



FINAL REPORT

States of Jersey

Shaping the Jersey planning system for the future

31 December 2013

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Introduction

POS Enterprises (POSe), the operational arm of the Planning Officers Society, was appointed to provide a team to visit the States of Jersey to do the following:

- take a forward look at how the planning service might develop over the next three years, to assist in focusing resources and efforts;
- consider how plan making for the Island might develop, in the light of relevant experience within the UK planning systems;
- make an independent assessment of how the Island's planning system effectively balances environmental protection, heritage and the social needs of the Island against the need to see sustained economic performance and in the light of the Island's long term strategic aims;
- review delivery of the recommendations of past reviews to identify any outstanding recommendations which might be seen as priorities in the context of the ideas for future development of the service.

The review is entirely independent and no member of the team has any personal involvement with the Island or the States of Jersey.

Throughout the process all members of staff have been helpful, open and constructive in their comments and the team wishes to highlight and thank them for their positive attitude to the entire process.

Executive summary

The programme of interviews and research for this review has been extensive. The POSe team visited the Island on three occasions and undertook background reading and research as well as reviewing a significant number of case files.

It is clear that there has been a great deal of positive activity and improvement since the original POSe review team visited the Island in 2010. Both the department and politicians are to be congratulated on the progress that has been made in improving the development control service.

The recommendations provided at the end of each section of the report have been made with the aim of identifying where further improvements can continue to enhance and streamline the service.

Section 3 of this report relates to the plan making system in Jersey and highlights the need for a stronger connection with the priorities of the Island's agreed strategic aims as well as the advantages of more and earlier engagement by the public during the plan making process to help shape proposals for the future. It identifies the benefits of all States members being more closely involved at an earlier stage in the process leading to a greater sense of "ownership" of the Island Plan throughout the process of its preparation.

Section 4 considers whether the balance struck between heritage, environmental protection, and economic development is the correct one when compared to the Island's strategic aims. Following a review of recent cases and interviews with many stakeholders this report concludes that balance of decision making is broadly appropriate. However, going forward, officer reports on planning applications should more explicitly outline how conflicting policies need to be interpreted and should express a clear position on where the balance of conflicting interests lies.

Section 3 argues that the next Island Plan, masterplans and all significant development briefs should take account of the financial viability of development and Section 4 also highlights that the principle of independent or open book development costs and valuation needs to be extended into discussions with developers and the planning department about marginal viability of proposed developments, with evidence available to demonstrate any arguments being put.

Section 4 also identifies the importance of completing the process of listed building intention notification and final listing as soon as possible and no later than the end of 2014. It urges that additional temporary resource should be provided to manage and complete the administration of the Ministerial decisions on listing to meet this target.

Section 5 considers the changing role of politicians within the decision making process. In the previous reviews there were many comments and recommendations about the ways in which these roles needed to change. Now, there is not only an agreed Ministerial Protocol but Ministerial intervention has significantly reduced in the period since 2010.

In 2013, the States accepted the introduction of an independent planning merits based appeals system which is currently being formalised by the States lawyers and this will see a further reduction in the opportunities for direct Ministerial involvement and any Minister will be unable to get involved in applications ahead of receiving an independent Inspector's report. Section 5 concludes that this will increase the importance and responsibility of the Planning Applications Panel's role as the main political level of planning decision making.

The review of previous planning improvement reports discussed in Sections 6 and 7 has highlighted significant areas of the planning decision making process where substantial changes have taken place over the last eight years. Some of the earlier proposals have been overtaken by time but there are other areas where it is clear that a great deal of work has been undertaken by the development control team to improve the service that is now being provided.

As well as the changes, referred to above, relating to the role of politicians and the new appeals system the department has also introduced a completely new integrated IT system with efficient web based access to all application information and has made significant progress towards the provision of a pre application advice service which has been very well received by applicants and agents.

However, in the original 2010 PIP review it was emphasised that the recommendations would only provide a significant change in levels of performance if they were introduced as a whole package. Although many of the original recommendations have been put in place, it is

clear there are still issues around resources and management that will not be resolved unless there has been a comprehensive review of permitted development and other internal resources (eg. standard conditions) have been streamlined. These issues will become more pronounced when the economy picks up and the pressures for development increase.

1. Background and terms of reference

- 1.1 The legal basis for the planning system in the States of Jersey will be 50 years old in 2014. As part of the drive to develop and improve the system some reviews of the service have previously been initiated, with a focus on the efficiency of the development control element of the service and the way in which decisions are made.
- 1.2 The planning department wishes to take a forward look at how the planning service might develop over the next three years, to assist in focusing resources and efforts.
- 1.3 The Planning Officers Society has been asked to carry out an appraisal of how the service might develop, through the Society's delivery arm, POS Enterprises. The appraisal has been informed, where relevant, by experience within the UK planning systems.
- 1.4 The department also wishes to have an independent assessment of how the Island's planning system effectively balances environmental protection, heritage and the social needs of the Island against the need to see sustained economic performance and in the light of the Island's long term strategic aims.
- 1.5 At the same time it is timely to review delivery of the recommendations of past reviews to identify any outstanding recommendations which might be seen as priorities in the context of the ideas for future development of the service.
- 1.6 Three past reviews were identified for examination:
 - The Shepley Review of 2005 – which was intended to guide planning and building functions at the advent of Ministerial Government;
 - The POS Enterprises Process Improvement Programme (PIP) review of the development control service in 2010 – which was commissioned in response to a Committee of Inquiry held earlier that year focusing on a specific high profile planning enforcement case;
 - The Reg's Skips Committee of Inquiry Report 2 of 2011 – which endorsed the improvements proposed by the PIP review and made additional recommendations about elements of the service and its operational relationship with other States departments.
- 1.7 The review is to assess the Department's delivery of the previous reports' recommendations and also consider the following:
 - Whether further changes are required in areas of pre-application work and development management
 - Whether permitted development rights should be extended further
 - Whether further changes will be required in the light of the introduction of the agreed independent planning appeals system
- 1.8 POS Enterprises has been able to use the same consultants who previously carried out the PIP review and are therefore already familiar with the Island planning system and its particular circumstances. In addition, the POS Enterprises team has drawn on the services of a specialist in the current English local planning system.

2. Method

2.1 The team of three consultants visited St Helier on 29-31 October to meet with the Chief Executive Officer, agree arrangements for longer visits and to undertake some initial interviews with key members of the planning team and with the Minister. In addition the team collected a significant amount of background documentation relating to the recent operation of the planning system in Jersey, the current staffing structure and the processes in place.

2.2 The POSe team returned to St Helier on two further occasions between 11-15 November 2013 and 2-6 December 2013.

2.3 The review has been undertaken using five main methods:

Observation

2.4 The consultants observed a regular monthly meeting of the Planning Applications Panel (14 November) and a monthly Ministerial Hearing (6 December) to ensure a clear picture of the public decision-making process was gained.

Interviews

2.5 The POSe team conducted interviews with the Planning and Environment Minister, Robert Duhamel and the Chair of the Planning Applications Panel, Deputy Sean Power as well as members of the States Scrutiny Panel. Members of the department staff were interviewed during the visit and three discussion groups/workshops were held with groups of development control and policy team staff.

2.6 The team met representatives of the Economic Development, Housing and Environmental Protection departments (including the Minister for Housing) as well as one of the States' legal team assigned to planning matters. Interviews were also conducted with agents regularly using the planning system, heritage interests and other interested parties.

2.7 A full list of those interviewed is contained at Annex A to this report.

2.8 Throughout the process all interviewees were completely open and frank about their experiences, on the basis that no quotes used within the report would be attributed.

2.9 Each individual interview covered an appropriate range of the following areas:

- The Island Plan and Supplementary Planning Guidance
- General service delivery
- Consistency of advice and recommendations
- Use of conditions
- Communication levels
- Ministerial involvement in decision-making
- The respective roles of the Minister and the Planning Applications Panel
- The proposed new appeals system
- Planning obligations
- Monitoring and enforcement of conditions
- The use of pre-application discussions
- The listing of historic buildings in Jersey
- The balancing of material considerations in the decision making process

- The assessments made about the economic viability of individual development schemes

Documentation and process review

2.10 During the visits the team undertook a detailed examination of the documentation, reference material, systems and processes currently being used including:

- The Jersey (Planning & Building) Law 2002 and Island Plan Order 2009
- “Inspiring Confidence in Jersey’s Future” – States of Jersey Strategic Plan 2012
- Scheme of Delegation for Minister for Planning & Environment (June 2013)
- Planning & Building (General Development) (Jersey) Order 2011 and associated public information concerning Domestic Permitted Development
- Planning Applications Panel (PAP) Code of Conduct (2011)
- Ministerial Code of Conduct (2011)
- Planning & Environment Business Plan 2013
- The Jersey Island Plan (2011) and the interim review 2013
- 2012 draft Economic and Diversification Growth Strategy
- Planning & Environment Department White Paper “Review of the heritage protection regime” January 2010 and MD PE-2010-0056 26 April 2010
- The suite of Supplementary Planning Guidance including draft “Protection of Historic windows and doors” October 2013
- Ministerial decisions PE-2011-0063 “Listed Buildings and Places: Criteria for Listing and Grading”, PE-2013-0058 “Listing Schedule Grade 4 listed buildings”
- “What does listing mean?”, “New heritage protection System”, “Historic environment resurvey” States of Jersey/Planning Building/Listed Building Places/Pages November 2013
- Ministerial Listing Advisory Group Terms of Reference
- Public information and ministerial guidance documentation for applicants and agents
- The Development Control procedures manual and departmental User Guides
- Pre application advice, documentation, processes and operation including SPG Practice Note 1 (October 2013)

Case file review

2.11 A sample of 31 files were reviewed to ascertain how the balance of decision-making discussed in Section 4 was weighted. A list of the cases reviewed is shown at Annex B.

Statistical analysis

2.12 Management information/data reports were reviewed to provide accurate figures about the level of applications being dealt with and to provide evidence about:

- Number of applications received
- Delegation levels
- Pre application engagement
- Types of application
- Officer case loads
- Ministerial call ins

3. The plan making system

Overview

- 3.1 The Jersey plan making system has been shaped to suit the particular circumstances of the States. In particular it reflects the fact that the States fulfil all the functions which in England are delivered by the national government, national agencies and local government.
- 3.2 Nevertheless, the system has much in common with the system of local plans which operated in England and Wales until 2004, when they were replaced by local development frameworks.
- 3.3 Prior to the 2002 Planning Law, decisions on the Island Plan were largely taken behind closed doors, and did not allow for effective public involvement in or scrutiny. The 2002 Law represented a significant move towards much greater transparency and openness.
- 3.4 It follows that in looking at how the plan making system might change in the future, it will be important to sustain the strengths of the current system, and identify how it might be further enhanced.
- 3.5 The brief for this commission requires that account should be taken of best practice and learning from system changes in England and Wales. However, there is no presumption that what happens in England (the Welsh system is now rather different from the English) is somehow “right” and can be imported into Jersey. Indeed the reverse is more likely to be true. Much of the recent change in the planning system in England reflects the parallel roles in planning of national and local government, and has no relevance to Jersey.
- 3.6 It is logical to look at the strengths and weaknesses of the Jersey system as it currently exists, to identify where there may be scope for improvement, and then explore what form it might take.
- 3.7 It will be important to recognise that many Jersey residents are passionate about the importance of the coast and countryside and the natural and historic environment, and the need for their protection. At the same time there are strong voices too for the need for homes, investment and the maintenance of a strong economic base.

Strengths and weaknesses

- 3.8 There are considerable strengths in the fact that the processes for preparing or changing the Island Plan are open and transparent. Looking at how the current Island Plan was developed, the following important features may be identified:
 - all the evidence relied upon in developing the plan was published and made readily available to any interested party
 - whilst the responsibility to prepare the plan sat with the Planning and Environment Minister, the key decision to adopt the plan was made by the States in an open meeting of the States Assembly
 - there was public consultation on the draft plan, which provided the opportunity for any person or organisation to comment upon the plan and seek change to its provisions
 - there was a right for people or organisations to make representations on the plan and have them considered at an examination in public (EiP)

- the EiP enabled a deliberative approach to be taken as to whether policy was soundly based
- the EiP format had the further advantage that it was less confrontational than a traditional local inquiry and made it easier for non-specialists to be involved

3.9 In addition to these procedural strengths, some matters of good practice can be identified in the way the current Island Plan was prepared:

- an extensive evidence base was developed, so that rather than being based on assumptions or perceptions the plan was founded in facts
- The evidence was made available to any interested party, giving them the opportunity to understand and make comment upon it
- the evidence appears to have been followed and reflected in plan provisions
- a Green Paper was published which explained the background to the plan review and explored current issues across the whole range of its expected coverage
- stakeholder groups were set up for all the main aspects of the plan and discussions held with them about the issues faced
- a strategic environmental assessment (SEA) was carried out of the draft plan, which verified that its provisions would not be damaging to different aspects of the environment. Jersey is not an EC member, so SEA is not mandatory, but it was undertaken voluntarily. Some changes were brought forward in the light of the SEA to amend policies so as to reduce their potential impact upon the environment

3.10 Nevertheless, there are some shortcomings to set against these strengths. There are two main weaknesses. The first is that the system as it stands does not effectively engage the public until near the end of plan preparation. The term “public” is used here to embrace anyone who may have an interest in the plan, whether as individuals or as members of community groups, interest groups, businesses, or local organisations.

3.11 The preparation and publication of the Green Paper and use of stakeholder groups were commendable measures, and did achieve some valuable input, but they did not generally engage the wider population.

3.12 The consequence is that the public could generally only react to the plan which had already been prepared. They did not normally have the opportunity to influence the issues to be addressed, or to put forward alternatives, or to seek to influence the direction of the plan and its policies.

3.13 In such a situation, it would not be surprising for people to take the view that by the time they *were* consulted the plan was a done deal, and that there was little real scope for them to get anything changed.

3.14 The second main weakness is that States members did not generally get involved in the development of the plan until late in the process. This was largely because there was little opportunity for them to do so. There was only limited scope for them to be involved during the development of the plan, so the main opportunities were at the time of public consultation and to make formal representations to be heard at the EiP. Some States members did make representations and appeared at the EiP, but most did not.

3.15 It is a feature of the Jersey system that under the 2009 Island Plan regulations, all States members have the right to move amendments to the plan when it comes

before the Assembly for approval. It may be that some chose not to get involved at earlier stages, including the EiP, but to engage only at that time. Others may have felt that there was no other suitable occasion for them to engage with the plan.

- 3.16 Whatever the reasons, the result was that at the very end of the plan making process a sizeable number of amendments were proposed. There was public consultation on the amendments and a mini-EiP into them, followed by the Minister's comments on them and his own proposed additional amendments. However, the situation remained that a total of about 50 amendments had to be individually debated and voted upon to finalise the content of the plan. The outcome included the removal of all site allocations from the plan.
- 3.17 Generally in the development of public policy, one would expect that a strategy will firm up progressively as it goes through the process of development and consideration, so that by the end all proper interests have been taken into account and only detailed changes may be expected.
- 3.18 However, the way plan preparation has worked in Jersey means that the opposite could be said to be true, in that the greatest uncertainty and propensity to change came at the very end of the process.
- 3.19 Such uncertainty is undesirable for a number of reasons:
- it feeds speculation and suspicion about how decisions are made and what influences are at work
 - actions are open to misinterpretation
 - the unpredictability is damaging to public confidence and the confidence of potential investors
 - individual landowners who reasonably believed that their land was to be allocated for development suddenly lost out
- 3.20 There is a further consequence of the limited involvement of States members in the evolution of the Island Plan, which is that they have not generally taken ownership of it. It is understood that States members commonly refer to it as the Minister's plan or the Planning Department's plan.
- 3.21 It follows that States members do not generally feel commitment to the plan and its achievement. This is reflected in the way they respond to and seek to influence subsequent decisions on planning matters and planning applications. The implication is that means should be sought to build a greater sense of ownership of planning policy among States members.
- 3.22 There is one further matter for comment here. The point is made above that a strategic environment assessment was undertaken as part of plan preparation, and this is commended. However, without detracting from the value of SEA in itself, there is at the same time something of a negative point too, because SEA by definition only considers the environmental impacts of plans, and does not address economic or social considerations.

Enhancements to plan making practice

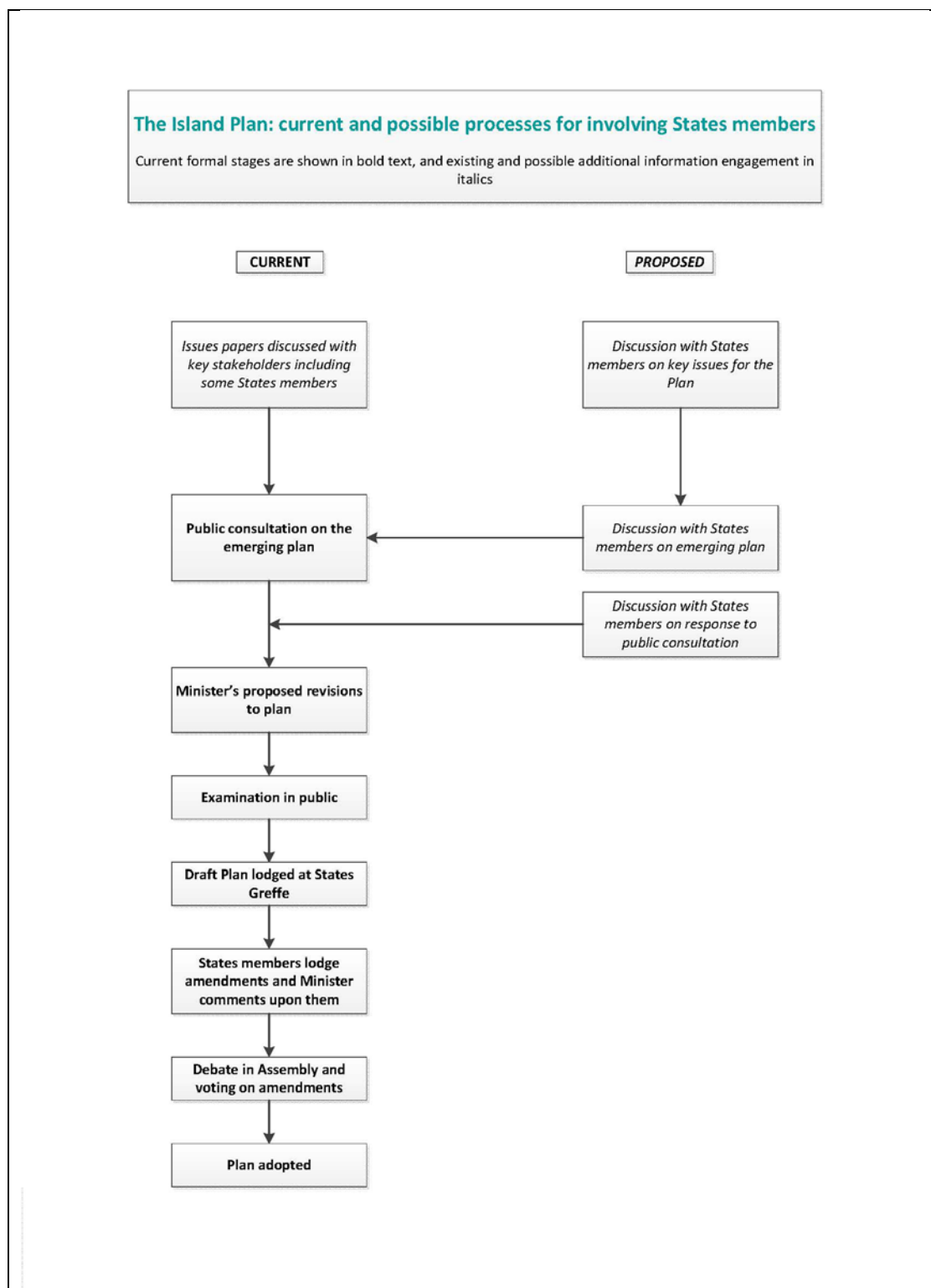
- 3.33 In considering what might be proposed by way of enhancement to the plan making system, the starting point has been to focus on changes to *practice*, i.e. how the plan is prepared, rather than contemplating legislative change. This reflects both the brief and the view that broadly speaking the statutory foundations of the Jersey system are well founded and thus do not require revolutionary change.

Earlier public engagement

- 3.34 One of the two main weaknesses identified in the present system is that the engagement with the public in the Island Plan came too late in the process. This should therefore be a main focus of change.
- 3.35 Experience in England and Wales offers a helpful model. Until 2004, the statutory process for preparing local plans was very similar to that in Jersey. A local planning authority could prepare its draft local plan without any public engagement in its development. Mandatory public consultation came only when the plan was essentially finished. Whilst some planning authorities developed more inclusive systems of public engagement, many stuck to the legal requirements.
- 3.36 It became apparent that organisations, business, developers or residents did not generally experience an effective opportunity to influence the formulation of the plan. Indeed, the reality could be that by the time the members and officers of the Council had worked for many months on the development of the plan, and resolved between them what would be acceptable, it was very difficult for them to accept that it should now change. Consultation could look like simply defending the plan, rather than a genuine opportunity for influence.
- 3.37 Recognising the weakness of this situation, legislation in 2004 to modernise the planning system included among other things the idea of “early engagement”. Planning authorities were required to engage at an early stage with residents and interest groups to consider what matters the plan should address and how it might do so. The planning authority would then develop its ideas and have further engagement with communities and interests on the emerging plan.
- 3.38 Only after these processes would the plan come to the stage where formal representations would be made and considered in due course at examination in public.
- 3.39 As practice has matured since 2004, many English planning authorities now carry out very effective processes of early engagement, and early engagement is generally considered to be a success. One could not now imagine a reversion to the previous system of consultation only at the end of the process.
- 3.40 Where it works well, early engagement gives individuals, groups and businesses the opportunity to influence the plan while it is still malleable. It enables the planning authority to take on board concerns and ideas and reflect them in the content of the plan. In terms of how the States engages with its citizens and interests this would appear to be the logical next step.
- 3.41 There is no need for legislative change to bring about earlier public engagement. Rather, the Minister and officers of the Planning Department can develop ideas for how it would work, in consultation with States members. This will enable earlier public involvement to be integrated with earlier engagement of States members themselves (see below).
- 3.42 It is suggested that the ideas should be taken forward in the form of a community engagement strategy, which can be tailored to suit the particular circumstances of Jersey. It is not appropriate for this report to try to specify the exact form such a strategy might take.

- 3.43 However, it is considered helpful to suggest some principles which could underpin an engagement strategy:
- engagement requires dialogue about the issues and possible solutions, and not merely asking people or groups what they think of what is already formulated
 - effective dialogue requires that those involved should be helped to identify and understand the issues and evidence, so that they can help to focus on important matters of policy and make informed contributions
 - it should take place at different stages in the plan preparation process, so as to address progressively the key issues the plan needs to address, emerging ideas for new or changed policy, and the draft plan
 - it should include area-based activities to facilitate local communities being able to raise their particular issues. This matter is returned to later in this Section
 - it should be tailored to meet the different requirements of different parts of society, so that residents, businesses, workers, interest groups and different age groups (eg elderly and young people) are engaged in ways which are likely to be effective for them
 - it should be clear what will be done with the information at each stage to progressively inform plan making, so as to avoid repeated rehearsal of the same matters
- 3.44 The amount of work and effort which will be involved in designing and carrying out an effective public engagement strategy should not be under-estimated. Apart from deciding what form the engagement should take, the processes and events which will then take place will need to be resourced. There will be a need for significant learning by all parties as they adapt to the new opportunities and find how to make the best use of them.
- 3.45 Accordingly, whilst the next full review of the Island Plan is likely to be some years off, it makes sense to think through the approaches sooner rather than later. Appropriate practices can then be applied to other plan making activity such as the development of masterplans and significant development briefs.
- 3.46 The outcome over time should be a better informed public constituency for planning, and greater responsiveness by decision makers to the inputs received.
- Earlier involvement of States members**
- 3.47 The other main weakness identified is in relation to the late involvement of States members.
- 3.48 There is a significant difference here between how things work in England and in Jersey, which it is useful to explore briefly. In England the preparation of a local plan involves at least some councillors throughout the process, as they steer the officers in the work, and all councillors will be involved at key stages in agreeing how it should go forward, and at the very end when it is adopted. This firming up of the proposals as they develop and building member commitment are important and currently missing from the Jersey system.
- 3.49 In Jersey the responsibility for preparing the Island Plan sits with the Planning and Environment Minister, and other States members only get involved *formally* when the Island Plan is brought forward for approval by the States. It follows that to engage States members in the earlier stages of preparation, informal means need to be found which will appeal to them and encourage their participation.

- 3.50 Just as an engagement strategy is suggested to shape earlier public involvement, similarly there needs to be an agreed approach to earlier engagement of States members. It is suggested that ideas are developed by the Minister with the assistance of officers of the Planning Department, which can then be discussed with States members to get their ideas and draw on their experience. The diagram below indicates broadly how States members might be involved at earlier stages.



- 3.51 Some principles are offered which could underpin the development of the approach:
- States members should be involved at key stages in the preparation of the plan, including contributing to the setting of the agenda of key issues for plan policy, the identification and consideration of alternative approaches to important issues, and consideration of the draft plan
 - as a generality, their engagement at a particular stage should precede engagement with the public, so that their input can influence what goes before the public
 - means should be sought to communicate the findings of key evidence to States members so they can build a good grasp of the factors which will drive the plan
 - events should have an informal style which encourages the exchange of information and discussion, and these should properly inform but be clearly distinguished from the formal decision making process
 - where area-based public engagement takes place, the States members within whose constituencies it falls should be involved as a matter of course and be actively involved in promoting the discussions
 - at each stage of reporting to the States on the development of the plan the Minister should set out how he has taken account of the discussions with States members
 - particular attention should be given to the involvement of the members of the Planning Applications Panel, to ensure that their experience is heard and they can develop their sense of ownership of the plan
- 3.52 The essential matter which all concerned will need to be clear about is that none of the events will involve proposals or motions, since their function is developmental and deliberative rather than decision making.
- 3.53 What is proposed here is additional to formal procedures, not in place of them. It would not change or dilute the function of the Minister in leading the plan making process and in bringing forward the Island Plan for approval by the States Assembly.
- 3.54 It should also be clearly understood that States members who participate in such engagement will not in any way fetter their subsequent right to propose amendments to the final plan when it comes to the States Assembly.
- 3.55 However, all parties should be clear that the objective is that by being able to contribute and raise concerns in a timely way, States members will hopefully find that they do not need to exercise their rights at the end of the process.

Sustainability appraisal

- 3.56 While it was beneficial that a strategic environmental assessment was carried out of the draft Island Plan, there was also something of a negative in that SEA focuses only on environmental impacts, and does not address economic or social matters. It would therefore be a logical progression to carry out sustainability appraisal of the next Island Plan review, since sustainability appraisal considers environmental, economic and social impacts together.
- 3.57 Section 4 of this report concludes that there is no significant lack of balance in the consideration of planning applications between heritage, environmental and economic considerations. However, it makes sense to be able to confirm that the Island Plan does not contain any bias or over-weighting in one direction or the other, and to be able to demonstrate this to interested persons. This further supports the case for sustainability appraisal.

- 3.58 It should be understood that sustainability appraisal is not about dealing with competition between economic, social and environmental considerations. This is too simplistic a view, and fails to understand that they are interdependent. As an obvious example, part of the economic success of Jersey results from the fact that the island offers such an attractive environment. Rather, sustainability appraisal should be seen as being about seeking solutions which maximise benefit and minimise harm across all three dimensions.
- 3.59 The strategic environmental assessment of the Island Plan was undertaken when the plan had reached a late stage in its development. In carrying out sustainability appraisal it will be important to begin much earlier, so that it can influence the development of the plan and its policies. This will require that it is re-iterated at key stages.
- 3.60 It is recognised that planning policy staff will need to develop their skills to be able to use sustainability appraisal effectively. One approach might be to use specialist consultants to assist with setting the foundations for appraisal, who can at the same time train staff in the principles and practice of sustainability appraisal so that they can then undertake most of the actual appraisal themselves. The consultants could then be used to verify the soundness of the results.
- 3.61 It is not suggested that sustainability appraisal should be attempted in considering planning applications. The amount of training and new learning which would be required by development control staff would be disproportionate to the benefit likely to be obtained. Nor is it considered that it should be required of applicants, because of the additional burden it would put upon them and the lack of the requisite skills among planning agents.

Addressing viability in plan making

- 3.62 Section 4 of this report addresses the matter of viability in relation to planning applications, and recommends that it should become accepted practice that viability should be taken into account through the use of open book evidence.
- 3.63 It is recommended that the matter of viability should also be taken into account in the preparation of the next review of the Island Plan, and any substantial masterplans or development briefs for particular areas. In the context of Jersey, where the great majority of new development is expected to take place in the built-up area, high existing use values will mean that development projects need to create sufficient increase in value to make them economical.
- 3.64 It will therefore be important to ensure that plan policies do not load significant additional costs onto projects which could put their viability into question. The evidence to demonstrate this will also provide the States with the means to counteract any claims that the plan acts against development viability.
- 3.65 Experience in England is relevant here. In the aftermath of the recession and the continuing difficult environment for investment, the Government became concerned that local plans should not, through their policies, become part of the problem. It therefore developed the concept of “whole plan viability”, whereby the effect of a local plan’s policies taken together should be assessed. This is now a mandatory part of local plan preparation, and open to testing at examination in public.
- 3.66 Whole plan viability assessment does not need to consider the effect of all policies in a local plan, because most do not have any impact upon development costs. Rather

it focuses on the effect of the limited number of policies which impose actual costs on development, which in England tend to come down to affordable housing requirements, any construction standards which go beyond the requirements of the Building Regulations, matters which would need to be covered by a Section 106 Agreement, and the projected level of Community Infrastructure Levy.

- 3.67 In applying plan viability to Jersey, it would be necessary to identify those existing or proposed policies which add costs to development over and above what would apply to any development scheme. The effect of these can then be considered by looking at the main classes of development through a sample of real or hypothetical sites, to assess their combined impact on the cost of development and consider any consequent implications for viability. The appraisal process should demonstrate that the policies of the plan taken as a whole will not materially impair the viability of development.
- 3.68 Similarly, in considering the viability implications of a masterplan or brief, the appraisal would ask what was being sought which would not be part of what a developer would normally be expected to provide.
- 3.69 It is advised that there should be consultation with development interests about the assumptions to be made about land costs, construction costs, development values and other parameters.

Community planning and localism

- 3.70 One of the issues to be addressed by this commission is whether there should be a greater development of community planning and localism. Implicit in this is whether the States has something to learn from recent developments in these areas in England.
- 3.71 Following the last General Election the Coalition Government introduced what in due course became the Localism Act 2011, which introduced provision for the making of neighbourhood development plans (NDPs) and neighbourhood development orders. The introduction of neighbourhood planning reflected a perception that some local authorities were imposing planning strategy and policy on local communities which did not fit well with local circumstances, and went against the wishes of those communities.
- 3.72 Many parish councils and local communities have shown strong interest in neighbourhood planning, particularly preparing neighbourhood development plans. Whilst the level of interest fell when Government made it clear that NDPs could not be used to stop development, a large number of communities are now involved in preparing them, and the first have recently completed their legal processes and been adopted.
- 3.73 It was apparent from the outset that preparing NDPs would involve a lot of work for the communities concerned. The Government therefore made grants available for frontrunner neighbourhood forums of £20,000 each, and continues to offer grants of up to £7,000 to other neighbourhood forums. It also put a statutory duty on local planning authorities to assist forums. There is evidence that this has created a lot of work for the LPAs affected, and in some cases has pulled scarce staff resources away from other forward planning activity. Even so, those communities which have made good progress have commonly needed to draw heavily upon the support of specialist planning advisers or consultancies.

- 3.74 Attitudes to neighbourhood planning vary considerably from one Council to another. However, it is common experience that where a Council is enthusiastic about supporting neighbourhood planning, local communities can come together successfully to promote NDPs. At the same time there are cases where local groups have found the task so demanding of their resources, or difficult to reconcile different views that they have given up.
- 3.75 Were the States to consider the introduction of community based planning in Jersey, it would need new legislation and supporting administrative arrangements. There would need to be careful consideration as to just how it would work, including:
- how it would fit with the present Island Plan process, including the extent to which conformity with the Island Plan would be required
 - which bodies would enjoy the power
 - the geographical areas over which community plans could be prepared
 - whether they should enjoy grant support from the States
 - what support would be provided by the Planning Department, and whether this would be mandatory or resource dependent
 - the processes to be undergone in community plan preparation, including whether to specify any minimum provisions for public participation
 - how they would be tested for soundness and effectiveness as planning policy documents (in England both an examination in public and a referendum are required)
 - how they would be formally adopted and by whom
 - the status they would carry in decisions on planning applications
- 3.76 Some of these issues go much wider than just land use planning and touch on issues of the Island's political and constitutional processes, and in particular the relative roles of the States and Parish Assemblies.
- 3.77 It is understood that a number of parishes have ambitions to meet what they see as important local needs, and that some would be attracted to the possibility of being able to bring forward different policies from those in the Island Plan. There are also a lot of very able people who could be expected to bring a wide range of expertise to the process. It is therefore very likely that there would be substantial interest locally in the prospect of such an opportunity.
- 3.78 However, for a number of reasons it is not recommended that the States should embrace the idea of community plans at this time or in the near future.
- 3.79 Firstly, it is not considered timely in terms of the current level of appreciation of the principles of public plan making in the Island community. Jersey has only had an open and transparent system of decision making on planning since the 2002 Planning Law was enacted, and communities and interests are still developing their understanding of how they can properly influence the process.
- 3.80 This report has identified earlier public engagement as a key means of improving the responsiveness of planning to community concerns and drawing upon their knowledge of the local situation. It will also facilitate the development of people's understanding of the planning system and how to engage effectively with it. It is prudent to take matters in manageable steps, and it is advised that this should be seen as the key development of practice which should be allowed to work through and settle down before any other significant change is contemplated.

- 3.81 Moreover, the support which communities would need to help them to succeed in community planning is not currently available in Jersey. There are very limited planning consultancy services compared to the range and degree of specialisation which exists in England, where there are a number of organisations and consultancies which can offer specialist experience and expertise. Moreover, it would not be realistic to look to the Planning Department to offer the required support because it has only limited resources and these are likely to be committed to other important priorities.
- 3.82 However, whilst a statutory system of community planning is not currently considered appropriate, this does not prevent the States from developing a local dimension to the its own plan making. This report advises that at the next Island Plan review, earlier engagement with the public should include area-based activities to facilitate local communities being able to raise their particular issues.
- 3.83 This could include first canvassing Parish Assemblies to establish whether they have particular concerns or issues which the plan might be able to address, and where appropriate taking potential solutions forward in liaison with them. These might be dealt with in the Island Plan itself or through supplementary planning guidance.
- 3.84 Moreover, where SPG is planned for a particular site or area, it is already standard practice for there to be local consultation on the emerging draft. This could be extended to include a particular focus on dialogue with the relevant Parish Assembly to ensure that so far as possible consistent with wider Island Plan policy, the solutions advanced are in tune with local concerns and preferences.

The size and balance of the development plan framework

- 3.85 The brief for this commission includes a requirement to consider “whether the size of the development plan framework employed in Jersey, based on an Island Plan and supplementary planning guidance, is appropriate and balanced when compared to the Island’s strategic aims”.

The size of the framework

- 3.86 The Island Plan runs to nearly 400 pages including Appendices. It is certainly a substantial document, and a number of those interviewed commented on its scale and suggested it was difficult to work with. However, it is necessary to reflect upon the job it has to do before accepting a simplistic assertion that it is too lengthy.
- 3.87 If a parallel is drawn with England, the Island Plan has to cover what in England is dealt with through both national planning policy and guidance, and through a local plan prepared by the individual planning authority. The Department for Communities and Local Government recently went through a major exercise to condense over 2,000 pages of planning policy guidance into a single suite of guidance called the National Planning Policy Framework (NPPF). This comes to a total of 57 pages including the glossary.
- 3.88 However, the NPPF does not contain any explanation of the background to policy or why it is considered necessary, but in essence asserts it. This could not be the case with the Island Plan, which needs to explain the rationale behind each policy so that users of the plan can understand why policies are as they are.
- 3.89 Subsequent to the publication of the NPPF, the DCLG went through a similar exercise to reduce a very large amount of practice guidance about how to address matters in local plans and through development management. This resulted in the publication of a web-based resource known as National Planning Practice Guidance

- (NPPG). This addresses 38 different aspects of planning practice and runs to a large number of pages accessed through a cascade structure.
- 3.90 Much of the NPPG consists of guidance for plan making, and some is procedural, so there would be no parallel with the Island Plan in those regards. However, there is also a substantial amount within it which relates to how planning applications for particular types of development should be dealt with.
- 3.91 The National Planning Policy Framework says that a local plan should normally be prepared as a single document, and that any further documents as part of the local plan should be clearly justified. This is a change from the previous requirement to prepare a separate strategic document known as a “core strategy”, which would normally be accompanied by at least one other development plan document. Consequently there are not yet many comprehensive local plans to refer to.
- 3.92 A sample of local plans which have been examined range in size from 140 to 300 pages. Moreover, many adopted core strategies are of similar size, so that by the time the relevant planning authorities have completed other intended development plan documents, it appears likely that their aggregate local plans will commonly run to 200 to 400 pages.
- 3.93 The current Island Plan does not contain proposals for specific sites in the way that an English local plan will, but as noted earlier it also has to perform the function of the English NPPF, and parts of the NPPG as well as those of a local plan. Also, there are classes of development which are subject to planning control in Jersey which are exempt in England, and policies are needed for them. In the light of all this, it does not appear that the Island Plan is excessively large compared to what is deemed necessary in England to achieve the same purposes.
- 3.94 Of course this is not to say that the Island Plan could not be made more concise. There are places where it is rather discursive, and no doubt some explanations of the reasons for policies could be condensed. One could also question whether every policy is really needed, or whether a few, but only a very few, could be dispensed with. However, the overall scale of the planning policy framework which it provides is considered reasonable given the job it has to do.
- 3.95 Consideration has been given to whether there is some way that the Island Plan could deal separately with policy which is not likely to change over time and more immediate issues. However, the conclusion reached is that this would actually involve more work than preparing a single document, and one could not be certain that some policies seen as long term in nature would not need to be revised sooner rather than later.
- 3.96 Turning now to supplementary planning guidance (SPG), the principle of publishing explanatory material to inform the public and assist applicants for planning permission is well established, and is commonplace in other jurisdictions.
- 3.97 In Jersey there are four classes of SPG as follows:
Advice notes, which offer more detailed information and guidance about the ways in which Island Plan policies are likely to be operated, interpreted and applied in decision making;
Policy notes, which can be issued by the Minister, following consultation with key stakeholders, in-between reviews of the Island Plan, to supplement and complement the existing planning policy framework;

Masterplans, development frameworks and planning briefs, which provide more detailed information and guidance about the development of specific sites and areas of the Island; and
Practice notes, which aim to provide information about how the planning system's protocols and procedures operate

- 3.98 There are currently over 60 items of SPG across the four categories, ranging in scale from compact leaflets explaining exempt development and very short notes such as that on crime impact statements, to extensive and detailed advice at substantial length.
- 3.99 It is difficult to judge whether all are strictly required without examining each in detail, which would go beyond the brief for this commission. Presumably there has either been a recognition by the Planning Department that a policy needs more explanation than is appropriate within the Island Plan, or a there has been demand for clarity from developers or members of the public.
- 3.100 The practical conclusion to draw is that SPG is useful and should continue to be prepared. The watchword in all cases should be conciseness, asking “how can what is needed be conveyed simply and in the least possible number of words?”

Balance against strategic aims

- 3.101 The Island's key statement of strategy is the Strategic Plan 2012. This concise document identifies the priorities for the States government and how they are to be addressed. These priorities are taken to be essentially the same as strategic aims. It should be noted that the current Strategic Plan was prepared subsequent to the Island Plan, which sought to take account of an earlier version.
- 3.102 The Strategic Plan says that the most urgent priority is “to get unemployed Islanders working, keep people in work and create new employment opportunities and jobs through sustainable economic growth.” Its other priorities are:
- to manage population growth and migration so as to maintain a working age population which enables the economy to flourish and public services to be sustained without threatening the environment and way of life
 - all Island residents should be housed adequately
 - providing appropriate support to both families and individuals is essential to develop a strong sense of community where everyone is valued
 - to reform Health and Social Services so that Jersey's residents enjoy safe, affordable and sustainable health and social services
 - reform government and the public sector to give strong government with a sense of purpose and direction to deliver the real and lasting changes that are needed to take the Island into the future
 - to put in place long term plans to address and resource future issues affecting the Island
- 3.103 Whilst there is no priority as such dealing with the environment, it runs as a key theme throughout the document, with a clear recognition that it is fundamental to quality of life.
- 3.104 Before considering how well the Island Plan balances strategic aims, it is important to be clear about the different functions of the Strategic Plan and the Island Plan. The Strategic Plan is prepared by the Council of Ministers to set out overall direction for Jersey for the next three years or so to focus on key priorities for short term action, but also to plan for major issues that will need to be addressed over the longer term.

- 3.105 It is essentially a management document for action by the States Government, and this is reflected in the key actions, which all relate to action by the States. It is reviewed every three years or so, which is a strength because this enables it to adapt to changing circumstances and take on board new issues or identified needs.
- 3.106 By contrast the Island Plan is a longer term land use plan, which is expected to stand for up to 10 years (the statutory maximum period between reviews). It is underpinned by legislation whose explicit purpose is “to conserve, protect and improve Jersey’s natural beauty, natural resources and general amenities, its character, and its physical and natural environments” with the intention :
“to ensure that when land is developed the development is in accordance with a development plan that provides for the orderly, comprehensive and sustainable development of land in a manner that best serves the interests of the community”
- 3.107 As a land use plan its achievement or otherwise will be the sum of the actions of a wide range of agencies, predominantly private sector, and the way their actions in land development are controlled through development management.
- 3.108 Its longer life means that strategy and policies need to be framed in such a way as to be relevant and appropriate for both current and likely future circumstances. To take the obvious example, the Plan needs to take account of the current post-recession economic conditions, but also to be relevant when demand and development pressures become stronger. This does not necessarily put it at odds with the Strategic Plan, but does mean that it necessarily has a rather different emphasis.
- 3.109 Having made these observations, it is interesting to consider how well the Island Plan sits with the Strategic Plan priorities. It should certainly be able to make a significant contribution to the achievement of the economic priority. Similarly, the implications of policy to control migration can clearly be influenced by planning policy, and of course adequate provision of housing must be fundamental to any plan. By contrast, one would not expect a land use plan to be able to do much to directly support families and individuals or contribute to reform of health and social services, other than to make provision for investments such as new health facilities.
- 3.110 In the light of this one would expect the Island Plan to put the development of the Island economy and provision of housing at the heart of the plan. It is considered that it does this reasonably well. It refers to the economic outlook having deteriorated and against this background sets out to support the States objective of maintaining a strong sustainable and diverse economy.
- 3.111 Policy SP5 on economic growth and diversification states:-
“A high priority will be given to the maintenance and diversification of the economy and support for new and existing businesses, particularly where development can attract small footprint/high value business from elsewhere and foster innovation, in the following ways:
 - 1. the protection and maintenance of existing employment land and floorspace for employment-related use;*
 - 2. the redevelopment of vacant and under-used existing employment land and floorspace for new employment uses;*
 - 3. the provision of sufficient land and development opportunities for new and existing employment use.”*

- 3.112 The introduction to the Economy section of the plan makes clear the need for economic growth of the right kinds, and contains a range of policies designed to both protect existing employment and provide for change, including the relocation of much of the financial services sector to the Esplanade area. Similarly the Housing section of the plan clearly recognises the importance of providing suitable homes for all sectors of the community, and sets out policies for the amounts and types of new provision. Moreover, the plan includes a section devoted particularly to social, community and open space, with a range of policies in support of these.
- 3.113 Looking to the future, it is suggested that the importance of these matters could be given greater prominence at the outset of the document, to set out headline objectives and principles for the plan before coming to other matters. These should clearly include the protection of the landscape and natural environment as well as economic and housing objectives.
- 3.114 This would suggest a rather different approach to that taken in the section entitled “Island Plan Strategic Policy Framework”, where although economic growth and diversification is covered by a strategic policy, it comes after spatial strategy, efficient use of resources, and sequential approach to development. Moreover, the importance of sufficient and suitable housing does not figure at all in this section.
- 3.115 Clearly, there is room for the Island Plan in the future to show a rather stronger fit with the Strategic Plan prevailing at the time and its priorities. Nevertheless, the Island Plan as it stands is considered to reflect a reasonable balance between the Strategic Plan priorities and other important planning considerations around the environment and infrastructure. Section 4 of this report goes on to consider how well this matter of balance is dealt with in development management decision making.

SECTION 3 RECOMMENDATIONS

- 3.116 ***Develop a public engagement strategy designed to involve the public more extensively in the earlier stages of plan preparation, to shape the process of development of the review of the Island Plan and other significant plan making initiatives.***
- 3.117 ***Involve States members more closely in the earlier stages of plan preparation, through an approach developed in discussion between the Minister and States members.***
- 3.118 ***Carry out sustainability appraisal of the next review of the Island Plan and the preparation of significant Supplementary Planning Guidance.***
- 3.119 ***Carry out whole plan viability when next reviewing the Island Plan, to demonstrate that its policies taken as a whole will not impair the viability of development; and similarly in preparing masterplans and significant development briefs.***
- 3.120 ***Take no action at this time on ideas of community based planning, but concentrate on earlier public engagement as a greater priority. However, where plan making has a local dimension the means should be sought for greater engagement with the local community as part of the process.***
- 3.121 ***Accept that the Island Plan is unavoidably lengthy because of the functions it performs, but seek conciseness as a virtue in future reviews and supplementary planning documents.***

3.122 *In future reviews of the Island Plan, make more explicit how it takes forward the priorities of the Strategic Plan.*

4. The balance between environmental, economic and heritage considerations in decision making

Introduction

- 4.1 The brief to POS Enterprises was to consider whether the balance struck between heritage, environmental protection, and economic development is the correct one when compared to the Island's strategic aims.
- 4.2 This element of the report is based on the views expressed in the interviews carried out (see Annex A), an examination of the States of Jersey Strategic Plan 2012 and the Island Plan 2011, and a review of a sample of 31 major planning applications from those determined in the past year and a half (see Annex B).
- 4.3 A number of commentators have suggested that environmental and/or heritage considerations may be holding back the economic development needs of the Island. The 2005 Shepley report reviewed Jersey's planning functions and noted the widespread support for environmental protection, but reported that the majority of a large number of comments received on heritage matters, related to the question of whether the policy on historic buildings was too interventionist and "petty".
- 4.4 The overall strategy of the Island Plan, involving strong protection for the Coastal National Park and Green Zone countryside protection restricting development enjoy wide support. In interviews they were not identified, in principle, as a block to economic development, although detailed interpretation of policies has sometimes become an issue, reflected in the changes proposed in the current interim Island Plan review. Strong concerns have been raised by major proposals in these areas such as with the Portelet and Plemont schemes, with little support shown by business or other interests in favour of such developments, suggesting there is little appetite to downplay environmental policies in favour of development in the Coastal National Park or Green Zone.
- 4.5 However the same consensus does not apply to heritage policies. Heritage and amenity group representatives stressed the importance of looking after the Island heritage and supported both the extent and detail of the Island Plan heritage designations and policies. However, development industry representatives felt the heritage approach was over developed and over detailed, and inhibited the development of commercial proposals to meet the State's economic objectives. Generally development supporting the construction industry and potential capital investment in the island were typified as synonymous with States economic priorities irrespective of whether the development proposed was residential or commercial in character.
- 4.6 Most development industry representatives recognised the difficulty of balancing competing interests and ensuring an appropriate balance was struck by officers, States' members and the Minister in making decisions. It was recognised that this was particularly so with the strong focus on such matters in an island community such as Jersey, intensified by media interest. Interestingly few actively engaged with the media to promote schemes.
- 4.7 However, cases such as the refusal of the Co-op Charing Cross redevelopment and the withdrawal of the developer from the redevelopment proposals for Bath Street have drawn negative criticism from some of the business community, with claims that inflexibility of planning requirements for public parking or the retention of historic buildings have been unhelpful to the developments proposed. Therefore the next

section addresses how well States priorities are reflected in planning decisions based on it, including the protection of historic buildings.

Critical Policies for decision making

- 4.8 The Island Plan identifies that the financial services sector accounts for 53% of total economic activity in Jersey and there will be future needs for new office development. Therefore the most important economic policy could be argued to be that which seeks to support the needs of the financial services sector. Policy Objective EO1 therefore seeks sufficient land and opportunities to be available to meet the need for additional office floorspace in St Helier town centre. Policy EO1 of the Island Plan goes on to propose a concentration of modern office developments with cabling and footplates to meet the needs of this sector in defined areas of the Esplanade area and town centre of St Helier. These will accommodate growth and replace outmoded offices elsewhere in St Helier. The Island Plan anticipates such office developments could represent 24% of the total office stock by the end of the plan period. The St Helier office market net office floorspace was potentially expected to increase from just over 2.8million sq ft to over 3.6 million sq ft. Since adoption of the Plan a large stock of potential office development in a number of planning permissions has been granted in accordance with this policy.
- 4.9 Other policies of the Island Plan frequently commented on, and bearing on, the balance between economic heritage and environmental considerations are:
- E1 seeking to protect the stock of existing employment land (other than offices and tourist accommodation) from being reduced, particularly in respect of nurseries and glasshouses with tests of lack of demand and redundancy before consideration will be given to changes to non-employment uses
 - HE1 seeking to preserve the character of historic buildings by not allowing their demolition or alterations altering their character, and only implicitly allows for exceptions
 - HE2 seeking to ensure historic windows or doors are repaired, or where repair is not practical or replacement of previously repaired windows or doors is necessary, replicating historic styles and details.

The balance in decisions on planning applications

a) Review of decisions

- 4.10 To consider how specific applications reflect the State's priorities the review examined a sample of 31 recent decisions on major planning applications and the balance struck between economic, environmental and heritage considerations. A list of the 31 application documentation cases examined is included at Annex B to this report.
- 4.11 The sample was drawn from decisions on major schemes in St Helier and major applications involving buildings of historic interest across the Island decided in the past year and a half, and major schemes decided in 2013 drawn from Planning Application Panel (PAP) and Ministerial hearing agendas. Consultation responses, public representations, officer reports and minutes of decisions were examined to assess how economic, environmental, heritage, and other factors were balanced and how well these considerations reflected the priorities of the States.
- 4.12 19 of the cases were on sites identified by the current resurvey of historic buildings as having an historic or heritage interest in the form of existing protected or proposed listed buildings. 19 of the cases involved commercial development of various forms. Eight cases involved residential development or residential redevelopment of which

four involved the change of use from a commercial use to residential use with some loss of commercial premises.

- 4.13 In each of the 19 applications with commercial content proposed, the relevant economic policies were clearly set out in the officer reports and advice was given on the weight to be attributed to those policies and in particular to:
- the high priority for maintenance and diversification of the economy of policy SP5
 - where appropriate, policy E1 (& EIW1) protecting existing employment land & premises
 - and where appropriate ensuring sufficient land and premises to meet the need for additional office and other commercial floorspace (Policies EO1 & EIW2)

- 4.14 Only two of the 19 applications were refused; both were refused on retail policy grounds being in the Green Zone.

b) Town centre office schemes

- 4.15 Five major town centre office schemes were reviewed. These were all approved, giving effect to the Island Plan's intent to ensure adequate office provision for the financial industry's needs at the Esplanade/Waterfront, Commercial Street, and Weighbridge.
- 4.16 Four of these permissions involved the demolition or partial loss of proposed listed buildings (Southampton Hotel, 8+9 Esplanade, J1 31-41 Broad St and 22+23 Esplanade). Officer reports on these schemes gave full regard to the relevant economic generation objectives and policies of the Island Plan as well as rehearsing the heritage interest and significance of the proposed listed buildings affected, and policy HE1 of the Island Plan.
- 4.17 Having balanced these and other material considerations, the officers' reports in all four cases recommended refusal because of the impact on historic buildings. However, the Minister, after a Ministerial Hearing, concluded that the balance of the considerations led him to place more weight on economic objectives and he decided to grant permission.
- 4.18 Generally the officers in Jersey and in mainland jurisdictions are reluctant to make a recommendation which is not in accordance with the relevant policies of the Island Plan. Where conflicts of policies arise officers understandably tend to adopt a cautionary approach. Where policies are mutually exclusive it is currently the Minister, or the PAP acting on his behalf, who apply the discretion as to which policies to give the greatest weight in making a decision. That is what happened in the four cases, and the economic objectives of the States as embodied in the Island Plan were judged by the Minister to be of greatest priority. This shows the final decision met the States' economic objectives with regard to the new office development sector. Other proposals including those foreshadowed in the Esplanade Quarter Masterplan are also coming forward. This shows a good match to the States economic objectives with regard to the new office development sector in and around the Esplanade quarter.
- 4.19 In future the Minister's role will change as he/she becomes the final arbiter in receiving appeal inquiry reports and deciding appeals. This has implications for PAP deciding such applications in future which are considered in Section 5 of this report.

- 4.20 The review noted that the five major town centre office scheme applications referred to above were not significantly controversial, although a number of historic, provisionally listed buildings were to be demolished or significantly altered to allow four of these schemes to proceed. There were low levels of consultation comments on all five proposals.
- 4.21 Part of the criticism of the weight given to heritage considerations over such matters seems to stem not from the balance set out in the Minister's decision making, but from the officer report balance. In the examples referred to above (and in other complex cases) it can be difficult to see how the balance of different considerations has been made. Consultee comments including the Historic Environment team advice are set out in the decision making agenda report and heritage recommendations are reflected in the recommendations but the department balance and how it has made that balance are not so easy to understand. To help the decision maker decide how conflicting policies need to be interpreted it is important for the officer report to recommend explicitly how conflicting policies need to be interpreted, and how the officers have balanced conflicting policies and made a clear recommendation.

Viability

- 4.22 The high land values in Jersey, and planning strategy which requires virtually all development to take place within the urban area will require development projects to create sufficient value to make them economically viable. In particular, the migration of the financial sector to the Esplanade area and changes in shopping behaviour are already impacting upon the value of existing uses in the north of the town centre, and it may be anticipated that landowners and developers will increasingly seek to put together schemes for redevelopment in this area. That will be happening in an area with a substantial number of listed and proposed listed buildings.
- 4.23 As values here adjust to the impacts of some Island Plan policies, viability may be more significant. As well as the 31 application files examined, reference was made to the Co-op redevelopment proposal at 21-28 Charing Cross, 4-6 Pitt Street, and 6-8 Dumaresq Street. This was encouraged for commercial development but refused because of the demolition of historic buildings and impact of the redevelopment on the two remaining historic buildings proposed.
- 4.24 The withdrawal of the developer from the redevelopment proposals for Bath Street and the recent refusal of the Co-op redevelopment in Charing Cross, have drawn negative criticism from promoters arguing that inflexibility of planning requirements for public parking and the retention of historic buildings have gone against being able to make schemes viable. A number of development representatives felt controversy was inevitable in Jersey given its Island circumstances and media interest. However, since the recession viability has become an even more critical factor in development
- 4.25 Section 3 of this report recommends that in the next review of the Island Plan an assessment should be made of the potential impact of the plan's policies on development viability, echoing current practice in England. It also suggests that viability should be examined in developing masterplans and significant development briefs.
- 4.26 Viability has now become an important material consideration underpinning mainland jurisdiction planning decisions, and it is considered appropriate that this should also be the case in Jersey. It is noted that in Jersey discussions about viability of proposed development are not generally driven by sharing open book detailed valuations, as has become common in mainland jurisdictions. It appears that this is not something which has previously been common practice in Jersey. Whilst some

development interests met suggested this would not be easily achieved or desirable, other jurisdiction planning systems have managed to overcome initial resistance. It would be helpful to extend the principle of independent or open book development costs and valuation to discussions with developers and the planning department about marginal viability of proposed developments.

- 4.27 However, the corollary should also be the case. No weight should be given to claims that planning policy or other requirements will damage viability if the prospective developer is not willing to put their evidence on the table. Assertions without the evidence would deny the States and other interested parties the opportunity to test or challenge the arguments advanced.

c) Heritage considerations

- 4.28 In relation to Historic Buildings Policy HE1 dealing with the protection of listed buildings and places states:-

“There will be a presumption in favour of the preservation of the architectural and historic character and integrity of Listed buildings and places, and their settings.

Proposals which do not preserve or enhance the special or particular interest of a Listed building or place and their settings will not be approved.

Permission will not be granted for:

- 1. the total or partial demolition of a Listed building;*
- 2. the removal of historic fabric, which might include roofing materials, elevational treatments (such as render or stucco) and their replacement with modern alternatives;*
- 3. the addition of external items, such as satellite dishes, antennae, signs, solar panels and roof lights, which would adversely affect the special interest or character of a Listed building or place, and its setting;*
- 4. extensions, alterations and changes which would adversely affect the architectural or historic interest or character of a Listed building or place, and its setting.*

In those exceptional cases where there is a loss of the historic fabric of a Listed building or place, the Minister will ensure that the recording of that fabric to be lost is undertaken, as appropriate.

Applications for proposals affecting Listed buildings and places which do not provide sufficient information and detail to enable the likely impact of proposals to be considered, understood and evaluated, will be refused.”

- 4.29 A number of people have suggested this policy formulation is too inflexible not allowing for exceptions which allow for demolition or alterations in exceptional circumstances. In the EiP into the Island Plan the appropriateness of the detail of this policy was considered.
- 4.30 The Inspectors’ report referred to the Association of Jersey Architects representatives referring to HE1 being over restrictive in its policy towards old buildings. The AJA referred to a perception of an anti-development culture now predominating in the case of historic buildings. Arguments were put to the EiP that the apparent automatic non-approval of any proposal not preserving or enhancing historic buildings should be qualified by the addition of an exception where there was overriding public economic or social benefit. The Minister and department pointed to the reference to

exceptional cases and the likely erosion of heritage if exceptions were included which weakened the policy.

- 4.31 The Inspectors concluded that there was adequate flexibility to deal with appropriate situations and that a loophole would be likely to lead to a significant loss of the Island's heritage. As this report shows there have subsequently been a significant number of cases where planning permission has been granted for development for economic reasons overriding policy HE1. This shows flexibility can apply with the policy formulation.
- 4.32 There will always be controversy about the balance between the need to preserve heritage and provide for economic and social needs. This tension has been continuing for many years and is perhaps magnified by Jersey's unique circumstances. The tension may become more prominent in the North of Town area as landowners seek to replace existing uses in an area where office demand may decrease and pressure for redevelopment of historic buildings continues.
- 4.33 A comprehensive review recommends increasing the approximate 4355 proposed listed buildings and statutory protected historic buildings (including 3349 buildings of local Interest) referred to in the 2010 Review of the Heritage Protection Regime White Paper to over 4500 historic buildings. Decisions about the criteria to register Jersey's buildings as of special interest and the level of protection are appropriate for Jersey.
- 4.34 The Shepley report recommended an independent review, and a team of independent historic building surveyors versed in UK listing standards was contracted to assess all buildings of historic interest. This was organised by Jersey Heritage under a service level agreement with the Planning and Environment Minister. The survey criteria were very similar to listing standards used in U K jurisdictions.
- 4.35 The Minister's Listing Advisory Group (MLAG), comprising Jersey architects and heritage experts, has considered and moderated the re-survey. They have recommended that approximately 5% of the independent surveyors' recommendations should not lead to statutory protection of the buildings concerned. They have also recommended approximately 10% of those buildings recommended for listing should have their recommended grade reduced from a higher grade.
- 4.36 The Minister has to follow a specified process to notify building owners of his intention to list buildings and then consider representations made as to the buildings' historic merits. This is in progress. About 90% of those notified up to the end of November 2013 had not made representations opposing the listing of their buildings during the period of such representations. Once the Minister has considered all representations and then finalised the list of protected listed buildings, the extent of concerns of property owners will have become apparent.
- 4.37 It was suggested that the designation of listed buildings should be the responsibility of a different Minister with cultural responsibilities, separate to the responsibility for determining whether planning permission should be granted for development affecting historic buildings. This is a logical suggestion but it is considered that this would be an inappropriate time to make such a change. The imperative is to complete the resurvey as soon as possible. Changing listing responsibilities at this stage is likely to be disruptive to the imperative.
- 4.38 However, if the present level of representations is maintained, the extent of listing confirmation may not have been as controversial as previous commentators have suggested. Once the Minister has completed his decisions on listing, the first part of

the assessment of “whether the number of protected buildings stands at the right level” of the Shepley report 2005 will finally have been completed.

- 4.39 As the Chief Minister stated in the 2012 Strategic Plan, the need to maintain a careful balance between economic social and environmental policies while dealing with economic and other challenges, means capitalising on Jersey’s strategic location, beautiful natural surroundings and unique cultural and historical assets. So protection of those assets is vital and well developed through policies reflecting the State’s priorities.
- 4.40 It is however important to complete the listing process as soon as possible to remove uncertainty by producing a definitive list with clear reasons why the building has been listed. There have been many proposed listed buildings in recent years where the listing process has not been completed. This leaves doubt in both decision maker and owners’ minds as to the weight that should be given to the special character of the building, in dealing with development proposals.
- 4.41 The process has recently been delayed by the Seymour Villas Royal Court and Court of Appeal cases. A temporary resource has already been brought in to accelerate the owner notification processes, but the completion by the end of 2014 is so important that it is recommended that the likelihood of being able to adhere to this timetable is carefully reviewed and consideration is given to securing additional temporary resource to manage and complete the administration of the Ministerial decisions on listing.
- 4.42 The second part of the Shepley report recommendation was to assess whether the level of detail in dealing with developments affecting historic buildings is appropriate. As stated above flexibility concerning impacts on historic buildings contrary to policy HE1 can be found in decisions taken by the Minister and PAP. In relation to minor works Policy HE1 provides a framework for decisions on proposed extensions, alterations and removal of historic fabric to/from historic buildings. A Ministerial direction has clarified that listed buildings graded as grade 4 will not require planning permission for internal alterations (MD-PE-2013-0058).
- 4.43 A more detailed policy applies to repair or replacement of windows or doors in historic buildings. Policy HE2 states:
- “All existing historic windows and doors in historic buildings should be repaired, wherever possible, using materials and details to match the existing.*
- The replacement of historic windows and doors in Listed buildings and in those historic buildings in Conservation Areas, where consent is required for such work, will not be approved, unless there is clear justification to show that repair is not possible.*
- Where repair is impracticable or where previous replacements are being replaced again, replacements that do not carefully replicate or restore the historic windows or doors in terms of materials, method of opening, proportions, dimensions, visual weight, decorative details and finish, will not be approved.”*
- 4.44 A number of those interviewed at the time of the 2010 PIP review expressed a view that attempts to control replacement windows and doors in post occupation extensions, and to resist secondary or double glazing alterations to historic windows

and doors of listed buildings were unnecessarily detailed. Similar views were repeated in 2013 interviews.

- 4.45 A draft SPG has been prepared to seek to respond to concerns and provide assistance. Consideration has been given to how to accommodate secondary glazing and improve the retention of heat whilst retaining the original historic windows or doors and to assist when replacement windows and doors are needed in later extensions not of themselves of historic importance. This is a helpful response to criticisms of unnecessary controls. Given the intensity of views about heritage protection in Jersey it is important to avoid criticism of decisions on post occupation extensions contributing to a climate of opinion where fundamental heritage concerns are given less weight than they deserve.

d) Employment land retention and light industrial/ warehousing land provision

- 4.46 A further area of decisions that was raised by development interests relates to Island Plan Policy E1. This is concerned with the protection of existing employment land (other than land used predominantly for office or tourist accommodation). Because of a limited amount of employment land, there is a presumption against the loss of such land unless lack of market demand or other factors apply.
- 4.47 This policy has caused some controversy and Supplementary Planning Guidance was published in June 2012 to amplify the criteria to be applied in deciding if the use had become redundant and with no market for the use. This controversy might seem a little strange as the policy was clearly designed to ensure a supply of employment sites to sustain the economy was maintained. However the removal from the policy of existing sites predominantly used as office or tourist accommodation was intended to meet the concerns expressed in 2010 and 2011.
- 4.48 Some criticism of the imbalance in favour of environmental policies against economic objectives has arisen in respect of redundant glass house sites and similar horticultural sites, and others where applicants feel the tests of policy E1 and its supplementary planning guidance have been interpreted too rigorously.
- 4.49 Most comments referred to proposals to redevelop redundant glass houses or nurseries with housing. Some officer reports in the examined files did not have the same level of economic policy consideration set out as tends to happen when HE policies are relevant. The policy was taken as a given and not necessarily placed in its context. It would be helpful to explain the significance of this policy to the States economic objectives. However as long as the policy to retain employment sites in employment use remains a key part of the Island's economic objectives, it is doubted development interests concerns will be assuaged.
- 4.50 Cases were found where the tests of redundancy and lack of market interest were met and accepted by officers based on reasonable evidence, although other green zone policies could still lead to refusal of residential redevelopment proposals.
- 4.51 The Island Plan identifies light industry and warehousing objectives including ensuring sufficient land is available to allow for the expansion of existing industries and the formation of emerging industries, sufficient land to provide for the relocation of inappropriately located industry, and protecting existing industrial estates and sites from development for non-industrial uses. It was anticipated that new light industrial and warehousing land of approximately 20 acres would be required. Policy EIW1 seeks to protect 8 existing industrial estates from non-related development and proposals 12 & 13 of the plan seek to bring forward La Collette & Airport non-

operational scheme provision. Concern was expressed by some States members at what they regarded as slow progress with the implementation of proposals 12 & 13.

Conclusion

- 4.52 The conclusion from this section is that the balance of decision making is broadly appropriate. Whilst greater clarity is needed on officer recommendations explaining the final balance of the recommendation where conflicting economic environmental and heritage policies apply, this does not negate the conclusion. Nor is this the case in dealing with applications involving changes of use under policy E1, where potential economic benefits need to be explicitly referred to. The balance of decision making is broadly appropriate.

SECTION 4 RECOMMENDATIONS

- 4.53 *The officer report on planning applications should recommend explicitly how conflicting policies need to be interpreted and express a clear position on where the balance of conflicting interests lies*
- 4.54 *It is important to extend the principle of independent or open book development costs and valuation to discussions with developers and the planning department about marginal viability of proposed developments, with evidence available to demonstrate any arguments being put.*
- 4.55 *Completion of the listed building intention to notify and final listing should be achieved as soon as possible and no later than the end of 2014. Consideration should be given to securing additional temporary resource to manage and complete the administration of the Ministerial decisions on listing to meet this target.*
- 4.56 *The impact of the draft SPG on windows and doors in historic buildings should be monitored, particularly in relation to works to post occupation extensions, and reported to the Minister.*

5. The role of the Minister and the Planning Applications Panel (PAP)

- 5.1 One of the major elements of the 2010 Performance Improvement Programme (PIP) report related to the role and behaviour of politicians involved in the decision making process and the way that Ministerial government had impacted on planning in Jersey.
- 5.2 The Minister's interest in planning matters had involved substantially more detail than might be expected, involving approx. 420 applications over the course of a year where he had required to be consulted, had called the application in for his decision (following a Ministerial hearing) or simply sought involvement or further information. Such a level of involvement, including informal pre application discussions with developers or other interested parties, had led to unrealistic expectations of the Minister and PAP members, in respect of the handling of planning applications.
- 5.3 The original PIP findings were that this involvement had slowed down decision-making, complicated lines of communication and impacted on the functionality of the department. These conclusions endorsed comments which had also been made in the first Reg's Skips Committee of Inquiry report.

Ministerial and PAP Members pre-application discussions

- 5.4 The previous Minister expressed a wish to be involved in far fewer applications than had previously been the case, but that he felt it important to retain the ability for early Ministerial pre application engagement for significant proposals. Such engagement, he felt, offered the greatest opportunity to mould development to the wider interests of Jersey, and was an area where the public would expect a Minister to focus.
- 5.5 He requested the production of a draft protocol to structure Ministerial involvement not only during the early stages of major proposal pre application discussions, but to outline how major applications affecting the Island should be determined. A draft protocol was provided and this approach was endorsed during 2011 by a Ministerial PIP Political Steering Group set up to assist with taking forward these recommendations.
- 5.6 A Ministerial Code of Conduct was formally adopted in December 2011 as Ministerial Decision PE-2011-120. This states that:

“ the Minister will only become involved in pre application discussions in exceptional cases, either if proposals are judged to be of Island wide significance or proposals where there is already published Ministerial Guidance.”

The protocol provides clear guidance on the processes to be followed for such Ministerial discussions and how any advice should be formally recorded.

- 5.7 On reviewing recent Ministerial involvement in planning applications it is clear that the level of involvement at a pre application stage has dropped significantly and that Ministers have actively promoted the production of some site specific master plans for schemes of Island wide significance (eg the Esplanade Finance Quarter).
- 5.8 In the 12 months to 11 October 2013 the Greffe records just under 40 planning decisions taken by the Minister following Ministerial hearings. Many of these cases were developments of Island wide significance or proposals where there is published

Ministerial Guidance. Others have been to deal with cases referred to the Minister by the Royal Court or Planning Applications Panel (PAP). A small number do not appear to fall within the ministerial code of conduct. While this is perhaps a little more than had originally been anticipated it is very significantly less than previously. For this reason, and because the forthcoming changes in ministerial role arising from the introduction of the appeals system will remove the Minister from a day to day decision making role, the report makes no comment on this level of ministerial involvement.

- 5.9 At the time of the 2010 PIP report there was no indication that PAP Members gave pre application advice either individually or collectively. PAP members showed a clear awareness of the dangers surrounding any appearance of pre-determination, and the existing PAP Code of Conduct made it clear that pre application meetings with prospective applicants required a degree of formality and should be left to officers, in most circumstances.
- 5.10 The PIP report endorsed this approach and recommended that formalising it into a revised code of conduct would reinforce the PAP as the decision-making body on most controversial, or major, planning applications. The 2011 Ministerial PIP Political Steering Group also agreed this approach.
- 5.11 In January 2012 a revised Members Code of Conduct for PAP was adopted and para 7 now states:

“Members of the Panel should not be involved in pre-application discussions with potential applicants. All discussions or requests for advice should be directed to Officers”

PAP decision-making

- 5.12 When PAP meetings were observed in 2010 it was noted that PAP members displayed a good command of material planning considerations and policy matters and did a good job of transparently balancing the material considerations on controversial applications.
- 5.13 At that time the PAP were determining approximately 200 applications per annum which represented 13% of all application decisions made. In 2013 (to date) the PAP has determined 101 applications (7.4% of all application decisions made).
- 5.14 In all cases the public could see a clear decision-making trail which was fully minuted to demonstrate the weight that the PAP had given to material considerations in balancing its decisions.
- 5.15 The revised Members Code of Conduct for PAP (Jan 2012) reinforced the role of PAP on the basis of recommendations made in the PIP report.
- 5.16 The PAP meeting held on 14 November 2013 was observed to follow very much the same pattern as in 2010 with a similar careful balancing of material considerations. Individual members of PAP also now clearly explained to the meeting why they were withdrawing if they were conflicted over an application.
- 5.17 As a further monitoring of PAP decision making it would be worth considering an annual post decision study visit of PAP members to view completed developments to review quality.

Ministerial decision-making

- 5.18 The PIP report recommended that the PAP should be asked to determine most controversial applications other than major proposals of Island wide significance, significant proposals on which the Minister has published or recorded Ministerial pre application guidance, or any proposal not in accordance with the Island Plan.

- 5.19 The Ministerial Code of Conduct (Dec 2011) says at paras 1.1 and 1.2:

“The Minister will only become involved in determining applications for planning permission or any other application that requires consent in exception circumstances. The exceptions are likely to include:

- *Proposals of Island wide significance*
- *Proposals where there is published ministerial guidance or recorded pre application advice for major proposals”*

In all cases when the Minister does become involved in determining applications for planning permission or any other consent the reasons for the intervention will be publicly recorded, and any proposed call in will be discussed with the officers prior to the Minister using reserve call in powers”

- 5.20 The PIP report also recommended that the Minister should retain reserve powers to determine applications by exception which were not in accordance with the Island Plan and where the PAP was minded not to accept an officer recommendation (known as the “cooling off period”) as set out in Ministerial decision PE2006/0012. Substantial departures were required by Article 12 of the Jersey (Planning and Building) Law 202 to be subject to a public inquiry after which the Minister would receive a report from the independent inquiry chairperson and issue a written decision.

- 5.21 The 2011 Ministerial PIP Political Steering Group endorsed this approach and the PAP Members Code of Conduct (Jan 2012) now states in para 11:

“Should the Panel be minded to make a decision contrary to the recommendation of the Officer’s report, in accordance with Ministerial Decision PE2006-0012, the decision will not be taken at that meeting, but referred to the Minister, who may seek further information, issue advice to the Panel, or decide the application himself. When such a situation arises the Panel will clearly give their reasons why they wish to depart from the recommendation so that the Minister can fully understand the situation”

- 5.22 In 2010 the PIP team observed a Ministerial Hearing of applications which was held in public. At that time it was not clear what weight was being given to the balance of different material considerations unlike the open discussion of such matters which had been observed at PAP meetings. In addition, because the Minister either announced a decision, or announced that he would consider the issues further and make a decision by issuing a Ministerial Decision at a later date, it was not possible to fully understand how the Minister had reached his decision. There was nothing of explanation to minute, other than the decision itself, unless the Minister set out his reasons for reaching the decision fully in each and every case.

- 5.23 The Ministerial Code of Conduct at paras 1.3 and 1.4 now states:

“All applications determined by the Minister will be determined by way of a Public Inquiry or Ministerial Hearing. The Minister at a Ministerial Hearing will allow a full explanation of all material considerations to be given by the

presenting officer, followed by a full audible debate to assist all those present to see how material considerations are being balanced.

Full reasons for a decision which address all the material issues raised during consideration of the application should normally be given in writing, after the Hearing, as part of the public record of the decision.”

- 5.24 A review of minutes from previous Ministerial Hearings shows a pattern of full reporting of arguments for and against applications and, generally, a clear account of the balancing of material considerations when the Minister makes a decision at the meeting.
- 5.25 The Ministerial Hearing of 6 December 2013 was observed. The Minister deferred a decision in all three cases heard that day; two pending further information being provided and another because of late information material received. Whilst it was clear that Minister asked questions of officers, applicants and objectors which related clearly to the material considerations of the cases being considered it was not entirely clear to those observing how such considerations were being balanced. However, where the Minister defers a decision the minutes show a clear account of what has happened at the meeting. Ministerial Decisions now contain much more detail and also now clearly show the way that the Minister has balanced material considerations in reaching his deferred decision and the reasons for any conditions added.

Requests For Reconsideration process (RFRs) and appeals

- 5.26 In 2010 the PAP heard almost all requests for reconsideration of delegated decisions (RFRs), where the applicant was unhappy with a delegated refusal or particular conditions that had been imposed on a delegated approval. The PIP report noted that the RFR hearings functioned to some extent as a surrogate appeal system, albeit only for delegated decisions, though not for more controversial decisions. In the past year 78 RFRs have been lodged for consideration by PAP.
- 5.27 The PIP report noted that Human Rights property protocols and natural justice considerations would suggest that an independent hearing of the planning merits of cases would add value to the Jersey system. This recommendation for an independent appeal commission had also been raised in the 2005 Shepley report. Both reports made the point that the existing appeals process through the Royal Court did not allow for the consideration of planning merits, only the reasonableness of the decision.
- 5.28 The PIP report expressed some surprise that there was currently an opportunity for minor application delegated refusals to be re-examined through the RFR system, but no similar opportunity for more controversial or major proposals.
- 5.29 The PIP report had found unanimous support for an independent appeals system from applicants, agents, amenity groups, members and planning and environmental officers who had been interviewed. The Reg's Skips COI Stage 2 report also recommended the introduction of such a system and the approach was further endorsed by the Ministerial PIP Political Steering Group in 2011.
- 5.30 In early 2013 a green paper was published outlining a proposed system and the States Assembly Members adopted a proposal for the introduction of an independent appeals system. The States, however, also agreed an amendment which retained the option of an RFR to the PAP in respect of delegated refusals or imposed conditions on a delegated approval.

- 5.31 The new appeals system will provide for an independent Inspector to be appointed who will either review a case via written representations, or, in certain circumstances, through a public appeal hearing. Under the new system, merits based third party appeals will also be introduced to replace the previous 3rd party right of appeal on reasonableness grounds only. Inspectors will be independent and drawn from a specialist pool with knowledge of the Jersey planning system. It is suggested that it will also be important for all inspectors in the pool to have a good understanding of the working of third party appeals which will be a part of the appeals process.
- 5.32 The appointed Inspector for any appeal will provide a balanced, written recommendation to the Minister, who will have the final decision making responsibility.
- 5.33 The PIP report also recommended that, to ensure the consistent application of policy it was desirable for major schemes that would be a departure from approved policy, to be advertised as major departures and so identified in the weekly application list, in the Jersey Evening Post and on the website, at the time of an application's registration. At this stage a decision would be taken as to whether they were "not insubstantial" departures when a public inquiry would be required as outlined in the Public Inquiries Order.
- 5.34 The department has not implemented the recommendation to advertise departures but continues to assess applications against policy and to identify departures in recommendations. Since 2010 there have been three inquiries on matters of "Island wide significance" – relating to applications at The Esplanade, Plemont and Field 622. Field 622 was identified as a departure whilst The Esplanade and Plemont inquiries were held because they were judged of island wide significance in view of the significant number of representations received.
- 5.35 Following the introduction of the appeals process it is considered that there may be a need to re-consider advertising major departures as such. The advantage of advertising major departures would be to ensure that there was no doubt about the status of a proposal and the need for a hearing to consider all the issues before a decision is made. The disadvantage is that, if the proposal is refused, abortive costs will have been incurred. It does appear that the internal mechanism within the department for identifying such departures is operating effectively now. So the imperative which drove the previous recommendation is not so important. As set out below there will be changes in the appeal system which will make it more desirable to reconsider advertising major departures, not least so that applicants understand at an early stage when their proposals are likely to be called in for determination by the minister after a hearing with implications for their rights of appeal.
- Implications of the appeals system on PAP and Ministerial decision-making**
- 5.36 It is considered that introducing a formal planning merits based appeal system will have a significant impact on the roles of both PAP members and the Minister within the planning decision-making process.
- 5.37 The proposed appeals system changes the Minister's role to that of a final arbiter, who will receive appeal inquiry reports or hearing reports on proposals of island wide significance called in for ministerial decision and then formally decide cases, much in the way that the Secretary of State does in the English system.
- 5.38 It is understood the Minister will still be able to call in applications of island wide significance and those which as a result are major departures, but will only be able to deal with them after receiving an independent inspector's report.

- 5.39 Only where the minister has published pre application planning guidance, or proposals of island wide significance are made, will the Minister be able to decide on an application after a hearing with the benefit of an independent inspectors report. The Minister will become the final arbiter of appeal decisions and of major decisions on applications of island wide significance. The Minister will need to set out clearly, in the light of the Inspector's report, his or her decision and the main considerations which have shaped it, as the SoS does in England.
- 5.40 In this role, the Minister will need to be careful not to become involved in matters other than those referred to in the previous paragraphs which might fetter his or her discretion in an appeal, or could be construed as doing so. This is in any event dealt with in the Ministerial protocol, and would include pre application discussions, commenting on proposals, or negotiating on or seeking to influence other applications
- 5.41 This means that most decisions will need to be decided by PAP in future and they will not be able to avoid determining applications that the Minister has decided not to call in. The PAP is likely to need greater support, including briefings on Island Plan strategy, to help its members step up to deal with the most significant applications. It will be necessary for officers' reports to set out clearly how the material considerations have been weighed and what the balanced department recommendation is to assist PAP as recommended in section 4 above.
- 5.42 This will require PAP to be even more transparent in their weighting of material planning considerations and PAP members will need to be confident and to clearly reflect the long term strategic aims of the States in their decision-making.
- 5.43 It is considered likely that PAP members will require significant additional training to assist them to develop the high level awareness and confidence needed to resolve these issues in future.
- 5.44 It will be sensible to consider enlargement and strengthening of the PAP because of the increased importance of the PAP as the main political level of planning decision making. It will also be essential for the PAP to ensure that they always sit with an odd number of members, unless the Chair were given a casting vote, to ensure that decisions can be made.

SECTION 5 RECOMMENDATIONS

- 5.45 ***As a further monitoring of PAP decision making, consider an annual post decision study visit of PAP members to view completed developments to review quality.***
- 5.46 ***All inspectors in the pool should have a good understanding of the working of third party appeals which will be a part of the appeals process.***
- 5.47 ***Following the introduction of the appeals process there may be a need to reconsider advertising major departures as such.***
- 5.48 ***Consider enlargement and strengthening of the PAP because of the increased importance of the PAP as the main political level of planning decision making and provide increased training support to assist them***

6. Review of previous reports and recommendations

- 6.1 The POSe team have studied the three previous reports undertaken of the Development Control service since 2005 and reviewed all of the recommendations made. Full commentaries on the progress made towards fulfilling the three sets of recommendations are detailed in Annexes C, D and E to this report. Text in the commentary sections normally confirms the progress made whilst emboldened text provides individual comments on the potential implications of actions taken.
- 6.2 Across the three reports there were a total of 142 recommendations. Of these 79 have been implemented with a further 21 recommendations having been partially implemented. 30 recommendations have not been implemented and the Annexes provide commentary on why they have not been and further reference is made in this and the following section where it is considered that the decisions not to proceed may cause issues for the department as it moves forward.
- 6.3 It is clear that a great deal of effort and resource has been committed to carrying forward the recommendations, particularly of the 2010 PIP Review, and a great deal of progress has been made in the areas of Ministerial and PAP involvement and the introduction of an independent appeals system. The department has also invested significant energy, initiative and resource into the introduction and development of an integrated IT and document handling system.
- 6.4 There are some matters on which it is helpful to comment, and also some areas where there has been less progress or there is a need for further improvement. These areas are outlined below with some further recommendations.

Performance and targets

- 6.5 Figures provided by the department show that in the 9.5 month period from 1 January 2013 to 17 October 2013, 1212 applications had been received. From this an estimate of approx. 1531 has been calculated as the annual number of applications received)
- 6.6 The number of determined applications in 2013 was 1578 (428 major applications and 1150 minor applications). This shows a very slight reduction from the 1621 applications recorded in the 2010 PIP report.
- 6.7 In 2010 one of the main issues highlighted in the PIP report related to the difficulties in obtaining any reliable statistical data from the IT system that was then being used. At that time it was noted that States money was available for upgrading IT systems. It was recommended that such funding should be sought once a clear system specification had been produced following a series of visits to English local authorities who were using integrated systems. Resulting from this the new Northgate Merlin system went live on 1 April 2012 and at this stage the target times taken for applications to be determined were reduced to 8 and 13 weeks.
- 6.8 Performance has continued to improve during 2013 as shown by the table below, and reflects the views expressed by almost all interviewees, including applicants and agents, that there has been a noticeable improvement in the Department's performance:

| Applications determined within target 8/13 weeks for Quarters 1-3 of 2013 | | | |
|--|-----------|-----------|-----------|
| | Quarter 1 | Quarter 2 | Quarter 3 |
| All | 71% | 86% | 91% |
| Minor | 70% | 91% | 97% |
| Major | 73% | 71% | 80% |

Management information

- 6.9 It became apparent during this review that there are still issues around the production of figures and other outputs from the new Merlin IT system provided by Northgate. The total number of applications provided through the Merlin system does not agree totally with a control total being produced manually by the team leader responsible for the Technical Support Team and there still seems to be a great deal of uncertainty about how to access management information and one off reports.
- 6.10 Those responsible for producing management information for use within the department have received basic training on report production but the system now in place is capable of providing a great deal more information if time could be devoted to developing greater skills in this area.
- 6.11 The system in place should be providing information for use throughout the department, particularly by the policy team and should be feeding into the development of the Island's broader strategic aims and aspirations.
- 6.12 It is suggested that consideration should be given to setting up an informal mentoring system with other established users of the Northgate system as this would help to develop advanced report writing techniques and build confidence in the information that could be provided.
- 6.13 There also seems to be an inconsistency in case officers' approaches to filling in fields. Many sets of data requested showed as "no record" for a substantial number of cases and this was clearly illustrated in the figures provided relating to the number of RFRs lodged over the year Dec 2012-Nov 2013

| | |
|--|-----------|
| Number of RFRs received as per Merlin system | 78 |
| Number of decisions maintained | 24 |
| Number of decisions amended | 10 |
| Number where no record shown | 44 |

- 6.14 A further example related to a discrepancy uncovered in the original figures provided for pre-application requests. The figure provided seemed surprisingly low and when it was checked it became clear that a large number of such requests had been entered onto the system incorrectly.
- 6.15 A series of comprehensive "how to do it" User Guides have been produced by members of the development control team and all case officers were apparently provided with initial training before the system went live. However, it is clear that some refresher training is required and that some monitoring of inputs needs to be undertaken to encourage compliance.

- 6.16 The consistency of data entry will become even more important once the new appeals system has been introduced, because of the provision which will allow for applicants to go straight to appeal in cases where an application has not been determined within the target time specified. Case officers will need to ensure that any agreements to time extensions have been formally recorded with a clear audit trail on Merlin and the associated document handling system (I@W).

Monitoring

- 6.17 One area identified in the PIP review where the previous IT system had failed was in providing regular reports for use by team leaders to monitor the progress of, particularly, major cases.
- 6.18 A weekly report (“traffic lights report”) is now produced alongside a 21 day reminder and this is circulated to all team leaders, allowing them to monitor the workloads of their team members. This report has proved invaluable during the re-introduction of the shorter 8/13 week targets.

The registration process

- 6.19 Despite the introduction of the new I@W system and much more information being made available on the web for the guidance of applicants, approx 15% of applications have been returned unregistered over the last year because they have been incomplete. This is disappointing and it is suggested that the documentation for applicants/agents should be reviewed again and that the addition of a front page “tick box listing”, as previously suggested in the PIP review, should be further considered.
- 6.20 The introduction of the new Merlin system and I@W has unfortunately not resolved issues relating to the handling of planning fees and work is still required to improve the interface with the States’ financial system.
- 6.21 One element of the updated Merlin system which has not been introduced yet provides a facility to accept phased payment of planning fees. The department is shortly to introduce partial payments where a percentage payment is made with an application for outline permission and the balance being paid at a later stage. Assuming the level of fees is going to remain as high as it is then applicants and agents indicated that they would welcome the extension of such a facility to all major applications. It is suggested that the introduction of such a scheme should be considered further once the outline scheme has been operated for a six month period.

Pre application engagement

- 6.22 The total number of pre application queries shown in Merlin for 2013 was 206 which were formally dealt with by Case Officers. In addition a further 116 pre application enquiries were recorded informally via the duty officer’s log.
- 6.23 It is understood that a possible charge for formal pre-application engagement has been considered by the department but is not currently being pursued. It is considered that this is the best option for the department at this time but this decision may need to be reviewed should the level of engagement continue to rise with the need for adequate pre application resources when the economy revives.
- 6.24 Revised Supplementary Planning Guidance for applicants about the pre application engagement process has recently been published (October 2013) and this provides clear advice on what applicants can expect from such engagement. It provides a commitment to management quality control checks on advice given, and indicates officers will seek to adhere consistently to the advice given when the proposal

reaches application stage. These changes are intended to enhance the pre application service.

- 6.25 However, it is understood that at present some applicants/agents are not interested in such engagement unless it provides certainty and that the free “go” which has been introduced for applicants who have received a straight refusal on their initial application, is viewed by them as providing a clearer gauge of what will be required to gain a permission.

Permitted development

- 6.26 The PIP review noted the greater level of detail controlled by the planning system compared to mainland jurisdictions. The Shepley report had also commented on the high level of detailed control in place. The brief in 2010 was to comment on the scale of potential reduction in the number of planning applications by an extension of exempt development to ease pressure on the development control system and its resources. Slowness in determining applications and the workloads were restricting pre application advice and other proactive planning work.
- 6.27 The PIP recommendations were to increase developments not needing permission by considering making exempt:
- Freestanding single storey outbuildings to the rear of dwellings being used as incidental to the enjoyment of the dwellings;
 - Larger rear and side extensions to dwellings’
 - Allowing garages to be converted to ancillary residential accommodation to the parent dwelling;
 - Roof conversions of dwellings to ancillary residential accommodation including rear and side fenestration;
 - Replacement windows and doors except for those in registered historic buildings.
- 6.28 In 2011 The Minister set up a Political Steering Group to assist with this and other recommendations. By the time of their report, in July 2011, the Minister had rejected the PIP recommendations in respect of exempt development and had proposed lesser additional exemptions (2 February 2011). These comprised a range of matters, including:
- A 25 cm increase in maximum permitted roof height of a conservatory or other domestic extension;
 - A 5 square metre increase in the total aggregated external area of a conservatory or other domestic extension;
 - Exemption of domestic loft conversions in buildings not listed or being considered for listing (with certain additional restrictions);
 - The exemption of extensions to industrial or warehouse buildings where the extension would not exceed 5% of the buildings existing surface area.
- 6.29 The Minister’s concerns about the PIP proposals focussed around the particular sensitivities to development (even of minor changes) in the Jersey situation and also the potential loss of income that would result from such changes.
- 6.30 The 2011 Ministerial proposals were considered by the Reg’s Skips Inquiry Part 2 prior to the Political Steering Group’s report. The Department advised the Inquiry that the changes were expected to result in around 400 fewer planning applications being received each year. However, given the workload pressures the department were facing and the impact on performance, the Inquiry report was concerned that the

measures proposed by the Minister did not go far enough to enable “a sufficient workload reduction to be achieved, let alone an appropriate regulatory loosening”. The Inquiry Report recommended the Political Steering Group be invited to consider this matter further.

- 6.31 The Political Steering Group's, published in July 2011, indicated to the Minister their willingness to carry this task forward. However, the Order giving effect to the proposed changes had come into effect on 28 June 2011.
- 6.32 The Department does not have estimates of the number of development proposals which would previously have required permission and now had a permitted development right as a result of the changes. Thus it has not been possible to quantify the impact of the Order on this. However the number of applications determined in 2013 was 1578. This shows a very slight reduction from the 1621 applications recorded in the 2010 PIP report and suggests that the exempt development changes in the 2011 Order have had only a slight effect.
- 6.33 Such a slight reduction leads the review to conclude that the arguments for extending permitted development remain valid and that the 2010 PIP review proposals will need to be revisited to achieve further efficiencies in the short term and more particularly in the longer term should application numbers increase post recession, or if temporary posts are removed from the establishment.
- 6.34 In addition there are a number of inconsistencies and anomalies about matters such as garage doors, which have resulted from the 2011 revision of the Exemption Rights and these need to be rectified as soon as possible to avoid further confusion.

Consultations

- 6.35 The I@W system records the number of consultations which have been sent to internal consultees in the past year as below:

| | |
|------------------------------------|------|
| Historic Environment Team | 641 |
| Environment - Natural Environment | 301 |
| Environmental Health | 231 |
| TTS - Highways | 205 |
| Parish of St Helier | 136 |
| Environment – Land Control | 118 |
| TTS – Drainage | 105 |
| Environment – Pollution | 83 |
| Econ Development – Tourism/Airport | 29 |
| Others | 45 |
| TOTAL | 1894 |

- 6.36 Given the number of listed buildings on Jersey it is perhaps not surprising that the Historic Environment Team has been consulted on such a large number of the applications received. However, one of the most interesting features of this list of consultees is that the Economic Development Department have only been asked to comment on 29 occasions. This is because that department has stated that they only wish to be formally consulted on applications relating to tourism or the airport/port.
- 6.37 In interview, the Chief Executive of the Economic Development Department had expressed interest in being consulted on more cases than currently and there is already provision, in the Jersey Law, for consultation with the ED Department to be

automatically triggered for applications which are inside areas of interest marked on a map which was to be provided by the ED Department. No-one within the planning department is aware of any such map having been received. Given the States priority for economic growth, there is clearly a need for closer and more regular consultation and dialogue with the ED Department, particularly on applications relating to employment and inward investment.

- 6.38 A closer working relationship could also assist when a case officer is faced with having to check on the viability of an application and would assist the planners to proceed with confidence on complex commercial applications. If the ED Department are not able to provide such expertise on an in-house basis then such re-assurance should be sought from an alternative source.
- 6.39 There have been particular efforts made to improve the consultation arrangements with the Environmental Health Department in the light of the Reg's Skips Inquiry Report 2, and all those interviewed were confident that any issues are being identified at an early stage and addressed appropriately.
- 6.40 In discussions with the Environment Department the frontloading of biodiversity consultations at pre-application stage was identified as particularly important to ensure that any necessary surveys etc could be completed to avoid subsequent delays in decision making. This would also avoid inappropriate ecological survey conditions being imposed when material considerations require the survey information to determine the application. It would be helpful for the Head of Natural Environment to make regular presentations to the case officers which could refresh the importance of such frontloading and also assist them when the results of such consultations are being reviewed.

Planning obligation agreements

- 6.41 Over the course of interviews, concerns were raised that applications requiring POAs invariably take longer than 13 weeks and that conditions and requests are received at too late a stage in the application process. There was also frustration that contributions were being sought which the legal department felt could not be pursued.
- 6.42 One of the PIP recommendations was that there was an urgent need to produce up to date guidance in this area for the use of both applicants and case officers. It appears that the work which had been started on this guidance has unfortunately been put on hold because of the greater priority being given to the legal drafting required for the new appeals system. The guidance would also have codified the agreements and levels of contribution that were currently agreed because these details are not currently available in a single source.
- 6.43 Although the recession has stopped much of the development, there is currently no mechanism for any re-negotiation of terms. However, revised schemes for some of these sites are currently coming through for consideration and it is therefore a task which still needs to be tackled fairly urgently at a high level.
- 6.44 It is suggested that the Director of Planning should agree with the legal department what should be included in such guidance and prepare a draft for discussion as soon as practicable. It is emphasised that this should not be postponed indefinitely because it needs to be firmly in place ahead of any upturn in the economy.
- 6.45 In the meantime, it is suggested that it would be helpful if case officers were to consult the legal team earlier in the application process (at pre application discussion

stage) so that realistic heads of agreement can be produced as soon as possible within the application process.

Levels of delegation

- 6.46 Following the PIP review the Scheme of delegation was amended so that any application which received less than four representations would be determined, in the first instance, by officers.
- 6.47 This has resulted in raising the level of delegation to 92% as shown in the table below.

| Method of determination | Percentage determined |
|-------------------------|-----------------------|
| Ministerial Meeting | 2% |
| PAP | 6% |
| Delegated | 92% |
| TOTALS | 100% |

This delegation level is now broadly in line with best practice in England and is considerably higher than the previous delegation level of 86% recorded in 2010. This higher level of delegation has also allowed the PAP to concentrate on more significant and controversial cases.

Standard conditions

- 6.48 The situation does not seem to have changed in this area over the last three years. Each case officer still has their own list of appropriate wording for standard conditions which they cut and paste but these conditions have not been added to the standard list currently on the Merlin system. There does now appear to be some standardisation of conditions within individual teams and the team leaders are more conscious about ensuring that any proposed new conditions are enforceable and occasionally consult with the Appeals Team to check wording but this does not happen on a regular, organised basis.
- 6.49 When discussed, case officers acknowledged that there was still a real problem in this area and the Principal Planner, who had originally been tasked with codifying a new set of standard conditions does not appear to have the capacity to undertake this task as well as his existing caseload. It is suggested that the management capacity created for the Director could provide the resource to take this work forward and this is reviewed further in Section 7.
- 6.50 It is considered that an updated list of standard conditions which have been worked through and checked for enforceability could significantly impact on the time spent preparing conditions. In addition, given that an appeal system is shortly to be implemented, it will be even more important that case officers use appropriate and enforceable conditions in the future.

Enforcement

- 6.51 One of the main complaints addressed by the Reg's Skips Committee of Inquiry report related to the lack of an agreed and published enforcement procedure, which had been noted as a problem since 2005. The PIP review recommended that an agreed enforcement policy and procedure should be produced as a matter of urgency and such a document was prepared and provided to the Reg's Skips Committee of Inquiry in early 2011.

- 6.52 However, further concerns about the enforcement process have arisen more recently and the enforcement function is now the subject of a separate internal review being undertaken by the Director of Environment. It would be inappropriate for this review to comment in any detail on further action to be taken in this area but it is noted that the enforcement policy and procedure guidance still doesn't incorporate policy priorities and that given the high profile of enforcement within the Island context there needs to be strong and clear leadership and management provided to the enforcement team.

Procedures manual

- 6.53 An electronic version of a revised procedures manual has now been completed and is available for consultation by all members of staff. The manual incorporates copies of the user guides for Merlin/I@W as well as guidance notes and other useful information and has been substantially updated.
- 6.54 It is understood that now it is electronically based it will be further developed over the next year to incorporate active links to other useful documents such as The Jersey Law, General Development Order, etc.
- 6.55 Further elements to be incorporated should be user notes around the production of Ministerial decisions on "Live Link", how to produce regular monitoring and other statistical report as well as developing user guides for the Enforcement Team.
- 6.56 It is important that the manual should be regarded as a "living document" and that elements should be continuously revised and added to by all staff, via a single co-ordinator.

SECTION 6 RECOMMENDATIONS

- 6.57 ***The 2010 PIP review proposals relating to an extension of permitted development should be revisited to achieve further efficiencies in the short term, and particularly in the longer term, if application numbers increase and resources remain the same or temporary posts are removed from the establishment.***
- 6.58 ***Anomalies in the current permitted development schedule concerning external appearance of garages, etc need to be addressed as a matter of urgency.***
- 6.59 ***Consideration should be given to setting up an informal mentoring system with other established users of the Northgate system to develop advanced report writing techniques and build confidence in the information that could be provided.***
- 6.60 ***Refresher training on data input to the Merlin system is required for all users and there should be regular monitoring of inputs to encourage compliance.***
- 6.61 ***Case officers will need to ensure that any agreements to time extensions have been formally recorded with a clear audit trail on Merlin and the associated document handling system (I@W).***

- 6.62** *Documentation for applicants/agents should be reviewed and the addition of a front page “tick box listing”, as previously suggested in the PIP review, should be further considered.*
- 6.61** *Consideration should be given to the introduction of a phased payment scheme for planning fees once the scheme for partial payments for outline applications has been operated for a six month period.*
- 6.62** *The Head of Natural Environment should be invited to make regular presentations to the case officers to refresh the importance of frontloading biodiversity consultations and to assist in understanding the responses received.*
- 6.63** *An updated list of standard conditions which have been worked through and checked for enforceability should be prepared urgently.*
- 6.64** *The Procedures Manual should be regarded as a “living document” and should be continuously revised and added to by all staff, via a single co-ordinator.*

7. Staffing and resources

Office accommodation

- 7.1 There has already been substantial work undertaken to open the existing accommodation up and to provide the Development Control teams with better and less cramped accommodation. The plan to bring the entire Planning department team together on one floor of the South Hill offices is to be applauded.

Staffing

- 7.2 One of the things which has struck the PIP team has been the significant improvement in staff morale and motivation when compared with the previous visit in 2010.
- 7.3 The current full time equivalent establishment for professional staff is 11.95 posts plus two appeals officers, who currently handle a small number of applications as well as their appeals work. The establishment has been supplemented by a full time temporary agency planner for the whole of 2013, and an additional agency planner for 2 x three month periods during the year.
- 7.4 This compares to the 2010 staffing levels of 12 full time equivalent plus two appeals officers. At that time the PIP review suggested that an additional staff resource was needed to ensure that an effective pre application service could be provided but also indicated that the low level of delegation (86% in 2010) and a high level of Ministerial involvement was resulting in substantial additional work for case officers.
- 7.5 Over the last three years, the team has benefited from the reduction in workload around a higher level of delegation (92%) and a much reduced level of Ministerial involvement, although it has not benefited from the greater level of exempt development that the PIP review had originally suggested. The team has also undertaken a significant level of formal pre-application engagement with only a limited amount of additional temporary assistance.
- 7.6 The improvement in morale and activity is particularly striking when viewed alongside what has been achieved in terms of performance levels. The team has worked together to reduce the times taken to handle applications back to 8 and 13 weeks, as well as reducing the average time for registration of applications.
- 7.7 Introducing the new Merlin and I@W IT systems, whilst a major task initially, is also now seen as having had a significantly beneficial effect on the entire team's working environment and the efforts of all staff in coping with the new systems should not be underestimated.
- 7.8 It is understood that the department is currently moving towards introducing the "lean" approach to the development control function and this is likely to have a further significant impact on the way that the teams are structured, caseloads are handled and performance is monitored. Such a "lean" approach, coupled with an increase in application numbers if the economy revitalises, or any reduction in the existing level of temporary staffing, would all indicate that a further review of permitted development is essential to maintain the current performance levels.

Team structure and caseloads

- 7.9 To coincide with the introduction of the new IT systems the development control team was restructured from 3 to 2 teams (Minor/Majors teams) with a Technical Support

Team (TST) which centralised all the registration/admin functions relating to application processing.

- 7.10 This appears to have provided the consistency of approach which had been identified as an issue in the original PIP review, particularly as one team leader now has direct line management responsibility for the TST.
- 7.11 The two temporary case officer posts have obviously assisted in the performance improvements identified earlier in this section and have provided flexibility which has allowed the Director of Development Control to implement the PIP recommendations about caseloads and frontloading. As a result he has now delegated much of the management for cases to the Principal Planner and the two team leaders. However, this has led to new concerns about extended lines of communication and caseloads and has meant that a number of key tasks, identified in the PIP review, are still incomplete.
- 7.12 There are concerns about extended lines of communication in briefings and these concerns can best be illustrated by the way in which discussions from the regular Monday Ministerial briefings are disseminated.
- 7.13 The Director now briefs the Principal Planner immediately following every Monday Ministerial briefing. The Principal Planner passes this information to the team leaders who then pass information to case officers every week. This provides an opportunity for “double handling” of information here because of the level of management delegation that is occurring.
- 7.14 The original annotated agenda from the weekly Ministerial meeting is now kept on file centrally, so that checks of the original intent can be made. However, there is a danger that messages may get diluted/changed and such extended communication channels need careful monitoring.
- 7.15 There is a perception that the Principal Planner and team leaders’ case loads have been reduced to allow them to take on the effective management and support of their staff. However, it is clear that at least one officer is still handling a significant caseload of major applications even though the temporary case officer post, which the PIP review originally suggested, is still in place and the overall caseload for the team is significantly lower than in 2010. This imbalance in the workload of the senior managers needs to be addressed, particularly in the up-skilling of senior case officers so that they are confident enough to handle complex major applications requiring require significant negotiation skills and experience of planning obligation agreements.
- 7.16 The lack of progress on several major areas identified in the PIP review, as outlined in Section 6, appears to be a result of this uneven caseloading and it is considered important that arrangements should be made, at Director level, to complete the work on the following:
- A revised set of standard conditions including those currently being used by case officers on an individual basis;
 - Guidance on the use and negotiation of Planning Obligation Agreements, together with a codification of all obligations that are currently in place;
 - A set of standard enforcement procedures and user guides, once the current internal review has reported and new arrangements are in place

- 7.17 It is also suggested that, on the introduction of the proposed “lean” management working, it would be appropriate to review the staff establishment further. Local authorities in England, which have introduced a similar approach, have found that this works best with a single integrated team of case officers and with technicians/registration teams undertaking many minor householder applications and initial pre application engagements.

Customer feedback

- 7.18 The number of personal visitors to the South Hill offices to view applications has fallen significantly since applications were accessible on the website and it is expected that this number will fall even more as online applications become the normal method of receipt.
- 7.19 There is a danger that the planning department could be seen as “remote” and it is suggested that it would be worthwhile considering setting up an annual developer/agent forum or similar customer focus group to provide a regular means to receive feedback on the service being provided by the department. If properly structured this could work positively to build a better working relationship between all parties.

Training

- 7.20 As identified in Section 6 those responsible for producing management information for use within the department have received basic training on report production within the new Merlin/I@W systems but it is capable of providing a great deal more information if time could be devoted to developing greater skills in this area.
- 7.21 It is suggested that consideration should be given to setting up an informal liaison system with other established users of the Northgate system as this would help to develop advanced report writing techniques and build confidence in the information that could be provided.
- 7.22 There is also a need for some continuous revision training of all officers using the system to resolve inconsistencies in team members’ approaches to filling in fields.
- 7.23 Earlier in this report there have been references to specialist skills around development economics and viability and it is recommended that training in this area should be undertaken on an in-house basis for groups of policy and development control planners as soon as possible.
- 7.24 At the same time it would be helpful to assess the team’s existing understanding and awareness of Planning Obligation Agreements and to refresh and train the DC team in this area ahead of the expected upturn in the economy.
- 7.25 One of the signs of improved staff morale and motivation has been the up-skilling of individual members of the TST to the extent that they are now being encouraged to take on more responsibility for straightforward pre application information requests and to handle householder applications under the supervision of one of the team leaders. This should be encouraged to continue and will provide a strong resource which could be used to assist in other areas, such as enforcement administration.

Networking

- 7.26 Progress has been made in linking officers to the Planning Officers Society and Town and Country Planning Association networks, but it is clear that budget and time restraints do not afford many opportunities for face to face contact with colleagues working outside of Jersey itself.

- 7.25 It is suggested that individual officers consider enrolling to receive information about the topic groups and committees of the Planning Officers Society so that if they have queries about particular issues they can raise them electronically with their peers in English planning departments.
- 7.27 It is also worth exploring opportunities to set up online discussion groups directly with other planners/administrators operating within similar remote locations who have to operate with a similar set of issues. Contacts with Guernsey and the Isle of Man should be reinforced but it is also worth contacting Alderney and the Isles of Scilly who have even smaller teams and are required to operate in an equally challenging Island environment.

SECTION 7 RECOMMENDATIONS

- 7.28 ***Arrangements should be made, at Director level, to complete the work on the following:***
- ***A revised set of standard conditions including those currently being used by case officers on an individual basis;***
 - ***Guidance on the use and negotiation of Planning Obligation Agreements, together with a codification of all obligations that are currently in place;***
 - ***A set of standard enforcement procedures and user guides, once the current internal review has reported and new arrangements are in place***
- 7.29 ***Case loads should be reviewed as a matter of urgency.***
- 7.30 ***Set up an annual developer/agent forum or similar customer focus group to provide a regular means to receive feedback on the service being provided by the department.***
- 7.31 ***Set up an informal liaison system with other established users of the Northgate system as this would help to develop advanced report writing techniques and build confidence in the information that could be provided.***
- 7.32 ***Training should be undertaken on an in-house basis for groups of policy and development control planners in the area of development economics and viability.***
- 7.33 ***Explore opportunities to set up online discussion groups directly with other planners/administrators operating within similar remote locations who have to operate with a similar set of issues.***

Annex A

Formal interviews undertaken

Planning & Environmental Department

Deputy Rob Duhamel, Minister for Planning and Environment
Deputy Sean Power, Chairman, Planning Applications Panel
Andrew Scate, Chief Executive Officer
Peter Le Gresley, Director of Planning
Kevin Pilley, Director, Planning Policy & Projects
Willie Peggie, Director of Environment and John Pinel, Head of Natural Environment
Morris Roscouet, Director of Building Control
Richard Glover, Planning Performance Manager
Tracey Ingle, Principal Historic Buildings Advisor
Rebekah Porter, Applications Manager
Alistair Coates, Senior Planner (line manager responsible for Technical Support Team)

a discussion workshop for representatives of the development control team
a discussion workshop for representatives of the policy team
a discussion workshop for a mixed group of policy and development control team members

Other departments at the States of Jersey

John Richardson, Chief Executive Officer, Chief Minister's Department
Mike King, Chief Executive Officer, Economic Development Department
Deputy Andrew Green, Minister for Housing and Carl Mavity, Housing Department
Alan Irving and Stewart Petrie, Environmental Health Department
Deputies John Young and Steve Luce, Environment Scrutiny Panel
Duncan Mills, Legal Adviser, States of Jersey

In addition the following individuals were interviewed:

Michael Stein and Stuart Fell (MS Planning) and Peter Bertram (Partner, Bedell Group), representing the Jersey Chamber of Commerce
Carlo Riva (Director, Riva Architects), Paul Harding (Director/Principal, BDK Architects) and Mike Waddington (Director, Waddington Architects), representing the Association of Jersey Architects

Charles Alluto, Chief Executive Officer, National Trust for Jersey
Jonathan Carter, Director and Roger Hills, Head of Historic Buildings, Jersey Heritage Trust

Ray Foster, Director of Estates, Jersey Property Holdings
Lee Henry, Managing Director, States of Jersey Development Company
Mick Cotillard and Martin Holmes (Director, Garenne Group), representing Jersey Construction Council
Martin Clancy and Adrian Huckson, Dandara Jersey Ltd
Jamie Le Sueur, Managing Director, Antler Homes
Steve Marie, Managing Director, Comprop (CI) Ltd

Annex B

List of application file reports and hearing and panel minutes examined to assess balance of economic environmental and heritage considerations

| | |
|-----------|---|
| 2012/0017 | Seymour Villas, St Helier |
| 2010/1124 | 8/9 Esplanade, St Helier |
| 2102/1141 | Finance Centre 4 Esplanade Quarter, St Helier |
| 2013/0734 | 12/18 Hilgrove Street, St Helier |
| 2011/0819 | 19/29 Commercial Street/ 31/41 Broad Street (J1), St Helier |
| 2012/1344 | 22/23 Esplanade, St Helier |
| 2011/0840 | Southampton Hotel, Weighbridge, St Helier |
| 2013/1186 | Jersey hospital temporary operating theatres |
| 2012/0738 | Longueville garden centre |
| 2013/0959 | La Fontaine Farm |
| 2013/0993 | Field 873, St Lawrence |
| 2013/0429 | Field Farm, St Lawrence |
| 2013/0382 | West View Hotel, St Mary |
| 2013/0253 | Field 498, St Peter/St Mary |
| 2013/0188 | Field 433, Grouville |
| 2013/0014 | Home Farm, St John |
| 2013/0088 | Maizin Adventure Park, St Peter |
| 2012/1381 | United Foods, Trinity |
| 2012/1447 | 19-21 Peter Street, St Helier |
| 2012/0639 | Beauchamp Farm, St Martin |
| 2012/1136 | Gorey Boatyard |
| 2012/0365 | L'Etaile, St Martin |
| 2012/0878 | Greve de Leq barracks |
| 2012/0969 | Chimes Bar, 22-3 The Parade, St Helier |
| 2012/1104 | Salmares Manor, St Clement |
| 2012/1241 | Millais Farm, St Ouen |
| 2012/1488 | Hillside Cottage, Grouville |
| 2013/0165 | 3&5 Conway Street, St Helier |
| 2013/0496 | Lowlands, St Ouen |
| 2013/0845 | Carlyon House, St Brelade |
| 2012/1726 | 79 Bath Street, St Helier |

Annex C

Review of progress on recommendations from the Shepley report 2005

(Text in the commentary sections normally confirms the progress made whilst emboldened text provides individual comments on the potential implications of actions taken)

| Section and recommendation | Implemented | Commentary |
|---|-------------|---|
| Section 2 – Strategic issues | | |
| 2.5 Both the department itself and the corporate management Board should actively consider ways in which the planning department can play a more central role in policy making | Partially | Chief Executive Officer plays an active role in the Corporate Management Board and relationships with other States departments have improved. However, there appears to be little involvement of the Planning Policy team in the development of the Island's corporate strategy. |
| Section 3 – The Island Plan | | |
| 3.1 A public examination, based on the “Examination in Public” style employed elsewhere in the UK, should be used to examine future round of changes to the Island Plan | Yes | Implemented |
| 3.1 It should not be possible to ask the Committee to alter the policies in the Plan simply by a proposition in the States Assembly | Yes | Any change now has to be initiated by the Minister, though States members can by resolution ask him to bring forward a change |
| 3.4 In the allocation of resources, greater emphasis should be given to the production of supplementary planning guidance, including a Plan for St Helier, advice notes and design guidance for applicants, and further advice on the implementation of the Island Plan | Yes | There is no separate plan for St Helier but master plans and SPG are now being produced for particular areas |
| 3.5 Where the Council of Ministers takes decisions on planning policies this should normally be done in public. But other decisions will be taken by the Minister | Yes | Island Plan and other masterplans are debated and adopted in the Assembly. |
| 3.5 Where the Minister takes a decision the reasons for it should be published and made clear. It will be necessary to monitor this approach but, again, I put these recommendations in the context of a move which is already taking place towards a more open system of decision making | Yes | Ministerial Hearings are held in public and decisions are produced to a standard format and then published by the Administrative Greffe. Reasons for decisions are now minuted in a much fuller format than previously and Ministerial Decisions published in the case of deferred decisions also incorporate much fuller reasoning and balancing of material considerations. |
| SECTION 4 – Development control | | |

| | | |
|--|---------------------|---|
| A review is carried out of the level of detail in development control with a view to introducing a lighter touch. This would free resources for other work if it were accepted. | Yes but see comment | Still an excessive attention to detail around windows, etc and the matter is returned to in this review |
| The level of exemptions should be re-examined, with reference to the levels of permitted development currently in operation in England, and that the level of exemptions is raised significantly | Yes but see comment | Review undertaken but did not go anywhere near as far as other reviews proposed. Still needs attention particularly if temporary posts are not available or workloads increase post recession. |
| 4.1 When a legislative opportunity occurs measures should be introduced to enable the Department to decline to deal with applications which are very similar to proposals which have been rejected within the last two years (or some other specified period). Similar legislation exists in England. | No | The opposite happens. Applicants are allowed a “free go” if they receive a refusal. Proactive advice is now given about how a revised approach would meet the grounds for refusal |
| 4.3 A single point of contact should be established, presumably in the Department for Transport and Technical Services, for all highway consultations – that person to be responsible for ensuring that parishes and others are brought in where necessary | Yes | Done |
| 4.3 Consideration should be given again to bringing the relevant responsibilities of health protection within the Environment Department | No longer necessary | Commented on by Reg's Skips Inquiry report 2. Stronger consultation liaison is addressing their point without structural change |
| 4.4 the site notice system is monitored carefully, possibly including in due course surveys of public reaction, and that the idea of neighbourhood notification is considered further in the future | No | See PIP review comments |
| 4.4 that when representations are to be made to the Committee an equal opportunity should be afforded to all parties, for or against the proposal, to put their views forward | Yes | Already in place in 2010 |
| 4.5 The internet should be the main source of information; applications are already placed onto the website and Members should be assisted if necessary in knowing the means of accessing and using this information. This route is cost and trouble free for the Department and convenient for the Members themselves | Yes | Very comprehensive application information on website, together with guidance on how to use it. It is unclear whether the PAP members use this resource rather than contacting case officers but neither case officers nor PAP members have expressed any concerns about requests for information or the responses received. |
| 4.6 That in reviewing the system to take account of the new arrangements, Members should seek to increase the proportion of items delegated to officers | Yes | Number of applications going to PAP has reduced as a result of changes in the scheme of delegation. Now only applications where there have been four or more objections are automatically considered by the PAP |

| | | |
|---|--|--|
| 4.7 That at the time of the introduction of the system (the PAP system), a major effort should be made through the local media to explain how it will operate and to stress the benefits in terms of openness and fairness of the new process | Not known and now irrelevant | No knowledge of how this was originally handled when Shepley report was produced, but the PAP system now seems to be well accepted as open and allowing participation |
| 4.8 The size of the Panel should be kept under review and that the possibility of enlarging the Panel should be considered | Not clear how and on what basis this is reviewed | New PAP formed at time of States elections. Will be necessary to consider enlargement and strengthening when the new appeals system is introduced because of the increased importance the PAP will then take on as the main political level of planning decision making |
| 4.9 Consideration is given to moving to a three week Committee cycle. If this works satisfactorily a four week cycle could be considered later. | Yes | PAP was already working on a four week cycle in 2010 |
| 4.12 The rule that there should be no discussion of the merits of a case at site visits should be strictly enforced and that the applicant or agent should not be permitted to address Members on site visits other than to point out factually the relevant features of the site | Yes | PAP Code of Conduct includes this |
| 4.13 a document similar to (but less detailed than) the Code of Conduct should be produced for all States Members. | Yes | States Code of Conduct for members is in place Separate codes for Minister and the PAP members |
| 4.13 Training should be provided for these Members in order to ensure that they have a full understanding of the planning function, its complexities and opportunities. | Yes | Training by an external provider has been provided but needs to be revisited on a very regular basis and may be worth reviewing additional areas where training might assist PAP members in their deliberations |
| 4.14 The Canavan Report recommending a "cooling off" period, be implemented. It might have avoided the problems which subsequently arose at Trinity | Yes | Done |
| 4.15 over a period of three years the target should be raised to 80% in eight weeks, with the figure of 90% in 13 weeks remaining unchanged | Yes | Had dropped significantly but performance now well above these figures for both eight and thirteen weeks |
| 4.15 for very large applications, or any case where the 13 week period is clearly likely to be exceeded substantially, a specific plan with timescales and milestones should be produced and agreed with the applicant (for whom it will also carry obligations) and with consultee departments | Yes – normally | May not be done through formal extensions of time or PPAs but in practice these extensions are now discussed, agreed and understood with applicants. Such agreements will need to be more formal, with a clear audit trail, ahead of new appeals system which allows applicants to appeal on grounds on non determination within 8 or 13 week periods, following notice period. |
| 4.19 The proposal for a separate tribunal should be revisited in due course | Yes | Separate system for dealing with appeals has been agreed by the States. This will need to use a cadre of independent planning inspectors from |

| | | |
|--|-----------------|--|
| | | outside the Island who have experience of dealing with 3 rd party rights of appeal (as per Isle of Man/Eire) |
| 4.20 the proposal for an alternative system within the Royal Court for dealing with planning cases should be pursued with urgency | Yes | As previous paragraph |
| 4.20 The system of requests for reconsideration be terminated, and that this should be done at the same time as the introduction of a simplified system in the Royal Court | No | The States have decided to retain the system of requests for reconsideration as part of the new appeals system. This creates a duplicate appeal system. See Section 5 of report |
| 4.21 Third party appeals are not introduced for the time being, and that the position is reviewed when the currently proposed reforms have been in operation for (I would suggest) a period of five years | No | 3 rd party appeals were introduced by 2010 and will be retained in the new appeals system |
| 4.22 efforts should be made to provide opportunities for more junior staff in development control to gain wider experience, through job swaps or secondments to other authorities | Partly | All opportunities should be explored to encourage this and now easier to pursue via electronic networking with RTPI, POS and others. In addition firmer links could be forged with the other Channel Islands, Isles of Scilly and Isle of Man |
| 4.23 a cut-off period of five years for enforcement action should be introduced. A similar cut-off point should be introduced for property searches | Partly | Article 40 of the Jersey Law introduced a cut offer period of eight years in 2007. There is no wish to change this. |
| Section 5 – Historic buildings | | |
| An exercise is carried out to assess whether the number of protected buildings stands at the right level and whether the level of detail in dealing with developments affecting such buildings is appropriate. | Yes | Re-listing process is currently underway. The use of independent surveyors and the moderation from the Ministerial Listing Advisory Group has addressed the first issue, and the proposed SPG on policy HE2 and MDs on external protection only for Grade 4 buildings will go a long way to addressing the level of detail concerns |
| Section 7 – Cross department issues | | |
| 7.1 urgent steps are taken to bring the policy section into the main building as soon as possible | Yes | Now scheduled for Jan 2014 |
| 7.1 seminars and discussions between the two sections (and others), should be organised in order to increase understanding and the two way flow of information | Yes | Run on regular basis now and include policy updates, new tools/techniques, heritage information, appeals analysis, etc |
| 7.1 The heads of the two sections should be asked to examine ways in which they could work more closely together | Yes | Now both attend Monday morning meetings with Minister and regular senior management team meetings |
| 7.1 the historic buildings division is brought within the policy division | Yes | Already there |
| 7.4 the Policy Division should be strengthened by the | Unclear whether | Not now relevant |

| | | |
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| addition of one post | this happened at that time | |
| 7.6 Appropriate quality assurance measures from the list which I have described above should be introduced | Some in place | Some surveys have taken place. PIP has undertaken 2 sampling reviews. It would be worthwhile considering setting up an annual developer/agent forum or similar customer focus group. It would also be worth considering an annual post decision study visit of PAP members to view completed developments |

Annex D

Review of progress on recommendations from POS Enterprises Planning Improvement Programme report 2010

(Text in the commentary sections normally confirms the progress made whilst emboldened text provides individual comments on the potential implications of actions taken)

| Section and recommendation | Implemented | Commentary |
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| Section 4: Document and process review | | |
| 4.28 Review performance targets for the screening of applications to avoid unnecessary rejection of applications causing more work in the long run | Yes | Performance target is still set at 5 days although inconsistencies are now being managed through implementation of the new I@W system. Targets are automatically added via the Merlin system. |
| 4.31 A formal protocol should be put in place to deal with variances from the published fee rates, which ensures that individual officers cannot be challenged about such decisions | No | No protocol has been prepared and there is anecdotal evidence that it was happening until recently. The Minister has recently refused to allow any delegation of powers to agree fee variances and DC team are now well aware of this. |
| 4.38 Review whether the five working days target for registration is too long, given that the initial screen must be completed within 24 hours | Yes | Reviewed and Technical Support Team aim to reduce the target to 3 days in 2014 |
| 4.39 Further consideration should be given to a neighbour notification system as proposed in the Les Ormes report to avoid issues arising in the future | No | Only one complaint received over the process in three years. Departmental view is that it will incur additional expenditure to implement and there are no current plans to amend the process. It is still a weakness in the system which could be challenged at some point |
| 4.40 Review the practice of not commencing to work on an application until the certification process is complete, to assist smarter working | Yes | Process was amended in Sep 2012 on adoption of I@W. Case officers/teams now receive and commence casework on applications prior to the receipt of certificates. Dates are entered onto Merlin system and any variances would be picked up in reports |
| 4.46 The “trialling” of the revised process for despatch of consultee responses should be prioritised and the letters should including as much detail as possible regarding timescales to inform the applicant/agent | Overtaken by events | Introduction of online services has changed this entirely. The system works well and website information for potential consultees is very full and helpful. Agents and applicants can sign up to receive notification of responses and objections received |
| 4.59 All case files should be allocated within five working days of registration to a named case officer | Yes | Case files are now allocated by team leaders earlier in the process |
| 4.60 Case officers should (as standard practice) be identified on the Merlin system (or any replacement) rather than simply to a team | Yes | Identified on Merlin system and also on website. Exceptions would be picked up in weekly list of applications (“traffic lights” list) |

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| 4.61 The Assistant Director, DC, should be involved with the team leaders in the allocation of applications to case officers and briefing upon them, immediately after registration. This will ensure that political involvement is managed, that consistent decisions are made across the teams and that planning obligations and percentage for art contributions are handled appropriately | Yes | Director now briefs Principal Planner immediately following Monday Ministerial Briefing. Principal Planner passes information to team leaders who then pass information to case officers every week. It appears that there is the opportunity for some “double handling” of information here because of the level of management delegation that is occurring. There is a danger that messages may get diluted/changed and such extended communication channels need careful monitoring. The original annotated agenda from the weekly Ministerial meeting is now kept on file centrally so that checks of the original intent can be made. |
| 4.62 Following the early briefing referred to above, day to day managing of cases should be dealt with directly by the team leaders, with the Assistant Director only being involved as a back-up or in cases of particular sensitivity | Yes | See 4.61 above |
| 4.63 Team leader case loads should be reduced as appropriate to allow them to take on the effective management and support of their staff. Until delegation and exempt development levels can be increased, and new IT introduced, there will need to be an additional temporary case officer post to allow for this, to deal with backlogs and to allow the re-instatement of pre application advice as outlined in Section 7 | Yes | There is a perception that this has now happened. However it is understood that at least one team leader is still handling a significant caseload of major applications. Temporary case officer post is still in place. |
| 4.70 Reduce the minor applications target incrementally back to 8 weeks once related recommendations in other sections of the report are implemented | Yes | From Jan 2012 targets have been 8 and 13 weeks for minor and major applications respectively. A very significant improvement. The figures are monitored weekly to ensure that current levels are maintained. Sections no longer work to complete on the final day but aim to work ahead if possible. On major applications the planners will discuss time scales with agents where the target is likely to be significantly exceeded. Some concerns on major applications once new appeals system is introduced because it will allow for a non determined application to go straight to appeal. There will need to be formal recording of agreements to time extensions |
| 4.76 All applications should be counter-signed by either the appropriate team leader or the Assistant Director DC | Yes | I@W requires this to happen and revised Scheme of delegation is clear that other actions (eg enforcement notices) must be endorsed and based on a written report justifying the action |
| 4.77 Standardise the signing of decision notices to ensure that junior staff are not allowed to sign them on behalf of the Director or Assistant Director | Yes | Should not happen now because of the electronic system. Paper copy is still required. However, there were still occasional cases found where case officers were signing decision notices |

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| 4.78 Attach draft conditions to the application assessment sheet, with an extra copy provided to the Applications Team, and ensure that delegated decision draft conditions/reasons are counter-signed and dated by a senior officer at the same time as the back sheet is signed | Overtaken by events | Dealt with electronically now I@W requires case officer to take responsibility for proper preparation of a recommendation prior to presentation for a decision. |
| 4.84 Levels of delegation should be reviewed to allow applications to be determined by officers when there are fewer than three outstanding representations to which the officers have responded and shown how they have balanced those representations in the decision (not necessarily resolved those representations) | Yes | Dec 2011 – Recommendation adopted and no complaints received |
| 4.85 Completely re-draft the current delegation scheme, in a tabular format, in consultation with the States' legal team | Yes | Dec 2011 - Completed |
| 4.92 All appropriate non-standard conditions that are currently being used should be collated together so that an immediate review and updating of the existing standard conditions can be undertaken by the Director of Planning, utilising the experience of the Appeals Team | No | Case officers identified there was still a real problem in this area and it needs to be dealt with urgently. This is referred to in Section 6 |
| 4.93 In the short term all case officers should be required to input conditions into the Merlin system because any new IT system will import data from Merlin and this should be as complete and up to date as possible | No | Each case officer has their own list of appropriate wording for standard conditions which are cut and pasted. It doesn't appear that these are being added to the standard listing for use by all. It appears that there is no co-ordination across teams taking place to standardise conditions or to input into the Merlin system, although there is some standardisation of conditions within individual teams. |
| 4.94 In addition, in the short term, adding the conditions will allow the scale of the use of non-standard conditions to be accurately quantified | No | No checking has taken place |
| 4.95 Once the revised list of standard conditions has been adopted, any officer proposing to use a non-standard condition should consult with the Appeals Team to check its enforceability before it is included in the officer's report, and the Assistant Director, DC and team leaders should sign off all non-standard conditions and regularly review any which should be added to the standard conditions list | Yes - partly | Use of new conditions is much more tightly controlled with team leaders. Appeals team have been consulted very occasionally on the enforceability of proposed new conditions.. |
| 4.100 Revise para 11 of the PAP Code of Conduct to reflect the current arrangements made for site visits | Yes | Jan 2012 – Revised PAP Code of Conduct adopted which incorporates current arrangements. Suggest that the Code should be subject to a two-yearly review. |

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| 4.101 Regularly review the conduct of site visits to ensure that no impression of pre-emption of the decision is taken | Not known | It was not possible to verify this through the review process but no problems were raised in this area. |
| 4.116 Put in place an agreed timetable for service between the department and the Administrative Greffe for production and publication of minutes of PAP and Ministerial Hearings | Yes | Once the minutes are prepared they are printed and issues to PAP members. Any changes, spotted by planners or PAP members will then be picked up at the next PAP meeting before minutes are signed off. Greffe now supply an agreed timetable of target response times |
| 4.122 Standardise the production and despatch of decision letters and permits across all three teams to avoid problems arising | Yes | I@W has required this to happen |
| 4.123 Clarify the legal wording in respect of time period allowed for objectors to lodge third party appeals | Yes | Royal Court has now ruled that the 14 days, allowed for objectors to lodge a third party appeal, is deemed to commence 2 days after the decision notice has been despatched. Wording is now very clear |
| 4.124 Review whether the 14 days currently allowed for third parties to lodge appeals should be extended to 21 or 28 days | Overtaken by events | The agreed new appeals system specifies that third party objectors have 28 days, from the date on the decision notice, in which to appeal. This is much clearer for everyone |
| 4.129 Produce, agree and publish the revised guidance on PFA as soon as possible to provide clarity to both applicants/agents and case officers. See also recommendations on PFA in Section 5 | No | Work is being undertaken with Education, Sport & Culture to amend the process. The Public Arts Strategy is now the primary guidance for this area. PFA is not an essential part of any scheme as it was previously although some money for art work is still being secured |
| 4.137 The “one stop shop” group, or an ad hoc inter departmental group, should be asked to: <ul style="list-style-type: none"> Recommend types of development and thresholds of sizes of development above which infrastructure and service provision planning obligations should be sought; Identify the infrastructure and service provision requirements generated by major development and appropriate standards to be sought by planning obligations Provide indicative tariff rates for these Revise SPGPN 13 to incorporate the above to ensure the policy objectives can be met | In progress | Work being undertaken to produce a document which will codify the money and agreements that are currently in place. It is not clear exactly what is there but the recession has stopped much of the development that was involved. There is currently no mechanism for a re-negotiation of terms. However, revised schemes for some of these sites are currently coming through. Probably not a priority at this time because of economic circumstances. However, a guidance note would help and should not be postponed indefinitely. Needs to be in place before any upturn in the economy |
| 4.138 A procedure should be adopted whereby the Assistant Director DC and team leaders identify to case officers at the case allocation stage (or in pre application discussions) that a planning obligation should be sought, | Not clear | Team leaders identify applications requiring POAs based around existing master plans. This seems to be working in practice. There are still concerns about the existing knowledge base for POAs and this has not yet been addressed by the provision of a single |

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| and the law officers are alerted to this requirement as soon as possible | | reference source. |
| 4.139 The law officers should be asked to produce standard agreements capable of being offered by applicants in simpler cases to seek to avoid delays in permits being issued awaiting the preparation of agreements | In progress | Work is being undertaken on these currently with the law officers |
| 4.144 An agreed enforcement policy and procedure should be produced as a matter of urgency and provided to the current Committee of Inquiry for information | Partly | An enforcement policy was prepared and provided to the Reg's Skips Commission of Inquiry in early 2011. The document still doesn't incorporate policy priorities and enforcement is now the subject of a separate internal review being undertaken by Director of Environment |
| 4.145 Consideration should be given to extending the Enforcement Team's role to cover checks on conditions compliance, following briefing from the individual case officers | No | No progress to date. It has been suggested that team are too busy to undertake this role. Suggest that the current review should consider some monitoring of the team's current caseload |
| 4.153 The content of the procedures manual should be reviewed thoroughly, completed and re-ordered in a sequential order with an index that shows clearly where process elements are still missing | Yes | Following completion and collation of the I@W User Guides this has been completely reviewed and new manual is now available as an electronic document. Any manual of this kind must be continuously monitored and updated as a living document. Not only the TST Manager must take ownership!! |
| 4.154 At the same time, there should be a critical review of all the processes in place to identify any simplification or "smarter" working that could be achieved, linked to the introduction of new IT systems (see Resources Section recommendations below) | Yes | Reviewed throughout in connection with introduction of new Merlin system and I@W. Further stage of "Lean Management" now being introduced |
| 4.155 Responsibility should be given to one of the team leaders to review and resolve issues arising as well as prioritising the production of the missing procedures | Yes | Performance Manager, Minor Apps Team Leader and Head Technical Support Team |
| 4.156 The manual requires some introductory context. Some of the content currently relates to the minutiae of the payments system ("how to do" training documents) whilst other documents provide overall policies and operational issues for case officers | Yes | Now have a procedures manual and separate User Guides for detailed computer inputting |
| 4.157 The completion of the manual should be treated as a matter of real urgency | Yes – but on-going | A great deal has now been achieved but there are still some areas where work is required (ie. enforcement). There is recognition that it is a living document but there are still |

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| | | some missing elements |
| 4.164 Provide a front sheet to the application form incorporating a comprehensive check list of items required for applications of various types and which requires either the applicant or their agent to sign and certify that all information required has been submitted | No | Sep 2012 – I@W process has meant this is no longer necessary. It appears that there are less applications being received with missing elements, however, the figures still show that approx 15% of applications were returned unregistered over the last year as incomplete so this suggestion should be reconsidered. |
| 4.165 Give consideration to designing a simpler, shorter form for minor householder applications | Not entirely | Forms have been simplified but some work still required. |
| Section 5: Consistency of conditions and policy interpretation in decisions – file review | | |
| 5.8 The time taken to draft conditions or reasons which are clear, appropriate, necessary and enforceable can be considerable and a revised standard set of conditions/reasons (with appropriate inserts to customise the condition to the circumstance) should help to reduce the time taken and ensure greater consistency. That is not to say that purpose designed conditions will not need to be carefully written in circumstances where a standard condition may not be precise enough to achieve the objective. However, a list of tested enforceable conditions built on best practice of the DC staff would avoid weak and unenforceable conditions, which have caused criticisms in past reports on planning decisions | No | Case officers identified there was still a real problem in this area. Principal Planner does not appear to have capacity to undertake this task because of existing workload |
| 5.26 It is understood that the department is reviewing details of the percentage for art policy, and it is recommended that the adequacy of percentage for art statements at permit stage is considered further in the review. If there are a significant number of permits granted before the percentage for art statements are completed, a legal agreement for the artworks is desirable | Not entirely | This situation has changed with active engagement with Department of Education, Sport and Culture and consideration as to how the percentage for art might tie into the cultural strategy more closely (it should do already) Sept 2012 – a revised SPG being prepared. The driving factor for PFA is no longer an imperative but schemes are still being secured (?) |
| 5.27 If a planning obligation agreement is needed for a scheme to cover other matters, the agreement could include the percentage for art statement without delaying the development. If only the percentage for art statement triggered the need for a legal agreement then the current standard condition could form the basis of a legal agreement template, with the details set out on page 10 of advice note 3 (or its successor) added. The developer | Not entirely | See 5.26 above |

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| could complete this as a unilateral agreement to save time, but leave appropriate control with the States | | |
| 5.28 It is suggested that to ensure consistency of implementation of the policy and condition, a department seminar/training event is organised when the revised advice note 3 is adopted | Yes | Held in January 2011 |
| 5.39 It is recommended that the Assistant Directors (DC and Policy) are asked to review the intended application of policy and then run an in-house seminar to agree a consistent approach to rural policy interpretation. Other measures recommended elsewhere relating to team changes and joint front loaded Assistant Director/Team Leader allocation will also help align rural policy interpretation, by providing consistent early advice in discussion with the case officer | No seminar run but overtaken by other changes | Consistency is easier to ensure because DC restructure means almost all rural applications are now dealt with by a single team under the control of a single team leader. In additional Island Plan 2011 and 2013 review have addressed this issue. It would be worthwhile to hold refresher seminars re policy interpretation on a regular basis |
| 5.45 In relation to the consistent application of policy it is considered desirable for major schemes, that would be a departure from approved policy (if approved), to be advertised as major departures and so identified in the weekly application list, in the Jersey Evening Post and on the website, at the time of an application's registration. A decision as to whether they were "not insubstantial" departures, when a public inquiry would be required, should be made at this stage. A definition of a "major" scheme would be required. For statistical purposes in the UK jurisdictions, "major" is defined as 10 or more dwellings or the equivalent quantum of commercial development. That may be appropriate for Jersey or a higher threshold might be set. | No | Department agreed not to advertise departures as such but to continue to assess applications against policy and to identify departures in recommendations. The Public Inquiries Order was poorly drafted and not clear. But the new appeals process should sort this out. "Island Wide Significance" seems to be the key phrase 3 inquiries since 2010 (Esplanade, Plemont and Field 622). Field 622 was a departure but the others were because of the many representations received Following introduction of the appeals process there may be a need to consider advertising major departures as such, but inquiries have been held on "not insubstantial" proposals since 2010. There is likely to be a need for some guidance/protocol to be produced to cover this area |
| 5.46 Development proposals below this major threshold, which are (potential insubstantial) departures, should be identified in the weekly application list, in the Jersey Evening Post and on the website, as possible insubstantial departures (if approved) | No | As 5.45 |
| 5.47 This publicity for substantial and insubstantial departures is recommended to: | No | As 5.45 |

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| <ul style="list-style-type: none"> Reinforce the need for early recognition of such important considerations in the processing of an application Reduce the risk of case officers not putting adequate weight on the approved Plan Help address the criticism of inconsistent rural policy interpretation by officers which was identified both inside and outside the department Help the Minister by providing early advice on whether an application is a departure | | |
| Section 6: Minor development review of exempt development in Jersey | | |
| 6.18 There would be likely to be significant benefits in allowing free standing single storey outbuildings including sheds, detached garages, greenhouses, freestanding conservatories, and summer houses, all of which would be ancillary to the enjoyment of the dwelling house, to be permitted to the rear of the front elevation of dwellings, subject to standard conditions to protect neighbouring properties, and provided that less than half of the rear garden area remained undeveloped with these ancillary buildings, such freestanding single storey outbuildings would not affect the greater extension of permitted development rights suggested below. | No | <p>Revised Exemption Rights produced in 2011 but this was not included partly because of issues around loss of departmental income. However, PIP Political Group urged Minister to agree greater exemptions. Nothing has been done in this area since 2011 and it has been seen as less of an issue because of the drop in applications being received because of downturn in economy</p> <p>The arguments for extending permitted development remain valid and need to be reviewed because application numbers have not decreased to the level previously anticipated by the amendments that were introduced in 2011.</p> |
| 6.19 The UK permitted development rights for rear and side extensions be considered further (other than for registered historic buildings) subject to a detailed examination of the impact of such levels for residential extensions of one and two storeys on decisions taken over a three month period. To seek to ensure that high standards of design are achieved for rear and side extensions, it would be possible under Jersey law to make such extensions permitted development if they met the requirements of the proposed residential design guide and were designed and fully supervised by a member of the RICS or AJA. | No | <p>See 6.18</p> <p>Experimental scheme not appropriate to introduce at this stage</p> |
| 6.20 After a trial period had assessed the success of RICS or AJA supervision a permanent scheme could then be introduced, if the Minister is satisfied that those levels of | No | See 6.19 |

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| exempt development would not cause unacceptable impacts on neighbouring properties, subject to standard conditions to protect neighbouring properties | | |
| <p>6.23 There would be likely to be significant benefits (except for registered historic buildings) in:</p> <ul style="list-style-type: none"> • Allowing garages to be converted to ancillary residential accommodation subject to closure of any openings in the structure being finished to match the adjoining wall finish of the parent property; • Allowing loft/room conversions to be converted to ancillary residential accommodation, including the insertion of windows in rear and side slopes, and velux style flush windows in front roof slopes, subject to no alteration to existing roof slopes or ridges or external roofing materials, and subject to standard conditions to protect neighbouring properties | No | See 6.18 |
| 6.24 The above measures would be likely to significantly reduce the number of applications (currently 22%) falling into those categories of description, although a large number would still be large enough to require planning applications | No | See 6.18 |
| 6.26 There would be likely to be significant benefits in exempting replacement windows and doors of dwellings above ground floor level, and only requiring applications for replacement windows in the historic elements of registered buildings | No | See 6.18 |
| 6.29 Further consideration should be given to a possible increase of exemptions to avoid the need for applications for dishes which are not on registered buildings | No | See 6.18 |
| 6.31 If it is considered desirable to raise exemption levels further, consideration should be given to only requiring applications for new accesses to principal roads | No | See 6.18 |
| 6.34 The external appearance criterion of the Jersey policy for industrial and warehouse buildings is unnecessary, and should be deleted from the order | No | See 6.18 |
| Section 7: Pre application advice | | |

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| 7.8 Charging should be considered to provide additional resources for major scheme pre application advice, although the level of such charge and resource needs to be determined | No | Has been considered but it has not been thought necessary to introduce charging at the present time. Currently 204 requests in last 12 month period looking for advice at varying levels |
| 7.23 These are set out in the decision making protocol section which follows | Yes | Ministerial protocol has been adopted. For major schemes - rule is that the Minister tries not to have pre application discussions unless officers are present. There have been exceptions but he has then passed these cases to PAP for decision. Once the appeals system is operational the Minister will not be able to make decisions on planning applications in most cases |
| Section 8: Protocols for advice to and involvement of Ministers and Panel Members in decisions and arrangements for appeals | | |
| 8.13 PAP should be asked to determine most controversial applications. It should be able to make a decision on all applications other than a major proposal of Island wide significance, or a significant proposal on which the Minister has published or recorded Ministerial pre application guidance, or any proposal not in accordance with the Island Plan | Yes | Jan 2012 - PAP protocol adopted. Will change on introduction of Appeals process and Code of Conduct will need to be changed to reflect the new situation |
| 8.14 The Minister should retain reserve powers to determine applications by exception when not in accordance with the Island Plan and the PAP are minded not to accept an officer recommendation (known as the cooling off period) as set out in Ministerial decision PE2006/0012. (Substantial departures are required by article 12 of the Jersey [Planning and Building] Law 2002 to be subject to a public inquiry after which the Minister would receive a report from the independent inquiry chairperson and issue a written decision). | Yes | Jan 2012 – PAP and Ministerial protocols adopted Will change on introduction of Appeals process and Code of Conduct will need to be changed to reflect the new situation |
| 8.15 That training should be provided for any new members of the PAP and for all following the 2009 Island Plan's adoption, and the issue of any new Ministerial guidance (See also recommendation for including staff in such training in the Staff section below) | Yes | Briefings provided to PAP on Island Plan and current revision as well as on the new Appeals system. Jan 2012 – general planning training provided to all members of PAP and internal training provided during 2012 to a further new PAP member (Deputy Bryan) Need for further briefings should be reviewed on an annual basis. Further training will be required to equip PAP members for their new role in the light of the appeals process |
| 8.16 The 2007 PAP Code of Conduct should be amended to omit references to possible PAP discussions with | Yes | Jan 2012 - Changes incorporated into the new PAP Code of Conduct |

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| applicants, and to update the site visit procedures section to reflect PAP site visits which now take place before the PAP meetings | | |
| 8.17 Where a Member of PAP is conflicted it will assist the public if the Member explains this when withdrawing from the Panel for that item. This will pass a clear message about standards and behaviour to any public present and ensure that there is no misunderstanding or perception of lack of interest on the Member's part | Yes | Jan 2012 - Changes incorporated into the new PAP Code of Conduct |
| <p>8.40 Planning & Environment Minister roles in guiding pre application discussions on major schemes and promoting development to implement the Island Plan for the benefit of Jersey can be vital. Departmental staff resources need to be harnessed to supporting the Minister in this role. To avoid unstructured approaches and promote transparent inclusive pre application discussions we commend to the Minister that for major sites:</p> <ul style="list-style-type: none"> • Inclusive ministerial guidance is developed through masterplans, planning and development briefs; • Initial pre application meetings should always involve officers and the Minister, in order that the Minister always has appropriate officer advice available when first involved in any pre application meeting (even if this means arranging a later meeting) • A Ministerial guidance output is published following forums or other appropriate consultation, for guidance of PAP, the public, and developers, and • The Minister needs to refer other enquiries for minor development to the officers to avoid getting drawn into such extensive involvement as previously and reduce the unreasonable expectations on the Minister's time on minor matters • To assist the Minister in changing expectations the proposed Code needs to make it clear that the Minister would only be expected to engage in pre application discussions if asked to do so by the | Yes | <p>Dec 2011 – Changes incorporated into the Ministerial protocol which control Ministerial involvement.</p> <p>Minister has promoted the production of some site specific master plans</p> <p>Minister has considered more cases than was anticipated but protocol changes for the appeals system will further change this role and reduce his involvement, except as the final arbiter, post appeal report.</p> |

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| Chief Executive Officer, Director, or by an Assistant Director. | | |
| 8.41 Planning & Environment Ministers should determine major proposals of Island wide significance, or a significant proposal on which the Minister has published or recorded Ministerial pre application guidance, or a major or substantial proposal not in accordance with the Island Plan | Yes | Dec 2011 – Ministerial protocol provides structure for such involvement. This has been shown to work as cases of Island wide significance have arisen. This is an area that will have to change with the introduction of the appeals system |
| 8.42 All other non-delegated decisions should be made by PAP | Yes | Dec 2011 – Ministerial protocol provides necessary guidance. Appears to be working in most cases |
| 8.43 The principles of a Ministerial Protocol or Code needed to give effect to the above are set out in a draft template in Annex F. They require: <ul style="list-style-type: none"> • A clear indication in pre application meetings and notes of meetings that the Minister is not making or pre-empting decisions on applications; • Officer presence in all pre application meetings to ensure public notes of meetings are produced and actions or negotiations following meetings are understood and implemented by officers; • An indication at any Hearing that any statement of ministerial guidance, or other pre application advice has been given; • An indication that a Minister has not pre-determined their position when determining an application, or recognition of being conflicted and withdrawal | Yes | Dec 2011 – Ministerial protocol includes the items recommended |
| 8.44 The Commission for Architecture's role should be recognised and built in to pre application and application process as a full consultee, to ensure appropriate weight is given to its recommendations | Yes | Jan 2012 – Jersey Architecture Commission's role has been formalised and its role was re-confirmed |
| 8.62 Promote legislative amendments to introduce appeals into planning merits and failure to determine an application through an independent appeals commission or environmental branch/panel of the Royal Court, and consider appropriate fees to offset the costs | Yes | Agreed by States |
| Section 9: Resource issues | | |
| 9.9 If possible, the long talked about move to more purpose built accommodation for the entire planning team should be | Partly | No move to entirely new accommodation but because of Technical Service staff re-location the building control team will shortly be moving to |

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| made as soon as possible. The accommodation should, if possible, be more open plan and should enable at least all DC team members to be together on one floor (including enforcement and appeals staff) | | another floor which will free up accommodation for the entire DC team to be located together. There has already been substantial work to open the accommodation up and to provide the DC teams with better and less cramped accommodation A significant improvement has already been made in this area and further office moves should be complete by early 2014 |
| 9.10 It is recognised that both enforcement and appeals staff have special requirements (see above) and so these staff should either have interview rooms and quiet space available, or be housed in separate offices to allow confidential discussions. Lockable storage space for enforcement records needs to be provided | Yes | There are procedure screens set up on the Merlin system for both appeals and enforcement staff. It would be helpful if User Guides were written for both sets of Merlin/I@W processes. Lockable storage space and interview rooms will be incorporated into the new accommodation areas. There is likely to be a need to provide some admin support to the enforcement team |
| 9.11 The Policy Team with the Historic Building Team should be accommodated as close to the DC team as possible to allow a much closer dialogue to develop between the teams | Partly | KP is now situated in the main building and the remainder of the team will move across in early 2014 to rooms adjacent to the DC team. |
| 9.12 A significantly larger reception area with small interview rooms should be made available for personal callers to the department | Partly | No changes have been made to the reception area itself but a room has been made available with computer screens for personal callers to access and view applications via the internet and for small meetings between applicants/agents and officers. Definitely a step in the right direction and difficult to see how much more can be done whilst the department remains in the existing building |
| 9.23 Take immediate advantage of the States IT investment money that is available to purchase a new purpose built system rather than continuing to customise the Merlin system. This will be more cost effective in the long run | Yes | New system purchased from Northgate (new Merlin) and I@W also introduced. Incorporates electronic publication of applications on website and has significantly streamlined operations A difficult and time-consuming project to undertake but the entire team is reaping the benefits now. |
| 9.24 Write a detailed specification for such a system prior to purchase covering all areas within the department which overlap with the development control process | Yes | Complete |
| 9.25 Include a secure module for protected enforcement records which should not be made available via the website | Yes | Complete but not being used on a consistent basis. A set of user guides are required and closer monitoring undertaken. Other Merlin users can only see that there has been enforcement activity for an individual property record and the date of entry but no details of complaints or action. They also have the facility to add additional complaint notes to a property record |

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| 9.26 Ensure that any new system fully and accurately integrates the data layers for GIS, zones, water table, flood risk and historic buildings | No | Complaints across the board that this still isn't in place. TST are currently testing new GIS layers ahead of implementation. Needs to be a priority |
| 9.27 Any system purchased should have the facility for bespoke reports to be easily generated to provide accurate figures for monitoring purposes | Not completely | Better than it was but still some work to do before they are able to produce ad hoc statistical reports that might be required without a significant time lapse |
| 9.28 A small team should identify and visit a selection of local authorities in England to look at their use of various IT and web based services before deciding which system to purchase | Yes | A team visited Southampton, Waverley and Wycombe before agreeing way forward |
| Section 10: Staff resources | | |
| 10.38 Undertake a month's study to quantify the number of calls and personal visits to the South Hill reception relating to planning applications | Yes | Yes, this happened in May 2013. It included a survey of calls and personal visits to parish halls. The number of personal visitors to view applications has fallen significantly since applications were accessible on the website |
| 10.39 Undertake a month's study within the DC team to quantify the additional time being spent on applications subject to Ministerial interventions | Not clear | No one sure if this happened. They feel no longer necessary given the fall in Ministerial involvement in applications |
| 10.40 Review the levels of delegation to allow those applications capable of being determined by officers when there are fewer than three outstanding representations; and the officers have responded to and shown how they have balanced those representations in their decision (not necessarily resolved these representations) | Yes | Despite initial resistance the Scheme of Delegation was altered to allow officers to determine some applications with representations in Dec 2012 ((for all applications with less than four representations) |
| 10.41 Amalgamate teams into on generic DC team when they move to new accommodation to ensure more consistency and in the meantime introduce regular cross team meetings to reinforce messages about consistency | Partly | Apr 2012 – DC team restructured to two teams (Minor/Major teams) with a Technical Support office Provides more consistency and everyone seems more aware that this needs to be ensured |
| 10.42 Resolve the situation regarding officers "acting up" as a matter of urgency (referred to in 10.11) | Yes | Apr 2012 – dealt with as part of the re-structure |
| 10.43 Ask the Director of Planning to take the following issues forward before his departure: <ul style="list-style-type: none"> • Writing guidance notes • Updating and reviewing standard conditions and reasons • Revision of GDO with increased levels of exempt development • Enforcement policy | Partly | Some of the tasks identified were dealt with before his departure. Work on conditions and a further review of the GDO are still required and need to be taken forward by the new Director of Planning. |

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| 10.44 Identify a team leader to take day to day management responsibility for validation, registration and new IT including all of the technicians and the Applications Team, to ensure consistency of screening and increase efficiency, with the other team leader responsible for case management progression | Yes | One team leader now has direct line management responsibility for the Technical Support team as well as managing the Minor Applications Team. There has been a significant improvement in service and staff morale/motivation as well as a much more consistent approach |
| 10.45 Consider further how resources can be found to organise the production of better management information and monitor performance, and implement a modern planning application management IT system as outlined in the previous section. This needs to be by one or both of the Assistant Directors (DC or Performance & Operations) in view of its high priority | Yes – but ongoing | Initially undertaken in conjunction with Technical Support Team. The production of better management information is really important – not just for team leaders. It is important to encourage development of skills to provide more bespoke reports/statistics on an on-going basis. |
| 10.46 Increase the delegation of the management of cases from the Assistant Director to permanent team leaders | Yes | Seems to be the case much of the time |
| 10.47 Arrange more formalised networking opportunities with staff on Guernsey, Alderney and the Isle of Man and explore the opportunities for short term job swaps | No | Probably less networking that there used to be because of tighter budgets and time constraints. Staff at Isle of Man proved very helpful when the investigatory work on the new Appeals system was being undertaken. It would be helpful if members of TST were actively involved in Users Groups for the Merlin and I@W systems to develop a greater awareness of the system's potential |
| 10.48 Encourage more involvement by staff with peers in POS and the RTPI SW Region | Partly | Joined POS and TCPA. Mainly electronic bulletin communications but encouraged to attend events in England arranged by RTPI Conferences, TCPA and POS if budgets allow |
| 10.49 Explore the opportunities for staff to participate in the POS Development Management Committee and for specific issues that are raising concerns to be informally discussed at such meetings with planners from England | Not yet | Staff are keen to be more involved but budgets and time are constraints Encourage involvement in online discussion groups when issues can be raised. TST are trying to proactively encourage staff development through an internal training programme which is allowing them to handle straightforward planning applications under the supervision of a case officer. |
| 10.50 Formalise arrangements for a regular seminar when the Appeals Team can feed back lessons to the DC case officers | Yes | New Appeals Officer has provided briefings with another due shortly. A short report is produced and circulated to all case officers on the outcome of every appeal which emphasises lessons that can be learnt. Being co-located on the same floor should help to ensure case officers are more aware of appeals information |
| 10.51 Provide in house training sessions to tackle issues where problems and inconsistencies have arisen | Partly | Provides more consistency and everyone seems more aware that this needs to be ensured. Adopt a rolling programme that will create |

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| | | opportunities for refreshers. Biodiversity session planned |
| 10.52 Provide joint training for staff and PAP Members on the 2009 Island Plan, once it has been formally adopted, and other Ministerial guidance that is published | Partly | Briefings now provided for PAP but not for staff. It will be important to ensure that staff briefing is provided as well as for PAP when revised plan is in place. |
| 10.53 Ensure complete formal training is provided for new IT system for all case officers, administrators and technicians | Yes | Completed – also User Guides produced internally. It is important that the focus of training in this area should now move to how to get the most out of the system to inform future actions and the development of new policies |
| 10.54 Continue with the “back to the floor” initiative and develop it further | No | Seems to have slipped due to pressure of attending more States meetings and getting more involved politically. Would be good to re-instate |
| 10.55 Continue to encourage staff team building and social events | Yes | More happens now. Morale is much higher throughout the team (Christmas jumper day/Soup run for charity) |

Annex E

Review of progress on recommendations from Reg's Skips Committee of Inquiry report 2 - 2011

(Text in the commentary sections normally confirms the progress made whilst emboldened text provides individual comments on the potential implications of actions taken)

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| <p>Permitted Development Before making the planned further revision of the General Development Order to enable a greater widening of 'permitted development' the Minister should refer to the Environment Scrutiny Panel both the draft Order and an accompanying report. This report should be agreed by the Minister's new Political Steering Group and confirm that the Minister has had the closest regard to all POS' recommendations on extending 'exempt' development in section 6 of its report, and explain the reasons with exactitude if he does not propose implementing the POS recommendations in their entirety. The referral to the Scrutiny Panel should be made no later than the start of the coming summer in order to give it time to consider the matter before the States breaks up for its holidays.</p> | No | <p>Revised Exemption Rights produced in 2011 but this was not included partly because of issues around loss of departmental income. However, PIP Political Group urged Minister to agree greater exemptions. Nothing has been done in this area since 2011 and it has been seen as less of an issue because of the drop in applications being received because of downturn in economy</p> <p>The arguments for extending permitted development remain valid and will need to be reviewed if application numbers increase and resources remain the same</p> |
| <p>Delegation of Powers The Minister and the Chief Officer, Environment Department, should satisfy the States that the Department's current delegation of powers agreement has been revised authoritatively, especially in order to clarify beyond peradventure what development control powers are delegated by the Minister to the Planning Applications Panel and officers respectively, and the limits of those delegated powers.</p> | Yes | <p>Decisions are now delegated to officers for decision unless there are four or more objections.</p> |
| <p>Code of Conduct for the Minister re planning decisions</p> | Yes | <p>Adopted December 2011</p> |

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| <p>The Minister should adopt, by formal Ministerial Decision no later than 31 May 2011, after appropriate consultation, a code of conduct regarding his involvement in pre-application advice and determination of applications. This should follow, as closely as reasonably practicable, the template for such a code of conduct set out at Annex F of POS' report</p> | | |
| <p>Consultation within Government on Planning Applications The Chief Officer, Environment Department should, without delay, prepare a policy document for the endorsement of the Corporate Management Board governing the way in which statutory and non-statutory consultation on planning applications should in all cases be undertaken between and among government departments and related agencies. This should cover the way the Department itself goes about initiating consultation requests and set out a mechanism for ensuring that a cadre of officers across all departments is identified as having responsibility, each person in her or his own department, for responding to consultation requests and for engaging with the Department on them as necessary. The cadre should be identified by name in a list kept by the Chief Officer and brought together from time to time by his Department so that it has credence and those who comprise can understand and appreciate all requisite factors and procedures to which they must have regard when commenting on planning applications. The Corporate Management Board should keep such arrangements under regular review on the advice of the Chief Officer, Environment Department</p> | <p>Yes</p> | <p>List of named consultees is part of revised Merlin IT system and I@W allowing electronic consultations to be made. Seems to be working much better.</p> <p>ED Department, however, have currently requested only to be consulted applications which relate to tourism.</p> <p>All need to be treated equally. However, biodiversity consultations particularly need to be frontloaded at pre-application stage if possible to ensure that any necessary surveys etc can be completed in the most timely fashion</p> |
| <p>Health Protection Unit, Department for Health and Social Services Current discussions between the chief officers of the Environment Department and the Health and Social Services Department about (a) eliminating overlap between the former and the Health Protection service within the latter and (b) ensuring better interaction between the two on development control issues having been concluded, the 2 relevant Ministers should bring forward a substantive</p> | <p>Not entirely</p> | <p>Discussions took place and a much better working relationship has developed in this area. However, it is not clear that anything was formally put to the States on this matter.</p> |

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| proposal to the Council of Ministers, and then the States, to implement the agreed changes. The aim of such changes should be, first, to make things go better through eliminating any overlap of activities and thus utilising resources better, and, secondly, to ensure the best possible Health Protection input to the development control process in a joined-up manner | | |
| <p>A “Planning Merits” Appeals System</p> <p>Taking account of comments in this report and in the relevant parts of the other reports referred to in paragraph 2.2, and indeed the whole ‘history’ of the matter over the last number of years, the Minister should publish, within four months from the date of this report, a public discussion document on introducing a ‘first-party’ planning appeals system (that is, concerning appeals against any decision on relating to planning applications taking account only of ‘planning merits’). The discussion document should set out a clear putative timetable for progress to be made to a satisfactory conclusion. Once public views have been gathered and assessed the States should have an orientation debate on the whole issue and remit the Minister to work with the Environment Scrutiny Panel and all interested parties to prepare specific proposals</p> | Yes | Agreed by States in Autumn2013. Work now underway with States Legal Department to draft legislation |
| <p>Momentum</p> <p>The Chief Officer, Environment Department, should report to the States, through the Minister, before the end of the First Session of 2011, on progress made in taking forward and implementing the above recommendations together with all the main ones made by POS; and thence should report similarly at least annually on all aspects of the performance and improvement of the development control function in Jersey, and on related matters</p> | Yes | Via annual Business Plan and monitoring reports |