

STATES OF JERSEY



JERSEY INFRASTRUCTURE LEVY: APPROVAL IN PRINCIPLE (P.100/2017) – COMMENTS

**Presented to the States on 4th December 2017
by the Environment, Housing and Infrastructure Scrutiny Panel**

STATES GREFFE

COMMENTS

1. On 20th October 2017 the Minister for the Environment lodged a Proposition ([P.100/2017](#)) which asked the States Assembly “to agree, in principle, to the introduction of an infrastructure levy in Jersey, to ensure that those who benefit from an increase in land value arising from the award of planning permission make a small contribution to offset the impact of that development on the Island community;”. The Proposition further asks the States Assembly to decide whether it is of the opinion to charge the Minister to develop and bring forward, for approval, the necessary legislation to give effect to the proposal of a Jersey Infrastructure Levy (“JIL”).
2. To begin, the Panel wishes to raise its concerns regarding the timing of the abovementioned Proposition. The Minister for the Environment is seeking an in-principle approval from the current States Assembly, but will not be bringing forward the details of the proposals and the draft legislation until after the elections next May. Whilst it is ultimately up to the States Assembly to decide, the Panel is of the opinion that this position is neither appropriate nor helpful. We would argue that it should be the same States Assembly which debates both the in-principle agreement and, if approved, the related draft legislation.
3. With regard to the Proposition before us, the Panel wishes to present information to the States Assembly which we hope will be of use to Members during the debate. The Panel has received regular briefings from the Department of the Environment over the last 12–18 months on the proposals to introduce JIL. The Panel has also previously met with the Department’s consultants to discuss the viability report that was produced in May last year.
4. Around the time when the Department was undertaking a public consultation on the proposal to introduce JIL, the Panel was made aware of a number of concerns from the Chamber of Commerce and various industry organisations. As a result, the Panel felt that it was important to hold a Hearing with the Chamber of Commerce, who had representatives from the industry, and the Jersey Farmers’ Union, in order to allow their views to be heard in a public domain. Subsequent to this Hearing, the Panel invited the Minister for the Environment and his Officers to a Public Hearing to respond to the concerns raised. The transcripts from both of the Hearings are available on the [Scrutiny website](#). Whilst we do not intend to highlight every point that was raised here, we will address the main issues which may assist the States Assembly during the debate.

Viability Report

5. Previous to the Hearing with Chamber of Commerce and the Jersey Farmers’ Union, we were made aware that the industry had serious concerns with regard to the viability of the proposed JIL and the potential impact on the industry. The Jersey Construction Council (“JeCC”) and associated member companies commissioned Lichfields to review the JIL proposal and the Viability Assessment that underpinned the proposal. Lichfields found the Viability Assessment to be fundamentally flawed, and recommended that the errors be remedied before the debate on the proposed JIL took place. The concerns raised in the Lichfields Report and the responses from the Department of the

Environment can be found at part 12.6 in the Minister's response to the consultation document.

6. The Panel questioned the Minister and his Officers on the concerns raised in respect of the Viability Assessment at a Public Hearing. According to the Department and its Consultant from HDH Planning and Development, the formal response from JeCC to the consultation on the proposals did not introduce any new evidence or information. We were advised that the report produced by Lichfields commented on the assumptions that had been used in the viability assessment rather than providing a technical analysis of the information. In respect of the Lichfields Report, we were further advised by the Department's Consultant that –

“Where they have made comments, if you look at the direct impact of their comments, we know that they cannot be right because if you did take all of them and put them together, well, there would be no construction industry on Jersey at all and it just does not stack up. It is not appropriate to take them on at face value.”¹

7. The Panel was also advised that, whilst the Department's Consultants did consider everything that was suggested in the Lichfields Report, they did not agree to everything that was said due to a lack of evidence to support the Report's findings.
8. Specifically, at the Public Hearing with Chamber of Commerce, the representative from JeCC raised an issue about the building costs that had been used in the Viability Assessment. He advised the Panel that the construction costs used were significantly below actual costs, as confirmed by JeCC member companies, based on current projects. When we queried this point with the Minister and his Officers, we were told that the figures quoted in the Lichfields report, in respect of building costs, did not compare like with like. As a result, the Consultants did not feel the costs used within their own report were inaccurate and needed amending.
9. The Report that accompanies the Proposition (P.100/2017), which asks the States for an in-principle approval to introduce a JIL, states the Minister's intention *“to develop a low, broad levy rate which does not threaten the ability to develop viably the scale of development identified and required by the Island Plan.”*² The Panel was informed at the Public Hearing that if the principles were to be approved by the States Assembly, the Minister would ensure that the levy was still viable before it was implemented. Furthermore, if at any stage and for whatever reason, the formula used in the viability assessment no longer allowed for a minimum of 20% profit margins for developers, the Minister would not move forward with the JIL.

¹ Transcript, Public Hearing with the Minister for the Environment, 9th November 2017, page 23.

² P.100/2017, page 5.

Potential impact on house prices and property development

10. One of the concerns raised by JeCC, and certainly an issue which the Panel wanted to address, is the potential impact of the JIL on property prices. JeCC are of the opinion that the proposed Levy, if approved by the States Assembly, will increase property prices, as the added cost will be passed on to the end user, making properties less affordable.
11. According to the Department's Consultant, the amount a property in Jersey is worth, and the amount that it is bought for, is set by the market; and for this reason they are confident that the proposed JIL will not affect house prices. We were advised that the idea of the Levy is that the developer is aware of the costs upfront and will be able to factor them into its overall expenses. Therefore, when the developer is bidding for land, it will offer less to cover the costs and to ensure their desired profit.
12. The industry has also raised concerns that the proposed Levy could have a detrimental effect on the extent to which land is made available for development. The Chairman of the Chamber of Commerce told the Panel –

“Our concern is that we have an area of the economy that we feel that these changes will slow down, and is it at a time where we need more building, we need more things to be happening and what we are going to be seeing is clearly the opposite. I think what you will see is one of 2 things. You will have landowners holding on to land or you will see it possibly passed all the way down. Either one of those is going to slow the industry down.”³
13. When we questioned the Minister on the potential impact of the Levy on land turnover, he advised the Panel that he did not feel a 2% reduction in the offer price of a piece of land would be an overriding factor in landowners deciding whether or not to sell. The Minister informed the Panel of evidence his Department had gathered, from historic data in the Royal Court, which showed a substantial increase in the price of agricultural land once it had obtained planning permission. Thus, on average, landowners are already making a considerable profit when their land is sold for development.
14. The Department of the Environment also informed us that it had received independent economic advice which demonstrated that, if a Levy was introduced that was low and broad, it would not be prejudicial to land coming forward for development. During the Public Hearing with the Minister, we were also made aware of a UK report that was produced by the Department for Communities and Local Government in February this year, which shows that the introduction of CIL has not adversely affected the overall supply of developable land.

³ Transcript, Public Hearing with the Chamber of Commerce and the Jersey Farmers' Union , 6th November 2017, page 16.

The use of CIL in the UK

15. During the Public Hearing with Chamber of Commerce, the Panel was informed of various issues with the current operation of CIL in the UK. A member of the Building and Development Committee, who has extensive experience of CIL, warned the Panel of the complexities of the Levy in the UK and the high administration costs of delivering the CIL as a result. As the details of the JIL are not yet available, there is a concern that the UK legislation will be used to form the basis of the legislation in Jersey, and therefore the problems experienced in England with CIL will translate across to our system.
16. With regard to JIL's potential complexity and the resulting high administrative costs, the Minister and the Department's consultant held a very strong opposing view. According to the Minister, the process that he is proposing is very straightforward and will be very easy to administer. The Consultant from HDH Planning and Development went on to explain –
- “The UK system is simple. It has become more complicated as various exemptions and what have you have been introduced. But it is simple. At the moment when one submits a planning application you have to put the size of the building, the gross internal area. To work out this levy, all one would do is multiply the gross internal area by the levy rate, at the moment £85per m². That will give the amount to be paid. There is not a lot of administration in it. It will be due when it is due. It is not complicated.”⁴*
17. The Panel wished to query the Minister and his Officers about the numerous legislative changes that had been made to CIL since its introduction in the UK. In particular, we were concerned that, if the Minister was to propose a similar piece of legislation, we could potentially face the same situation here in Jersey. The Panel was advised by the Department's Consultant that 8 sets of amendments had been made to CIL since its introduction. It was further advised that, whilst a number of the amendments had been made as a result of political reasons, the levy as it was originally drafted was not sophisticated enough to deal with large development schemes in the UK and therefore had to be altered accordingly. As Jersey is very different to England with regard to the scale of development, the consultant does not envisage that the Island will face the same difficulties. In addition, the Panel was assured that in respect of the JIL, the Minister would not be proposing a clone of the UK system.
18. It was interesting for the Panel to learn, during its Public Hearing with the Chamber of Commerce, that on a number of occasions local authorities in the UK had ceased to implement CIL due to a lack of return from the Levy. This raised the question as to whether the proposed JIL would have a similar result, and whether the Levy would in fact deliver what was intended by the Minister.
19. When we queried this point at the Public Hearing with the Minister, the Consultant from HDH Planning and Development advised the Panel that, as a consultancy, they themselves had previously advised Councils not to pursue

⁴ Transcript, Public Hearing with the Minister for the Environment, 9th November 2017, page 15.

CIL. We were told that the reason for this was that the average price of houses in the areas of England which the consultancy looks after is approximately £74,000. Consequently, the amount raised by CIL in such cases would not be sufficient to make it either viable or worthwhile. According to the Department's Consultant, these problems would not be experienced in Jersey if JIL was introduced, due to the fact that the average house price in Jersey is much higher than those particular areas of the UK. Furthermore, it is envisaged that whilst the Levy would be modest and relative to the value of the development, when added together from all the different developments, the pot of money would be sufficiently large to do something meaningful with.

Planning Obligation Agreements (POAs) Vs JIL

20. One of the main issues that has been presented to the Panel by the industry regarding JIL is the lack of clarity about the relationship between JIL and POAs and the infrastructure in which each will be funding. During the Public Hearing with Chamber of Commerce we were advised that, whilst it was understood that POAs were intended to be "site-specific", the industry felt that on occasions developers would be asked to pay for something which they felt was beyond the scope of such agreements.
21. The Panel sought clarity from the Minister and his Officers on this particular matter at the Public Hearing. We were advised that POAs are site-specific and can only be used for work that needs to be done in the vicinity of the development. Furthermore, the agreements have to fairly and reasonably relate to the development that is being proposed. Effectively, the POA system that is currently in place in Jersey is there to deliver infrastructure that sites need for them to work. The Panel was given a number of examples of what POAs are commonly used for –
 - visibility displays
 - traffic lights
 - drainage connections
 - pavements.
22. The Minister, however, did inform the Panel that there were currently 2 instances where POAs are used for non-site-specific work. The first is percentage for art, which is voluntary, and the second is the Eastern Cycle Track. The Minister did advise that, if JIL was approved by the States Assembly, his intention would be to remove the requirement to contribute to the Eastern Cycle Network under POAs, and the new Levy would become the vehicle to raise those funds.
23. The Panel noted that legally, POAs cannot be used to capture wider value and wider benefits from developments, hence the proposal to introduce JIL. The Levy would enable the Minister, through the uplift in land value, to obtain a contribution from developers to help improve the wider area in which the development is situated. It is envisaged that the Levy would allow the Minister to pool money from a number of schemes and put it into delivering something that is tangible, and to help mitigate the impact of the specific development and other developments together.

24. The Panel queried whether POAs and JIL would co-exist if the Levy was to be approved by the States Assembly. The Minister confirmed that, due to the fact that they are used for very different purposes, POAs would remain in place. According to the Chief Officer –

“We would still need a legal vehicle to ensure some practical things for a development to be delivered. Like a visibility display on someone else’s land, for instance. If the development needs a visibility display for its vehicle access, we will still be seeking legal agreements to ensure that legal access or that visibility is provided. It is a legal mechanism to ensure people deliver things related specifically for that development. So, we would still need those in place.”⁵

Transparency – Spending JIL Funds

25. Whilst the Panel acknowledges that the States Assembly is only being asked for an in-principle agreement at this time, we feel that it is important to address the issue of how the funds raised from the JIL will be spent, if it is indeed approved and implemented in the future.
26. At the Public Hearing with Chamber of Commerce, the representative from JeCC raised concerns about transparency in respect of where the funds from JIL will be allocated. Unlike POAs, JIL will not be specific to a development for which planning consent has been granted. Thus, there is a fear that the monies will be paid to the Environment Department and will then simply disappear into a “black hole”. In addition, due to the fact that POAs are paid upfront and the full amount of the JIL will not be paid until the development is complete, there is a concern that developers may end up being charged for the same infrastructure twice, i.e. ‘double dipping’.
27. In December 2012, the UK published new official guidance for the Community Infrastructure Levy, which replaced the earlier guidance that was published in March 2010. The new document stated that the Government expected charging authorities to work “proactively” with developers to ensure that they were clear about charging authorities’ infrastructure needs and what developers would be expected to pay for through which route. The report went on to advise that the purpose for this was that there was no actual or perceived ‘double dipping’, with developers paying twice for the same infrastructure.⁶
28. With regard to the issue of ‘double dipping’, the Minister advised the Panel that, due to the fact the POAs and the JIL are designed to achieve different things and will be used to fund different types of infrastructure, he is certain that monies will not be taken twice for the same benefit. Furthermore, similar to the UK legislation, the Panel was advised that the JIL legislation will include a clause which will limit the use of planning obligations to infrastructure that directly relates to the development. It is intended that this will provide developers with another safeguard against ‘double dipping’.

⁵ Transcript, Public Hearing with the Minister for the Environment, 9th November 2017, page 14.

⁶ Community Infrastructure Levy, Guidance, Department for Communities and Local Government, April 2013.

29. In respect of transparency, we were told by the Minister that, if JIL is approved, his intention would be to ring-fence the monies received from the Levy and underpin this within the legislation. The money raised would go into a pot and the Minister, together with the ‘Future of St. Helier’ group, would put together a “shopping list” of works that needed to be done, but for which money was not available from general taxation. It is our understanding that each item on the list would have a price attached to it, thereby allowing the developer or member of the Public to know exactly how much things cost and the specifics of how the Levy was going to be used. It was made clear to the Panel during the Public Hearing that public transport and the regeneration of St. Helier were considered top priorities for the monies raised.

30. During the Public Hearing with the Minister, the Chief Officer accepted the importance of transparency in respect of the amount of funds raised through the Levy and the subsequent use of the funds to benefit the wider community. The Chief Officer told the Panel –

“I think it is absolutely vital for us to be very clear in what we have received in Levy and be very public about that. We also need to be very public about how we spend Levy money and whether that is an annual report or an annual report to the Assembly, whatever form that takes. Not only does the Assembly ask for that of us, I think the community ask us of that. “You have been receiving this money. What on earth have you been using it for?” The principle here is for community gain so I think we have to be absolutely demonstrating to the community what we received and what we spent it on.”⁷

31. The Panel is very supportive of the need to ensure transparency to both those who pay the Levy and the general Public. The Panel would therefore recommend, as suggested by the Chief Officer, that, if the Levy is implemented, an annual report is presented to the States Assembly which demonstrates the amount of money and how it has been applied. The Panel would also recommend that, similar to the UK, the Minister and his Officers should work proactively with developers to ensure they are aware of the infrastructure needs – as displayed on a “shopping list” – and what they can expect their money to help fund from that list.

Conclusion

32. We are of the opinion that the decision as to whether or not to agree to an in-principle approval for the introduction of an infrastructure levy in Jersey is a States matter and should be taken by the States Assembly as a whole. The Panel has, however, noted the concerns raised by the Chamber of Commerce and industry representatives, and will be considering them during the debate to help inform its own decision on the principles. We would also recommend that all States Members read the transcripts from both Public Hearings so that they are fully aware of all the issues raised and the responses provided.

⁷ Transcript, Public Hearing with the Minister for the Environment, 9th November 2017, page 28.

33. In order to provide context for this proposal, the Panel wishes to remind Members that the notion of capturing some of the uplift in land value is not new. It formed part of the rationale of the Property Tax Review⁸ which was consulted on in 2014 and 2015. The Property Tax Review was undertaken by the Minister for Treasury and Resources, and addressed the same desire to capture uplift in land values arising from planning permissions. However, the review concluded that whilst there was public support to capture some of the increase in land value following receipt of planning permissions, there was no public appetite to capture sales value through the property taxation system. Subsequently, the responsibility for exploring this concept further fell back onto the Minister for the Environment. If the notion of capturing this uplift is pursued, there remains the question, not only of whether the Levy (as now proposed) is the only and optimal way of achieving this, but also under whose ministerial responsibility it best falls.
34. As stated earlier, the Panel is of the opinion that the debate on the in-principle agreement should take place once the new States Assembly has been elected, so that the same Members can subsequently consider the detailed legislation. However, if present States Members approve the principles of the draft Law in the forthcoming debate, the Panel will be urging the new Environment, Housing and Infrastructure Scrutiny Panel, through its legacy report, to review the details of the proposed JIL and the accompanying legislation, when made available by the Minister for the Environment.

⁸ *Taxation of land and buildings in Jersey*
(<https://www.gov.je/government/consultations/pages/taxation-of-land-and-buildings-in-jersey.aspx>)