

DEPARTMENT OF THE ENVIRONMENT**SUPPLEMENTARY PLANNING GUIDANCE – PROTECTION OF EMPLOYMENT LAND –
POLICY E1****CONSULTATION FINDINGS AND RESPONSE**

The draft advice note on the protection of employment land – Policy E1, was published on the States' website and sent out to key stakeholders on 15th February 2012 and the closing date for comments was 28th March 2012.

The following consultation responses were received and accepted by the Department during the consultation period.

A) Summary results to questionnaire

Question	Strongly agree	Agree	Don't know	Disagree	Strongly disagree	No answer
1. Is there is a need for planning guidance on the protection of employment land?	4	1			2	0
2. Is it appropriate for the Minister to require an independent marketing strategy to be undertaken of the site in order to evidence the current level of demand and viability for employment use?	2	3			2	0
3. When assessing the demand for employment uses is it appropriate to have a flexible approach towards the time period required for marketing a site?	1	3	1		1	1
4. If you did not agree with question 3, what would be the appropriate minimum marketing period?	Less than 3 months	3-6 months	6-9 months	9-12 months	More than 12 months	3
		2	1		1	
5. Is the form of the planning guidance clear and easy to understand and use?		5		1		1

B) Additional comments received with the questionnaire returns – with responses

No.	Representations / comments	Officer Response	Minister's Decision
Q1: Is there a need for planning guidance on the protection of employment land?			
Mourant Ozannes	Agree: Section E paragraph 5.23 of the Plan makes certain that supplementary planning guidance will be issued in relation to what is required to demonstrate that a site is no longer viable for employment use and that it has been subject to a full and proper marketing of the site for employment use. Accordingly, we agree that guidance should indeed be issued addressing and defining what is meant by the words "viable" and "full and proper" marketing.	Comments noted – however the document makes it clear that viability will be subject to an independent assessment and the requirements for full and proper marketing is detailed in appendix A.	No Change
Anonymous	Strongly Agree: The pressure for and relatively high returns of sites for housing makes residential use the default for redevelopment. Look at tourism sites - almost all lost to housing.	Comment noted – policy E1 will seek to ensure that the existing employment uses are tested for continued employment use before potentially higher value uses such as housing developments are considered, apart from tourism accommodation and office use which are exempt..	No Change
Anonymous	Strongly Agree: All land, whether under farming production or capable of use for food production or grazing and/or providing employment must be protected. The Island must look to it's food security and strongly resist the siren voices of those who would concrete over productive land. Even equine or cattle grazing land should be required to be placed into production for food as a first default option. There are already more than enough planning permits which remain uncompleted for various types of housing (1st time buyer/over 55's/catgeory B) and it ought to be a requirement that they are mostly completed or cancelled before any more workable land is given up.	Comments noted – agricultural land is further protected by Island Plan policy ERE1 in which there is a presumption against the loss of agricultural land for development or other purposes. All planning permissions are time limited and further applications are required to be made once they have expired, which may result in different decisions being arrived at, depending upon the policy regime at that time.	No Change

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Anonymous	<p>Strongly Agree: There are too many sites allowed to fall into a state of disrepair by owners, sites which were previously and CURRENTLY used for commercial/retail/employment but which the owners feel it would be more lucrative to demolish and build housing upon. There are sufficient sites earmarked for housing. There is little available for commercial and retail/light industry out of town with the facilities required. Small businesses cannot and do not want to be in St Helier where rental demands and access/parking are prohibitive. There should be protection in place, supported by the Economic Development department, to help small businesses survive and thrive. By allowing property owners to demolish viable commercial sites in favour of housing is a nonsense: it will put small businesses out of business, create higher levels of unemployment and the consequential drains on social security. The small business community is thriving and it should be encouraged. By Planning protecting employment sites this is assisting the economic development of the island. My personal experience in this relates to the Denvil site at St Peter.</p>	Comments noted, policy E1 is aimed at protecting employment sites where appropriate to do so, subject to meeting the tests laid out within it.	No Change
Anonymous	<p>Strongly Agree: An economy needs more than flats and luxury housing to be viable.</p>	Comment noted.	No Change
<p>Q2: Is it appropriate for the Minister to require an independent marketing strategy to be undertaken of the site in order to evidence the current level of demand and viability for employment use?</p>			
Mourant Ozannes	<p>Agree: We recognise that there is a benefit to the island in seeking to maximise the economic contribution of employment sites, and we note that this is a clear policy</p>	Comments noted	

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	<p>objective set out in SP5 and E1 of the Plan. We do however consider that a balance needs to be achieved between stimulating the economy with this policy and stifling it with an over zealous implementation of it.</p> <p>The two marketing strategies applicants are required to have pursued by Paragraph 5.6 of the proposed planning guidance (the Guidance) are:</p> <ul style="list-style-type: none"> - marketing the re-use of the existing site; and - marketing the redevelopment of the site for employment purposes. <p>Note: (Alphabetical listing added by the Department to make officer responses more specific)</p> <p>a) Policy SP 5 does refer to the "redevelopment of vacant and under-used existing employment land and floorspace for new employment uses" but without reference to marketing. In fact, the Plan only provides for "full and proper marketing" of the site "on terms that reflect the lawful use and condition of the premises". Paragraph 5.5 of the Guidance requires not only that the owner considers the redevelopment potential of the site, but that the site is marketed as available both for its authorised use and other suitable uses given the characteristics of the site. Paragraph 5.7 expands this further, stating that the site should be marketed as vacant and available for a "full range" of alternative employment uses.</p> <p>(b) We would suggest that it is unrealistic to</p>	<p>(a) The 2011 Island plan Policy at E1 (1), states that unless it is demonstrated that the site is inappropriate for any employment use to continue, having regard to market demand (emphasis added), therefore the guidance is entirely consistent with policy.</p> <p>b) This guidance runs alongside those reasonable</p>	<p>No Change</p>

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	<p>expect the relevant land to be marketed for the "full range" of uses, given the constraints of restrictive covenants, planning conditions and the need for planning permission. The lack of certainty involved in marketing a property for uses that may or may not be realistic in the long run would also complicate the valuation process.</p> <p>(c) The obligation in the Guidance to produce evidence that the land cannot be re-used for "mixed" employment land use prior to change of use to something other than employment land would need further qualification, particularly in light of the further guidance that a "lesser financial return" would not be a sufficient justification for the loss of employment land. A property may be capable of being split between two or more uses, but this may be completely unrealistic in terms of return for the owner and therefore impossible to fit in with the demands of the owner's business and/or its funders. It is also open to abuse in the sense that there is no limit suggested on how small the employment land use part need be.</p> <p>(d) At paragraph 5.7 and 5.16 of the Guidance it is made clear that employment uses cannot be justified on the grounds that an alternative use offers a higher financial return. We understand the rationale behind this provision and we accept that this may be reasonable where:</p> <p>- reasonable attempts have been made to</p>	<p>requirements that would be undertaken as a matter of course by any land owner or developer prior to seeking planning permission. It is best practice that when seeking the redevelopment of a site to an alternative use, whether it is an employment or alternative (such as housing) use that all potential restrictions such as the relevant planning policies or restrictive covenants are explored in order to adequately assess the realistic development opportunities. Should existing covenants be in place that prevents any specific land use taking place on a given site for example, then clearly the full marketing for alternative uses would reflect this restriction as they may not be viable options. Evidence of such covenants would have to be included in a submission.</p> <p>(c) The development of mix uses on a site can be a viable option should it be demonstrated that the site is incapable of providing full employment use. The level of mix uses will be on a site by site basis as supported by the evidence required in policy E1.</p> <p>(d) The marketing of the full range of alternative use will need to be evidenced, but clearly the uses, as suggested above, need to be viable and so where only a narrow marketing strategy has been undertaken this will need to be qualified with an independent professional view as to why this was done.</p> <p>The general presumption against loss in policy E1</p>	<p>No Change</p> <p>Amend section 6.3 (previously 5.7) of SPG to 'A lesser financial return, relative to other development or reuse options outside of</p>

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	<p>maintain the land in employment use at a suitable price;</p> <ul style="list-style-type: none"> - there is not a substantial difference between the price achievable for employment land use or part employment land use and another use; or - where there is not an urgent business need to access the value in the land. <p>However, it is surely the case that for many businesses, for example failing businesses, it may be totally financially unviable to delay the transfer of property indefinitely in order to achieve what will eventually be a lesser return. Policy E1 requires the production of "documentary evidence that the size, configuration, access arrangements or other characteristics of the site make it unsuitable and financially unviable for any employment use". It is not entirely clear to us what the difference will be to the average business of the property being "financially unviable" for employment use (and therefore capable of conversion to another use) and the property being transferrable for employment use only at a significantly "lesser financial return" (which would not be sufficient to allow the change of use).</p> <p>(e) The Plan is not clear on this point. We would submit that the Guidance may be counter productive to protect employment land (in the aim of stimulating the economy) in such a way as to cause small businesses to fail or under perform as a result of being able to extract less value from their assets than</p>	<p>allows the Minister to consider the specific circumstances of any case. It is considered important that, as a general principle, a lesser financial return for employment use, (as opposed to other non-employment use) is an important one in the context of this policy and should remain.</p> <p>However, it is noted that here will be some cases where it is legitimate for some uses that offer higher financial returns to be considered as alternative uses under the tests of policy E1. The relevant sections will be reviewed.</p> <p>(e) Policy E1 does not negate supply and demand principles and is not considered discriminatory on the basis that the guidance is simply setting out the evidence that is required to support the States approved objective of seeking to ensure, where it is appropriate to do so in the public interest, the supply of employment land in support of the local economy.</p>	<p><i>employment uses, will not normally be sufficient to justify the loss of employment land. And section 7.4 (previously 5.16) to 'Nevertheless, to reiterate, the release of an employment site for alternative, non employment uses, will not normally be justifiable on the grounds that an alternative use offers a higher financial return</i></p> <p>No Change</p>

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	<p>perhaps the levels upon which they originally planned their operations and obtained funding for their investment. These sections could perhaps be amended to state that employment uses cannot <i>necessarily</i> be justified on the grounds that an alternative use offers a higher financial return, but that each application will be considered on a case by case basis dependent on the business or individual needs of the applicant, where evidence has been produced to show that reasonable efforts have been made to retain the land for employment use.</p> <p>The Plan is silent on the issue of the price at which the land should be marketed. Paragraph 5.8 of the Guidance states that the land should be marketed: <i>"At a realistic price which reflects the employment status of the site, for a period of time appropriate to the market for the building and type of use sought"</i>.</p> <p>Appendix A to the Guidance states that: <i>"It is important the price of the property reflects the current market value of such property based on its current condition and use status. If a site requires extensive conversion/repairs then the price should be based on the unconverted state unless the works are to be undertaken prior to completion of the sale of a site"</i>.</p> <p>We would seek assurance or clarification that it is not the aim of the Guidance that properties should be marketed for the "full range" of potential uses and as "a refurbishment and/or redevelopment</p>	<p>The policy also permits flexibility and is not absolute.</p> <p>The guidance will be reviewed to make the point clearer.</p> <p>The marketing of a site at a 'realistic price' will be judged on a site by site basis, (in line with the length of the marketing period), as it is not possible to offer specific values within this guidance document, which by their very nature will be subject to change and current market conditions. It is expected that the marketing evidence will demonstrate a realistic price has been used through evidence of similar sites recently marketed and/or acquired.</p>	

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	<p>opportunity" but at a controlled price that does not reflect the potential of the property in either of these respects. This would negate the basic supply and demand principles of the free market and would be discriminatory against landowners.</p> <p>(f) Policy E1 refers to the production of "documentary evidence that the size, configuration, access arrangements or other characteristics of the site make it unsuitable and financially unviable for any employment use". There are no specific details in the Plan defining what is meant by "documentary evidence" or "full and proper marketing", both of which were intended to be dealt with in the Guidance. In both respects, we consider the obligations imposed on the applicant and the applicant's agent by the Guidance to be rather more onerous than strictly necessary. The requirement to disclose the price, any amendments to the price made during the course of marketing, the names, dates and contact details of all parties having expressed an interest (together with the right of the Minister to contact all parties having made an expression of interest), as well as the disclosure of all offers received, including details of progress, negotiations, and (where possible) the reasons for any withdrawals of interest, present significant confidentiality and data protection issues entirely inappropriate to business.</p> <p>(g) Some of the other requirements, which again are not specified by the Plan, are likely</p>	<p>(f) The plan provides a policy regime. It is the purpose of the guidance to supplement the policy regime as enabled under article 6 of the 2002 Planning and Building (Jersey) law. Article 9 of the same law enables the Minister to require the provision of information before making a decision in respect of a particular application. The purpose of this guidance is to set out the Minister's requirements in respect of developments affecting employment land, and is considered to be reasonable where a case for a change of use is being sought.</p> <p>The Minister will have regard to requests for commercial confidentiality and will have regard to the compliance requirements of the Data Protection (Jersey) law 2005 where personal data is involved.</p> <p>(g) The only time that this part of the guidance will be triggered is when existing employment uses are</p>	<p>No Change</p>

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	<p>to involve the engagement of professional advisers and therefore incur costs that may not be financially viable for the applicant at that stage of the transaction. These include the provision of details of any known restrictions, conditions or covenants on the land (necessitating legal advice at an earlier stage than usual), and the evidence required to accompany a planning application to demonstrate that refurbishment is not viable. This evidence (required by paragraph 5.21 of the Guidance) obliges the applicant to show that the costs of redevelopment of the site would exceed any likely return, but the measures are costly and in our view should not all be compulsory in every case, particularly if all of the evidence is not really necessary in order to demonstrate the case. These requirements include a full site/structural survey highlighting matters that are incapable of refurbishment, an operational survey, a breakdown of the costs of works, evidence from at least three financial institutions of the likely cost of borrowing over a "suitable" period (this would need to be clarified) given the status of the site (which is meant to be assessed for all possible uses) and the level of refurbishment needed. Each report must be prepared by a "suitably qualified professional" clearly with reference to the reports produced by the other professionals. Paragraph 5.14 of the Guidance states that a "development appraisal or residual valuation" should be obtained from a suitably qualified professional, such as a character surveyor, in</p>	<p>seeking non employment uses. In reality this will in nearly all cases be for housing development, which has a much higher value and therefore greater return for any potential land owner or developer. As already stated it is best development practice when seeking an alternative land use development opportunity that all the financial costs and benefits are explored prior to embarking upon a potentially expensive and risk based activity. Therefore the evidence for moving to an alternative use should already have been considered at the pre-application stage of any significant development. What is therefore required as evidence in this guidance should already have been considered before a planning application is made and given the potential higher development values to be gained through housing development, for example, ensuring all the professional independent evidence is in place should not be overly burdensome to a potential developer.</p>	<p>No Change</p>

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	<p>respect of "every option" (ranging from "limited refurbishment to partial or full demolition and rebuild, depending on the nature of the site"). This could be very damaging to the property market and therefore the economy generally as it will hinder and stifle the ability of the market to move quickly and responsively and operate freely.</p> <p>(h) The final requirement of paragraph 5.21, to provide an indication that the anticipated rate of return would not cover costs over a "reasonable period", would also need to be tightened up, in terms of what is deemed to be a "reasonable" period.</p> <p>(i) The requirements in Appendix A to the Guidance in respect of advertising at least once a month for an indefinite period of time in appropriate publications, trade magazines and on the agent's website and publications are also potentially too costly for a number of applicants.</p> <p>(j) Of greater concern to us however is the paragraph on "Tenure". We note that this is drafted so as not to be binding, but the statement "property owners should" is possibly intended to be binding and therefore we would suggest that this paragraph be removed from the Guidance. It is not appropriate to compel property owners to offer their sites on both a freehold and a</p>	<p>(h) This point is similar to that made concerning both the marketing period and what defines a 'realistic price (e)'. Therefore, each application will be judged on a site by site basis, as it is not possible to offer specific guidance as to what constitutes a 'reasonable period', which will be subject to the specifics of a site and/or use.</p> <p>(i) It is for the applicant to set out and justify their approach to the marketing of the site relative to the requirement of this guidance.</p> <p>(j) The comments related to 'tenure' are noted. It is not the intention of the guidance to be binding on this matter but rather outline the alternatives that should be considered.</p> <p>Again, it is for the applicant to set out and justify their approach to the marketing of the site relative to the requirement of this guidance.</p>	<p>No Change</p> <p>No Change</p> <p>No Change</p>

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	<p>leasehold basis, nor to expect them to offer flexible terms such as short leases, monthly licences and regular break clauses. The property owner should be free to make such choices acting in the best interests of its business (and shareholders in some cases) and may not be able to comply with these provisions as a result of the terms of their title deeds or facility agreements with any funder. Moreover such provisions could seriously diminish the value of the owner's land, perhaps below the level of borrowing. Flexibility of terms, such as regular break options, attract a premium from tenants on the open market, so forcing landlords to grant such valuable rights for no return is a step too far in a free market in our view.</p>		
Anonymous	<p>Agree: Yes, look at Big Deal Carpets. The developer considers that he has marketed the site (as a whole), however existing and proposed tenants want to use only part of the site. The marketing needs to be broad and consider all available options. Employment sites needs to be thought of as a finite resource, there is so little scope for creating more in the island. Flexibility required in types of employment uses that can be accommodated - each will be site dependent.</p>	Comments noted	No Change
Anonymous	<p>Strongly Agree: But this must be robust. It is quite easy to show that grazing land is "not required" by placing low key advertisements or asking completely unreasonable rents. All land can, in principle, be used for food production. Storage can be used for many purposes and landowners should required to properly show what alternatives they have</p>	Comments noted	No Change

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	first considered before applying for conversions to housing.		
Anonymous	Strongly Agree: Absolutely - my personal experience in this matter is testimony to the importance of this point. The landowner of the site where I have operated my own business from for the last 17 years has submitted to Planning that it cannot find tenants for the premises. I can prove to this to be incorrect by means of written refusals from the estate agent to prospective tenants. How many other similar situations arise where the Planning department rely on the applicant making honest submissions? If there is no one against the proposal to prove otherwise then there is no transparency. A very simple advertisement in the JEP or on the Planning web site (obviously after sufficient publicity) placed by P&E in conjunction with support from Economic Development asking for expressions of interest in a particular site would surely get the ball rolling??	Comments noted – the planning process does not solely rely upon the applicant's evidence as this can be challenged as necessary.	No Change
Anonymous	Independent reviews will avoid the Politicalisation of the issue	Comments noted	No Change
Q3: When assessing the demand for employment uses is it appropriate to have a flexible approach towards the time period required for marketing a site?			
Mourant Ozannes	Disagree: The lack of a defined period for the "full and proper marketing" of these sites is in our view problematic, and could lead to lengthy and costly disputes, particularly if the final form of this Guidance incorporates such extensive marketing strategies. Some form of certainty, or at least maximum periods, should be prescribed, as these may be fundamental to the land owner's business needs, including for example meeting any funder requirements.	The general view from the consultation with industry and in general is that a flexible approach should be followed. No appropriate maximum periods have been proposed by the respondent.	No Change

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Anonymous	Depends on the case and circumstances. We are currently in a recession and it could be argued that there is little/no demand for employment uses - however when the economy picks up, if employment sites have been allowed to change to other (residential) uses then the island has lost this resource. Timescale needs to be realistic, robust and stand up to scrutiny. If a minimum period had to be picked then 6 months (minimum) is suggested. If an applicant is organised and well advised this is not unrealistic and could be accommodated into decision-making process.	Comments noted.	No Change
Anonymous	Strongly Agree: Wholeheartedly in favour of this point. Very often word of mouth travels faster than any other form of advertising and when it becomes known that a landowner wishes to sell a site, with planning permission, there is often a buyer/developer waiting in the wings for that permit to come through before snapping up the site. Again, it would be easy for a landowner to claim little or no demand for the site by insufficient, untimely or unappealing advertising for an insufficient period or at an inappropriate time, and then simply refusing potential tenants who may apply. I believe there ought to be documented proof of advertising methods used, together with details of applications received so that the Planning officer can review the interest independently.	Comments noted	No Change
Q4: If you did not agree with question 3, what would be the appropriate minimum marketing period?			
Anonymous	3-6 months: We would suggest a review of comparable policies in other jurisdictions but if forced to make a suggestion, an appropriate	Comments noted	No Change

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	period might be 3-6 months, with exemptions or extensions available in certain circumstances considered on a case by case basis, with a right to request an appeal/reconsideration.		
Anonymous	6-9 months: see answer to Q3	Comments noted	No Change
Anonymous	More than 12 months: Depending on the size of the site and the previous use/potential uses. Again, I only have my personal first hand experience to relate to and with this in mind, the Devil site at St Peter, whilst let to one main retailer in the past, does lend itself to multi uses but this is not being explored by the owner, despite several interested parties having made approaches and applications in writing, all of which have been ignored or refused. I believe it is the duty of the Planning department and Economic Development to take any step to discourage and prevent a similar course of action being allowed to continue and to be satisfied that all avenues have been explored prior to allowing the loss of employment sites.	Comments noted	No Change
Q5: Is the form of the planning guidance clear and easy to understand and use?			
Mourant Ozannes	Disagree: The guidance could, in our view, benefit from simplification into various separate sheets with basic charts showing the various obligations of the applicant in each case (once in final form). Some sections repeat others, or deal with the same points as another, but are worded slightly differently, which could cause confusion.	The document needs to be comprehensive and separating elements that are co-dependent may not be helpful. The document has been reviewed and some minor setting changes and amendments have been made in order to improve form and clarity of the guidance document.	Minor changes made to improve clarity and layout
Q6: Please indicate any additional information that you think is needed that is not in the guidance document.			
Mourant Ozannes	The exemption available on grounds of the "overall benefit to the community" could benefit from further guidance showing what	Comments noted. However, the definition of community benefit is too wide to be adequately set out within the guidance document and applications	No Change

No.	Representations / comments	Officer Response	Minister's Decision
	this means and how it could be satisfied. The use of defined terms, as in legal documents, could be very useful as there are a number of terms that could be defined for greater clarity. The use of the words "reasonable" or "suitable" period (without declaring in who's view or judged by which criteria), should be avoided and tightened up where possible.	where a community benefit is being put forward will be considered on a site/case by site/case basis.	
Anonymous	If the Panel/minister decide to make a decision that is contrary to the policy then clear reasons will be given to explain why.	Comments noted – this is a general procedural issue related to planning decisions.	No Change
Anonymous	I think you have it about right but a shift in emphasis is needed as at present the default mindset is "housing" when it should really be "employment/food security" and I welcome this long overdue review of this important subject.	Comments noted	No Change

C) General comments made by consultees – with responses

Rep No.	Representations / comments	Officer Response	Minister's Decision
Alan Miller			
EL1	<p>Initial reaction is that this Policy is likely to be at odds with other policies (ie;- in the case of Gros Puits the removal of an obvious 'bad neighbour' in the wrong location)---Gros Puits is not a loss but a relocation proposal which would most likely lead to greater employment opportunities not less---and then lead on to the provision of housing, which would not just present more homes, but also finance and support the relocation and construction of fully compliant modern recycling facilities elsewhere in order to meet the States own stated WM policies and requirements. I've re-examined the E1 and SP5 statements and find they're quite general, and specific circumstances (and GP is a good example) would need to be taken into account. We've not been allowed to extend GP which is also a reason for the proposed relocation and I feel it would be doubtful if P+E would allow a different user to occupy the sheds we're trying to remove--- which (if ever approved) in turn would not provide the funding for the 'lock stock and barrel' move elsewhere.</p>	<p>It is inappropriate to consider specific sites as part of this consultation on the draft employment land SPG, however, in general terms, the policy allows for bad neighbour uses to be re-located or even replaced with uses that are deemed to be more acceptable, subject to meeting the criteria of other policies in the plan, most notably the spatial strategy.</p> <p>If a scheme can demonstrate that the existing employment use can be replaced or even increased elsewhere, again subject to meeting the criteria of other policies in the plan, most notably the spatial strategy, then this would be a material consideration in the decision process and may not be in conflict with policy E1.</p>	No Change
Mike Waddington			
EL2	<p>I am concerned that this policy will be too onerous and restrictive on development in St Helier. Towns and cities grow largely through economic endeavours not regulatory ones, unless on masterplan or government tax-break initiative scales.</p> <p>This policy seems to tinker with market forces on one hand, yet offer very little joined-up government assistance with the other.</p>	<p>Employment land is a finite resource and it is right that it should be protected. The policy only relates to employment uses moving to other non employment uses (with the exception of offices and tourist accommodation) and has built in tests to consider alternative uses, such as housing.</p> <p>The re-generation of the town is an important objective of the Island Plan and will be the catalyst for positive and sustainable developments that will meet many of the policy objectives in the Island plan, including policy E1.</p>	No Change
EL3	I disagree strongly that the applicant should be responsible	Evidence from the applicant is explicitly required in order	No

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	<p>for 'proving his case' in relation to whether employment land is still viable.</p> <p>My understanding is that the Planning Law should seek to presume in favour of development, subject to policy fit, yet often we experience the exact opposite.</p>	<p>to assess an application against the criteria set out in the policy. This is no different to other policies in the plan.</p> <p>Under the 2002 Planning and Building (Jersey) law, the Island plan is the primary consideration and any departure from it should be officially justified and remains open to challenge.</p>	Change
EL4	<p>The process proposed in this paper will slow down the whole planning and development process down even more. It is already currently far too slow, but this initiative will add to the burden and stifle regeneration. This contradicts the Island Plan 2011 aspirations to concentrate development, and in particular residential development, in St Helier.</p>	<p>It is recommended that in order to minimise any potential delays in assessing applications all relevant SPG documents are considered by the applicant and, where appropriate, pre-application advice is sought to ensure that when schemes are submitted they have all of the required information elements.</p> <p>Applications that do not have the appropriate information will inevitably be delayed.</p>	No Change
EL5	<p>The States should be looking to speed up this whole process and make it more reliable, not slow it down. in short, in these tough economic times in particular the States should be seeking to encourage developments in St Helier, but I believe the impact of this policy will do the exact opposite.</p>	<p>The policy was approved by the States of Jersey to protect the existing supply of employment land, and this SPG seeks to clearly outline the required evidence basis in order to demonstrate that alternative uses should be considered. Where there is proven evidence that it is no longer appropriate to retain an employment site for employment uses then alternative can be considered. Developments wishing to go from office or tourism accommodation use or existing employment sites wishing to change to an alternative employment use, will not be subject to this policy.</p>	No Change
EL6	<p>in particular derelict sites it seems to me should carry more of a presumption in favour of a change of use- in fact, I believe that if they are derelict they are not employing people and therefore their use has actually changed anyway.</p>	<p>Derelict employment sites may still have a viable employment use and this should be explored before an alternative use such as housing is considered.</p>	No Change
EL7	<p>This policy will I believe kill-off the 'windfall' housing sites in St Helier, as well as significantly encumbering the aspirations of the North of Town Masterplan.</p>	<p>Many of the significant sites identified in the town capacity study were either outworn office or hotel sites, which are exempt from policy E1. The policy still allows</p>	No Change

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		for other employment uses to be developed into non employment uses, such as housing, subject to the various tests.	
EL8	<p>I fully accept the validity of ensuring an adequate supply of employment land and sites, but this policy seems short sighted. Other initiatives might be considered, eg:</p> <p>(a) Master planning La Collette or re-zoning low grade land elsewhere (possibly out of town?) to create a proper B1 Light Industrial / Business Park.</p> <p>(b) Using States-owned sites for this purpose. The current thinking seems to be dominated by affordable homes.</p> <p>(c) Encouraging live-work units, by way of tax-breaks and planning-breaks. Working from home has many advantages, and i wonder if States research has defined the future trend in terms of likely numbers?</p> <p>(d) What encouragement does the North of Town Masterplan give to developers to include live-work units?</p> <p>(e) Could there be a planning initiative to encourage ground floor workplace units/small offices etc. in lieu of shops in areas of town where retail is struggling, like La Colomberie? Clearly the loss of retail vitality would need to be assessed, and this could be done in conjunction with the Town Centre Manager as he has footfall statistics for most areas.</p>	<p>Comments noted, specifically with regards to;</p> <p>(a) The master planning of both the harbour and airport land is being undertaken as part of the 2011 Island plan proposals 12 &13 and this may yield some additional employment based land uses.</p> <p>(b) Some States owned land will generate employment land uses (see (a)). Affordable housing is another important land use requirement identified and it is appropriate for States owned land to provide some of this need.</p> <p>(c) This is an area that has some merit, although some of this falls outside of the remits of the planning department. Applications for a live-work use can be considered under the existing policy regime (policy EO4): Businesses run from Home) and could form part of the evidence base for a mixed use site as identified in policy E1.</p> <p>(d) The North of town master plan encourages this but, as all land use, will be subject to the prevailing market demand for such units.</p> <p>(e) The current policy regime would allow for such uses within the office other small scale office development (policy EO3) and so in the case of la Colomberie office uses at ground floor may be appropriate.</p>	No Change
Peter Thorne			
EL9	The supplementary guidance, in my view, seeks to extend the	The Department is of the view that the SPG is legally	No

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	<p>scope and definition of “employment land” in Strategic Policy 5 and Policy E1 which, literally, is land on which employment occurs. For the policy to apply to an application, that is the only criterion – somebody must be employed at the premises. If that criterion cannot be met, the policy is irrelevant, and if applied would be <i>ultra vires</i>. Section 5 of the guidance refers to “employment-related activities” (whatever that means) and generally seeks to extend the meaning of Employment land. In short, the policy is constrained by the definition in E1, and cannot be extended in its scope by SPG. Remember the legal problems we had with the Enabling Development Policy under the Rural Economic Strategy.</p>	<p>compliant with the 2002 Planning and Building (Jersey) law.</p> <p>Although it is ultimately a matter for the court to adjudicate, the Department considers that the draft guidance does not intend to extend the application of policy E1 and SP5 of the Island Plan. In other words, the position of the draft Employment Land Guidance deals with how the policy is operated under policy E1 rather than devising a further exception test. The guidance is therefore what an applicant is required to do in order to overcome the presumption against the loss of land for employment within the express terms of policy E1.</p> <p>With regards to Mr. Thorne’s view that the words “<i>existing employment land</i>” mean that the land has to be in actual use at the time of a planning application, the Department considers that this is far too narrow a view and that the plain reading of policy SP5 does not support this. Paragraph 2 refers to vacant and underused existing employment land. Taking the first scenario, a vacant site means that there will be no one employed on the site at present, however if a factory were to close for example, does that mean that it ceases to be a factory because there is nobody working there the day after it closes? This is not the intention or purposes of the policy, which is further supported in terms of paragraph 3 because the Strategic Policy requires the provision of sufficient land and development opportunities for new and existing employment use.</p> <p>Further support for this view can be found in the wording of policy E1, which does not refer to the expression employment land but rather opens with the sentence..”<i>There will be a presumption against the</i></p>	Change

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		<p><i>development which results in the loss of land for employment use....</i>" It is therefore the Department's view that this terminology sits comfortably with the purpose and intention of the policy to ensure that competing interests in favour of land being available for employment purposes, is not then undermined by a narrow construction.</p> <p>The legal issues related to the earlier guidance on enabling development were about consistency with the 2002 Island plan and are not considered relevant or applicable in the case of this guidance, which is entirely consistent with the 2011 Island Plan, as set out above.</p>	
EL10	<p>I consider that the SPG is wanting in so far as it does not explain how the land use priorities for housing development and creating employment will be assessed on a site-by-site basis. Paragraph 5.4, ironically, refers to the provision of new homes, but the rest of the document seeks to prevent them being created! I am aware of housing developments that are being kicked-back because of Policy E1, even on sites where there is no employment and the policy does not apply, when far more employment will be retained in the development companies than will ever be created by Policy E1.</p>	<p>The guidance document is specifically aimed at providing additional information on employment land related applications.</p> <p>Employment land is a finite resource and the States have determined that it should be protected. Sufficient housing development land has been identified in the Island plan and it is not expected to compete with land for employment purposes.</p>	No Change
EL11	<p>The corollary of this is that if employment land is retained as employment land, and the way the SPG is worded that is the intention, at any cost, then the Island will never achieve the housing targets in the Island Plan. How many sites in the Town Capacity Survey will no longer be available for housing, because of Policy E1? Probably most of them! There needs to be a better mechanism for deciding which employment sites are suitable for housing use.</p>	<p>Many of the significant sites identified in the town capacity study were either outworn office or hotel sites, which are exempt from policy E1. The policy allows for other employment uses to be developed into non employment uses, such as housing, subject to the various tests set out in the policy as detailed in the guidance.</p>	No Change
EL12	<p>I am aware that the Department itself is proposing housing development on employment sites (eg. Summerland and the Ambulance Station) in the recently launched draft SPG. This is inequitable, and discriminates against the private sector. If</p>	<p>Policy E1 still applies to States owned sites and will be subject to the same tests. Any release of employment land for development to other purposes will require appropriate justification relative to the requirements of</p>	No Change

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	the States can build homes on employment land, then so should everybody else.	the policy. This is addressed in the draft development briefs.	
EL12	I consider that Section 6 will prevent sites being used for any beneficial use as the market tests are too onerous. There is no way of 'getting over the bar' the way it is written.	The marketing is just one of the tests and is there to be fair and equitable in order to ensure that sites are truly unviable and no longer required for an employment use.	No Change
EL13	Finally, even if the policy is adopted as drafted, I will be surprised if there will be a sufficient number of takers for the employment premises retained in that use.	This is part of the evidence base and if sites are genuinely unviable for employment use then alternatives uses can be considered.	No Change
Environment Scrutiny Panel			
EL14	..we have very significant doubts about the desirability and workability of the proposed arrangements. We asked the Planning Officers to confirm that legal advice had been taken from the States Law Officers as to whether policy E1 of the Island Plan fell within article 2 of the Planning Law, i.e. its purposes. We regard this as a fundamental question, because the draft SPG goes very much further than the policy that it is designed to enforce.	<p>the Department is of the view that the SPG is legally compliant with article 2 of the 2002 Planning and Building (Jersey) law.</p> <p>The draft Employment Land Guidance deals with how the policy is operated under Policy E1 rather than devising a further exception test. Although it is ultimately a matter for the court to adjudicate, the Department is of the view that the draft guidance does not intend to extend the application of policy E1 and SP5 of the Island Plan. The guidance sets out what an applicant is required to do in order to overcome the presumption against the loss of land for employment within the express terms of policy E1.</p>	No Change
EL15	The SPG is also highly discriminatory, identifying 2 favoured uses, i.e. tourism and office accommodation, being exempted for very sensible reasons. The Panel would require evidence that there are no equally valid reasons for exceptions to the policy amongst the 11 heads of industry listed at item 4.1.	<p>Island Plan Policy E1 is rightly concerned about protecting all forms of employment use as it is seeking to support strategic Policy SP5, in which it is recognised that the Island needs to grow a diverse economy.</p> <p>It is evidenced in the supporting text of the 2011 Island plan that some developments can accommodate particularly high value types of employment, for example, the finance industry can provide relatively high returns from within a small footprint. Other sectors of the economy, such as the service sector, tourism, retail, agriculture and creative industries are equally important</p>	No Change

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		<p>to the economy and can also contribute to other aspects of the quality of Island life such as a relatively greater level of access to community benefits and services or in the case of agriculture, the quality and character of the Island's countryside.</p> <p>These sectors all contribute to improving the range and quality of employment for Jersey residents and workers. Safeguarding physical opportunities for developments which can accommodate such employment opportunities can provide economic, social and environmental benefits and contribute to sustainable development aims.</p> <p>Originally the Policy E1 included all forms of employment use, but the two exemptions were made following a full consultation process on both the Green paper and the White Paper, which also was the subject to two public enquiries carried out by independent planning inspectors. The inspectors and other key stakeholders, such as the States of Jersey Economic Development Department, have fully endorsed the policy as set out in the 2011 Island Plan.</p>	
EL16	Agriculture, horticulture and fishing employ many temporary seasonal workers. Is it right that the same level of protection should apply to what is transient activity?	<p>If the panel are concerned about the use of agricultural land, then this is protected under a separate Policy ERE1, safeguarding agricultural land. Equally Island Plan Policy ERE8, Fishing and fish farming, endeavours to safeguard marine and land resources forming the basis of fishing and fish farming industries.</p> <p>With regards to agricultural buildings, which in many cases are located in sensitive green field sites, these are only often only granted permission because of their importance to the rural economy. Once these buildings are no longer needed by the business it is right that they</p>	No Change

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		should sought to be retained within employment use, unless they can demonstrate an alternative non employment use is the only viable option. However, proposals to redevelop or convert such sites for alternative uses such as housing are likely to be problematic because of their sensitive location and they raise the price of such sites beyond the means of businesses and also because the Plan makes adequate provision of land for residential development elsewhere.	
EL17	The inclusion of disaster recovery facilities seems nonsensical, since these mostly occupy and have displaced the very light industrial premises which this policy is designed to protect	The policy is concerned about all forms of employment use as it is seeking to support strategic policy SP5, in which it is recognised that the Island needs to grow a diverse economy.	No Change
EL18	Public administration should also surely be excluded, otherwise this would prevent modernisation of public sector services	In most instances public administration will be regarded as office use and so will be exempt from policy E1. The potential re-development of other public employment land will be considered within the context of policy E1	Amend section 4 to delete specific reference to Public Administration
EL19	Why should food, drink, leisure and other tourism-related businesses be included, where tourist accommodation is excluded?	<p>The policy is concerned about all forms of employment use as it is seeking to support strategic policy SP5, in which it is recognised that the Island needs to grow a diverse economy.</p> <p>The policy does not prohibit the change of use of such premises but rather sets out a series of tests against which proposals to do so should be assessed.</p>	No Change
EL20	Retail - are we really saying that failed retail shops should be prevented from changing use?	The policy does not apply to retail units seeking to change to any other form of employment based uses. If a non employment use is being sought then evidence will be required to demonstrate that it is no longer viable for that or an alternative employment use, and of course meets other policies within the Island Plan.	No Change

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EL21	The policy reminds members of the Panel of the failed policy preventing the change of use of tourist accommodation several years ago, which failed for legal reasons, and the Panel is not convinced of its benefits. On the contrary, we consider that it may lead to unintended adverse effects and be potentially counter-productive.	The prime sites policy, to which the panel refers, was an attempt by the then Planning Committee to protect a specific employment use from alternatives uses, namely prime site hotels. Policy E1 is somewhat different in that it sets out a presumption in favour of the retention of land within employment use generally (but this allows change of use where tests can be met) rather than imposing an absolute requirement that a particular use be maintained.	No Change
EL22	We have real concerns over the requirement to advertise redundant premises as available for other employment uses at "a realistic price". Who is to say what a realistic price is? We query whether this is legally enforceable. The detailed information required of the applicant seems excessive and unreasonable considering its commercial nature, and its disclosure may lead to data protection problems.	This information will need to be provided by professional valuers and is something that they carry out as part of their standard service to clients already through the marketing of sites. The Department will need to rely on the professional integrity in order to assess the evidence and can refer this to an independent party if it is felt that the evidence is not robust. Where commercial information is required, the department will deal with this in a sensitive and careful manner in consultation with the applicant. With regard to personal data the Minister will, of course, have regard to the need for compliance with the Data protection (Jersey) law 2005.	No Change
EL23	In conclusion, we regret having to be so negative, but we believe that the SPG should be subject to a thorough re-think once the legal advice has been received. We strongly suggest that economic advice be taken before this level of intervention is contemplated, as to whether these measures will encourage or discourage new and existing enterprises.	The policy has been fully supported by the States of Jersey Economic Development Department, who see that the protection of employment land is important to the growth and diversification of the economy of Jersey, as outlined by the States of Jersey Strategic Plan.	No Change
EL24	On a more positive note, we would recommend introducing greater flexibility in enabling changes of use of industrial premises, to facilitate a quick response to market changes, and the Panel supports measures to increase the availability of modern light industrial premises in the Island.	The previous Minister has signed a ministerial decision that allows all existing light industrial sites to be able to extend 5% of their floor area without the need for planning permission. The panel's support for further light industrial land is noted, a need which has been identified in the 2011 Island Plan.	No Change

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Jersey Chamber of Commerce			
EL25	<p>This policy does not address itself to the fundamental problems of industrial land provision on the Island and attempts to retain land within the use class, whether or not the site is still suitable and viable for industrial use.</p> <p>The danger of the proposal is that it applies a blanket protection of employment land and ignores the contribution of the current stock and the current requirements of users. Retaining in use land and buildings that are no longer suitable in type or location.</p>	<p>Comments noted on the proposed provision of industrial land, however given the potential to unlock more industrial land supply through the master planning of the airport and harbour areas, sufficient new land is expected to become available. This position will be subject to ongoing monitoring.</p> <p>The policy does not impose absolute protection but sets out a general presumption against the loss of employment land and a series of tests against which proposals to change their use can be assessed.</p>	No Change
EL26	<p>The majority of the existing stock within the island is of poor quality as most units are old converted farm buildings situated in locations away from the commercial capital and notably lacking in vehicular access or parking. The policy will inhibit the recycling of such units.</p> <p>The changing economic conditions resulting from the "Credit Crunch" in late 2008 have caused the market to weaken and the level of requirements has fallen. It has been estimated that there are currently unsatisfied requirements for approximately 50,000 sq.ft to 75,000 sq.ft of accommodation. However the recent restrictions imposed on the fulfilment industry may release a quantity of better quality stock on to the market. The policy, as proposed, will prevent an orderly market adjustment. Ideally the poorer quality peripheral stock should be released for other uses and the better quality stock capable of subdivision take up the slack.</p>	<p>One of the issues with employment sites is that there is a lack of starter units. Older stock provides some of this supply.</p> <p>Sites which can demonstrate that they are not able to provide adequate services, in poor condition or generally unviable can be considered for alternative uses under the tests outlined in this policy.</p> <p>The marketing of a site will reflect the prevailing market conditions and therefore allow for older stock to be replaced with either new stock or alternative uses.</p>	No Change
EL27	<p>In summary: in the light of the current imbalance in the market, exacerbated by the uncertainty of the future of the fulfilment industry, introducing such a set of stringent tests before considering alternative uses will inhibit a natural realignment of supply and demand and frustrate the release of poorly located and laid out stock for more beneficial alternative uses.</p>	<p>The policy allows for the re-development of sites which can evidence that they no longer have any viability, either through their location, condition or overall demand. Employment sites are a finite resource and it is not sustainable in the long term to allow green field sites, for example to be developed in order to fulfil future demand.</p>	No Change

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Jersey Construction Council			
EL28	<p>It is felt that the recent UK government's decision on low value consignment relief, and the subsequent loss of the court case trying to overturn that decision, will have a substantial effect on the number of companies being based in Jersey operating in that field, with the knock on effect of empty commercial buildings seeking new tenants. In the current market place we believe that these premises will be difficult to fill, certainly at the same value per square foot.</p> <p>The approach of the Policy E1 is based on a presumption against development rather than being based upon the planning merits of each application. The reason for having a planning system is to assess the merits and not to automatically make a presumption against.</p> <p>Additionally, the proposed policy is a blanket "one size fits all" approach that would be better handled by a common sense approach in the planning process, where the individual sites can be determined upon their individual merits. Some sites, because of location, may well be better in the housing market (where we all know a proven need exists), other sites may need considerable reinvestment to update the premises to the standards that the new market place tenants expect, and this may not be a viable option for many reasons e.g. size, access, parking etc. The policy does not give consideration to mixed use sites where residential may already exist on a commercial site and in those circumstances it may not always be possible or preferable to use the existing commercial site for any use due to the close proximity of residential sites. To suggest that landowners should be prepared to release the commercial units on flexible terms, such as short leases, monthly licenses and regular break clauses in preference to a change of use on the site is not viable and is impractical.</p>	<p>The policy allows for the re-development of sites which can evidence that they no longer have any viability, either through their location, condition or overall demand, including warehouses that may become vacant from the fulfilment industry.</p> <p>Employment land is a finite resource and it is right that it should be protected. The policy only relates to employment uses moving to other non employment uses (with the exception of offices and tourist accommodation) and allows for other employment uses to be developed into non employment uses, such as for housing, subject to the various tests set out in the policy detailed in the guidance.</p> <p>If evidence can be provided that sites are genuinely unviable for employment use, because of the reasons outlined, then alternatives uses can be considered through Policy E1.</p>	
EL29	It must be remembered that at one time a policy existed in the	The prime sites policy, to which the Council refers, was	

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	<p>tourism sector that precluded the change of use of that sectors' properties, this policy was a total failure, and was eventually scrapped, as the properties neither attracted the modern cliental, or buyers who could viably convert them to modern standards in the tourism sector, the end result being a continual decaying of the buildings.</p>	<p>an attempt by the then Planning Committee to protect a specific employment use from alternatives uses, namely prime site hotels. Policy E1 is somewhat different in that it sets out a presumption in favour of the retention of land within employment use generally (but this allows change of use where tests can be met) rather than imposing an absolute requirement that a particular use be maintained.</p>	
EL30	<p>Another reason we believe this policy should not be implemented, is the pending discussion on the H3 Affordable housing policy. If this policy was implemented by the States (against the current advice of all the experts in Jerseys' housing market), then a period of time to see if the policy works would be necessary. If it was proved not to be working, then alternative provisions would need to be made to build the housing that the market requires. This may not be easy, particularly if the "employment land" policy is in place, further creating a hurdle in finding sites. A prime example of this would be glasshouse sites, as it is assumed that these sites would be incorporated into the new policy, as there seem to be very few sectors that are not encompassed into the "Employment Land" policy.</p> <p>Overall, we believe this policy seeks to introduce further rules and regulations into our society, at a time when the general public wishes to see less regulation! We believe the timing is totally wrong, in view of the affect to the commercial sector from the low value consignment relief court case. This landmark decision needs time to "play out" in its effect on the commercial sector, as it may well be the single factor that brings balance back into the market place? If not, there is always the option to reinstate the originally proposed commercial/industrial area around the "regal" site on the St John/St Lawrence border. This was withdrawn from the</p>	<p>Sufficient housing development land has been identified in the Island plan and it is not expected to compete with land for employment purposes. Policy H3 is currently subject to consultation and requires endorsement by the States of Jersey before it is adopted. Policy ERE 7 (derelict and redundant glasshouses) is a test based policy that in the first instance seeks to retain glasshouse use or restore the land back into agricultural use. It is only in very exceptional circumstances that housing development would be considered, and then only at the minimum level required for improving the character of the area by removing outworn and derelict glass.</p> <p>The removal of the Thistlegrove site from the approved Island Plan was based upon the evidence that other sites, such as the redevelopment of the harbour and airport areas would provide additional supply of employment sites over the Plan period. It was also recognised that this future supply together with the retention of the existing stock, as supported by policy E1, is vital in being able to satisfy current and future demand.</p>	

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	recent Island Plan, without explanation, or was it because there was no requirement for any additional commercial sites?		
EL31	<p>It is noted that the onus is on the owner of any "Employment Land" sites to prove that they are no longer viable, with the hurdles and cost of doing so being placed upon the owner. We believe that the onus should be the other way around, and the States should prove to the public that there is a need for this policy, because we doubt the need for this policy at all, and certainly not in the next 5 years, for the reasons stated above. However, should this situation remain the vigorous marketing campaign that would be required to demonstrate that the site is not required for employment would have to be time limited. The policy as currently drafted leaves the marketing campaign unlimited and consequently could result in the process for a planning application to be considered is never actually completed. Additionally, it is considered to be totally unacceptable to require a landowner to provide full financial details of any commercial offers made for a site and to submit full development appraisals and residual valuations for each alternative use on the site. The policy should be a planning driven document and not a financial one.</p>	<p>The plan provides a policy regime. It is the purpose of the guidance to supplement the policy regime as enabled under article 6 of the 2002 Planning and Building (Jersey) law. Article 9 of the same law enables the Minister to require the provision of information before making a decision in respect of a particular application. The purpose of this guidance is to set out the Minister's requirements in respect of developments affecting employment land, and is considered to be reasonable where a case for a change of use is being sought.</p> <p>It is anticipated that the length of the marketing strategy undertaken will be different for each site, however providing a minimum period is not a practical or very flexible approach. The marketing period will therefore need to be appropriate for each individual case, based upon evidence from a qualified independent professional that can be tested as part of the overall evidence base submitted with the planning application.</p> <p>The Minister will have regard to requests for commercial confidentiality and will have regard to the compliance requirements of the Data Protection (Jersey) law 2005 where personal data is involved.</p>	