

3.6 Deputy J.H. Young of the Attorney General regarding the pending litigation between Harcourt Limited and its potential effect on the approved Esplanade Masterplan:

Will the Attorney General inform the Assembly whether the Planning and Building (Jersey) Law 2002 either requires or entitles the Minister for Planning and Environment to take into account, as a material consideration when considering policies and guidelines for development of the Esplanade Quarter, or in determining planning applications within this area, the pending litigation between Harcourt Limited and its potential effect on the approved Masterplan for development?

The Attorney General:

In my opinion, the answer to the question is no, it does not. Article 19(1) of the Planning and Building (Jersey) Law 2002 provides that: "The Minister, in determining an application for planning permission shall take into account all material considerations." While the law does not define "material considerations", the courts have required there to be a connection between the consideration and the use and development of the land; in short, to be material, it must be a planning consideration. The pending litigation does not relate to the use and development of land and is not a planning consideration.

3.6.1 Deputy J.H. Young:

I thank the Attorney General for his answer. Could he confirm that if the Minister for Planning and Environment had produced the Masterplan, based on information which was produced for financial forecasts in the absence of a legal claim, would he not accept that if this legal claim destroys the financial viability of that Masterplan, that must surely be a legal consideration for the Minister to include in his review.

The Attorney General:

I do not think it is a legal consideration. Masterplans and policies are matters for the Minister and sometimes matters for the Assembly if he submits them to the Assembly for approval by the Assembly. It is a matter for the Minister whether circumstances have changed, or might change, in a way which the plan should be revisited, but I do not think it is a legal matter.

The Bailiff:

Does any other Member wish to ask a question? Final question, then ...

3.6.2 Deputy J.H. Young:

Could I just ask for a clarification, Sir? Does what the Attorney General has just said mean that the answer is not no, it is that it is up to the Minister for Planning and Environment to decide whether it is material to the Masterplan or not?

The Attorney General:

This is not really a matter of law and therefore not really a matter of legal advice, it is a matter for the Minister - a matter of policy - as to what the Minister does, the circumstances in which he changes a plan or brings a revised plan to the Assembly and the things that he takes into account. It will be a matter for the Assembly, if faced with a revised plan, to determine whether the appropriate things have been taken into account and whether or not to approve it, but it is not really a legal matter.

The Bailiff:

We come to the next question which the Connétable of St. John will ask of the Minister for Treasury and Resources.