

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

BY EMAIL

12 November 2021

Dear Mike

Re: Review of P.76/2021 (Draft Planning and Building (Amendment No. 8) (Jersey) Law 202-): Written Questions

Thank you for your letter dated 28 October 2021 and please see response to your questions below.

- 1. What level of public or industry consultation took place on the changes being proposed, prior to lodging, and can the Panel see the output from any such consultation?**

Regarding the proposed changes to the control of works to trees, the principle was publicly consulted during August 2021 through the Tree Strategy work via an online public survey on gov.je, and paper copies at Parish Halls. The results are posted online: [Jersey tree strategy](#). This was further consulted on with a stakeholder group of 44 local experts at two workshop sessions in July and September 2021, as part of the development of the Tree Strategy.

Regarding the creation of Conservation Areas, this has been publicly consulted on for decades as part of the previous adopted Island Plans of 1987, 2002 and 2011. This proposal brings forward the enabling powers already requested by the States Assembly as part of the previous Island Plans, so was not separately consulted on again in 2020 - 2021. However, the detail of the proposed Regulations and Order will be publicly consulted on when they are drafted and then subject to a debate in the Assembly before their introduction.

The remainder of the changes are considered minor, either aligning law to reflect current practice, or suggested changes arising from case law, appeals, applications, or other experience in practice. I was of the view that these changes would not be influenced by consultation, and so none was undertaken.

- 2. P.76/2021 states that “There are no new financial or manpower implications for the States arising from the adoption of this draft Law’. What evidence does the Minister have to support this assertion?**

The Amendment proposes enabling powers, which, as drafted, do not have immediate financial or manpower implication. The powers will not be brought into force, by way of a Commencement Act, until the subsequent Orders are made. The Regulations are likely to have financial and manpower implications. Whilst the full detail is currently unknown, we

have made initial provision for additional resources as part of a wider bid in the Government Plan. See additional information in the answer to 5 b.

3. What wider consultation took place with the Council of Ministers prior to lodging on the implications arising from the adoption of P.76/2021, particularly with regards to the potential risk of creating a further backlog in processing planning applications?

Consultation with the Council of Ministers took place at their meeting of 21 September 2021, and they are aware that the backlog in processing planning applications is a result of the impact of both the pandemic and the Target Operating Model on IHE.

The detail of the regulatory regime for the control over works to trees has not yet been proposed. The regime could easily be applied using a notification process or competent person scheme, and in this way, I do not expect that application numbers will increase significantly.

The introduction of conservation areas will, by nature, introduce increased regulatory control, which will likely lead to an increase in the number of planning applications. However, this will take time and the work will be phased. Additionally, it will be influenced by the level of additional control (which, as stated above, will be set by Order, which will be the subject of consultation and, ultimately, decision by the Minister).

It should be noted that the Amendment will lead to a reduction in applications relating to control over caravans which currently number 700 per year (100 Jersey resident permits and 600 tourist permits per year on average).

4. Can the Panel have sight of the legal advice provided to the Minister with regards to the appeals process in the event that two members of the Determining Panel are in conflict with the Minister over an appeal, and how this would be interpreted in Court?

Please see Code of Practice for Engagement between 'Scrutiny Panels and the Public Account Committee' and 'the Executive', section 'G' regarding legal advice.

On the determining panel, the proposal is only in relation to a Public Inquiry, and not an Appeal; these are separate parts of the law.

I would issue published guidance on the practice of the determining panel, which with regard to the situation arising above, the decision would fall to the majority vote.

5. If possible, can the Minister provide the Panel with the following:
a. a full implementation plan for P.76/2021, setting out the timescales for drafting the Orders and when they will come into force.

Please see the timetable as it stands following necessary amendments resulting from the decision of the Panel to review the proposition. The timetable can be considered ambitious if, for example, we consider the time remaining in this term of the Assembly.

Please note that having reflected on the concerns expressed by the Panel and some in the Assembly regarding the provisions to allow for greater tree protection, I am prepared to reschedule the work on trees to a later date to allow for other proposals

contained within the Amendment to proceed this term. However, such action would be dependent on any findings and recommendations of the Panel in their report.

Subject	Key Milestones	Comment
November 2021	Draft Tree Strategy blueprint delivered	Demonstrates public consultation and stakeholder engagement with principles and actions established for tree protection within regulatory regime
	Stakeholder engagement on draft tree strategy	Testing and refinement of principles and actions for tree protection across wider stakeholder group
	Comparative study of regulatory regimes	Consultant appointed to undertake a comparative study of regulatory regimes for trees and makes recommendations for regulatory regime for Jersey
	Business Case Conservation Areas	Principles setting out, criteria for assessment, process for designation, scope of regulatory control, prepared by SP3.
	Focused stakeholder engagement on business case Conservation Areas	Liaison with IHE on regulatory and administrative impact (resourcing). Minister to endorse business case. Heritage stakeholder forum consulted.
	Request law drafting change	Request law drafting change to Amend No 8
	Law drafting	LDO to prepare amendment
December 21	Drafting Instructions	Consultant takes draft tree strategy principles and comparative regulatory study, and drafts into Law Drafting Instructions. Refinement of Instructions following testing of principles with stakeholder group
	Drafting Instructions on CA Regulations and Order	SP3 to prepare drafting instructions for process for designation and offences (Regulations) and scope of regulatory control (new Order or review of GDO). SP3 to draft SPG on criteria for assessment and process for designation
	Minister signs instructions	Law drafting instructions prepared for Minister to sign
January 22	Revision Lodged	Revision to Amend No 8 lodged 4 th January
	States' debate	Amendment No 8 debate on 19 th January
	Law Drafting Dec-Feb 22	LDO preparing Orders and Regulation for trees and Conservation Areas Dec-Feb 22
	Tree Strategy published	Tree Strategy published as part of the Queen's Tree-bilee celebrations
March 22	Scrutiny review	Draft Orders and Regulations presented to Scrutiny for review
	Planning Committee review	Draft Orders and Regulations presented to Planning Committee for review

Mar-Apr 22	Public Consultation	Public consultation on draft Orders
May 22	Order refinement	Refine and re-draft Orders based on consultation comments
June 22	Order signed and Regulation lodged	Orders signed by Minister; Regulations lodged

b. how requirements for additional budget approved by the States Assembly to support the implementation of these proposed changes to the Planning Law will be managed.

Following my initial submission of a business case for £1.49m for this purpose, additional funding of £750k is allocated to the IHE department in relation to the Environment portfolio in the Government Plan 2022 and is outlined on pages 74-77 of the GP22 Annex. These resources will, in part, be put towards the implementation of the proposed changes once the manpower and financial implications are better understood.

c. how the Department intends to manage this workload alongside the progress of the Draft Bridging Island Plan and any other related workstreams and/or competing priorities.

There are two different government departments involved with planning matters. The Place and Spatial Planning team in Strategic Policy, Planning and Performance Department are managing the Bridging Island Plan process. The Regulatory Improvement team within the Regulation Directorate of Infrastructure, Housing and Environment Department are managing Amendment No. 8 and its consequential Orders.

Whilst there are many competing priorities, these two significant pieces of work have separately dedicated teams to manage the workload and will continue to be managed in an integrated manner as has been the case during my term.

d. A detailed governance procedure setting out roles and responsibilities of the Council of Ministers, the Minister for the Environment and Departmental Officers in implementing these changes.

Roles, responsibilities, and procedures for implementation of the planning and building law are clearly set out in the law itself, along with the powers vested in the Minister for the Environment; the Planning Committee; and the Chief Officer for Regulation. Any subsequent delegation of roles and responsibilities, where legally permissible, will be clearly set out in published delegation agreements.

The Planning Committee has established procedures, arrangements and its operation are bound by a code of conduct, all of which is published. It is envisaged that the establishment of a determining panel would be subject to the adoption of similar procedures and arrangements.

Minister for the Environment



I hope this letter is of assistance to the Panel's review and please do not hesitate to contact me if you have any further queries.

Yours sincerely

A handwritten signature in blue ink that reads "John Young".

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