

Environment Scrutiny Panel
Review of the Planning Process

**Submission to the Panel on behalf of the Minister for Planning
and Environment**

**Planning and Building Services Division
Planning and Environment Department
South Hill
St. Helier
JE2 4US**

Note

This submission, on behalf of the Minister, explains the planning process to assist the Scrutiny Panel, but is limited to those parts of the process relating to the matters directly referred to in the letters to the Minister from the Chairman of the Environment Scrutiny Panel, Deputy R. Duhamel, and the Lead Member of this Review, Deputy G. Baudains, dated 27 February 2006 and 9 March 2006 respectively. The Minister, and the Planning and Building Services division of the Planning and Environment Department, have other statutory and non-statutory functions which are not referred to in those letters. Should the Scrutiny Panel wish to extend its area of review, the Minister reserves the right to make supplementary submissions on any matters not dealt with in this submission.

Introduction

1. The planning process in Jersey is concerned with changes in the physical fabric of the Island. It provides the policy and regulatory frameworks to ensure that such change that does occur is in the public interest.

Legal Framework

2. The first comprehensive legislation for planning in Jersey was the Island Planning Law 1964, which came into force in 1965. The 1964 Law was based closely on the 1962 Town and Country Planning Act in England and Wales. It was preceded by the Preservation of Amenities Law 1952 and the Preservation of Amenities Regulations 1945, which were fairly rudimentary. The 1964 Law is shortly to be replaced by the coming into force of the Planning and Building Law 2002 later this year. (The Minister has lodged an Appointed Day Act proposition proposing that the law be introduced on 1 July 2006)
3. The Scrutiny Panel has a copy of the 1964 Law, which is organised as follows:
 - Long title and purposes
 - Preparation of development plans (policy)
 - Powers to acquire land (to assist in achieving policy aims)
 - Development Control (to regulate the activities of individuals to achieve the purposes of the law and policy aims)
 - Designation and protection of Sites of Special Interest
 - Control of Advertisements
 - Powers to control the condition of land
 - Planting and protection of trees
 - Restrictions on the importation of caravans
 - Control of movable structures
 - Rights of Appeal
4. The purposes of the Law at Article 2 are as follows:
 - to provide for the orderly planning in, and the comprehensive development of, land;
 - to ensure that land is used in a manner serving the best interest of the community;
 - to protect and enhance the natural beauty of the landscape or the countryside;
 - to preserve and improve the general amenities of any part of the Island;
 - to keep the coasts of the Island in their natural state;
 - to control the placing of advertisements and hoardings;
 - to protect sites of special interest;and generally to prevent the spoliation of the amenities of the Island.

Obligations in discharging functions of the Law

5. In exercising the regulatory functions of the Law in particular, the Minister for Planning and Environment, the Planning Applications

Panel, and officers of the Department have certain obligations which must be observed in decision-making. These include:

- The need to act within the law and in furtherance of the purposes of the law;
- The need to act reasonably and objectively;
- The need to act fairly and consistently;
- The need to take into account only those considerations which are material to the decision to be made;
- The need to act in a timely manner.

Rôles

6. The States Assembly – Under the Law, the rôle of the States Assembly is limited to approval of development plans put to it by the Minister under Article 3 of the Law, and the approval to the use of compulsory purchase powers to acquire land on behalf of the Public. Members can, and do, bring propositions to the Assembly about individual planning cases.
7. The Minister - All the powers contained in the Law, other than those referred to above, are vested in the Minister.
8. The Planning Applications Panel – Those powers listed in Article 9A(1) of the Law, which are limited to application decisions under various articles of the Law and certain enforcement powers, are vested in the Panel.
9. The Officers – The scope of officers to make decisions under delegated powers provided by the States of Jersey Law 2005 are described in the Delegation Agreement, of which the Scrutiny Panel has a copy. The Minister intends to review the Delegation Agreement this year.
10. One of the aims of the Scrutiny Review is to “assess the extent of, and any implications arising from, limitations of the States to direct the Planning Minister.” This is addressed separately later in this submission.
11. Deputy Baudains requested a detailed overview of any issues affecting the integrity of the planning progress. The Minister, the Committees that preceded him, and the Department itself are extremely careful to ensure the integrity of the process. A number of measures are in place to achieve this, including:
 - All staff and States Member applications are dealt with by the applications Panel;
 - Staff may not participate in, or seek to influence in any way, the consideration of their own applications or any by members of their family;
 - There is a Code of Conduct for Members involved in the process (at Appendix 10);
 - The are strict rules for Civil Servants with disciplinary sanctions;
 - The professional bodies have strict codes of conduct, with disciplinary sanctions.

Previous reviews of the Jersey planning system

12. This is by no means the first review that has been undertaken into the planning system in Jersey. In the last 10 years or so, all or part of the service has received independent review, as follows:

- November 1995 – Review of Planning Application Service (UK District Audit Service)
- September 1999 – Strategic Review of the Planning and Environment Committee (ERM Ltd)
- January 2002 – Planning and Building Control Services: Workload and Human Resource Requirements (ERM Ltd)
- November 2005 – Review of the Planning and Building Functions (Chris Shepley Planning)

13. In respect of the latest Review, the response of the Minister to the Shepley recommendations is attached as Appendix 1. Copies of the earlier reviews can be made available should the Panel require them.

14. Additionally, in 2002/3, the Department conducted a major review of how it delivers its services. This was done following a period during which a significant increase in workload, combined with staff shortages, resulted in less than acceptable performance. Internal procedures were reviewed and improved, resulting in greater efficiency in the use of resources and a faster turnaround in both planning and building applications. Furthermore, in November 2002, with support from the development industry, the States agreed the “user-pays” strategy, where improved services, including up to ten additional staff employed on fixed term contracts, were funded by a significant increase in application fees.

The Planning and Building (Jersey) Law 2002

15. The long awaited coming into force of the new Law is scheduled for 1 July 2006. It has been delayed principally because of concerns about the costs, but also the principle of setting up an independent Planning and Building Appeals Commission. This would have operated in a similar manner to the appeals inspectorates in the UK and the Republic of Ireland, where cases are heard by expert inspectors. In the event, the States decided at the end of 2004 to “reinstate” the Royal Court as the appellate body for planning appeals. This amendment (and a consequential amendment) to the Law, was registered in 2005. However to make the appeals process more readily accessible, it is intended to introduce new Royal Court Rules later this year. This is addressed in more detail later in this submission.

16. The Scrutiny Panel intends to assess the implications of the new Law on the planning process, and this is also addressed later.

Summary

17. This submission describes how the two main arms of the planning process in Jersey currently operate, i.e. the formulation of policy and the Development Control process, and finally considers the

implications of the coming into force of the Planning and Building Law
2002, later this year

Policy formulation

Legal basis

18. The legal basis for the development of planning policy is provided by the purposes of the Island Planning (Jersey) Law and is specifically enabled by Article 3 of the revised edition which allows the Committee to prepare 'from time to time...for the approval of the States development plans for different parts of the Island'. In so doing the Minister is able to define sites and areas for different uses and to set out how land should be used.
19. This has been manifest in the preparation of a development plan for the entire Island – the Island Plan – which has included, in all editions, a mix of area-based and use-based policies. The first Island Plan was approved by the States in 1963 (commonly referred to as the Barratt Plan), and the second in 1987; more recently, the Plan has been comprehensively reviewed and updated and approved by the States in July 2002. The Island Plan is a fundamental part of the planning process and is set to become even more so. For most people who come into contact with the planning process and for most planning issues affecting the Island, it is the most relevant document.
20. Whilst optional under the current planning legislation, the Planning and Building (Jersey) Law 2002 requires that an Island Plan be prepared and subsequently revised at least every 10 years. Perhaps even more significantly, the Island Plan is given precedence in the decision-making process by the new law (at Article 19 (2) and (3)) such that planning permission should not be granted where it does not accord with the Island Plan except where there is overriding justification to do so. This is, in effect, a 'plan-led' system.

Island Plan

21. The Island Plan plays a major role in the Island's strategic and local planning, which is crucial to the success of the economy, the protection and enhancement of the quality of the environment and the welfare of the local community. The 2002 Island Plan is the principal document in land-use planning in Jersey and the first consideration when making decisions on planning proposals during the Plan period.
22. The main purpose of the Plan is to provide a framework of policies and proposals as a basis for land-use planning decisions for Jersey to the year 2011, although many of the policies and proposals will have a much longer-term influence. In particular, the Plan sets out to:
- establish a framework of land-use policies and proposals to address the Island's social, environmental and economic requirements at both a strategic level and in relation to specific areas of land;
 - provide a framework of policies that allow for considered decisions to be made on proposals to develop land or change its use;

- provide a detailed basis for co-ordinating the development and other use of land by the States of Jersey, other public bodies, private organisations and individuals;
- provide a measure of certainty about what types of development will, or will not be permitted and where; and
- bring strategic and detailed planning issues before the public.

Format of the Island Plan

23. The Island Plan comprises a Written Statement, an Island Proposals Map and a Town Proposals Map. The Written Statement sets out all the policies and proposals of the Plan and the reasons behind them. The Proposals Maps illustrate the policies and proposals on the Jersey Digital Map base.

24. The Written Statement comprises five main elements. These are:

- introductions to the Plan, its context and the aims, vision, objectives and strategies (Sections 1-3);
- a general policies chapter dealing with policies affecting development Island-wide (Section 4);
- detailed policies and proposals for the broad areas of the Island – the countryside, built environment and marine environment (Sections 5-7);
- detailed policies and proposals for each main type of land-use, such as housing, travel and transport and natural resources (Sections 8-14); and
- an implementation and monitoring chapter addressing how the Plan will be moved forward (Section 15).

25. At the end of the document is a glossary of key words and terms used in the Plan. The Appendices to the document are:

- Appendix 1 – International Commitments of Relevance to the Island Plan;
- Appendix 2 – Supplementary Guidance.

Procedures/ processes

Macro-level

26. Whilst there is no mandatory requirement to produce or review the development plan presently, it is evident that, for the plan to remain useful and its policies relevant and applicable, there is requirement to keep it up-to-date.

27. For certain aspects of the plan, there is a systematic monitoring and review process in place. Specifically, work is undertaken on an annual basis to review the supply of housing resulting in the publication of *Planning for Homes*. This is regularly supplemented with a review of housing need based on the *Housing Needs Survey*.

28. Other aspects of the plan are reviewed on a responsive basis as and when circumstances within the Island require it. For example, the rapid

structural changes ongoing in the agricultural industry have identified a requirement to review planning policy and guidance relating to the use of agricultural land and buildings: this work is ongoing.

29. There is presently no systematic review of other aspects of the Plan. The need has, however, been identified to establish a more comprehensive monitoring and review mechanism to ensure that the department is more aware and the Plan is more responsive to the requirement for change.

Micro-level

30. Whilst the Island Plan provides the planning policy framework within which decision-making can take place, it is important to ensure that the application and interpretation of policy is consistent and appropriate. There are two processes/procedures by which this takes place at a micro-level involving differing degrees of formality.

Planning policy advice

31. In the process of dealing with a large volume of planning applications, planning officers become familiar with the basis and application of the many policies within the Island Plan, particularly the general policy matters. As a matter of course, however, the list of applications submitted to the department is reviewed by the Policy and Projects Section on a weekly basis and applications with significant policy implications are normally 'called in' for specific comment from the Policy and Projects Team and/or officers in the Development Control Team seek policy advice. The purpose of this process is to highlight policies of relevance to the determination of planning applications and/or to provide additional guidance on the application and interpretation of policies.

32. The process also serves to ensure that the Policy and Projects Team remains aware of the nature of applications being submitted which, over time, can be helpful in identifying development trends. It can also serve as a useful tool in the assessment of the appropriateness and rigour of individual policies within the development plan.

33. In addition to planning policy advice on individual planning applications, advice is also offered by the Policy and Projects Team across the States on other departmental/ corporate policy or project-based initiatives.

Supplementary Planning Guidance

34. Supplementary planning guidance (SPG) builds upon the policies in the Island Plan 2002 and provides detailed advice on the way in which those policies are likely to be interpreted and applied. The guidance falls into two basic types, area or site based guidance and topic or issue based guidance: this process represents the formalisation of policy advice and interpretation.

35. Guidance documents are prepared in consultation with interested parties and/or those who might use them and, in appropriate circumstances, will only be adopted following public consultation.
36. This guidance does not have the same status as the policies in the Island Plan, which remain the first consideration when making decisions on development proposals. It may, however, be a material consideration in the determination of planning applications, and can be given substantial weight.
37. The department has issued a whole range of guidance notes covering many different areas of activity and use and for a range of purposes. The SPG offered by the department is presently the subject of review. A number of the guidance notes are presently the subject of active revision: this is outlined in Appendix 2.

Consultation

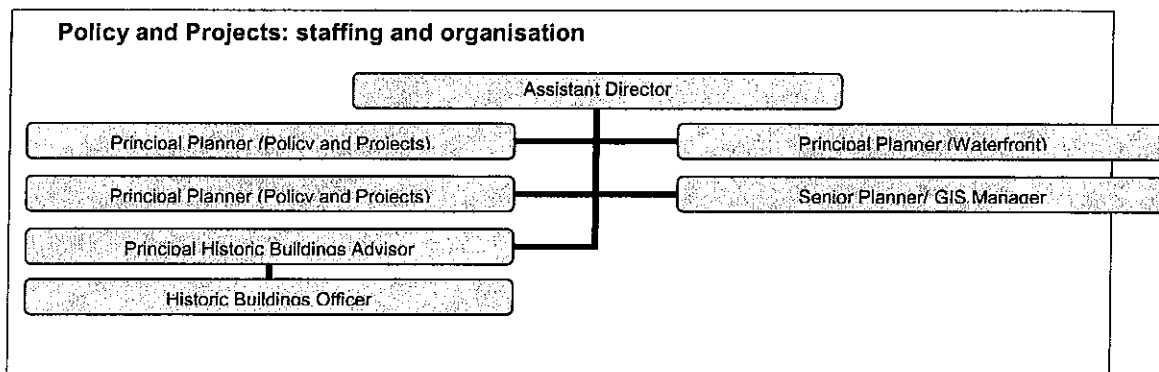
38. The development of and changes to the planning policy framework is generally subject to extensive and rigorous consultation.
39. The development of the latest Island Plan was the subject of an extensive consultation process which also involved independent review. There is no formal requirement to carry out any such consultation in the current law: the new law prescribes the requirement to undertake formal consultation.
40. Interim changes to the Plan sponsored formerly by the Committee and now by the Minister are also generally the subject of significant consultation: the 'rezoning' of housing sites in 1999 was subject to a wide-scale public consultation process.
41. Changes sponsored by other members of the States Assembly, where they are accepted by the Minister are not, however, always the subject of wide consultation: the Shepley Report highlights deficiencies in this respect and makes recommendations accordingly.
42. The development and adoption of supplementary planning guidance is also normally subject to consultation. The extent of consultation will, however, be determined in accord with the nature and likely scale of interest in the matter at hand and the degree to which the guidance represents a development of policy or simply clarification of how that policy will be applied. For example, the Committee approved SPG on the Disposal of Foul Sewage in 2005 without consultation as this simply clarified the interpretation of a particular Island Plan policy and how it would be applied; the SPG on planning obligations, which was essentially a development of policy, was, however, the subject of much wider consultation.

Work in progress/ programme

43. The current work programme of the Policy and Projects Team, so far as it relates to policy formulation, including the provision of SPG and other planning advice and guidance, is set out at Appendix 4. The Scrutiny Panel already has a copy of the Department's Business Plan.
44. It is also relevant to note the Strategic Plan identifies a need to undertake a review of the Island Plan in 2007, although no specific funding has been provided to undertake this major exercise.

Organisation and staffing

45. Policy formulation and the provision of advice and guidance is undertaken by the Policy and Projects Team of Planning and Building Services. It cannot, however, be undertaken in isolation. Accordingly, work of this nature involves a wide range of staff both within and outside Planning and Building Services: the number of people involved and the extent of their involvement will be dependent upon the subject matter at hand.
46. It is also relevant to note that the work of the Policy and Projects Team extends beyond policy formulation and the provision of planning advice and guidance: the team is involved with the implementation of projects and the development of legislation. All aspects of work related to historic buildings and mapping are also undertaken within the Policy and Projects Team.
47. The current level and organisation of staffing is set out below.



48. It is relevant to note that the Shepley Report identified the need to urgently address the inadequacies of the team's accommodation which is in a portacabin in the car park at South Hill separate from the other functions of the division in the main building: a situation that has prevailed for some years.

Development Control

Procedures

49. A flow chart summarising the planning applications process is attached as Appendix 3.
50. The Department uses a computerised applications database – known as 'Merlin'. This software suite, which is also used for building control, historic buildings and enforcement, was installed in December 2000, and runs the whole applications process, producing letters and documents at varying stages. It is also used to produce management information reports using the Crystal reporting package.

Pre-application advice

51. One of the most frequent requests received by the Department is for advice on whether it is likely that planning permission will be granted for a particular scheme – known as pre-application advice. This is a quite natural response on the part of public, who will have to commit sometimes significant sums in the preparation of architectural drawings and other fees.
52. The Department attempts to provide a decent level of service on such requests, bearing in mind that its primary duty is to the fee-paying applicant and the public as a whole. It must also be borne in mind that pre-application advice does not amount to a planning permission – it is simply an informal officer view that is offered without prejudice on the likelihood of consent being granted. The Department is careful to point out that the advice service does not include any consultation or publicity, which may later influence a project.
53. Because the outcome of meetings can be interpreted in different ways by different people, the Department prefers to both receive requests and issue advice in written form. This advice is also always qualified such that it is informal officer advice only and is not binding on the Panel or Minister and is offered without prejudice to any subsequent decision that the Panel or Minister might make. This helps to avoid later misunderstandings. A full explanation of the procedure for pre-application advice is set out in the Practice Note attached as Appendix 4.

Form of application

54. The legal basis for the content of a planning application is set out in Article 6 (1) of the Island Planning Law. Essentially, this Article states that an application for permission under the Law shall be in the form required by the Committee. Over the years, custom and practice has developed to prescribe more clearly what details are required for each type of planning application. This is set out more completely in the Department's (draft) Advice Note for making Planning Applications (see Appendix 5.)

Fees

55. All planning applications must be accompanied by the requisite planning fee. This is also a requirement of the Law, under Article 6 (1). The Minister prepares a schedule for the approval of the States (as an Order) and this is published by the Department. Fees are usually increased on an annual basis in line with cost of living. An exception to this was agreed by the States in 2003, when fees were substantially increased to allow the Department to recruit additional staff in order to improve performance, for which no other funds were available. A copy of the current planning fee schedule is attached as Appendix 6.

Registration

56. All planning applications are vetted by the Department before they are 'registered'. This is a complex process, split into two main functions – screening and inputting - which together can take up to 3 days from receipt.

57. Screening involves the checking of the application forms and submitted details for completeness and correctness. The fee is checked and the authorities which are to be consulted are identified. Often, errors are highlighted or information is missing. The Department's policy on these applications is to telephone the applicant to request the correct information. If that can be provided within 24 hours, then the application is held by the Department. If it cannot, then the application is returned as incomplete. The screening process is detailed more fully in the Technicians Note, attached as Appendix 7.

58. If an application is complete, then the data is input into the Department's applications database. Once the information has been input into this system, the application becomes 'registered'.

Publicity

59. Although there is no requirement within the current Planning Law to do so, applications are publicised by the Department. This takes a number of forms, but principally a list of the previous week's applications is published in the Jersey Gazette every Tuesday. The list is also displayed on the States website and sent to all States members who wish to receive it. Other organisations, such as the National Trust for Jersey and the Societe Jersiaise are included. A full list of those organisations is attached as Appendix 8.

60. The purpose of publishing the list is to make the public aware that an application has been submitted. The plans are available for viewing at South Hill, as well as the relevant Parish Hall. The Department encourages comments from interested parties to be received within 2 weeks, although in reality that period is usually much longer. Any letter received before the decision is made is taken into account.

61. *Note – 'small works' applications, defined as those which are non-contentious, are not usually published on the list. Typically, these include satellite dishes, fences or conservatories. The Department*

reserves the right to advertise these applications where it considers there may be implications beyond the site

Consultations

62. The Department frequently consults with other bodies in the process of dealing with a planning application. Usually, these are other States Departments, but they can also include the Parish or Statutory Undertakers (e.g. Jersey Water). The consultees are identified at the 'screening' stage, although planning officers can and do add to those at a later date, if another issue arises. The consultees are identified in line with the Technician's Note, Appendix 7.
63. Consultants are usually given 2 weeks in which to respond to the Department, although again, this period is often extended for complicated applications, or where a meeting of a statutory body such as a parish roads committee is required.

Consideration and Recommendation

64. Applications are allocated to planning officers on a geographical area basis. The Central Team covers the parishes of St. Helier, St. Clement, St. Saviour and St. Lawrence. The Rural Team covers the remaining parishes.
65. Once received by a planning officer, an application will be vetted to check that all the procedures (screening, consultation, publication) have been carried out correctly. Officers will then visit the site to undertake a preliminary assessment of the application. During this time, letters from consultants or members of the public will flow into the process and these will need to be considered by the officer.
66. In arriving at a conclusion, the officer should be careful to ensure that they have taken all material considerations into account. The primary material consideration for any planning application will be the relevant policies of the 2002 Island Plan and any published SPG. However, it may be that other planning factors weigh strongly on the decision and these will have to be balanced against the policies.
67. Having amassed, analysed and weighed all of the relevant information, the officer will make a recommendation. This may be to approve, to approve with conditions or refuse the application as submitted. Frequently, however, applications may be negotiated if the officer believes that a series of amendments may make the submission acceptable. Negotiations with the applicant may take place, which may or may not be successful, and an amended scheme may result, which will be re-advertised and further consultation undertaken as necessary. Finally, the officer will make a recommendation.

Application Decision-making

68. The Department deals with over 2,000 planning applications annually. Clearly, these cannot all be dealt with by the Minister or the Applications Panel and so, since legal delegation of functions was introduced to the States of Jersey Law in 1996, it has been the practice

of the Committee (latterly the Minister) to delegate to the Department application decisions in accordance with a formal agreement. Under the agreement, the Department has dealt with about 90% of applications under its delegated powers. The powers are prescribed within the Delegation Agreement, a copy of which is provided at Appendix 9. For information, approximately 91% of applications are approved.

69. Some standard procedures are of note. The following applications cannot be determined under officer delegated powers: those submitted by staff or States Members; those on which there has been significant objection; and those where the Department makes a recommendation which is contrary to policy, or to the advice of one of its consultants.

70. All application recommendations are checked by a senior officer to ensure consistency and to agree who will make the decision.

71. The Scrutiny Panel wishes to assess the degree to which recommendations or decisions are influenced by:

- Island plan policies;
- Precedents;
- The prospect of litigation.

72. Clearly, the Island Plan informs all decisions that are made, and nearly all decisions conform to the principles and policies of the Plan. However, the Minister and the other decision-makers are bound to take into consideration all material considerations. Sometimes such other considerations, properly taken into account, may lead to a recommendation that doesn't conform to a policy, or policies of the Plan, but this is extremely rare.

73. One of the tests of planning decisions in the Royal Court is whether they are reasonable, having taken all the material considerations into account. Given the need to be fair and consistent in decision-making, precedents have a part to play. It would be perverse, for example, to approve an identical proposal in identical circumstances in nine cases of ten, but to refuse the tenth. Appellants will often cite precedents in their grounds of appeal, and the Court, having established that they are genuine precedents, will take them into account in its deliberations.

74. The prospect of litigation also has a part to play in decision-making, although not in the sense that the decision-maker is intimidated by that prospect. The decision-maker has to ask himself whether the decision is reasonable, whether he has taken all the matters into account that he should have and disregarded those that he should not have, whether the decision is legal, and so on, because those are the tests the Court will apply if the decision is appealed, and the decision will need to be defended on the Minister's behalf.

Notification

75. Once a decision has been taken, the applicant is notified in writing. This takes the form of an official decision notice, which sets out the full

reasons for the imposition of any conditions (on an approval) or the reasons why an application has been refused. Additionally, any person who has written in to the Department (including consultants) will receive a letter informing them of the decision.

Planning Applications Panel

76. The Planning Applications Panel has a current constitution of 3 members (Constables Dupre and du Feu and Deputy Pryke) with 2 reserve members (Constables Ozouf and Crowcroft). The purpose of the Panel is to decide those applications which are too contentious for the delegated procedure. Meetings are held, in camera, every two weeks and applications are determined by simple majority vote.

77. The Minister is currently monitoring the Panel system, and has issued law-drafting instructions with a view to increasing its size (increase to 5 permanent members) and reducing the frequency of meetings to every 3 or 4 weeks. Once the new Planning Law is brought into force, meetings of the Panel will be held in public.

78. Members of the Panel must adhere to a Code of Conduct in their deliberations. A copy of this Code is attached as Appendix 10.

Appeals

79. There are 3 effective methods to appeal a decision of the Department, Panel or Minister: these are Requests for Reconsideration, Boards of Administrative Review (Review Boards), or a direct appeal to the Royal Court. The basic differences between these and the procedures required are set out in the Department's Practice Note No. 3, attached as Appendix 11. There is a justifiable perception that the internal reconsideration process is neither independent nor open but it has come about because of the difficulties in the statutory right of appeal under the Law which are described in the next paragraph. These issues are well documented in the recent Shepley Review.

Royal Court Appeals – new procedures

80. The existing and the new laws make provision for a right of appeal against a planning application decision to the Royal Court. In practice this avenue of appeal is used in only a small number of cases. It is believed that the reason for this is that to invoke the appeals process, exposes the appellant to a considerable financial risk. Not only does he have (in nearly all cases) to appoint an advocate (because the existing Royal Court Rules require that any representative of a party to an action must be an advocate), but also, he faces the risk of having the Minister's costs awarded against him if he loses the case.

81. The Bailiff has recognised this problem, and is proposing to introduce new Royal Court Rules to simplify the procedures including allowing persons other than an advocate to represent the appellant and the Minister. These rules are expected to be introduced when the new Law comes into force later this year. The Rules will allow appeals to be heard solely on written submissions by the parties, by informal hearings, or by the Inferior Number of the Royal Court as they are at

present. A simple flow diagram showing how the new process will operate is attached at Appendix 12.

82. It is hoped that not only will more aggrieved applicants avail themselves of the statutory appeals system, but it will lead to a more efficient system for all parties – appellants, the Minister and the Royal Court itself

Third Party Appeals

83. In 2001, when the new planning law was debated in second reading, Deputy Scott Warren successfully introduced an amendment to enable persons who had made written representations on an application to enjoy the same rights of appeal as applicants.

84. The Minister is proposing that the relevant provisions should not come into force immediately. The reason for this delay is the unavailability of resources to the Minister and the Royal Court to fund the many more appeals that would arise, and the greater complexity of those appeals because of the greater number of parties involved. It is intended that the provisions will only be introduced when sufficient resources are in place.

Annual report

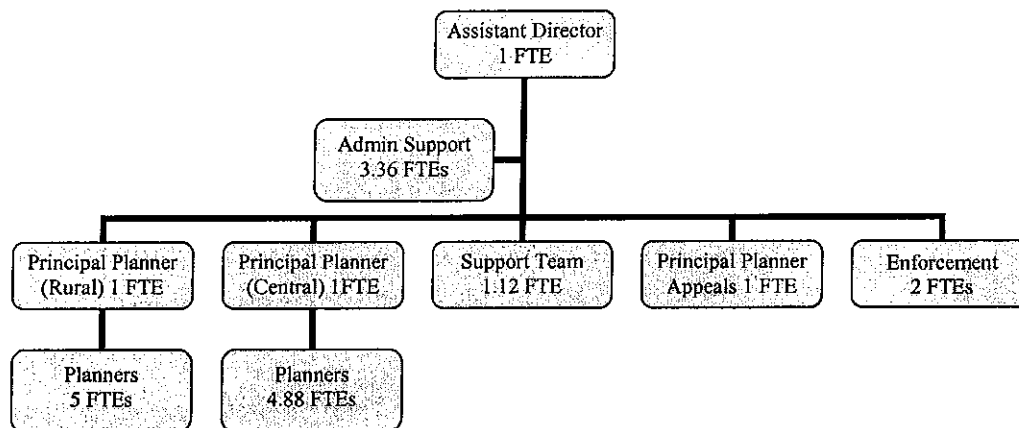
85. The Department currently publishes several statistics in its Annual Report. The publication of this Report is part of the Department's Service Level Agreement with customers. Generally speaking, numbers of planning applications may be taken as a crude barometer of activity and confidence in the economy. Numbers increased year on year throughout the late 1990s, peaking in 2001. Since then, numbers have gradually declined until the current year, where there are signs that activity is on the rise once again.

Performance

86. The Department measures its own performance in a number of ways and is currently examining how these might be improved. Typically, the 'standard industry' statistics are the 8 week and 13 week decision percentages. The advantage of these figures is that they are used across the UK, allowing the Department to benchmark itself against other similar jurisdictions. However, there is a view that these are crude tools, which look at only one aspect of the Department's work – that of speed – and do not measure level of input or quality of outcome.
87. The Department's performance against the current measures has improved year on year since 2001. The Annual Report for 2004 (Appendix 13) indicates the latest performance figures available. The Department is currently preparing the Report for 2005. A copy of the Service Level Agreement is attached at Appendix 14.

Organisation and staffing

88. The overall headcount for the Development Control Section of the Department is 20.36 FTEs. This is divided into a number of different teams, as set out on the chart below:



Implications of the Planning and Building Law 2002

89. The new Law consolidates into one law, and updates, the existing Planning and Building Control Laws. There are no substantive changes in the purposes of the Law. However, it introduces certain new provisions and changes the way certain things are done - generally making them simpler, more transparent and more effective.
90. This submission does not seek to describe each new provision in detail – not least because members of the Panel are already familiar with them.
91. The main new planning provisions are as follows:
- The requirement to prepare an Island Plan, the requirement that representations on the draft Plan are heard in public and the need to review it at least every 10 years (referred to in paragraph 19);
 - The need to consult appropriate bodies when producing guidelines for publication;
 - Better provisions for advertising applications, probably by site notices (Ministerial Order needed)
 - Provision for Public Inquiries for significant developments or significant departures from the Island Plan;
 - Environmental Impact Assessment becomes a statutory requirement for certain categories of development (Ministerial Order needed);
 - The Public may attend meetings of the Planning Applications Panel;
 - Planning permission may be granted in outline or detail; in the former case reserving specific matters to be subsequently approved;
 - Certification of completion of development in accordance with a planning permission;
 - More effective enforcement procedures, including Stop notices and injunctions;
 - Simplified procedures for designating Sites of Special Interest and Protected Trees;
 - Third Party Appeals.
92. The overall implication of these new provisions is that they will produce a more effective and transparent planning process, with greater opportunities for the views of the general public to be heard, and in which the public can have greater confidence.
93. Some of the provisions could have resource implications, and these have been highlighted in the list above. Apart from Third Party Appeals, where the additional costs are likely to be considerable, the Department will, initially at least, absorb these extra costs.

The Role of the States Assembly in the Planning Process

94. As stated in paragraph 6, with the exception of approving development plans and the compulsory purchase of land, the States Assembly has no statutory role in the planning process. As a legislature, it has the power to agree or not agree regulations proposed by the Minister, and it has the ability to lodge Orders for debate, but it has no power to decide applications or to direct the Minister in any way.
95. That does not of course prevent individual Members from time to time bringing propositions to the States with the aim of influencing the Minister to refuse an application or to amend policy. Although Chris Shepley refers to this with some concern in his November 2005 review of the planning process in Jersey, this is sure to continue, and while it can create problems politically for the Minister it is not a major issue. Of greater concern are requests to revoke or modify decisions that have already been made.
96. From the Planning Department's perspective, it is difficult to see how the States Assembly could have the power to direct the Minister without itself having a statutory role in the process, for which it would be subject to the same duties and obligations referred to in paragraph 5 of this submission.
97. Without this safeguard, however, it is likely to be wholly unworkable. As States debates on individual cases have shown on many occasions, the Assembly rarely, if ever, confines itself to material planning considerations, it never has the full information available to it, and Members have often pre-judged an issue publicly without sufficient information (which under the Code of Conduct which presently operates for the Minister and the Applications Panel, would bar them from participating in the decision). Were the Minister to be directed in this manner, then each decision would be wide-open to successful challenge in the Royal Court.
98. If the proper safeguards did apply to the Assembly however, it would have the power to direct, and would become *de facto* a higher level planning authority, and as a result would invariably find itself having to debate far more planning cases. Perhaps more significant are the delays and uncertainties that would arise for landowners and applicants.

Appendices

1. Minister's response to the Shepley Report
2. Current status of Guidance Notes
3. Development Control flow chart
4. Pre-application advice note
5. Advice Note to Applicants
6. Current Fee Schedule
7. Technicians' screening instructions
8. Recipients of weekly list of applications (excl. States Members, Departments and Parishes)
9. Delegation Agreement 2006
10. Members Code of Conduct
11. Appeals advice
12. Appeals flow-chart (new rules)
13. Annual Report 2004
14. Service Level Agreement