

STATES OF JERSEY



DRAFT PLANNING AND BUILDING (AMENDMENT NO. 8) (REPEAL) (JERSEY) LAW 202-. (P.90/2023): COMMENTS

**Presented to the States on 24th November 2023
by the Minister for the Environment**

STATES GREFFE

COMMENTS

In this Comment paper I urge Members to reject P.90/2023 and thereby to preserve the option to extend protection of trees as envisaged in Amendment 8 to the Planning Law, passed by the Assembly by 44 votes to 1.

However, in doing so, I accept that there is a need to pause the current plans for extending tree protection as outlined in P.71/2023. It is clear to me that more time is needed to bring forward proposals that can achieve wider support, and that trying to do so whilst the island is still recovering from Storm Ciaran is neither desirable nor realistic. Accordingly, I am withdrawing P.71 and – should P.90 be defeated – I will not bring forward new proposals for at least 6 months.

Despite the withdrawal of P.71, I strongly believe that we should keep open the option of regulating work on trees via Amendment 8 to the Planning Law.

Deputy Bailhache seeks to repeal the potential use of the Planning Law to protect trees. However, that step is unnecessary. Members can wait to see the proposals I bring back to this Assembly and make their decision then as to whether they support the proposals. I would therefore ask Members to keep an open mind and to wait for a debate and a vote on detailed proposals, when they are brought back to the Assembly.

I understand there are concerns regarding over-regulation. There is an argument that landowners should be able to do what they want on their own land - especially when most landowners act responsibly and with care.

However, we need to strike a balance. The public want us to protect trees, and they value trees whether they own them or not. We have, unfortunately, seen some poor practices which have stirred public anger and concern. Therefore, there is a legitimate community interest that needs to be taken into account.

One of the functions of regulation is to manage conflict in a way that is transparent and proportionate. There is undoubtedly conflict over the felling of trees, and rather than resolving that conflict by giving absolute rights to landowners in all circumstances, I believe that we should keep open the option of managing that conflict through a proportionate system of regulation.

Therefore, instead of prematurely repealing legislation upon which there has been extensive consultation, that has been through Scrutiny, and then supported overwhelmingly by this Assembly, I would ask Members to allow work to continue. If Members do not like the proposals that come forward, they will have ample opportunity to reject them.

Background

The people of Jersey have a deep and strong connection the Island's natural environment, including to its trees. This became particularly evident a couple of years ago following public disquiet over several high-profile cases where trees were cut down without apparent good reason. This led the Connétable of St Brelade to propose an Amendment to the 2021 Government Plan seeking a tree strategy and more protection for our trees. As he put it at the time:

“From the rural parishes to the urban landscape of Town, everyday life for Jersey’s people and wildlife is both supported and enhanced by trees: the green infrastructure of the Island. There are multiple widely known benefits of trees. Trees improve air quality, they can be a home to wildlife, may be a source of food, provide shade on a hot day, and will often be an aesthetically pleasing feature of the landscape. The evidence for maintaining and protecting trees within a community is strong.”

This successful Amendment to the Government Plan provided funding for a Tree Strategy.

3,000 comments were received to the consultation on a tree strategy in 2022, showing overwhelmingly support for the strategy and support for increased regulation so that trees are better protected. Simply put, the public care about trees.

As a result, a [Jersey Tree Strategy \(gov.je\)](https://www.gov.je) was produced in 2022 providing a framework for the future protection, management, and enjoyment of trees in our Island. The Tree Strategy identified a wide range of functions that trees play in ecosystems and in our landscape. It is this greater understanding of the role of trees that helps justify the need for stronger protection.

The last Assembly then approved, overwhelmingly and following scrutiny, provisions which added trees to the definition of development, allowing more detailed regulations, orders, and guidance to come forward. It is this provision that Deputy Bailhache wishes to repeal.

As the Scrutiny Panel at the time recognised, the key point is to get the balance right. We need to make sure that regulation is not overly intrusive and that it does not create too much bureaucracy, while achieving what it needs to achieve with the lightest touch possible.

It is one thing to wish to protect trees, it’s another entirely to do so in a proportionate manner. The challenge is to protect trees without being overbearing toward the owners of the land on which those trees sit. That is the policy challenge that I have wrestled with as Minister.

My initial proposals, introduced earlier in the year, did not get this balance right, which is why I withdrew them and went back to further public consultation. In response to extensive feedback from key stakeholders, much of it supportive, I increased the scope of works that would be exempt or considered routine management, listing specific operations to trees that would require no notification or permission, such as: the felling of a tree that is diseased, or poses danger to the public, or is causing damage to a building. It also considerably widened the scope of routine maintenance that would be exempt from development control. The aim of these proposals was to ensure that regulation concentrated on the felling of mature trees, allowing routine work to go ahead without any involvement of the planning system.

However, for the reasons mentioned earlier, I am now withdrawing these proposals, and will not be taking forward P71/2023, “Draft Planning and Building (Commencement of No. 8 Amendment Law) (Jersey) Act 202-”. Instead, I propose to engage with all stakeholders in a “ground up” review of how best we can develop proposals that strike a better balance between protection of trees and the rights of landowners.

One further point to make is that it has been argued that the present listing powers (or a variation on them) would be sufficient to achieve the protection of trees that is required. This is not the case. Listing is suitable for particularly high value trees, but it cannot apply to the wider range of circumstances in which it might be appropriate to protect trees, for example, around the development of housing. It is simply impossible to anticipate where the felling of trees that are playing an important role in the environment might occur, so just as now, many trees would be lost without adequate examination of whether their loss was appropriate.