

STATES OF JERSEY



HOSPITAL: DETERMINATION OF PLANNING APPLICATION DURING ELECTION PERIOD

Lodged au Greffe on 25th April 2022
by the Minister for the Environment

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

that the incumbent Minister for the Environment should determine the planning application for the new hospital during the election period if, on receipt of the inspector's report, the Minister is satisfied that they can determine the application.

MINISTER FOR THE ENVIRONMENT

REPORT

Introduction

Following the completion of the public inquiry into planning application ([P/2021/1670](#)), the Minister is minded to seek the opinion of the States Assembly with regard to the appropriateness of determining the application during the Election Period, given the importance of this decision.

Detail

The Minister for the Environment recommends that the Assembly support the proposition.

The Minister for the Environment ('the Minister') recognises that the proposition will not have met the necessary lodging periods outlined in Standing Orders. However, due to the urgent nature of the matter – this being that the Assembly will have no further opportunity to discuss the issue before the Minister is in a position to determine the new hospital application ([P/2021/1670](#)) ('the application') – the Minister would like to present an opportunity to the Assembly to discuss the matter. Despite it being known that the determination of the application would take place during the Election Period for some time (see the [Terms of Reference](#) for the [Our Hospital public inquiry](#) ('the inquiry')), the issue has re-entered the public and political consciousness following the Future Hospital Review Panel's (the 'FHRP') decision to write to the Minister on [13 April 2022](#).

The original timetable for the inquiry was established in December 2021 and, following a [request from the FHRP](#), the Minister, having consulted with the Inspector, [agreed a delay to the inquiry](#) of one week. The reason for this request related to the debate of the Bridging Island Plan ('the BIP') as it related to the new hospital, particularly the amendments proposed by some [members of the FHRP](#) (P.36/2021 [Amd. 79](#) and [Amd. 84](#)) in their capacity as private members, and other relevant sections in the now [published BIP](#).

The [Our Hospital 2022 public inquiry](#) commenced on Monday 4 April 2022 and concluded on Monday 11 April 2022. Following the conclusion of the inquiry, the Minister is expected to receive the inspector's report on 13 May 2022 for consideration and, if the Minister is so minded, determination of the application. As the Election Period (previously known as 'purdah') commences on 10 May 2022, the Minister would have to determine the application during the Election Period.

For the avoidance of doubt, the Minister would like to note that he never received a request to meet with the FHRP, whether in private or public.

The Chief Minister presented to the States on 4 April 2022 the 'Guidance on Government Activity during the Election Period' ([R.37/2022](#)) ('the guidance'). The guidance seeks to provide direction to Ministers as to what activity should and should not take place during the Election Period. While the Minister believes he can determine the application in line with the guidance, and notwithstanding their legal vires to do so under the [Planning and Building \(Jersey\) Law 2002](#), the Minister recognises that States Members may have their own interpretations as to whether an administrative decision, such as determining a planning application, can take place during the Election Period. See extract below.

“Guidance on Government activity during the election period

1. *During an election period, government should conduct itself differently for the sake of an impartial election.*
 2. *In Jersey, this period refers to the time between the nominations and the election of the last Minister into office, which is when the new Council of Ministers is formally established. From Wednesday, 11 May 2022 (nominations opening) to 12 July 2022 (election of Council of Ministers) inclusive.*
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Ministerial Responsibilities

3. *The Codes of Conduct and Practice for Ministers and Assistant Ministers (gov.je) (“Ministerial Code”) provides guidance for the responsibilities retained by Ministers and Assistant Ministers during the election period:*
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During an election period (normally being between the nomination meetings and the election of the last Minister into office), Ministers retain executive responsibilities, and the essential business of government must be carried on. However, they should observe discretion in initiating any new action of a continuing or long-term character; and decisions on matters of policy on which a new Council or Minister might be expected to want the opportunity to take a different view should be postponed where possible, provided that such postponement would not be detrimental to the Island’s best interests or wasteful of resources. Furthermore, Ministers should apply sensible restrictions on the publicity they issue in connection with their role as a Minister during this period. This all applies to Assistant Ministers in so far as the areas for which their Minister is responsible.

4. *This allows for government business to continue and recognises that the Council of Ministers and Ministers retain executive responsibilities, and the essential business of government must be carried on during this period.*
 5. *In this context, consideration should be given to the impact of any delays to decisions or actions relating to government business, including whether it is detrimental to the Island’s interests or wasteful of public money.*
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6. *In addition, consideration should be given to existing decisions of the Assembly where an outgoing government may be expected to seek to implement those decisions, where doing so during the election period is necessary.*
7. *At the same time, the accountability of Ministers to the Assembly, and the normal democratic mechanisms of checks and balances, are largely in abeyance during an election period; and the actions and decisions of government can influence elections. As such, notwithstanding the need to maintain services and in accordance with this guidance, decisions where democratic accountability would normally be expected to apply, including organisational changes, usually with reference to whether a Ministerial Decision would be required, or which R.37/2022 3 are likely to be a political issue during the general election campaign, should be avoided. This is the case unless points 5 and/ or 6 above apply.*
8. *Similarly, Ministers, Assistant Ministers, and civil servants should take care to ensure that government resources are not, or even appear to an observer to be, used for political ends in this period of heightened political sensitivity. This applies to all Ministers and Assistant Ministers whether or not they are seeking re-election.”*

In addition to the above guidance, there are rules, colloquially known as the ‘purdah rules’, that govern other types of executive business ahead of the general election. See [P.88/2018](#) (States of Jersey elections: pre-election procedures for States meetings and the lodging of propositions)

There is an additional aspect that the Minister is aware of, this being that some members of the public, and possibly some States Members, are of a mind that it is inappropriate for a States Member who has previously declared they are not standing in the General Election to determine a planning application which they believe to be of significant public interest. Conversely, some have made comments that not coming to decision is inappropriate, regardless of the Election Period. While these are clearly matters of opinion, and recognising that there is no definitive guidance, code, etc. on such a scenario, the Minister is of the mind that it is nevertheless worth highlighting this comment.

Building on the above point, the Minister would like to draw Member’s attention to [P.76/2021](#) (Draft Planning and Building (Amendment No. 8) (Jersey) Law 202-). Part of this proposition, if it had been debated and adopted in December 2021, would have allowed the Minister to establish a Panel to decide an application that had been subject to a public inquiry. Unfortunately, the EHI Panel, chaired by Constable Jackson who is also a member of FHRP, decided to review the proposition which in turn delayed the Assembly’s ability to consider the proposition. If adopted, the proposition would have allowed the Planning Law to have been updated to allow the Minister to call a panel. This may have allowed the Minister to allay any concern in this regard.

The Minister would like to provide confirmation that where in his capacity as a decision maker he could be seen as having an actual or perceived conflict, he has withdrawn from

certain aspects of the debates on the hospital in the chamber or those discussions had at meetings of the Council of Ministers.

In conclusion, the Minister hopes that he has relayed his reasons for bringing this proposition to the Assembly, and that the Assembly understand that the proposition is in no way intended to reopen the various debates that have already been had. Whether these were in the form of bespoke propositions; via the Government Plan; or where the topic of the hospital was raised during the BIP. Additionally, the Minister would like to request that Members seek to refrain from drawing the debate into the merits and demerits of the application.

Financial and Manpower Implications

The financial and manpower implications which arise from the outcome of the determination of a planning application is a matter for the applicant. However, the Minister is aware that the Ministers leading the Our Hospital project are of the view that there are cost implications in a determination being made after the Election Period.