

PLANNING AND BUILDING CORE SERVICES: STRATEGY FOR FUTURE RESOURCING

**Lodged au Greffe on 5th November 2002
by the Planning and Environment Committee**



STATES OF JERSEY

STATES GREFFE

150

2002

P.203

Price code: C

PROPOSITION

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

- (a) to approve, with effect from January 2003, a 'user-pays' strategy and to agree that income from fees for applications for development and building permission should be used to fund the cost of services provided by the Planning and Environment Committee;
- (b) to agree that, as soon as practicable, the Department of Planning and Building Services should be established as an independent business unit as an initial step towards achieving this strategy;
- (c) to agree that the strategy should be implemented from January 2003 through the appointment of additional professional and administrative staff to improve the Planning and Environment Committee's core services, with the increased costs of doing so to be funded wholly by increases in application fees agreed by the Finance and Economics Committee, and with the creation of additional posts to be subject to the approval of the Human Resources Committee;
- (d)
 - (i) to agree, in principle, that to enable the Planning and Building (Jersey) Law 2002 to be brought into force, there should be further increases in fees to enable the Planning and Building Services Department to carry out its additional responsibilities;
 - (ii) to agree, in principle, that additional revenue funding should be made available, subject to the States' revenue spending priority process, to fund the operation of the independent Planning and Building Appeals Commission which is to be established in accordance with the provisions of the Planning and Building (Jersey) Law 2002; and
- (e) to agree that the new Environment and Public Services Committee to be appointed in December 2002 should, in consultation with other Committees as appropriate, assess the feasibility of establishing a Planning and Building Agency, and should report to the States on this matter as soon as practicable.

PLANNING AND ENVIRONMENT COMMITTEE

Notes: 1. The Finance and Economics Committee supports the proposals in respect of a "user pays" strategy for the future funding of planning and building core services. The Committee would expect to receive appropriate performance measures and benchmarks in addition to the detailed justification required for any proposed increase in fees, in accordance with the provisions of Code of Direction No. 24 under the Public Finances (Administration) (Jersey) Law 1967, as amended, with these to be published on an annual basis.

The Committee supports the positive initiative of the creation of a possibly independent business unit for Planning and Building Services and would encourage that department to work closely with officers of the States Treasury and Human Resources Department to establish the necessary framework of policies and procedures. The Committee considers the successful operation and performance of the proposed independent business unit over a period of time to be a fundamental measure of the feasibility of a possible Planning and Building Agency in the future, or indeed as an alternative to it.

The Finance and Economics Committee considers that all requests for additional funding in 2004 should be submitted and prioritised as part of the Fundamental Spending Review and not considered outside that process.

2. The Human Resources Committee's comments are to follow.

REPORT

Following a joint meeting with the Finance and Economics Committee on 21st October 2002, the Planning and Environment Committee has decided to withdraw its proposition (P.143/2002) and replace it with this revised proposition to respond to the concerns which have been raised over important points of detail. In particular, the Planning and Environment Committee recognises that part of the wording of its original proposition would have unintentional effects on the outcome of the future revenue expenditure priority setting processes, and should be deleted.

Changes of detail have therefore been included in this amended proposition which still embodies the fundamental principle of "beneficial user pays". The strategy proposed by the Committee remains unaffected and the wording of the original report, attached at the Appendix, is also unchanged.

REPORT FROM P.143/2002

Introduction

1. In the last year or so the States have given considerable attention to Planning matters. They have given overwhelming endorsement to the new Island Plan, and have also approved the new Planning and Building Law which is currently awaiting Royal Assent. A resource strategy is a pre-requisite for its introduction.
2. The States have previously received a detailed report (R.C.13/2002) setting out in detail Environmental Resource Management (ERM)'s review of the Planning Department's application services and a comparison with United Kingdom Local Planning Authorities. Also before the States is an amendment to the new Law which highlights the resource implications of the proposed Planning and Building Appeals Commission, which cannot, and should not, be funded by the Committee in order to protect its independence for Human Rights purposes. The States will also recall the President of the Committee making a Statement to the States in April this year of the reductions in core services which, of necessity, will have to be maintained, pending the agreement to this resource strategy.
3. These service reductions were necessary as a consequence of the Decision Conference held to determine 2003 revenue budget priorities. It is important for the future delivery of planning and building services that the States approve a strategy for resourcing core services which reflects the priorities now set by the Finance and Economics Committee in the Resource Plan for 2003 and 2004. This proposition seeks to complement the Resource Plan to enable the provision and development of these essential services for the future, in a way that does not compromise the Resource Plan.

Background

4. The under-resourcing of Planning and Building Services was first brought to the attention of the States on 26th July 1994 when they approved a Proposition of the former Island Development Committee "*to approve providing adequate resources to meet its responsibility under the Island Planning (Jersey) Law 1964 (P.84/94).*" The accompanying report said that the pressures on Planning Officers were so great that they necessitated a review to ensure the continued long-term quality of the service. In 1999, the Committee's Service Review was completed and published. It reported that despite the Department being under-staffed, Jersey performed better, in terms of application throughput per case officer, than the average for U.K. authorities with similar characteristics. Improvements suggested in their report have been subsequently addressed and implemented with the exception of the recommendation for increased staffing. Late last year ERM consultants carried out an assessment of costs and benchmarking of human resource requirements for maintaining these services, which had seen a decline in performance in the previous two years. The Committee's report to the States (R.C.13/2002) published the results of this review, which identified the urgent need to address the long-standing resource problem of Planning and Building Services.
5. Between 1994-2001 the Department's revenue budget increased by only 19%. During this same period inflation and wage increases added 30% to the general costs in the Island. Public sector expenditure as a whole increased by 65%. **These figures clearly show that the Planning and Building Services element of the Committee's budget has declined very substantially in real terms when set against both public sector expenditure and inflation.** Services have been maintained through windfall increases in the Committee's income, principally from rents on property the Committee administers through Property Services. This is unsustainable in future, particularly if the functions of Property Services are transferred to another Committee. The Committee's approved manpower has remained unchanged since 1994 except for two temporary "(j)" posts appointed to enable permanent staff to produce the Island Plan. One of these contracts has now ceased and the other has been extended until December 2003 by the Human Resources Committee to enable a Planner to be seconded to the Housing Task Force.
6. To cope within these constraints, the Committee has given priority to its core services and reduced discretionary ones. Priorities have been set through annual business plans **but it is no longer possible to sustain an acceptable service.** Many essential projects have simply not been moved forward for many years, e.g. environmental improvement in the Island, and service levels for applications have fallen. The Committee has maintained the amount spent on the environment, as these particular resources need to be consolidated pending the machinery of government changes.
7. Earlier this year a bid was submitted to the Decision Conference to restore core "application" services to the level required. This proposal also sought to meet the resource needs of the draft Planning and Building Law by raising

charges for services to 50%, with the States meeting the remaining 50%. This followed the policy agreed by the States in 1995, which determined that the cost of its service should be equally funded by the beneficial user and the taxpayer. The proposal submitted to the Decision Conference this year was not recommended by the conference.

8. This proposal having failed, the Department had no option but to reduce its service level by discontinuing or limiting a number of important, but discretionary, elements of the service, e.g. pre-application advice and informal requests for reconsideration of decisions. These were explained in the President's Statement to the States in April 2002. The Committee has recognised and accepted that the draft Planning and Building Law cannot, for resource reasons, be introduced during 2003, therefore important interim changes to the existing Planning Law have been submitted to the States and been approved. In addition, the Committee will shortly lodge proposals to raise the threshold of developments exempt from the need to obtain permission.
9. These resource problems are not unique to Jersey. In the Republic of Ireland and United Kingdom, the resourcing of Local Planning Authorities has become critical. A number of U.K. Local Authorities have found their service levels falling so far below the level required that the Government proposes direct sanctions against them under its "Best Value" legislation. In the U.K., a shortage of Planning Officers has been brought about by pressures of workload, long hours of working, low salaries, limited promotion prospects and has led to difficulties in recruitment. The U.K. Government has responded, in its recent spending review, by increasing significantly, in real terms, the resources available. This is in response to support from bodies such as the CBI, English Heritage, House Builders Federation, Unison, RICS, RTPI, Town and Country Planning Association, British Retail Consortium, Council for the Protection of Rural England, Civic Trust, RSPB and Friends of the Earth. It is known that these problems also exist in other western developed nations, e.g. in Canada, Ottawa's Planning Department identifies similar difficulties in press reports this July.

Need for a Strategy

10. The Planning and Environment Committee believes that so far Jersey's Planning Department has done well to survive these intense pressures. It has introduced many improvements in recent years without which the service would almost certainly have collapsed. It also recognises the outstanding commitment and quality of its professional staff, which has been essential to maintaining satisfactory performance. However, it is absolutely clear that the present service falls substantially below the very high level of expectation of Jersey's public and of those professions serving the local construction industry. Therefore, maintaining the current service level with existing resources, on the basis that this is only just better than the worst the United Kingdom provides, is neither sustainable nor a realistic option.
11. The Planning and Environment Committee believes the States should be given the opportunity to debate the outcome of the Committee's Service Review and the conclusions of a Committee with nearly three years' experience of the issues. Agreement to the proposals will be of great assistance to the transitional committee to be elected in December 2002, as this aspect of the service will be able to follow and build upon a strategic direction approved by the States.

Beneficial user-pays principle

12. As a wealthy Island, the Jersey community should be able to properly support the essential services it requires. It is recognised, though, that it is no longer practical or fair to expect the taxpayer to continue to meet most of the cost of all of those services. Indeed, the Resource Plan makes it clear that this is no longer possible even if it were thought desirable. It is therefore essential that, where appropriate, a beneficial user-pays strategy be adopted for the future. This requires agreement to ring-fencing or "hypothecation" of this additional income, all of which is needed to fund the improvements in service required.
13. The applications service receives cross-support from other services, e.g. policy planning, historic buildings, mapping, and so on. This means that at present only 36% of the costs of development and building control are recovered by fees. The States will recall H.M. Attorney General's advice that non-trading Committees of the States could not "make a profit in applying charges for services since this would be ultra-vires". It is, however, legally acceptable to recover up to the economic cost of those services. The present level of charges falls significantly below the level of 50%, which was set by the States as a maximum in 1995. When the charges were introduced these were set modestly to ensure that they were affordable and did not impact adversely on any sector. During the period 1994-2001, at the same time as the decline in Departmental resources, the number of applications submitted increased by over 50% in volume and also in complexity, which is apparent by the unprecedented amount of current building activity in the Island. Whilst it is not known whether this will continue, the level of development required by the Island Plan, particularly to meet housing needs, indicates this will be maintained for at least five years.

Consultations with the Industry on future strategy

14. Preliminary consultations have taken place with representatives of the professional groups, e.g. architects, surveyors and building designers, with whom the Planning and Building Services Department work. The conclusions reached point the way to the future strategy -
- that the standard of planning and building regulation needs to be maintained at least at its present level, so that Jersey does not fall further behind other jurisdictions;
 - that the setting of standards and enforcement of regulations is seen as a government obligation;
 - that the service provided by the Planning and Building Services Department is highly regarded but is not available in sufficient quantity and on a timely basis to meet the industry's needs;
 - that the "one-stop shop" which enables planning and building permission to be obtained in a single application needs to be retained;
 - that greater flexibility of process is necessary to ensure the time-scale for building permissions are not unreasonably constrained by Planning negotiations on more contentious applications;
 - there is a very low level of support for adopting a self-certification system for building control, other than for specialist installations;
 - there is, however, limited interest in enabling private sector "approved inspectors" for building control with similar arrangements as those in the United Kingdom.
15. The overall conclusion of those consulted is that the charges for services are at present much too low (they are much lower than the U.K. for example), and should be substantially increased to enable the employment and engagement of additional staff to deliver a service which is to the standard the user now expects. **Their preference is to have a well-resourced States Department for which the users pay - in other words, they are prepared to pay for the service they need.**

Staffing

16. The experienced staff available to the Planning and Building Services Department has reduced this year as a result of a decision taken not to extend the contract of one "(j)" category member of staff recruited from the United Kingdom. The present development control team, which is headed by a locally trained professional, has a high proportion of relatively inexperienced Planning Officers, several of whom are currently undergoing training. The high number of complex major applications requires an increase in the experience level of this team. To meet the service standard required will involve the recruitment of additional experienced professional staff. Such increases are essential irrespective of any future change in organisational framework.

Improvements already in progress

17. Several initiatives are already in progress, many of which were recommended by the Service Review. The Department has embarked upon a project to enable the submission of planning and building applications on-line, and to allow enquiries on the progress of applications to be checked directly by applicants, over the Internet. It is considered that not only will this reduce the amount of work for the Department, but will be a major contribution to e-government systems. The new system will be linked to the new database of planning and building information, which is in the course of implementation, and the new digital map produced by the Department's state of the art geographic information system. The system will provide exciting corporate opportunities for effective planning in Jersey.
18. The clerical procedures in the Department were revised 18 months ago. However, these procedures are being further improved to ensure that, as far as possible, the Building Control and Planning applications streams are organised as best as possible and that all avoidable delays are driven out of the system.
19. The Committee has announced its intention to increase the threshold of exemptions from the need to obtain planning permission and in the autumn regulations will be placed before the States designed to remove the need for applications in many cases. This will parallel the arrangements already introduced for exemptions under the

Building Bye-Laws and self-certification of controlled fittings and installations.

20. The Department is planning for the introduction of the new Planning and Building Law in 2004, which will include all the improvements in policy and practice approved by the States.

21. However, these initiatives will achieve little, and the full benefits of improvements in service will not be attained, unless they are matched by the recruitment of additional professional and administrative staff to ensure that the workload of the Department is matched by its ability to deal with applications in the time-scale required.

Beneficial user-pays and the Committee's aims

22. The Finance and Economics Committee has recently reviewed its policy and advised the Committee that as part of its user-pays proposals charges in excess of 2½% inflation increases could, with its agreement, be introduced. The Finance and Economics Committee has already been requested to support this beneficial user-pays strategy and has given its support "in principle" prior to the presentation of this report to the States.

23. In line with the Resource Plan report, it is proposed that performance indicators will be published to provide evidence that the user-pays principle is delivering the services required and providing value for money.

24. In the long-term, the Planning and Environment Committee considers that planning and building services should be provided by an agency funded in large part by fee-income. This needs to be considered carefully by the transitional Environment and Public Services Committee. Non-fee paying services would still need to be funded directly by government.

25. The agency approach is also entirely consistent with the key principles set out in P.70/2002, approved by the States in July for the future organisation of States Departments. Creating separation between development and building control functions and the policy and environmental functions would have certain advantages.

26. The Committee considers that a significant beneficiary of the planning system is the public in general, and thus considers that fees should be set to recover at least 50% of the costs of the planning application process. However, as far as the Building Bye-laws are concerned, for the most part the applicant is the main beneficiary, and thus it is proposed to increase the charges for building control towards recovery of the full costs.

27. In the interim, the Committee considers that the Planning and Building Services Department should be established as an independent business unit within the States structure, which could later become a Planning and Building Agency.

Delivering the services in the future

28. Planning and Building Services is a core Department of the States implementing and delivering on many of Government's strategic and detailed policy aims. One of three Departments reporting to the Planning and Environment Committee, it is responsible for the Committee's statutory functions under the Island Planning (Jersey) Law 1964, and the Public Health (Control of Buildings) (Jersey) Law 1956. The Department comprises four sections -

- **Policy and Projects**, which is responsible for policy formulation (for example, the Island Plan and supplementary planning guidance) and project work, principally under the Urban Renewal umbrella;
- **Design and Conservation**, which is responsible for the protection of Jersey's Built Heritage, but also makes significant contributions to the planning application process;
- **Building Control**, which assesses the compliance of building projects with the Building Bye-laws through plan-vetting and site inspections during construction; and
- **Development Control**, which deals with applications, appeals and enforcement under the Planning Law.

Building Control

29. The Committee has given thought to the United Kingdom method of appointing private sector practices to deal with Building Bye-Law applications. Such an arrangement would have to be additional to services provided by government. The Committee has taken external professional advice from the United Kingdom and been advised that,

in Jersey, such an arrangement would result in the public sector being left to pick up less favourable and poorly remunerated work. The most financially attractive business would be “cherry-picked” by the private sector who would poach the best and most experienced professional staff from the Department since no specialist building control expertise exists locally in the private sector. In the local situation, enforcement powers and standard setting would remain a government responsibility, as would the need to monitor the approved inspectors’ performance. All this suggests strongly that in Jersey there would be more disadvantages from such an arrangement than advantages. However, the Committee remains open to the possibility that as part of a longer-term strategy (2004 and beyond) such an arrangement may need to be considered. At the present time it does not consider the circumstances justify bringing this proposal forward.

30. The Committee has concluded that there is no support locally for a strategy based exclusively on self-certification. Rather it should extend the existing procedures for self-certification of specialist building work and installations. This is a sensible option since it reduces the amount of work required without the attendant disadvantages, which would likely result in a fall in building standards.
31. The French system could also provide useful comparisons. However, its certification and enforcement arrangements are under-written by private sector insurance arrangements, which simply don’t exist in Jersey or the United Kingdom. The track record of British insurance schemes has so far been unsuccessful. However, in the future it is possible that an extension of self-certification would be an option.
32. The Committee recognises that Building Control cannot go on meeting the demands placed upon it without radically re-thinking its organisational structure. One alternative is the establishment of a separate agency. It considers that such an agency, if it were established, would need to increase the charges for Bye-Law application services towards full cost recovery. In practice the need for Government to set Building Bye-Law legislation policy and its responsibility for prosecution and enforcement would necessitate contracting in building control expertise - most likely from the Agency.

Planning

33. Different considerations apply for planning applications. The principal beneficiary of this service is the public in general, so a significant proportion of its cost should be met by the taxpayer. However, to maintain the standards of service required, fees will need to increase beyond the maximum agreed level of 50%. It is not possible at the present time to determine precisely the appropriate fee level required to support the planning part of a viable “Planning and Building Agency”. Such considerations would be part of the grant negotiations with government were an agency established. The grant would also need to cover the Planning’s non-fee-generating functions.
34. The planning service is seen very much as a core government service. There is a significant political dimension, both in the setting of policy and to a lesser extent in dealing with applications in accordance with those policies. As a result, the delivery of those services is seen as a function of government, either as a government department or as a government agency. The options for self-regulation or outsourcing of decision-making simply do not exist.

Planning and Building Services Agency

35. The agency should be big enough to make it viable but avoid excessive costs of bureaucracy. Establishing an arms-length agency could have strategic consequences for the States and the Committee consider it inappropriate to bring forward a specific proposal in advance of the new Machinery of Government changes. However, it clearly remains an option for the future.
36. The Committee considers that a first step can be made by preparing for the creation of a separate business unit for Planning and Building Services. This would establish a greater degree of internal self-accounting for this service which, were an agency approved by the States in the future, would facilitate the arrangements. Such an independent business unit could achieve a greater level of focus under the transitional arrangements for Government than is possible under the present constraints and administrative rules.

The proposed Strategy

37. It is proposed that the States approve the strategy outlined below. If approved, the Human Resources Committee would be requested to permit the employment of additional professional and administrative staff during 2003. This would need to be sufficient to restore the core services of the Department to an acceptable level.
38. The Human Resources Committee will be asked to assist in assessing the exact requirement for additional posts, the

roles required, whether the posts be permanent or short-term, and their timing. It is hoped as many as possible of the posts will be filled by local applicants. However, in the absence of specialist professional skills in the Island, it is inevitable that some “(j)” category posts will be required for an initial period, to deal with the more complex and demanding applications and while the local training programme is in progress. The Department’s record in training local people is exemplary. The Committee’s own forecast of the number of additional staff required to achieve a service improvement in 2003 is 10 additional posts (including contracts), of which 5 might require “(j)” category posts.

39. Staff increases would be constrained by the revenue generated through increases in fees, from 36% of **present** costs to around of 50% of **future** costs. The States should be aware that the fee increases needed to fund the improvements in the service will be substantial. Full funding of the service improvements would require the present level of charges to increase by a factor of 2.5. **This would bring them to a level broadly equivalent with those applicable in the United Kingdom.** The impact of the increased charges is best illustrated by applications relating to construction of new units of housing. The present fees per unit of accommodation constructed are -

Planning	£64
Building	£126
	<u>£190</u>

40. In January 2003 fees would need to increase to -

Planning	£160
Building	£320
	<u>£480</u>

41. Fees were last altered on 1st January 2001 when an increase of 2½% was made.

42. The States should be aware that the 10 additional staff forecast for 2003 would bring about an improvement in the service levels, but would not be sufficient to enable the introduction of the Planning and Building Law in 2004. To achieve this objective, further increases in fees would be required from 2004, sufficient to fund the additional costs, which were previously set out in detail in R.C.13/2002. Similarly, under a wholly user-pays strategy the Committee forecasts that application fees for constructing a new unit of residential accommodation would need to be further increased to, approximately -

Planning	£253
Building	£500
	<u>£753</u>

43. Provisional financial forecasts show that these fees, which are considered reasonable, would be sufficient to fund the additional departmental costs for the new Planning and Building Law, by the adoption of the beneficial user-pays strategy.

44. The introduction of the draft Planning and Building Law is also contingent on the establishment of the Planning and Building Appeals Commission, the costs of which are indicated in the proposed amendment to that law (P.56/2002). **The Commission would require States funding.**

Conclusions

45. The Resource Plan (at 4.4) refers to the fundamental review of expenditure proposed for 2004 and 2005. It is made clear that departments will need to focus on the costs and priorities of their services and *inter alia* the implementation of the user pays principle. As many States members know, the Planning and Environment Committee’s bids at the 2003 revenue decision conference were based, uniquely, on the principle of beneficial user-pays. To that extent the Committee was ahead of its time, but in preparing those bids, and subsequently this strategy it has been able to demonstrate how essential service improvements can be obtained at no additional cost to the States.

46. Those users of its services that the Committee has consulted have indicated that they would be more than prepared to pay significantly extra for the Department’s services, if they were to receive a significantly improved service. These increases should not be seen simply as additional costs, as the present delays and uncertainty are more costly to applicants. The fee increases proposed are likely to be less than those costs and recovered by applicants through greater certainty and speedier outcomes.

47. The beneficial user-pays principle is clearly an important component of funding in the future for the States, and there are compelling reasons why it should be introduced from January 2003 for planning and building services.