal Court at the date of commencement of this Law under the provisions of Part 7 which would be superseded, should continue to be heard under those latter provisions.

*Article 8* would confer power to make further and consequential amendments as necessary to bring this Law into full effect. *Article 10* would give the title of this draft Law and provide for its commencement 7 days after registration.



Jersey

## **DRAFT PLANNING AND BUILDING (AMENDMENT No. 6) (JERSEY) LAW 201-**

### **Arrangement**

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#### **Article**

1	Interpretation .....	17
2	Article 1 amended .....	17
3	Article 9A substituted.....	17
4	Article 19 amended .....	18
5	Article 21A inserted .....	18
6	Article 22A inserted .....	19
7	Part 7 amended.....	20
8	Further and consequential amendments .....	30
9	Transitional and saving provision .....	30
10	Citation and commencement.....	31







Jersey

## **DRAFT PLANNING AND BUILDING (AMENDMENT No. 6) (JERSEY) LAW 201-**

**A LAW** to amend further the Planning and Building (Jersey) Law 2002

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **1 Interpretation**

In this Law, the “principal Law” means the Planning and Building (Jersey) Law 2002<sup>1</sup>.

### **2 Article 1 amended**

In Article 1(1) of the principal Law, before the definition “planning obligation” there shall be inserted the following definition –

“ ‘Planning Applications Panel’ means the body exercising functions conferred under Article 9A;”.

### **3 Article 9A substituted**

For Article 9A of the principal Law there shall be substituted the following Article –

#### **“9A Role of Planning Applications Panel**

- (1) Functions under any of the provisions listed in paragraph (2) may be carried out wholly or partly by a Planning Applications Panel established in accordance with standing orders under Article 48(1) of the States of Jersey Law 2005<sup>2</sup>.
- (2) The provisions mentioned in paragraph (1) are –
  - (a) in Part 3, Articles 19 to 23, 26 and 27;

- (b) in Part 5, Articles 40, 42 and 45; and
  - (c) Orders made under Articles 76 and 81.
- (3) A Planning Applications Panel holding a meeting for the purpose of carrying out any of its functions under this Article shall –
- (a) permit members of the public to attend the meeting; and
  - (b) cause to be published in the Jersey Gazette, at least 3 days prior to the date of any such meeting, a notice inviting the public to attend and specifying –
    - (i) the date of the meeting and the time and place at which it is to be held, and
    - (ii) the applications for planning permission or (as the case may be) decisions to be considered at the meeting.
- (4) Except as otherwise provided in this Article or by standing orders, a Planning Applications Panel shall determine its own procedure.”.

#### 4 Article 19 amended

In Article 19 of the principal Law, after paragraph (7) there shall be inserted the following paragraph –

- “(8) Where representations have been duly made by any person in relation to any application for planning permission, a decision to grant such permission under this Article shall not have effect during the period of 28 days immediately after the decision is made.”.

#### 5 Article 21A inserted

After Article 21 of the principal Law, there shall be inserted the following Article –

##### “21A Time limits for determinations

- (1) The Minister may prescribe a time limit for the determination of –
- (a) an application for planning permission, under Article 19;
  - (b) an application for planning permission for development already undertaken, under Article 20; and
  - (c) an application to remove or vary a condition of planning permission, under Article 21.
- (2) If an application of a kind mentioned in paragraph (1) is not determined within the limit prescribed under that paragraph, the applicant may make a request to the decision-maker that the application be determined no later than the end of –
- (a) the period of 28 days; or
  - (b) such other period as may be agreed between the applicant and the decision-maker

beginning with the date of the request ('the extension period').

- (3) If, following a request made in accordance with paragraph (2), there is a failure to determine the application within the extension period, such failure shall be deemed to be a refusal of the application in question for the purposes of an appeal under Part 7 (but where no such appeal is lodged, nothing in this Article prevents the determination of the application after the expiration of the extension period)."

## 6 Article 22A inserted

After Article 22 of the principal Law, there shall be inserted the following Article –

### "22A Review of certain decisions

- (1) This Article applies where a decision is taken, other than by the Planning Applications Panel –
  - (a) to refuse to grant planning permission; or
  - (b) to grant planning permission subject to conditions (other than by virtue of a Development Order).
- (2) Where this Article applies, the applicant may request a review of the decision in question (the 'initial decision') by the Planning Applications Panel.
- (3) A request for review under paragraph (2) shall be submitted to the Planning Applications Panel no later than the end of the period of 28 days beginning with the date of the decision and shall contain –
  - (a) the applicant's name and address for correspondence;
  - (b) the reference number of the application in question; and
  - (c) the grounds on which the request is made, including where relevant the reasons why the applicant disagrees with the initial decision and with any reasons for the initial decision.
- (4) The Planning Applications Panel shall determine the request as soon as reasonably practicable and shall explain the reasons for its determination.
- (5) Where a determination of the Planning Applications Panel differs from the initial decision, the determination shall be substituted for the initial decision and an appeal shall lie under Part 7 against the determination –
  - (a) in the case of a refusal, or of a grant of planning permission subject to conditions, as though it were a decision under Article 19; or
  - (b) in a case relating to a condition, as though the condition were attached or imposed under Article 23."

**7 Part 7 amended**

In Part 7 (Appeals) of the principal Law, the chapter headings shall be deleted and for Articles 106 to 118 there shall be substituted the following Articles –

**“106 Interpretation and application of Part 7**

(1) In this Part –

‘appellant’ means a person aggrieved who brings an appeal under any of Articles 108 to 110;

‘document’, unless otherwise indicated, includes a map or plan, and a copy of a document in paper or electronic form;

‘Greffier’ means the Judicial Greffier;

‘inspector’ means an inspector appointed for the purposes of this Part under Article 107;

‘interested party’ means, according to the context, all or any of the following –

- (a) the appellant;
- (b) a third party;
- (c) a person who, in respect of the same or a related matter as that which is the subject of the appeal in question, has made a representation in writing prior to the decision against which that appeal is brought;
- (d) the occupier of any property which is the subject of the appeal in question, where such person is not the appellant;
- (e) the decision-maker;

‘Jersey Appointments Commission’ means the body of that name established under Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>3</sup>;

‘third party’ has the meaning given by Article 108(4).

(2) Reference in this Part to the ‘decision-maker’ is to the person who is entitled under this Law to –

- (a) make a decision against which a right of appeal lies under Article 108;
- (b) serve a notice in respect of which a right of appeal lies under Article 109;
- (c) impose a condition against which a right of appeal lies under Article 110; or
- (d) exercise the right to enter a dangerous building and undertake work, against which a right of appeal lies under Article 111;

and who, in any particular case, has made the decision, served the notice or imposed the condition duly appealed against under this Part.

- (3) For the purposes of this Part and unless otherwise appearing, a reference to a 'decision' includes reference to a refusal, and reference to a 'refusal' includes a failure deemed by Article 21A(3) to be a refusal.
- (4) This Part shall apply without prejudice to the right of any applicant to request a review by the Planning Applications Panel under Article 22A.

### **107 Appointment of inspectors**

- (1) There shall be appointed as States employees such number of persons as the States may direct being persons who are, to the satisfaction of the Jersey Appointments Commission, capable of acting and willing to act as inspectors for the purposes of this Part.
- (2) Appointments under paragraph (1) shall be made by the Minister following recommendations made for the purpose by the Jersey Appointments Commission.
- (3) The list of persons so appointed shall be made available for public inspection at all reasonable hours.

### **108 Right to appeal against certain decisions, and persons who may appeal**

- (1) A person aggrieved by a decision of a kind listed in paragraph (2) may appeal against that decision.
- (2) The following decisions are those against which an appeal lies under paragraph (1) –
  - (a) a decision to grant planning permission under Article 19(3), (4) or (5);
  - (b) a refusal under Article 19(6) to grant planning permission;
  - (c) a refusal under Article 20(3) –
    - (i) to grant planning permission for development already undertaken, or
    - (ii) to amend planning permission already granted;
  - (d) a refusal under Article 21(4) to amend planning permission already granted so as to remove or vary a condition of that permission;
  - (e) a decision under Article 27 to revoke or modify planning permission already granted;
  - (f) a refusal to issue a certificate of completion under Article 28(1);
  - (g) a refusal under Article 35(4) to grant building permission;
  - (h) a decision under Article 51(2) to include a building or place on the List of Sites of Special Interest;
  - (i) a refusal to remove a building or place from the List in accordance with Article 51(5);

- (j) a refusal to grant permission to undertake an operation or make a change of use to which Article 54 applies;
- (k) a refusal to grant permission under Article 55(3)(a) to undertake an activity to which Article 55 applies;
- (l) a decision under Article 58(2) to include a tree on the List of Protected Trees or under Article 60(5) or (6) to remove a tree from that List;
- (m) a refusal to grant permission to undertake, in relation to a protected tree, an activity specified in Article 61(1)(a);
- (n) a refusal under Article 99(1) to grant permission to import or use a caravan.

(3) In paragraph (1) of this Article, ‘person aggrieved’ means –

- (a) for the purposes of an appeal against a decision mentioned in paragraph (2)(a), the applicant for planning permission and any third party;
- (b) for the purposes of an appeal against a decision mentioned in paragraph (2)(e), the applicant, the owner and (where different) the occupier of the land to which the planning permission relates;
- (c) for the purposes of an appeal against a decision mentioned in paragraph (2)(h) to (m), the owner and (where different) the occupier of the land on which the building or, as the case may be, the tree in question is situated;
- (d) for the purposes of an appeal against a decision mentioned in paragraph (2)(n), the owner of the caravan in question;
- (e) for the purposes of all other appeals to which this Article applies, the applicant.

(4) For the purposes of paragraph (3)(a), ‘third party’ means a person, other than an applicant, who –

- (a) has an interest in, or is resident on, land any part of which lies within 50 metres of any part of the site to which an application for planning permission relates; and
- (b) prior to the determination of that application, made a representation in writing in respect of it.

### **109 Right to appeal against certain notices, and grounds of appeal**

(1) This Article applies in respect of the following types of notice under this Law –

- (a) a notice served under Article 5(4) declaring that the deposit of refuse or waste material will constitute development;
- (b) a notice served under Article 10(2)(b) requiring work to be undertaken or a development to be modified;
- (c) a notice served under Article 26(2) terminating planning permission by reference to a time limit;
- (d) an enforcement notice served under Article 40(2);

- (e) a stop notice served under Article 45(2);
  - (f) a notice served under Article 47(2) to enforce a condition of planning or building permission;
  - (g) a notice served under Article 54(7) requiring an injury to a site of special interest to be made good;
  - (h) a dangerous building notice served under Article 66(2);
  - (i) a land condition notice served under an Article of Chapter 6 of Part 5.
- (2) A person aggrieved by a notice in respect of which this Article applies may appeal against the notice on all or any of the following grounds, namely –
- (a) that the matters alleged in the notice are not subject to control by this Law;
  - (b) that permission has already been granted under this Law in respect of the matters alleged in the notice;
  - (c) that at the date of service of the notice no or no expedient action could be taken to remedy the alleged breach;
  - (d) that the person was not the proper person to be served with such a notice;
  - (e) that the matters alleged in the notice have not in fact occurred;
  - (f) that the requirements of or conditions in the notice exceed what is reasonably necessary to remedy any alleged breach of control or make good any injury to amenity;
  - (g) without prejudice to the generality of sub-paragraph (f), that any time period imposed by the notice for compliance with its requirements falls short of the time which should reasonably be allowed for such compliance;
  - (h) subject to paragraph (4), where the notice is an enforcement notice served under Article 40(2), that in all the circumstances planning or (as the case may be) building permission should be granted in respect of the development in question;
  - (i) where the notice is a notice served under Article 47(2), that the condition with which compliance is required by the notice should be discharged.
- (3) Where an appeal is brought on any ground stated in paragraph (2), the appellant shall not be entitled to allege, in any further or other proceedings instituted after the appeal, that the notice which is the subject of the appeal was not duly served.
- (4) An appeal may not be brought on the ground stated in paragraph (2)(h) unless the notice of appeal is accompanied –
- (a) in addition to any fee prescribed under Article 112(2)(b), by the fee prescribed under Article 9(3)(a) in relation to an application for planning permission;

(b) where the appellant is not the owner of the land in question, by a certificate as required by Article 9(3)(b).

(5) In this Article, a 'person aggrieved' is the person on whom the notice in question is served.

#### **110 Right to appeal against certain conditions**

(1) This Article applies in respect of conditions attached to a grant of permission under any of the following provisions of this Law –

- (a) a condition attached under Article 23 to a grant of planning permission (a 'planning condition');
- (b) a condition attached under Article 37 to a grant of building permission (a 'building condition');
- (c) a condition attached under Article 55(6) to a grant of permission to undertake a restricted activity on a site of special interest (a 'restricted activity condition');
- (d) a condition attached under Article 101(1) on the importation or use of a caravan.

(2) A person aggrieved by a condition in respect of which this Article applies may appeal against the condition on such of the following grounds as apply in respect of the particular condition in question, namely –

- (a) in respect of a planning condition, that the condition does not fairly and reasonably relate to the proposed development;
- (b) in respect of a building condition, that the condition does not fairly and reasonably relate to the proposed prescribed building work;
- (c) in respect of a restricted activity condition, that the condition does not fairly and reasonably relate to the protection of the special interest of the site;
- (d) in respect of a condition attached under Article 101(1), that the condition does not fairly and reasonably relate to the importation of the caravan or (as the case may be) the use of the caravan in Jersey.

(3) In this Article, a 'person aggrieved' is the person to whom the permission in question is granted.

#### **111 Right to appeal against entry into building**

(1) This Article applies in respect of an entry under Article 71 to a building appearing to the Minister to be dangerous and in respect of the undertaking of work under that Article.

(2) A person aggrieved by a matter in respect of which this Article applies may appeal against it on all or any of the following grounds, namely –



- (a) that the building in question is not immediately dangerous as alleged;
- (b) that the entry was unjustified, for the reason given in subparagraph (a) or any other reason; or
- (c) that the extent or nature of the work undertaken was unreasonable.

(3) In this Article, a 'person aggrieved' is a person on whom a notice may be served under Article 71(3).

### **112 Notice of appeal: proper form, time limits and fee**

(1) An appeal under this Part must be made by notice of appeal duly given in accordance with this Article.

(2) A notice of appeal must –

- (a) be in such form as shall be prescribed for that purpose;
- (b) be accompanied by the prescribed fee; and
- (c) contain or be accompanied by such further particulars as may be prescribed or as may reasonably be required by the Greffier.

(3) The notice of appeal must be received by the Greffier no later than the end of the period of 28 days beginning –

- (a) in the case of an appeal under Article 108, with the date of the decision against which the appeal is made;
- (b) in the case of an appeal under Article 109, with the date of issue of the notice containing the requirement or condition against which the appeal is made; or
- (c) in the case of an appeal under Article 110, with the date of grant of the permission containing the condition against which the appeal is made;
- (d) in the case of an appeal under Article 111, with the date of the entry in respect of which the appeal is made.

(4) Where the Greffier receives a notice of appeal which fails to comply with any of the requirements imposed by paragraph (2), the Greffier may –

- (a) reject the notice, and in such a case no appeal shall lie under this Part or otherwise against that rejection; or
- (b) may invite the appellant to remedy any defect in the notice by submitting, within the period of 14 days beginning with the date of the invitation, such further material (including any fee or additional fee) as the Greffier may request.

### **113 Registration of appeal, nomination of inspector etc. by the Greffier**

(1) Upon receipt of a notice of appeal in accordance with Article 112, the Greffier shall –

- (a) notify the decision-maker that an appeal has been registered;
  - (b) invite each interested party to submit all documents relevant to the decision appealed against, and any supplementary statement, by no later than the end of the period of 28 days beginning with the date of the invitation; and
  - (c) ensure that the appeal is publicised, and provision is made for representations to be provided by members of the public, in the same manner as prescribed under Article 11 in relation to an application for planning permission in the first instance.
- (2) As soon as practicable after the end of the period mentioned in paragraph (1)(b), the Greffier shall –
  - (a) nominate an inspector to conduct the appeal, from the list of persons appointed for that purpose under Article 107;
  - (b) in the case of an appeal proceeding by way of written representations, take all necessary steps for the due administration of any prescribed procedure, including notifying all interested parties of the identity of the nominated inspector;
  - (c) in the case of an appeal proceeding by way of a hearing, take all necessary steps for conducting the hearing and for notifying all interested parties of the date, time and place of the hearing;
  - (d) obtain, and send to the inspector, all documents necessary for the proper determination of the appeal.
- (3) A supplementary statement under paragraph (1)(b) and any response to such a statement shall be in writing and in the form (if any) which may be prescribed for the purpose.
- (4) Any document received from one interested party shall be circulated by the Greffier to all other interested parties without undue delay, and in any case no later than the time when such a document is sent by the Greffier to the inspector.
- (5) The appellant may withdraw the appeal by notice in writing given to the Greffier at any time.

#### **114 Appeal procedures**

- (1) Subject to paragraphs (2), (3) and (6), the following kinds of appeal shall be determined by way of consideration of written representations –
  - (a) an appeal under Article 108(2)(b) against a refusal to grant planning permission;
  - (b) an appeal under Article 110(1)(a) against a condition attached to a grant of planning permission;
  - (c) an appeal under Article 108(2)(f) against a refusal to grant a certificate of completion;

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- (d) an appeal under Article 108(2)(g) against a refusal to grant building permission;
  - (e) an appeal under Article 110(1)(b) against a condition attached to a grant of building permission;
  - (f) an appeal under Article 108(2)(h) against a decision to include a building or place on the List of Sites of Special Interest;
  - (g) an appeal under Article 108(2)(k) against a refusal to grant permission in relation to an activity on a Site of Special Interest;
  - (h) an appeal under Article 108(2)(l) against a decision to include a tree on the List of Protected Trees;
  - (i) an appeal under Article 108(2)(n) against a refusal to grant permission to import or use a caravan; and
  - (j) an appeal under Article 110(1)(d) against a condition attached on the importation or use of a caravan.
- (2) An appeal of a kind mentioned in sub-paragraph (a) or (b) of paragraph (1) shall be determined by way of written representations only in a case where no representations (except representations by statutory bodies) were made in relation to the application which gave rise to the appeal.
- (3) An inspector nominated to hear a particular appeal of a kind listed in paragraph (1) may, notwithstanding that paragraph, determine the appeal by way of a hearing –
- (a) on the application of any party; or
  - (b) on his or her own motion,
- but in either case following consultation with all the parties.
- (4) Subject to paragraphs (5) and (6), appeals of all kinds other than those listed in paragraph (1) shall be determined by way of an appeal hearing.
- (5) An inspector nominated to hear a particular appeal of a kind not listed in paragraph (1) may, notwithstanding that paragraph, determine the appeal by way of written representations –
- (a) on the application of any party; or
  - (b) on his or her own motion,
- but in either case following consultation with all the parties.
- (6) An inspector nominated to hear a particular appeal of any kind may, if the inspector considers that any of the issues in that appeal should be more properly addressed by way of a public inquiry, make a recommendation to such effect to the Minister.
- (7) If the Minister declines to accept a recommendation by an inspector under paragraph (6), the appeal shall be determined under paragraph (1) or paragraph (4) (as the case may be) as though paragraph (6) were of no effect.

**115 Conduct of appeal by inspector**

- (1) The inspector shall, without undue delay, consider the appeal and all supplementary statements and other documents provided under Article 113 in relation to the appeal.
- (2) In considering an appeal by way of written representations the inspector shall take into account all representations duly received from the appellant, the decision-maker, and any other interested parties.
- (3) In relation to the conduct of an appeal hearing the inspector may determine all matters of procedure, including but not limited to –
  - (a) the use of cross-examination;
  - (b) the use and admissibility of expert evidence; and
  - (c) the exclusion of any person from the hearing in the interests of good order.
- (4) For the purposes of this Article the inspector may –
  - (a) impose any reasonable conditions (including, but not limited to, conditions as to the contents of any evidence, number of witnesses, duration of a hearing, or number and length of supplementary statements);
  - (b) invite any Minister or other body or person to provide expert advice or opinion (whether or not that Minister, body or person has previously given evidence, or been acknowledged as a party interested, in the appeal in question);
  - (c) hold a meeting of such parties and for the purpose of investigating such issues as the inspector may determine;
  - (d) request from any interested party such further and better particulars (whether in writing or by way of oral evidence at a hearing) as the inspector may reasonably require to reach a decision;
  - (e) carry out an inspection of the site to which the appeal relates.
- (5) Following the consideration of written representations or (as the case may be) the appeal hearing, the inspector shall make a report in writing to the Minister and the report shall include –
  - (a) the inspector's recommendation as to the determination of the appeal; and
  - (b) the reasons for such recommendation.

**116 Minister's decision on appeal, etc**

- (1) Having considered the inspector's report under Article 115, the Minister shall determine the appeal, and in so doing shall give effect to the inspector's recommendation unless the Minister is satisfied that there are reasons not to do so.
- (2) For the purposes of paragraph (1) the Minister may –

- (a) allow the appeal in full or in part;
  - (b) refer the appeal back to the inspector for further consideration of such issues as the Minister shall specify;
  - (c) dismiss the appeal; and
  - (d) reverse or vary any part of the decision-maker's decision.
- (3) As soon as practicable after the Minister has determined the appeal, the Minister shall give notice in writing of the determination to –
  - (a) the appellant;
  - (b) the Greffier;
  - (c) the decision-maker; and
  - (d) any other interested party.
- (4) The Minister shall make reasonable arrangements for access by the persons mentioned in paragraph (3) to the inspector's report under Article 115, and the notice given by the Minister under that paragraph shall include –
  - (a) details of how copies of the inspector's report may be obtained or where the report may be viewed, or both, as the case may be; and
  - (b) if and to the extent that the Minister does not give effect to the inspector's recommendation, the full reasons for the Minister's decision.
- (5) No further appeal shall lie from the Minister's determination under this Article except on a question of law arising from the appeal, which question may be referred to the Royal Court.
- (6) The power to make rules of court under Article 13 of the Royal Court (Jersey) Law 1948<sup>4</sup> shall include the power to make rules regulating practice and procedure in relation to references under paragraph (5) of this Article.
- (7) Where the Minister refers an appeal back to the inspector under paragraph (2)(b), the inspector shall as soon as practicable produce a supplementary report and recommendation to the Minister, and –
  - (a) the Minister shall thereupon determine the appeal; and
  - (b) this Article, except for paragraph (2)(b), shall apply to that further determination.

#### **117 Effect of certain appeals pending determination**

- (1) Subject to paragraph (2), in the case of any appeal under Article 108 the decision against which the appeal is brought shall remain in effect until determination.
- (2) In the case of an appeal under Article 108(2)(a), the development permitted by the grant in question shall not take place until determination.

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- (3) In the case of any appeal under Article 109 except an appeal against a stop notice as mentioned in Article 109(1)(e), the notice in respect of which that Article applies shall cease to have effect until determination.
  - (4) In the case of an appeal against a stop notice as mentioned in Article 109(1)(e), the stop notice shall remain in effect until determination.
  - (5) In the case of an appeal under Article 110, the condition in relation to which the appeal is brought shall remain in effect until determination.
  - (6) In the case of an appeal under Article 111 –
    - (a) the Minister may direct that any work being undertaken shall cease; but
    - (b) if no such direction is given and an appeal in respect of the work succeeds in whole or in part, Article 72 shall not apply.
  - (7) In this Article, ‘determination’ means –
    - (a) determination by the Minister in accordance with Article 116; or
    - (b) the withdrawal of the appeal.”.

## 8 Further and consequential amendments

- (1) The States may make Regulations for the purpose of further or consequentially amending any enactment (including the principal Law, and whether or not already amended by this Law) so far as necessary or expedient for giving full effect to this Law.
- (2) In Article 48 of the States of Jersey Law 2005<sup>5</sup>, after paragraph (3) there shall be inserted the following paragraph –
  - “(3A) Standing orders made under paragraph (1) shall –
    - (a) establish a Planning Applications Panel;
    - (b) require the States to appoint an elected member, who is neither a Minister nor an Assistant Minister, to be its chairman; and
    - (c) require the States to appoint to be members of that Panel at least 3 and no more than 9 elected members who are not Ministers or Assistant Ministers.”.

## 9 Transitional and saving provision

Where at the date of commencement of this Law an appeal under Chapter 2 of Part 7 of the principal Law has been made to, but not yet heard by, the Royal Court, that appeal shall proceed to final determination by the Royal Court as though that Chapter were still in force and unamended by this Law.

**10 Citation and commencement**

This Law may be cited as the Planning and Building (Amendment No. 6) (Jersey) Law 201- and shall come into force 7 days after being registered.

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- <sup>1</sup> *chapter 22.550*
  - <sup>2</sup> *chapter 16.800*
  - <sup>3</sup> *chapter 16.325*
  - <sup>4</sup> *chapter 07.770*
  - <sup>5</sup> *chapter 16.800*