

**Public Inquiry – Future Hospital Planning Application - Reference
PP/2018/0507**

**Response of the Independent Inspector to the Minister’s revised Terms
of Reference**

Dear Minister,

Thank you for your letter of 17th July 2018 and the associated enclosures regarding the above. I have noted carefully the details of Proposition P.90/2018 and the extended terms of reference, which allow me to consider the issue of alternative sites at the forthcoming Public Inquiry, if deemed necessary and appropriate.

I have also noted the establishment of a new Policy Development Board, which has been tasked with reviewing the decision making concerning the selection of the existing site. I note that it will be reviewing the evidence which supported the conclusion that other sites were less suitable or deliverable and that the sites to be reviewed include Peoples’ Park, St. Saviour’s Hospital, Warwick Farm, the Waterfront site (including Jardin de la Mer), Overdale and the Dual Site solution.

I have considered these matters carefully and believe that it would be in everyone’s best interest if I explained my current thoughts on the extended terms of reference and, in particular, the opportunity to consider evidence on alternative sites.

In short, I do consider that it is appropriate to dedicate some of the forthcoming Inquiry to the alternative sites issue. I have reached the view that it is appropriate to do so because the availability of alternative sites to accommodate the development has the potential to become a material consideration in the determination of the current application (PP/2018/0507).

You will note that I have underlined the word ‘potential’ because it is an important qualification. As you will be aware, the scope of what can constitute a ‘material consideration’ in Planning decision making is extremely wide. The merits of alternative sites do have the potential to become material considerations for major infrastructure projects, such as the Future Hospital.

In my report on the first application (PP/2017/0990) dated 2 January 2018, in drawing my conclusions and recommendations, I did touch on these complex issues. After my summary of serious adverse effects that I assessed would arise from that earlier proposal, I stated:

293. *However, the Law does allow the decision maker to depart from the provisions of the Island Plan if there is ‘sufficient justification’ for doing so. What constitutes a sufficient case for overriding the Plan’s provisions is not defined and requires judgement. There is clearly a significant public benefit in delivering a modern fit for purpose hospital for Jersey’s population. There is also a case made by some that providing a new*

hospital is long overdue and that delaying the project would have negative impacts.

294. *The critical issue here is not the need for a new hospital facility, but whether the application proposal represents the one and only vehicle that could deliver it. This raises questions about two matters that are beyond the scope of the Inquiry. The first concerns site selection and the comparative merits of alternative sites. The second concerns the 'brief', which is currently premised on a single phase comprehensive new build project.*
295. *If the Minister were to be satisfied that no other site / brief combination could meet the future hospital needs of Jersey, that could potentially provide 'sufficient justification' for departing from the Island Plan. However, doing so would, in my view, require a convincing justification on matters beyond the scope of this Inquiry. It would also require an acceptance of the serious Planning harm and conflicts with the Island Plan that I have identified.*

Exactly the same approach is appropriate for the current application. I must stress that I have formed no judgments whatsoever about the current application proposal. The Inquiry process will allow me, in the light of the evidence, to form views on the extent to which the proposal conforms with the Island Plan and whether it will result in adverse environmental effects and, if so, their nature, magnitude and severity.

However, I do think that it is safe to speculate that any proposal for a new hospital (of the scale required) on any site in Jersey will result in some adverse environmental effects. This is simply a direct product of the scale and nature of such a large development in a constrained and sensitive Island setting. As a consequence, there is merit in giving some consideration to the issue of alternative sites and the extended terms of reference are helpful in this respect.

The relevance and 'weight' to be afforded to alternative sites evidence will be informed by the assessment of the current proposal against the Island Plan. In a scenario where the proposal is judged to be fully in accordance with the Island Plan, the issue of alternative sites would have no tangible weight in Planning terms. In a scenario where the proposal is assessed to be in conflict with the Island Plan and to result in significant adverse environmental effects, alternative sites have the potential to be material considerations. Put simply, the decision maker will wish to know whether there is another site that could clearly avoid those adverse effects, or at least substantially reduce them.

In practice, undertaking that assessment of alternative sites is not straightforward. There is a comparability issue, in the sense that there is only one worked up proposal and 'like for like' comparisons cannot be made, although I do consider that a high level assessment can be undertaken. I am also aware that there are many different views about the various sites and, in extending the

Inquiry's terms of reference, it is likely that interested parties will wish to make submissions on a subject which, to date, has been outside of the Inquiry's scope.

Taking all of the above into account, I have reached the view that the consideration of alternative sites evidence should be high level, strictly Planning based and proportionate. On the latter point of proportionality, I stress again that alternative sites are only potential material considerations in the determination of this application. As a result, it would not be appropriate or justified to hold an 'Inquiry within an Inquiry'.

You will be familiar with the 'without prejudice' sessions that are routinely held within Planning Inquiries that can deal with issues such as Planning conditions and Planning Obligations. I consider that a similar approach should be adopted for the alternative sites evidence and a 'main issue / question' for exploration through the Inquiry should be:

In the event that the Minister concludes that the application proposal (reference PP/2018/0507) would have significant adverse environmental effects, are there alternative site options that would clearly avoid those adverse effects or substantially reduce them?

The Inquiry is scheduled to open on 17th September 2018 and I had anticipated that it will sit for four days. In order that the above issue / question can be considered, I propose to extend this to allow an additional sitting day. For the reasons stated above, I do intend to time limit the alternative sites consideration. I also propose that further public announcements are made on these matters and that there will be the opportunity to make further written submissions on this specific subject, for an extended period up until 5.00pm on 7 September 2018.

In conclusion, I do recognise that this is a complex and unique situation. However, I hope that my proposals set out above represent a measured and sensible way forward in the light of Proposition P.90/2018. Subject to your endorsement of my procedural proposals, I will liaise with the Programme Officer and the Principal Parties to put them into effect.

P. Staddon

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