

19-21 Broad Street | St Helier
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Constable Jackson
Chair, EHI Panel
BY EMAIL

29 March 2022

Dear Mike

Re: Quarterly Public Hearing: Residual Questions for Written Response

Please see below responses to your questions in your letter dated 8 March 2022.

Draft Planning and Building (Amendment No.8) (Jersey) Law 202- [P.76/2021] – Draft Orders

1. Minister, you committed to sharing the Draft Orders relating to P.76/2021 with the Panel by early March 2022. Last week we received the law drafting instructions for the Draft Orders along with other relevant documentation. When do you anticipate the Draft Orders will be ready and that you will be able to share these with the Panel ahead of the States' debate in April?

Law drafting has been requested for changes to or new Orders relating to:

- (New) Planning and Building (Trees) Order 202-
- (New) Planning and Building (Conservation Area) Regulation 202-
- (New) Planning and Building (Conservation Area) Order 202-
- (New) Planning and Building (Caravans) Order 202-
- Planning and Building (General Development) Order 202-
- Planning and Building (Publication of Applications) Order 202-
- Planning and Building (Display of Advertisements) Order 202-
- Planning and Building (Moveable Structures) Order 202-

All changes are being progressed with the Legislative Drafting Office. Regarding the drafting of the Order and Regulations relating to Trees and Conservation Areas, we shared the drafting instructions and the briefing notes to provide clarity on the policy intention, as the drafts currently have technical issues to resolve. Once the Orders and Regulations have reached their final form, which will be after the elections, these will be shared with the Panel.

The [consultation](#) on the planned tree protection subordinate legislation has commenced and we will prepare a summary of consultation responses swiftly following its conclusion and share these with the Panel ahead of the debate in April 2022.

It should be noted that the Law must be adopted and given royal assent before we can produce all the relevant documentation and subordinate legislation. Furthermore, that any new legislation and/or Order will be open to States Assembly scrutiny through the usual mechanisms.

Investigation into Jersey's Planning system / independent regulation

2. Minister, the findings of a recent independent investigation into Jersey's planning system were [reported](#) on in December 2021 which found that the planning system was 'dysfunctional' and 'not fit for purpose.' Examples were given relating to:

- poor oversight, and a lack of proper training;
- a lack of clear guidance as to how regulations should be applied;
- and that officers were working without an approved or published enforcement procedure.

What is your response to these findings and what is being done to address the issues that were uncovered from the investigation?

No report was produced by Norfolk Police and the comments made in/by the Press are reports of comments made in the States Assembly. I will be producing a report on improvements to Regulation which will include, but is not limited to, lessons learnt from Norfolk's investigation.

3. Minister, you have previously voiced concerns over the implementation of the restructuring of Government through the Target Operating Model and the lack of distinction and separation between the executive arm of Government and the regulatory arm. Where do things stand currently on this in terms of reviewing the present structure and whether there are any plans for independent regulation?

In the Department's view, a clear separation of roles and responsibilities has been established by developing a protocol and through the use of delegation agreements - these are soon to be published on gov.je to ensure they are available to the public. With these protocols in place, the Department is of the view there is sufficient separation of responsibilities to address any perceived conflicts of interest.

However, I am of the view that the concerns I hold should be further addressed by having one Minister who is ultimately accountable for all aspects of the work of a department hence why, in my capacity as a private member, I have lodged P.52/2022 (Ministerial Responsibilities). If adopted, this proposition would enable options to be presented for consideration in autumn of this year. On the final part of your question, I can confirm that there are no plans to establish an independent regulator. There would be significant resource implications if this were pursued, and careful consideration must be given as to whether separating Regulation from policy would have unintended consequences. This is something which can only be considered and progressed by my successor.

Independent environmental regulation

4. Minister, you will no doubt be aware of a [report](#) produced by Save our Shoreline Jersey calling for environmental regulation independent of Government.
- a. Could you advise us why establishing an independent regulator has not been progressed?
 - b. What mechanisms are in place to ensure that regulation can be carried out effectively by Government without undue influence and any conflicts of interest managed appropriately?

Irrespective of independence, Regulation only has regulatory and enforcement powers

to the extent they are determined by legislation. In terms of regulating Government activities without undue influence or conflicts of interest, please refer to the appropriate separation of responsibilities through the IHE protocol and delegation agreements in place referred to in point 3 above.

The Target Operating Model (TOM) was adopted by the States Employment Board without, in my view, sufficient consultation with the appropriate minister. However, notwithstanding my concerns, it was important to let the resultant disruption settle to understand how the TOM would work in practice. My proposition for consideration by the Assembly at the last sitting demonstrates that I have concluded changes to structure are needed.

I must stress that I am aware of no evidence of conflict of interests, however, I do recognise there is a perception.

5. Have you engaged recently with the Ramsar Management Authority as to what their views are on the case presented for independent environmental regulation?

I have not engaged with the Ramsar Management Authority to ascertain their views on an independent regulator.

Air quality monitoring of quarries

6. In a recent response to our written questions you confirmed that there is currently no funding provision for regular air quality monitoring around quarries. Minister, do you feel that funding should be allocated for this purpose?

If a need to monitor the quality of air around quarries is identified then yes, I do feel that funding should be allocated for this purpose. I do support greater monitoring of air quality across the board, and not solely as it relates to quarry operating.

7. As we understand from your written response, any complaints of dust arisings in the vicinity of a quarry would trigger the Department to assess the air quality but no such complaints have been made. What is the rationale for not undertaking a more proactive, rather than a reactive approach, to air quality monitoring in these areas?

When it comes to regulation the Assembly has demonstrated a preference for smaller regulatory teams that undertake intelligence led investigations rather than a more resource intensive approach. If the Assembly would prefer that we recruit a larger team to allow for proactive investigations in this area as well as others, I would support a bid to increase resources for the Department.

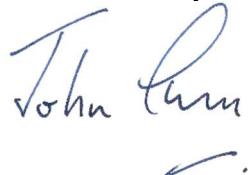
Medicinal Cannabis - Amendment to the Planning and Building (General Development) (Jersey) Order 2011

8. The Panel is aware that the Minister instructed officers last November to arrange the drafting of an amendment to the Planning and Building (General Development) (Jersey) Order 2011 so that the exemption for a change of use application no longer applies to the use of glasshouses for the purpose of hypotonic growing of cannabis requiring a licence under pharmaceutical and control of drugs legislation. Please can you advise of the present position regarding the implementation of this decision and, if not so implemented as yet, the reason for the delay?

Drafting instructions have been recently signed and are currently being progressed by the Legislative Drafting Office. There is no particular delay in the progress of this initiative.

I hope the above responses are of use to the Panel and please do not hesitate to contact me if you require anything further.

Yours sincerely



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