

PLANNING AND ENVIRONMENT: DIVISION INTO 2 MINISTERIAL OFFICES

Lodged au Greffe on 22nd January 2010 by Deputy P.V.F. Le Claire of St. Helier

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

In the past I have brought this proposition forward for lodging and withdrawn it prior to debate, as concessions in regard to my arguments were made by the Minister for Planning and Environment on both occasions. In the first instance, the Minister regarded that it was right that he devolve himself from certain planning issues relating to the Department, and appointed his then Assistant Minister, Deputy Anne Pryke, with the responsibility for environment. The Minister assured members that he would devolve those responsibilities to his Assistant Minister to remove the apparent conflict I had identified in the Minister's 2 conflicting portfolio responsibilities. Deputy Pryke was made the Chair of the Planning Applications Panel, and as his Assistant Minister we were informed that she would be the champion of the environment that I and the Public had been calling for. This appeared to be a move in the right direction, but upon finding out by chance that there were issues to do with pollution of the oyster fisheries and e-coli viruses, I put a question to her asking her to update members in the States about the situation. She denied all knowledge of the incident in the States but that was clearly at odds with what the Minister had conveyed to another Minister whilst I was within earshot. I then asked the Bailiff, then Deputy Bailiff, if I might for the first time put a subsequent supplementary to the Minister for his answer. His answers and later statements, both public and in his written strictest confidence e-mail message to all States members, were proof that he was still clearly in charge of the environment, contrary to his claim that the power had been devolved. In response to these concerns I re-lodged this proposition.

This prompted the Minister to again further change the way his Ministry operated, and he appointed Deputy Duhamel as his new Assistant Minister with sole responsibility for environmental matters. I believe that since that time, the Minister has given the Deputy the portfolio in total, but as the Deputy is without his own Ministry, he is still subject to the influences of his masters and importantly, he does not warrant a fulltime place aboard the Council of Ministers, all be it that he may attend upon them in the Minister's absence I believe. This is in stark contrast to the Connétable of St. Ouen, who has a de facto seat at Council due to his position on the Comité des Connétables. This engenders team spirit from the Connétables, but holds up for all to see what priority the environment is given. Look, let us not fool ourselves, the environment has been sidelined in Jersey, as in other places globally, to the detriment of the inhabitants and their eco-system, be they human or non-human. This can no longer be sustainable policy of the States. The importance the States places upon the environment, and a Minister for it, is widely astray of public opinion in my belief, which I believe in the main to be in favour of stronger environmental safeguards, checks and balances. There will be presented to the States in the next few days a Scrutiny Report by the Environment Scrutiny Panel on the current safeguards the system delivers at present in relation to the EfW plant and our Ramsar site; I will let that Report speak for itself.

So long as the environment has an Assistant Minister in charge of it, it will play a poor man's second fiddle to the tune of the Council of Ministers, which has in the past in many areas, together with the States Departments, failed the Island in these important areas.

I could cite examples but I will leave that to the debate. I shall not be withdrawing this proposition unless the Council of Ministers recognises and accepts that there needs to be an Environmental Minister to safeguard our Island and our wider responsibilities within the bio-sphere.

There need be no change in the balance of power, just a re-alignment of Assistant Ministers, if there even needs that to occur. The Planning Applications Panel is chaired now by the Connétable of Trinity, and Deputy Duhamel has no Assistant.

Financial and manpower implications

The financial implications of this proposition, if accepted, will need to be drawn out and agreed by the States in the Business Plan. I anticipate that there would most likely be an increase in the first instance of approximately £50,000 of States expenditure in the 12 months following any States approval in the setting-up of such a Ministry or at least the evaluation of setting it up. Standing Orders require backbenchers to give their best estimates in such propositions. There will be no precise cost known to the States until the States Annual Business Plan is approved and covered in the subsequent budget debate. So as there are so many unknowns, I will estimate that £50,000 will be the cost of agreeing this in the first instance. Later, more money may be made, saved or spent depending on how effective any Environment Ministry exercises its affairs.

If the States agrees in principle, the Ministers and the Council can mobilize their officers in identifying the exact costs for this proposal which shall never be identifiable by the resources afforded a backbencher. My last financial and manpower comments are presented here –

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.

The Minister for Treasury and Resources responded to my proposal at that time in the following manner –

Planning and Environment: division into 2 ministerial offices (P.47/2009) – Comments – Presented to the States on 27th April 2009 by the Minister for Treasury and Resources

"The Minister for Treasury and Resources does not believe that the States can make a decision on this matter without being aware of full financial and manpower implications. There will inevitably be costs – for instance there would be a need for an additional Chief Officer. There may also be a duplication of administrative structures.

If the States are minded to approve this proposition, it can only be in principle and subject to the necessary additional resources being considered by the Council of Ministers when prioritising expenditure for the Annual Business Plan process. If the Council of Ministers did not prioritise the necessary resources it is, of course, open to any States Member to bring an amendment to the Annual Business Plan.

The Minister for Treasury and Resources advises States Members to reject this proposition as it stands, on the basis that it does not contain all the information they require to make an informed decision."

Therefore the issue is clearly one for us to make, in principle if we can make it at all, according to the Minister for Treasury and Resources, who informs us of what we can and cannot do as a legislature.

Of course any amendment to the Business Plan will also be deemed to be too serious a matter to bring as an amendment to a Business Plan. And no doubt will get kicked back into touch, perhaps into the Strategic Plan. Catch 22.

I would therefore ask members to debate the principles and the merits, and if they are deemed worthy, we can then determine what resources that worthy objective will require and what we can and cannot afford to assign it in our fiscal priorities.



PLANNING AND ENVIRONMENT: DIVISION INTO 2 MINISTERIAL OFFICES

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

STATES GREFFE

2009 Price code: B P.47

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.

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

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.



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

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

STATES GREFFE

2008 Price code: A P.114 Com.

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.



PLANNING AND ENVIRONMENT: DIVISION INTO 2 MINISTERIAL OFFICES (P.47/2009) – COMMENTS

Presented to the States on 27th April 2009 by the Council of Ministers

STATES GREFFE

2009 Price code: B P.47 Com.

COMMENTS

Deputy Le Claire's proposition is to establish 2 separate Departments, one for Planning and one for the Environment. His primary reason is that separation will give greater prominence to environmental issues by minimising the inherent tension between environmental protection and development pressures and reinforcing the role of the environment champion.

In addition, the Deputy outlines the very real need to ensure Members' Questions are answered appropriately, that the public are informed of any potential risks and that the environment is properly protected through up-to-date, robust regulation.

The Council of Ministers recognises that by bringing this proposition the Deputy is seeking to achieve laudable aims; however the Council does not support the mechanism which is proposed. Dividing the existing Department will not achieve greater environmental protection nor will it address his other concerns.

Managing the inherent tension between development pressure and the environment

The Deputy's proposition is accompanied by a previous proposition debated and rejected by the States in September 2008. Whilst it is true that the membership of the States is now different, the central argument remains largely the same.

There are undoubtedly inherent and unavoidable tensions between development – which is deemed necessary for economic and social purposes – and the protection of the environment. This pressure is witnessed across the globe and is a normal occurrence. Splitting the Planning and Environment Department will not remove this tension. It would still exist and will 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. Planning and Environment staff work together to ensure these tensions are managed on a daily basis. Splitting the current Department would remove the very structures that allow the conflicts and tensions to be resolved. It would displace them to 2 different Departments and create greater separation between staff with planning expertise and staff with environment expertise. It would worsen the situation that the Deputy seeks to solve.

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".

However, even if the development control function was to be located elsewhere, a standalone Environment Department would still need to manage complex tensions and competing priorities on a daily basis; for example, the issuing of licences to discharge effluent into controlled waters or, to cite the Deputy's example, the need to secure funding to implement the EU's comprehensive bathing water directive.

An Environment Champion

A fundamental change has been made since the Deputy bought his last proposition in 2008. The Assistant Minister for Planning and Environment has been appointed the Environment spokesperson. She does champion environmental issues, both within the States and within the Department. She liaises with internal bodies such as the Environment Scrutiny Panel, and external bodies such as the Jersey Environment Forum, the Advisory Group on Environmental Sustainability (the Environment Think Tank), the National Trust, the Société Jersiaise and other informal pressure groups.

A breakdown of her duties in attached at the Appendix to this Report.

Her role does not preclude others from acting as Environment Champions. Indeed, all States Members should speak on the Environment's behalf whenever they feel it is appropriate.

It is important to remember that the Minister for Planning and Environment, in law, retains overall responsibility for his Department. It is therefore proper and expected that he continues to speak on environmental issues when he feels it appropriate.

Public Information and Members' Questions

The Deputy rightly points out that all Members' Questions must be answered in an accurate, timely and appropriate fashion. This is essential to the ability of the States Chamber to function.

There is however, in some circumstances, a legitimate balance to be made between answering questions in the Chamber and straying into areas of commercial sensitivity. In the case specified by the Deputy, the Minister considered that it was not appropriate to release sensitive information by way of a verbal answer. He considered that it was more appropriate for a confidential note to be prepared. It would be the prerogative of any Minister for the Environment, regardless of whether or not they had responsibility for Planning and Development Control.

Splitting the Department will change nothing in this regard.

Proper regulation of the Environment

The Deputy is concerned that there are lax controls over the Environment in Jersey and that these result in adverse impacts on human health.

It is important to note that the environmental protection regime operating on the Island has been significantly strengthened since the year 2000. In that period of time, we have introduced a new Waste Management Law, a new Water Pollution Law, a new Animal Welfare Law, an Environmental Impact Order, a new Plant Health Law, a Conservation of Wildlife Law, and a new Water Resources Law. In addition, there have been regular updates to Regulations affecting other areas of the environment, including Fisheries.

The Department is also planning to extend this control regime, and is starting work on significant new legislation around air quality, contaminated land and a review of the existing waste law.

Considerable steps have been made to increase the environmental protection regime which operates in Jersey. It is clear from the amount of legislation in place and planned, that controls are far from lax.

Splitting the Department would have a detrimental effect on this work programme. It would result in a substantially increased administration burden, and deflect resources away from front-line environmental protection work.

Financial and legal issues

P.47/2009 correctly identifies that there are practical, financial and legal issues that would need to be addressed if the Department was split. These are not insurmountable, but they are complex and expensive, and additional resources would have to be sought as part of the 2010 resource allocation process.

Conclusion

The Council of Ministers recognises the need that is so clearly stated by the Deputy, to afford our environment the highest possible levels of protection. It also recognises that the need grows on a daily basis. But it disputes that the solution outlined in this proposition will achieve the desired aims. It will absorb precious resources for little proven gain.

The current Planning and Environment function is working, and staff are increasingly working as one entity to reconcile environmental issues with development pressures.

The Environmental Champion role delivered by the Assistant Minister is bringing benefits. It is complementing the work done by other States Members to ensure a voice is heard for the Environment.

Accordingly the Council of Ministers does not support this Proposition.

Planning and Environment

Minister and Assistant Minister Responsibilities

Minister	Assistant Minister
Strategic responsibility for all Planning and Environment Issues	Specific responsibility for decisions on Environment issues not requiring Ministerial Order
All States propositions on Planning issues	Chair of the Planning Panel
All Ministerial Decisions	All States propositions on Environment issues
Architecture and Design	Press Releases from Environment not on those subjects opposite
Percent for Art	News bulletins from Environment
All Press Releases from PBS and specific Environmental issues below	Lifelong Homes
Energy Policy	Social Housing in conjunction with Assistant Minister for Housing
Eco-Active strategy	Advisory Group on Environmental Sustainability
Energy conservation, Energy Trust	Jersey Environment Forum
Tidal Power	
Advisory Group on Environmental Sustainability	
Jersey Environment Forum	