

# STATES OF JERSEY



## PLANNING AND ENVIRONMENT: DIVISION INTO 2 MINISTERIAL OFFICES

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Lodged au Greffe on 1st April 2009  
by Deputy P.V.F. Le Claire of St. Helier

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STATES GREFFE

## **PROPOSITION**

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

to request the Chief Minister to bring forward for approval the necessary Regulations under the States of Jersey Law 2005 to allow for the division of the ministerial office of Planning and Environment into 2 ministerial offices to be known as the Minister for Planning and the Minister for the Environment.

DEPUTY P.V.F. LE CLAIRE OF ST. HELIER

## REPORT

Two interesting quotes, one from the Council of Ministers from last year when I lodged this same proposal (P.114/2008), and the other from Barack Obama, the 44th President of the United States.

### The first

**“Splitting the Department would remove the very structures that allow the conflicts and tensions to be resolved. It would simply displace them to another department and create greater separation between staff with planning know-how and staff with environment know-how.**

**It is important to recognise that, even if the development control function was to be located elsewhere, the Department would still need to manage complex tensions on a daily basis, for example the issuing of licences to discharge effluent into controlled waters.”**

### The second

**“The World has changed and we must change with it!”**

For many years now I have been arguing about the lax controls in place, for the protection of our environment and in particular, human health in Jersey, as a consequence of those lax controls.

These lax controls and protections were also highlighted in various questions by many members that same day when they complained about the fact that the laws that would penalise the States for pollution issues were not in place, despite having been agreed in 2004.

There is a new membership of the Assembly and there now needs to be fresh debate about the value of our environment and our governance of it.

On 31st March 2009 the Minister for Planning and Environment was overheard speaking in relation to an issue involving oysters in Jersey. Later that morning he faced questions on the environment in the States.

When he was asked a question during question time upon an environmental matter, he announced that his Assistant Minister would answer the question as she had special responsibility for the environment. In a supplementary question on water pollution issues at La Collette, I asked the Minister with special responsibility for the Environment, the Deputy of Trinity, what she knew, if anything, about oyster contamination in Jersey. Her response was unremarkable. She stated that she did not know anything, but recognised that I had asked her a very specific question which she would speak to me about when she had looked into it.

I pressed her in another supplementary question but again did not receive an adequate response to my question. My third attempt to establish the facts was realised when I was successful in a subsequent supplementary question, tabled by Deputy Le Hérissier of re-directing my question away from the Assistant Minister back to the Minister himself. The Minister responded to my question by saying the subject was so delicate

that he was not prepared to discuss it in public and that he would circulate a note to all States members later that day.

Later that day he circulated a confidential e-mail prepared by the environmental officer and the health protection officer regarding oysters and a contamination issue that had occurred.

I append my last proposition and comments from the previous debate in which I was unsuccessful, after having lost it due to the understanding that a “Champion of the Environment” would be appointed; instead of the need for a Minister, the Assistant Minister would do it.

Whilst I do not wish to cause offence to the Deputy of Trinity or indeed to the Minister, both of whom I like very much, I am sorry to say they need to look long and hard in the mirror.

The game needs to move from pretend to support the environment – to defend and support the environment.

Under the current arrangement that is not possible. Whilst both members would make good candidates for Minister for the Environment, neither will ever make, a good Champion for the Environment, whilst these 2 roles remain conflicted and attached.

The argument is akin to suggesting that conjoined twins who are unhealthy for each other should stay joined, as then at least when they become ill, they can both be treated at the same time.

I expect that by the time this proposition comes forward for debate, there will have been another serious issue involving the environment that will come to our attention; and again the conflict which exists will have created an atmosphere in which it can occur and/or thrive.

Whilst I am mindful of the need to protect industry from adverse publicity, especially at this time, should that corporate goal extend to keeping confidential, potential risks to members of the public due to the fact that the remedy of protecting the environment and remedial action and proper governance is too costly?

We have a duty to inform the public about all and any potential risks to them. To issue a confidential note instead of being held to account in the States’ question time denies the public their right to accountable democracy.

The civil service are on record in transcripts at the Environment Scrutiny Panel that to implement a comprehensive EU bathing water directive, which would tackle this, would be extremely expensive due to the number of streams that discharge onto our beaches. The Island is a small place and the young, sick and vulnerable should enjoy a far higher level of protection than we are currently giving them, and a greater level of accountability.

We allow the discharge into St. Aubin’s Bay of treated sewage and untreated sewage regularly, and we fail to take action to deal with or even monitor the viruses that are much more damaging to health that are on all beaches in Jersey that streams flow into,

and all because it would require us to spend money to resolve these issues and/or even test the water for their presence.

The civil service is keeping the issue of remedial action under tight control for not wanting to expose the Island to the reality of our pollution issues, and we conspire with them to hide the issues from the public by agreeing to be briefed in confidential e-mails.

The public expect that an elected representative will champion the environment, and a member that has been elected should not accept that their duty of fighting for accountability can be neutered by accepting in place of public responses in the States, privately circulated e-mails.

I believe that the system is fundamentally flawed. It is certainly evident that the real person in charge of the Environment and its brief, remains the Minister for Planning. This is in my opinion a thoroughly conflicted role.

### **Financial and manpower implications**

I am not able to suggest to members what these would be. In the first instance there would undoubtedly be a cost perhaps, but I do not think it would be significant. The Minister perhaps needs to inform this part of the debate in comments for us to be certain, but in speaking with him he sees no cost. I would think that the cost of these changes would be justified in the improvements that would occur in our structure, which would hopefully in the future demonstrate a saving overall. There would also be, in my opinion, an increased level of service to the public and a strengthening of our Government in its ability to meet the challenges of the future. There would also be a real champion for the Environment, and that is why I am bringing this Proposition.

## APPENDIX

### Report from previous proposition – P.114/2008

I have been perplexed and troubled for some time, over issues concerning the Environment under the new structure of ministerial government. Over the past 2½ years, I have been trying to raise concerns in relation to many of the operations and planned and existing facilities in the Island generally, and found it difficult to get the support for issues at the level I and others believe are necessary. There have been many individual problems that we have experienced in No. 1 District in St. Helier which are on-going in the La Collette area in particular. In my experience these have given me cause for concern about the adequacy of the systems that are in place within the executive for the protection of the environment and the health of the public. There are a variety of inherent conflicts that exist with responsibilities of the environment being part of the Minister for Planning and Environment's portfolio that need to be recognised, so evident are they that in his speech in relation to the 'Provision of land for lifelong dwellings (for people over 55) and first-time buyers: amendment to Island Plan (2002)' (P.75/2008) on 16th July 2008, the Minister for Planning and Environment said that if a proposal was brought before the States asking for a separation of the roles he would support it. I believe that he and his Assistant Minister, the Deputy of Trinity, have performed highly and with diligence and dedication. They have also been very willing to listen to me and others on many issues as they arise, so there are no personal criticisms of them whatsoever. The Minister recognises that the environment and the planning considerations that face the Island are inherently in conflict at present, and will be even more so in the future. We are facing changes in global terms that may, in the near future, require a lot more attention and resourcing than we have currently provided for. If we are to meet these new challenges, then we are going to need a strong Environment Ministry that will champion the needs of the environment in all its forms and one which will enable us to continue to be a successful offshore finance jurisdiction. NO Environment – NO Business, period. There are many areas that will be coming into focus within the next 3 years that will make us realise that the environment is going to be an ever-demanding drain upon our resources and our considerations. I will not linger on the issues as members, I believe, understand them sufficiently.

#### **The Scrutiny Functions**

If we agree to these changes, the scrutiny function already carried out by the Environment Scrutiny Panel could remain unchanged, with small changes to Laws and Regulations if required.

#### **The process of change**

The process of changing the ministerial structure is unfortunately quite complex under the legislation as agreed by the States. Unlike other jurisdictions where a Prime Minister or Chief Minister might be given considerable latitude to create and amend the number of Ministries, the situation in Jersey has been very tightly restricted by the States of Jersey Law 2005 and the Standing Orders of the States of Jersey.

The States of Jersey Law, at Article 18, states that the Council of Ministers consists of a Chief Minister and 9 Ministers. The titles of the 9 Ministers are set out in Standing Order 117. The restriction that is commonly known as the "Troy Rule" is translated in

the States of Jersey Law at Article 25(3) through a restriction which states that the total number of members in the Executive, namely the Chief Minister, Ministers and Assistant Ministers cannot exceed 23 individuals.

There is no reason why the legislation could not be amended to increase the number of Ministers to allow for the changes that the States would wish, if the Chief Minister was to agree, so long as the new Ministers were made up from the existing numbers of Assistant Ministers and a re-organisation of the Executive accordingly. The preferred option is clearly a matter for the States and their considered judgement.

Unfortunately, under the legislation as agreed by the States, the rights of individual members are severely restricted in relation to changing the ministerial structure. Article 29 of the States of Jersey Law allows the States to make Regulations to establish or abolish ministerial positions and transfer functions between Ministers. Regulations made under this Article would therefore be able to make the changes that I am seeking. Unfortunately, Article 29(4) states that only the Chief Minister may lodge draft Regulations under the Article. This means that no changes can be made unless the Chief Minister himself or herself is willing to bring Regulations to the States.

I am therefore bringing this standalone proposition asking the States to request the Chief Minister to bring forward the necessary Regulations under the States of Jersey Law 2005 to give effect to the change. In practice it is, of course, almost certain I would imagine, that the Chief Minister would be willing to comply with the request if the Proposition was adopted. In relation to the Troy Rule, the only consequence would be that if additional ministerial positions were created, there would be a requirement for the appointment of less Assistant Ministers, so that the overall total of 23 was not exceeded.

The balance of power of the Executive being in the minority would not change.

#### **Financial and manpower implications**

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# STATES OF JERSEY



## **PLANNING AND ENVIRONMENT: DIVISION INTO 2 MINISTERIAL OFFICES (P.114/2008) – COMMENTS**

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**Presented to the States on 8th September 2008  
by the Council of Ministers**

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**STATES GREFFE**

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2008

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## COMMENTS

Deputy Le Claire's proposition suggests the establishment of a separate Ministry for the Environment and gives 2 principal reasons for wanting to do this; firstly to give greater prominence to environmental issues by creating a political champion and secondly to remove the inherent tension of the Minister for Planning and Environment having responsibility for determining planning applications which may require the acceptance of some environmental damage in pursuit of a greater public good.

Whilst it is correct that there are inherent and unavoidable tensions between development – which is deemed necessary for economic and social purposes – and the protection of the environment, splitting the Department would not resolve these. Ultimately, the tensions would still exist and would still need to be reconciled.

The balancing of these tensions and competing priorities is the responsibility of the Minister, who has access to specialist staff, information and resources such as Environmental Impact Assessments.

Splitting the Department would remove the very structures that allow the conflicts and tensions to be resolved. It would simply displace them to another department and create greater separation between staff with planning know-how and staff with environment know-how.

It is important to recognise that, even if the development control function was to be located elsewhere, the Department would still need to manage complex tensions on a daily basis, for example the issuing of licences to discharge effluent into controlled waters.

Planning and development control are environmental functions in their own right. They are the tools used to protect the Island's environment from inappropriate development whilst facilitating necessary development in a manner that minimises harm. The notion of "Planning" as a subset of "Environment" is widely understood in other jurisdictions, including the UK, Scotland, Wales, Eire, Isle of Man and Guernsey, where it is also the convention for "Planning" to sit within "Environment".

P.114/2008 correctly identifies that there are significant practical and legal issues that would need to be addressed if the Department were split. Whilst these are not insurmountable, the potential risks must be understood. In addition, set alongside demands to create additional Ministries – such as Child Protection – it would not be sensible to make such a decision in isolation.

**The Council of Ministers, therefore, does not support this Proposition.**