



OFFICIAL REPORT

OF THE

STATES OF THE

ISLAND OF ALDERNEY

HANSARD

The Court House, Alderney, Wednesday, 14th March 2018

*All published Official Reports can be found on the
official States of Alderney website www.alderney.gov.gg*

Volume 6, No. 2

Present:

Mr Stuart Trought, President

Members

Mr Tony Barnes
Mr Matthew Birmingham
Mr Mike Dean
Mr James Dent
Mr Louis Jean
Mr Graham McKinley
Mrs Norma Paris
Mr Steve Roberts
Mr Alex Snowdon
Mr Ian Tugby

The Greffier of the Court

Mr Jonathan Anderson

Business transacted

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States of Alderney

*The States met at 5.30 p.m. in the presence of
His Excellency Vice Admiral Sir Ian Corder KBE, CB,
Lieutenant-Governor and Commander-in-Chief of the Bailiwick of Guernsey*

[THE PRESIDENT *in the Chair*]

PRAYERS

The Greffier

ROLL CALL

The Greffier

The Greffier: Sir, all 10 Members are present this evening.

Billet d'État for Wednesday, 14th March 2018

The President: Thank you very much.

Before we go any further I would like to officially welcome His Excellency the Lieutenant-
5 Governor, Admiral Sir Ian Corder, this evening. A very warm welcome to you from myself, the
States and the people of Alderney.

Convener's Report of the People's Meeting held on 7th March 2018

The President: Now if we could move on to the Convener's Report, please, Mr Birmingham.

Mr Birmingham: Thank you.

10 Your Excellency, Mr President, fellow Members, I convened the People's Meeting last
Wednesday, 7th March. I was assisted by the Chief Executive. There were six States Members
excluding myself present, and the minutes secretary; there were 33 members of the public and
six members of the press. Apologies were given for Mr McKinley and Mr Roberts.

15 The Convener welcomed the new Chief Executive to his first People's Meeting and the Chief
Executive thanked Mr Adrian Lewis for his role as interim Chief Executive during the past nine
months.

The President: Thank you very much indeed.

**I. Chief Pleas –
Chief Plea of Mrs Pamela Pearson**

20 **The President:** Can we move to Item 1 on the Agenda, please, Greffier.

The Greffier: Thank you, sir. Item 1 this evening is Chief Pleas.

The President: Do we have any Chief Pleas?

25 **The Greffier:** Sir, I have received one Chief Plea and that is from Mrs Pearson.
If you would kindly like to step forward.

The President: Thank you very much.
Mrs Pearson, before you start ... Were there any comments on this at the People's Meeting?

30 **Mr Birmingham:** Thank you, Mr President.
Item 1, Chief Pleas: the President advised there had been no Chief Pleas submitted to that date
and it was noted that the closing date was Friday, 9th March.

35 **The President:** Thank you very much.
Before you start, Mrs Pearson, I would just like to remind you that this is an opportunity for an
individual to bring personally before the States a matter of public interest which they request shall
be considered, and you may address the States in support of your request. It is an opportunity to
address the States as a whole. It is not a platform from which to opine on the merits or otherwise
40 of individual States Members.

Also, nothing in the section of the Law covering Chief Pleas confers on a person who addresses
the States any other right, privilege or immunity. In effect, anyone who states anything as a fact
which is untrue or makes false allegations may be subject to whatever remedy is available under
law.

45 Thank you.

Mrs Pearson: Thank you very much.

Mr President, Your Excellency, Members of the States, it gives me absolutely no pleasure
whatsoever to feel that I have to address you tonight. Normally I would write to you personally,
50 privately, but this is a matter I feel has reached a particular point in the process of the Land Use
Plan, for which I had to write to the States and request an amendment to be put to it. I will explain
that within my statement that I am about to give, but it grieves me greatly to have got to this
point.

I thank you for the opportunity to speak. I also thank Mr Jean and Mr Tugby, Mr Jean being the
55 proposer of an amendment which is being put later in this meeting and seconded by Mr Tugby by
way of an appeal against certain aspects of the Land Use Plan that you are about to look at and
pass this evening.

There are two aspects of this appeal, which were outlined in my letter to you all of 7th March.
Being as there are two aspects, if I might just interject by asking that Mr Jean actually asks for
60 these to be voted on separately. I am not sure how the process works –

The President: Be careful about procedure, Mrs Pearson.

65 **Mrs Pearson:** – because they are two separate things. The first refers to the treatment of the
Arsenal in regard to being an opportunity area. This is a new distinction introduced in this Land
Use Plan and one very much welcomed by us as the family who own the property. My letter
begins:

Following the Land Use Plan inquiry, the inspector made recommendations which the Building and Development Control Committee have further amended. Those recommendations and amendments directly affect the Arsenal and there is no prescribed appeal against either aspect. This anomaly was raised by Paul Arditti, former States Member, in connection with the 2011 Land Use Plan.

To explain the lack of prescriptive appeal is best given by way of the events of the 2011 Land Use Plan and involves the farm buildings at the Saye campsite. The owners at that time applied for a change of use. The inspector at the inquiry recommended that they be utilised, but the Committee at the time reversed that recommendation, and I have to say they were perfectly entitled to do so. However, Mr Arditti felt changes to the previous plan should be debated as part of the executive process in exactly the manner in which you are being asked later this evening to pass the new amendments to the law. In that case the amendments were presented, approved and the new law was written. In this case the inspector's report and the BDCC changes are laid before you. You are not asked to debate them. The final plan has been written and you are asked to accept or reject it.

That is how I read the proposal tonight and how the last Land Use Plan was processed.

My letter continues:

In order to redress this injustice, we see our only recourse is to propose two amendments.

70 We wrote and requested help in putting these forwards by any States Member who was prepared to do so, and again we are grateful to Mr Jean and Mr Tugby for giving us a voice.

It would perhaps be helpful at this point to envisage the marina proposals as just one project we were prepared to invest in.

That is in order to give you some visual clues as to how this presentation will progress.

The States were well aware of the proposals and we would like to think that they took such a project and the vision of it into account when considering the cause and effect aspects of the Land Use Plan as it is now written.

The marina proposals also came and went in the harbour area. With that in mind, I would like to explain the inclusion of the two maps of the sea area of Braye Bay and Braye Harbour opportunity area which I attach to my letter.

The Braye Harbour opportunity area was indeed another welcome addition to the overall Island plan. Prior to the 2017 plan, the entire area of Braye Bay was designated as an opportunity area. The Committee, following extensive consultation with ARUP and the chosen stakeholders, who gave considerably of their free time, decided to cut the bay in half. This rendered the western end

– that is the harbour area –

as an opportunity area, while the east end of the bay under the Arsenal was reassigned as designated area

– or greenbelt, as it is commonly known.

At the inquiry we asked for justification of this decision but none was forthcoming.

I refer to the inspector's conclusion on this matter in sections 49 to 52 of the report that has been laid before you. In summary, but without taking away its context, it reads as follows:

This unexplained change of policy seems to me to be unsatisfactory; and the proposed amendment of the boundary of the Designated Area appears arbitrary. It is not for me to come to a view on whether a proposed marina development in this location would be acceptable, but I cannot see why the B&DCC should be prevented by law from even considering a future application for such a development;

75 Ultimately he concludes:

I recommend against the inclusion of the eastern part of Braye Bay within the Designated Area; and I recommend the retention of the Designated Area boundary in this location as shown in the LUP 2016.

In other words, he concluded that the whole of Braye Bay should be an opportunity area, as it had been initially defined, and in fact that is how the Land Use Plan now stands.

On our proposal, the first amendment that Mr Jean is going to bring runs as follows:

In granting the opportunity area status to the Arsenal and other fortifications, namely Fort Tourgis, Albert and Chateau L'Etoc, the BDCC has discriminated by imposing additional conditions on the Arsenal. These conditions are defined and compared to the other forts on the table on page 4.

– which you all received –

In no other similar opportunity areas have any such conditions been imposed. Broadly speaking, both the States-owned fortifications at Tourgis and Albert are granted mixed-use opportunity as being encouraged and the privately owned Chateau L'Etoc granted mixed-use opportunity as likely to be acceptable. These have remained unchanged before and after the inquiry. Looking at the Arsenal, the initial equivalent designation read:

'Proposals for additional office or industrial and storage floor space or residential units are likely to be resisted, except where it can be demonstrated that they accord with ...'

80 rather a long list of policies. We naturally appealed to the inspector and he concluded a little differently in this respect:

Proposals for mixed use development including offices, industrial and storage uses are likely to be acceptable. Residential development is likely to be resisted, except where it can be demonstrated that it would accord with ...

another policy in the Plan.

We were not unhappy with this, but the Committee changed it in the final Plan which is now before you. The option for industrial use has been removed with the explanation in the summary
85 report on page 3 – and that is of the A3 sheets you were given as to their deliberations on the inspector's report. It reads as follows:

The recommendation change has been made with the exception of the word 'industrial' in the development principles. This is because the development of additional industrial uses would not reflect the Arsenal's significant opportunities.

We beg to differ. If anybody had approached us on the FAB Link project, where we may have the capacity to accommodate the controversial converter station within our existing buildings, this approach to the strict industrial use seems detrimental. Likewise, should the marina project
90 be resurrected, it may well include some small industrial aspect not currently being offered at the harbour or perhaps as more suitable to the Arsenal complex. Industrial use has been part of the Arsenal complex for decades. We comfortably accommodate residential, commercial and industrial use on a pretty big scale.

To quote the land use inspector at paragraph 143 of his recommendations, he writes:

It seems to me that the Arsenal Estate would have better credentials as a location for employment development than Fort Tourgis, Fort Albert or Chateau L'Etoc; and should be on a par with the existing industrial estates at Berry's Quarry and La Corvée.

95 So, in addition to asking for a reversal of the change that is actually on the Land Use Plan before you, we are proposing that the Arsenal is given as much opportunity to develop in the future, and more particularly that future Committees are free to determine planning applications on their merit.

100 **The President:** Mrs Pearson, you have had 15 minutes already. Do you intend to be much longer?

Mrs Pearson: No, sir.

105 **The President:** Good.

Mrs Pearson: This concurs with the BDCC's own edict at section 3.10 of the Land Use Plan on flexibility, which reads:

drafting policies that address all forms of development and are flexible so as to reduce the possibility of them not providing for future proposals

and

planning applications will be assessed on their merits, on a case by case basis;

110 It is our submission that plans for the Arsenal should be deliberated by the Committee in office at the time plans are presented and that Committee should not be encumbered by the views of the current Committee.

I would also point out that Alderney Electricity are presently constructing a substation dedicated solely to the Arsenal, which takes account of marina-type possibilities and expansion.
115 Mr Birmingham is on the board of AEL and is presumably aware.

We also recognise the contribution of the General Services Committee, who under Mrs Paris are funding the new water main to the estate. All of this is for future prospects.

120 **The President:** Mrs Pearson, would you please address the States with regard to the assistance you request.

Mrs Pearson: The last part of this, sir, is that such is the recognition of the potential of the Arsenal, sadly not reflected when comparing the Arsenal opportunity against the opportunities awarded to Forts Tourgis, Albert and Chateau L'Etoc.

125 That, sir, concludes my submission on the first part of the amendment that is proposed. I have a little note as to the other section at the bottom of my letter, which was basically –

The President: Pray make it brief, because –

130 **Mrs Pearson:** – for the entry of putting our private tenants into the Land Use Plan. It is, in our opinion, not for the current Committee to dictate anything on our private tenants and we do take exception.

The President: Mrs Pearson, you are here to request assistance, not instruct the States.

135

Mrs Pearson: The second amendment we fully accept is an out of time request post inquiry. My letter to you read:

We were unaware at the time of the inspector's inquiry that our land was earmarked under environmental policies. No list existed in the Land Use Plan by which we could have identified our land and neither were we informed.

140 **The President:** Mrs Pearson, I am sorry to interject again. The States Members are in receipt of your letter, they have read it, so please curtail the rereading of your letter – they all have it – and stick to your request for assistance from the States Members, please.

Mrs Pearson: This request has got absolutely nothing to do with the trees, the grassland or any aspect of the Arsenal estate. What I am asking for is recognition of the right of an Island resident to privacy. The Committee, with the States' approval, chose to change the link between the

145 heritage assets and the Land Use Plan, thus introducing a new type of register. I advised the
inspector of the injustice of the process. He recommended its removal and it is no longer there.

The Arsenal is very much private property. It says so at both entrances. The Committee must
150 have authorised someone to undertake the survey of our land. We take very seriously the privacy
of our tenants and residents who have the enjoyment of the estate. I live there and it is my garden
as well. A section of trees on the hillside has very specifically been drawn in a lined boundary
which, in the absence of any written detail, is taken as definitive. These lines could not have been
drawn without entry on to our estate and we object to such invasion of our privacy.

The President: Mrs Pearson, please address the States with regard to your request. I told you
155 very clearly at the beginning that you are not here to opine on the actions of the States, you are
here to request their assistance for a specific reason. Please do so.

Mrs Pearson: On the grounds that the Committee chose to write to as many as – in my
160 counting, anyway – 300 private property owners on the heritage assets list that they published in
the Land Used Plan and yet chose not to advise us that our land had been surveyed and sections
marked up is surely unjust treatment. Further, the BDCC law requires 24 hours' notice to be given
to an owner before entering private property. We never received any notification.

The Arsenal may well be seen as a public asset, but no one comes on to the estate other than
165 by right of tenancy or invitation.

The President: Mrs Pearson, I am going to have to ask you again, please – (*Interjection*) That is
quite enough, thank you. Mrs Pearson, you have had 20 minutes. Please confine yourself –

Mrs Pearson: In that case, I will –
170

The President: – to a request to how you wish the States to address you, not a list of things
which you see as things which have been where you have been wronged.

Mrs Pearson: Sorry Sir. The reason I am saying all this is to save Mr Jean from doing so.
175

The President: Mr Jean is quite capable of saying this, as I am sure you are well aware. I am
sure he will speak on your behalf at the time.

Mrs Pearson: In that case I will sum up with the statement by the chairman of the company
180 that owns the Arsenal, if I may:

Since the purchase of the Arsenal by a local businessman in the 1960s the landowner facilitated and funded its use
for housing, commercial enterprise and industrial use and sporting amenities for the benefit of many Island
residents and businesses. Without this entrepreneurial investment this estate may well have deteriorated in the
same way as others have done.

The company that currently owns the estate is engaged in the process of formulating the 2017 plan and contributing
to it in an attempt to enable future development of this important Island asset. The land, the heritage and position
of the Arsenal, sitting at the gateway to the Island, has much potential to facilitate towards the economic
regeneration of this Island and with foresight, the will and investment, it can be done without impacting other areas
of the Island that the policies set out to protect.

Thank you, sir.

The President: Thank you very much, Mrs Pearson.

**II. Speed Trials (Alderney) Ordinance, 2018 –
Item approved**

Item II.

The States is asked:

To approve the Speed Trials (Alderney) Ordinance, 2018.

The President: Can we move to Item II on the Billet, please.

185

The Greffier: Thank you, sir. Item II this evening is the Speed Trials (Alderney) Ordinance, 2018. A letter has been received from Mrs Paris in her capacity as Chairman of the General Services Committee and the States of Alderney have been asked to approve the Speed Trials (Alderney) Ordinance, 2018.

190

The President: Mr Birmingham, as Convener, were there any comments on this Item, please?

Mr Birmingham: Thank you, Mr President. Speed Trials Ordinance – there were no comments on this Item.

195

The President: Thank you very much, Mr Birmingham.
Mrs Paris, I believe you wish to propose this.

Mrs Paris: I do, sir, thank you.

200

Sir, Your Excellency, fellow States Members, I am pleased to put this before the States with regard to the 2018 Sprint and Hill Climb event. The Guernsey Cart and Motor Club wish to bring this longstanding annual event back to Alderney in September. We should be delighted to welcome them as old friends and to thank them for the increase in visitor numbers that this event provides as our summer season draws to a close, so I commend the Speed Trials (Alderney) Ordinance, 2018 to my fellow Members. Thank you.

205

The President: Thank you very much, Mrs Paris.
Mr Roberts, I believe you wish to second this.

210

Mr Roberts: Yes, I would like to second this with great pleasure.

Each and every year this event brings revenue to the shipping companies, the airline, guesthouses, retailers, pubs and the restaurant trade. The shoulder month that brings in caravans, bikes and racing cars. That brings in thousands to Alderney when we need it most; Guernsey friends returning year after year, supporting Alderney and showing faith in coming here at the great cost of travel.

215

We need to encourage and promote. We need more of these events and I am sure Mr Snowdon will succeed in promoting even more when our Jersey and Lee-on-Solent links commence, as they will, although late on the regulatory requirements.

220

The President: Thank you, Mr Roberts.
Does any Member wish to comment on Item II? Mr Snowdon.

225

Mr Snowdon: Mr President, Your Excellency, fellow colleagues, I would just like to add my support to this very important event during the shoulder month, and I thank Mrs Paris and Mr Roberts for bringing this forward. Thank you.

The President: Does any other Member wish to speak on Item II?
Mrs Paris, do you wish to exercise your right of reply?

230 **Mrs Paris:** I do not think there is anything further to be said, sir.

The President: Thank you very much indeed.
Mr Greffier, would you please put this to the vote.

235 **The Greffier:** Thank you, sir.
The States of Alderney are asked to approve the Speed Trials (Alderney) Ordinance, 2018.

A vote was taken and the results were as follows:

FOR	AGAINST	ABSTAINED
Mr Tugby	None	None
Mr Birmingham		
Mr Jean		
Mr Roberts		
Mrs Paris		
Mr McKinley		
Mr Dent		
Mr Snowdon		
Mr Dean		
Mr Barnes		

The Greffier: Sir, 10 votes for, none against; that motion passes.

The President: Thank you very much indeed.

III. Alderney eGambling (Amendment) Regulations, 2018 – Item approved

Item III.

The States is asked:

To resolve that the Alderney eGambling (Amendment) Regulations, 2018 not be annulled.

240 **The President:** Can we move to Item III, please.

The Greffier: Sir, Item III this evening is the Alderney eGambling (Amendment) Regulations, 2018.

245 A letter has been received from Mr Dent in his capacity as Chairman of the Policy and Finance Committee and the States of Alderney are asked to resolve that the Alderney eGambling (Amendment) Regulations, 2018 not be annulled.

The President: Thank you very much indeed.
Mr Birmingham, as Convener, were there any comments on this Item?

250 **Mr Birmingham:** Thank you, Mr President.
It was noted that this is a procedural issue in order for the Regulations to continue to be in force.

255 **The President:** Thank you very much indeed.
Mr Dent, I believe you wish to propose this.

260 **Mr Dent:** Your Excellency, Mr President, colleagues, you will remember in January we passed the Alderney eGambling Ordinance, which introduced a fourth category of licence similar to the B2B associate licence. This was to allow businesses outside of the Bailiwick who can demonstrate that they meet all the strict criteria of the AGCC to obtain an associate's licence and be able to deal directly with gambling customers. The feedback received from Alderney eGambling Ltd and the AGCC was that this was a welcome addition to the licence offering and as a consequence we have now been asked to amend the Alderney eGambling Regulations.

265 These Regulations were, I initially believed, totally uncontroversial, although somewhat lengthy. A question was nonetheless asked at the People's Meeting and the next day I and others did a little research. In my view, it would be wise from now on for the AGCC to be perhaps a little more structured in the way it consults, certainly before passing regulations as extensive as these.

270 It is, however, my firm belief that it would be wise for the States to ensure this Item goes through. If we do not, there is a danger it would lead to uncertainty in the eGambling market, not least with potential licensees left wondering whether or not they would be able to hold the new category of licence here.

275 I believe that the new licences will be useful to create both additional revenue and additional work for our local financial houses and I believe that our local finance houses will be well positioned to act as agents for the new licence holders. I therefore commend the legislation to this Chamber. Thank you.

The President: Thank you, Mr Dent.
Mr Tugby, I believe you wish to second this.

280 **Mr Tugby:** Yes, Mr President, purely because the Gambling Commission is such an important benefit to the Island and without it we would have major problems, so we have got to do everything to support wherever we can.

285 **The President:** Thank you, Mr Tugby.
Does any other Member wish to speak on Item III? Mr Birmingham.

Mr Birmingham: Thank you.
Your Excellency, Mr President, I am sure everybody will remember that the previous time we discussed this I mentioned that I am a director of AEGL, the Island's marketing company in relation to gambling, and therefore on this matter I think it is only appropriate that I should abstain.

The President: That is entirely with your own conscience, Mr Birmingham; you do not have to. Does any other Member wish to ...? Mr Barnes.

295 **Mr Barnes:** I am in the same situation as Mr Birmingham and I, sir, must also abstain.

The President: As I said to Mr Birmingham, it is entirely a matter for your own conscience.

Mr Barnes: I understand that.

300 **The President:** Does any other Member wish to talk on this particular issue? No.
In that case, Mr Greffier, would you please put Item III to the vote.

The Greffier: Thank you, sir.

305 The States of Alderney are asked to resolve that the Alderney eGambling (Amendment) Regulations 2018 not be annulled.

A vote was taken and the results were as follows:

FOR	AGAINST	ABSTAINED
Mr Tugby	None	Mr Birmingham
Mr Jean		Mr Barnes
Mr Roberts		
Mrs Paris		
Mr McKinley		
Mr Dent		
Mr Snowdon		
Mr Dean		

The Greffier: Sir, with 8 for, zero against and two abstentions, that motion passes.

The President: Thank you very much indeed.

**IV. Land Use Plan Review 2017 –
Approval in principle –
Item approved**

Item IV.

The States is asked:

- 1. To agree in principle to the approval of the Land Use Plan 2017 subject to prior approval of:
i. the Building and Development Control (Alderney) (Amendment) Ordinance, 2018;
ii. the Building and Development Control (Designated Area) (Alderney) Ordinance, 2018;
iii. the Building and Development Control (Exemptions) (Alderney) (Amendment) Ordinance, 2018; and
iv. the related amendments to the States of Alderney Rules of Procedure.*
- 2. Only if Proposition 1 on this item is defeated, to direct the Building and Development Control Committee to return to the States of Alderney as soon as possible with advice on the implications of that decision of the States of Alderney for the review of the Land Use Plan, and the proposed amendments to the legislation referred to in Proposition 1, taking into account any relevant requirements under the Building and Development Control (Alderney) Law, 2002.*

The President: Could we move to Item IV, please.

310

The Greffier: Thank you, sir. Item IV this evening is the Land Use Plan Review 2017 – Approval in Principle.

315 A letter has been received from Mr Birmingham in his capacity as Chairman of the Building and Development Control Committee and the States of Alderney are asked, firstly, to agree in principle to the approval of the Land Use Plan 2017 subject to prior approval of the four major pieces of legislation which follow; and, only if Proposition 1 on this item is defeated, to direct the Building and Development Control Committee to return to the States of Alderney as soon as possible with advice on the implications of that decision of the States of Alderney for the review of the Land Use Plan, and the proposed amendments to the legislation referred to in Proposition 1, taking into
320 account any relevant requirements under the Building and Development Control (Alderney) Law, 2002.

The President: Thank you very much indeed.

Mr Birmingham, as Convener, were there any comments on this at the People's Meeting, please?

325

Mr Birmingham: Thank you, Mr President.

Quite surprisingly, the BDCC were congratulated on the consultation exercise.

It was noted that no comments were received from placing the information on the Government website. However, other advertising means were questioned as not everyone uses the website. It was requested that it be explained at the States meeting what and when other means of advertising are used, such as the Official Gazette. I do not at the present moment, however, have that information. I believe, though, from talking to the Chief Executive, he intends to release some information relating to communication at some point in the future.

330

335 **The President:** Thank you very much, Mr Birmingham. I believe you wish to propose this Item.

Mr Birmingham: Yes, thank you, Mr President. I would like to propose this Item.

The President: Thank you very much.

340 Mr Dean, I believe you wish to second this.

Mr Dean: Yes, I would like to second this and I would like to reserve my right to speak until later. Is that possible?

345 **The President:** If you wish to speak on this Item, now is your opportunity.

Mr Dean: Okay, I will speak now.

The new Land Use Plan has taken three years to finish. It has been a huge, time-consuming process. I hope the community can see that this comprehensive Land Use Plan has been done with extensive public consultation. This consultation has resulted in a document with a detailed framework and is not only robust but fit for purpose, which will see Alderney into the future.

350

None of this would have been achievable without Kieran, Chloe, Dan and the team from ARUP. Their professionalism and their guidance have been invaluable and their attention to detail has been most impressive. I would not hesitate in requesting their assistance in the future. A huge amount of work has been done by John Young and Sam Osborne in the Planning Department. Mr Birmingham himself should be congratulated for the way he steered the BDCC Committee during the whole process and none of this could have been achieved without the Law Officers and the extensive assistance they have given with phone calls, conference calls and emails, often lasting long into the night between all of us. The involvement of the community with their criticism, their constructive comments, has shaped the whole Plan and shows what can be achieved with closer co-operation with the public.

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We must build on that, because Alderney is governed democratically and democracy means the people have a right to say what they want and to influence their own future and prosperity. I congratulate Mr Birmingham on setting a bold and brave new precedent, which must be followed in future. We must consult the public on all major proposals from now on. We, as States Members, need a far better working relationship with the Chamber of Commerce, the Alderney Society, the Alderney Wildlife Trust, the accommodation sector and all Island stakeholders. Furthermore, full and frequent public consultation is the only way to prevent the self-interest and dodgy dealings which –

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The President: Mr Dean, we are talking about the Land Use Plan, please.

Mr Dean: I am talking about the Land Use Plan.

375 **The President:** Yes, well, you have mentioned public consultation there – that is fine. Please continue.

Mr Dean: Okay. Furthermore, full and frequent public consultation is the only way to prevent self-interest and dodgy dealings, which had previously occurred in Island politics until now. In order for us to interact fully –

380 **The President:** Mr Dean, I will ask you to strike that, please, what you are saying about dodgy politics etc. I would ask you to withdraw that. It may be your opinion, fine, but we are not here to talk about that. We are here to talk about the Land Use Plan.

385 **Mr Dean:** Okay, I will strike my previous comment.

The President: Thank you.

390 **Mr Dean:** In order for us to fully interact with the public, we must ensure that the public have all the information they need to decide what they want. It is our fundamental duty as States Members to make sure we get all the information out to the people. We have not done this at all well in the past; in fact, we have failed miserably at it.

395 Once the Land Use Plan and the Ordinance is adopted, it will no doubt result in the submittal of a major infrastructure project proposal. I, of course, refer to the FAB Link. It is a shame that this project has tarnished the excellent Land Use Plan already. No developer –

The President: Mr Dean, we are here to speak (**Mr Dean:** I am.) about the Land Use Plan and the approval of it.

400 **Mr Dean:** I am, sir.

The President: We are not here to speak about specific issues or specific projects that are coming through. We are here to talk about the Land Use Plan. If you want to use that as an example of how it can be used, please go ahead, but we are not here to talk about specific projects.

405 **Mr Dean:** I am not here to talk about specific projects. I am discussing the Land Use Plan.

The President: Okay, please continue.

410 **Mr Dean:** No developer and their commercial negotiations should ever interfere with planning or policy, because it has been extremely difficult for the BDCC to continually reassure the public that this Land Use Plan is neutral and not for the benefit of any developer. I can assure the public that we are in a far better position with this new Land Use Plan and it safeguards not only the designated area but the Island as a whole.

415 We still do not know the full extent of the FAB Link project and its implications for our Island. A public document was signed in 2005 without any public consultation and without any public conscience, without any public scrutiny. This was very wrong.

420 I believe the Land Use Plan should now be adopted and the Ordinance that goes hand in hand with it should also be adopted, and then we must be bold and build on the strong foundation to correct the wrongs of the past administration.

The President: Thank you very much, Mr Dean.

Mr Greffier, I believe you have an amendment to this Item.

425 **The Greffier:** Yes, sir. An amendment has been received from Mr Jean, which reads as follows:

In proposition 1, immediately after 'To agree in principle to the approval of the Land Use Plan 2017 subject to' insert 'the deletion of the Development principles as set out at OA4 and their replacement by the wording of Development Principles set out at OA3 and also to the deletion of areas marked at Section 5.3 as "Broadleaved woodland; small isolated patches around the island" and "Coastal grassland" at the Arsenal outlined in the associated green index notation on Map reference Figure 5.5: Hierarchy of Biodiversity Designations: Regional Tier, and also subject to'

The President: Thank you very much indeed.
Mr Jean, I believe you wish to propose this amendment.

Mr Jean: I do, sir. Would you wish that I speak now?

430

The President: I would indeed.

Mr Jean: Thank you.

435

We have heard quite a deal this evening from Mrs Pearson. She gave, in my opinion, what was a good and important address. What we are trying to do this evening, in my opinion, is to rectify a situation where somehow this one slipped out and did not manage to get addressed. We have heard of about 300 other people who have dealt with their problems with the Land Use Plan. They were dealt with and I believe that this is one that we should ourselves deal with.

440

I would hope that the States ... This is the right time as well to do this, because we are here to discuss the Land Use Plan. If I had to try to achieve any kind of amendment to the Land Use Plan at a later date it would be a far more cumbersome vehicle for me to achieve. I would have to do it through a requête, and that might not be so easy.

445

I am hoping tonight that you will all accept what we heard and understand that both amendments are necessary. I am not sure whether you would wish me to speak on both amendments.

The President: I think you only have one amendment there. Under the law you have only submitted one, so it will have to go through as one.

450

Mr Jean: Both sections of the amendment, they should indeed go through. I understand as well that this could complicate and make more difficult ... I will not refer to the specific development, but what I would say to you is that any development in that area could well be impeded by the conditions if we pass the Land Use Plan as is without the two parts of the amendment which I am proposing. So I am hoping to persuade you this evening and of course I will be, later on, I believe, possibly having the chance to sum up.

455

I am grateful for the assistance I have received from all the people who have helped me to get this amendment together and I am grateful to my seconder, the Vice-President, Mr Ian Tugby, for assisting me.

460

I do not think I need to say any more, as the case has already been fairly well made out before you. I hope that you will join me in amending this Item.

Thank you very much, sir.

The President: Thank you, Mr Jean.
Mr Tugby, I believe you wish to second this.

465

Mr Tugby: Yes, sir. Shall I speak now?

The President: Yes, please.

470 **Mr Tugby:** The reason I second the amendment is because I have known what has gone on at the Arsenal since the War, basically. It has been industrial, it has been meat products out there, it has been a pig factory, timber stores, and now it has been a residential area as well. There has been a tarmac plant there for the last, what, 30 years, I suppose; it could be even longer.

To actually put restrictions on it after all this time seems absolutely ridiculous in my book. If in the future there should be a marina – in the distant future I feel there could be – there would be residential accommodation required and that would be a perfect place to put some. So, basically
475 I would recommend that you accept the amendment and get the land use planned accordingly.

Thank you.

The President: Thank you, Mr Tugby.

480 Does any Member wish to speak on the amendment? Mr Birmingham.

Mr Birmingham: Thank you.

Your Excellency, Mr President and fellow States Members, the amendment to the Land Use Plan that Mr Jean has brought forward follows a letter by a developer lobbying all States Members in an attempt to bypass the due process for altering the Land Use Plan laid out in the law. That
485 letter follows three major points, which I shall deal with.

Firstly, the developer has no right of appeal to the inspector's decision. Simply put, the inspector *is* the appeals process of the LUP. The Building and Development Control Committee make recommendations, the inspector runs the rule over them and the developer gets the chance
490 to put their points across, and then the inspector adjudicates on the matter.

Anyone who attended the Land Use Plan inquiry would see that it is an open, fair and transparent process where all stakeholders get the chance to address the inspector with their concerns. Of course it helps if you attend the Land Use Plan inquiry to understand that. Maybe someone would like to ask Messrs Jean and Tugby on how many of the nine days of the
495 examination of the Plan they attended. I suspect it could be counted on the fingers of one hand.

The process of preparing the Land Use Plan is set out in law. The process for preparing and examining the Land Use Plan 2017 has included production of an evidence base, including stakeholder engagement; public consultation on the evidence base; a call for sites; public consultation on the draft Land Use Plan 2017 ahead of the public inquiry; a public inquiry held by
500 an independent inspector with opportunities for written and oral representations from interested parties; public consultation on related documents, including statutory guidance and proposed law changes and of course there was the People's Meeting last week before this Item was brought forward.

It is a process where there are more than adequate opportunities for interested parties to be involved and have their views considered. It should be noted that in other comparative jurisdictions, including mainland UK, there are not prescribed appeals processes against
505 recommendations and amendments following examination of the Land Use Plan.

The process that the developer is objecting to is the industry norm and while I have great respect for my departed colleague, Mr Arditti, I am afraid his opinions were irrelevant because he
510 was not a planning lawyer. The process the developer is objecting to, as I said, is the industry norm. The developer had the opportunity to address the LUP inquiry on the issues that she raises in her letter, and she did. Those representations were heard by the independent inspector and the Committee are following his recommendations. The developer does not like the decision and is now trying to make an end run around due process in an attempt to change the Plan in what I
515 can only describe as a disgraceful misuse of the Chief Pleas system using completely disingenuous and fatuous arguments that only a total idiot could fall for.

The President: Can you moderate your language, please, Mr Birmingham.

Mr Birmingham: I will attempt to. Thank you, Mr President.

520 An attempt to alter the Plan in this way is a clear attempt at an end run around the entire LUP inquiry process. I could see it as an abuse of process to amend the Plan in this way and must simply say that it must not be allowed to pass.

525 Secondly, the issue on opportunity area. The letter suggests that all opportunity areas should have the same criteria and that the developer is being discriminated against because they do not. This argument is complete nonsense in an attempt to try and plead that the developer is being treated badly. Quite clearly each opportunity area will have different characteristics and there is no reason that all the opportunity areas should have the same criteria. In fact, quite clearly each should be treated on its own merits and there is no validity to the argument that it simply does not stand independent scrutiny.

530 Thirdly, on the matter of biodiversity, the natural environment categories in the plan list areas of types of ecological habitat on the Island. This is a simple mapping process that gives a baseline study to the Island's fauna. The developer seems to suggest the States have no right to draw up a map of the various ecological habitats on the Island without the agreement of the landowner. In other words, a stand of trees should not be called a stand of trees or an area of grass should not
535 be called an area of grass unless you have consulted with the landowner and have their agreement. An area of grass is an area of grass. It is not a matter of consultation, it is a matter of fact, and I will leave it up to you to decide if the developer's argument is reasonable or not.

540 In terms of the comments that were made about entering people's private property to allow them to take the survey, no, that is incorrect. A desktop survey was undertaken and the mapping relates to a desktop survey. You can do mapping like this. If you do an aerial survey you do not need to be actually on the land to do it. Personally, I look forward to the developer making similar arguments to the Ordnance Survey about if a tree is a tree the next time they map the Arsenal. I wish her good luck with that.

545 The habitat list was published for all to read within the Natural Environment Strategy. The strategy was fully discussed at the inquiry. The inspector examined it in detail. The developer had an opportunity to respond at the inquiry and did not – end of story, I am afraid, and I cannot understand how any reasonable person thinks that they should get some form of special treatment above every other participant in the process in the way that the developer is trying to do.

550 For me, however, the biggest issue is that two States Members can have monumentally catastrophic judgement in even thinking that bringing this amendment forward is the right thing to do. I am especially puzzled that it is Messrs Tugby and Jean. I think it is fair to say that both gentlemen are no fans of the planning system. Why, all of a sudden, a road to Damascus conversion and an interest in amending a plan formed out of a process that they have shown no
555 interest in taking part in?

Mr Jean: I will post an objection, if I may, to those remarks and I want them withdrawn.

The President: You are allowed to make a point of order.

560

Mr Jean: I would like to make a point of order.

The President: Your point of order is?

565

Mr Jean: That he should withdraw those remarks as –

The President: That is not a point of order.

Mr Jean: – not correct.

570 **The President:** Carry on, please, Mr Birmingham.

Mr Birmingham: Fine, okay, he has no interest. Fine. Luckily, I went back through all the Building and Planning Ordinances since 2015. On both Mr Jean and Mr Tugby's voting records it would seem that they have had nothing but contempt for the planning system: March 2014, Building Regulation Ordinance, Mr Jean and Mr Tugby against; March 2015, proposal to direct BDCC to protect Lager Sylt, Mr Jean and Mr Tugby against; (**Mr Tugby:** Sir –) July 2016, BDCC amending Ordinance –

580 **The President:** What is the point of order?

Mr Tugby: Sir, I thought we were a democratic Island. We are supposed to have an opinion, and just because we have voted differently to what Mr Birmingham seems to want us to do –

585 **The President:** Mr Tugby, there is nothing wrong with him relating your voting record. That does not imply that you were right or wrong. As you say, you have a right to vote as you wish. Continue, please, Mr Birmingham.

Mr Birmingham: Thank you.

590 July 2016, BDCC amending Ordinance, Mr Jean and Mr Tugby against; July 2016, LUP phase 1, Mr Jean and Mr Tugby against; December 2016, BDCC amending Ordinance (No. 2) and Fees Ordinance, Mr Jean and Mr Tugby against; June 2017, BDCC amending Ordinance 2017, Mr Jean and Mr Tugby against. Oh, no, sorry, that is wrong; I have got that one wrong. That is just Mr Jean against. That is right, because Mr Tugby was on holiday – sorry, my bad on that one.

595 So neither gentleman has ever supported any planning reform, has not attended any LUP meetings or taken an active part in the process.

Mr Jean: Sir, on a point of order –

600 **The President:** Point of order?

Mr Jean: That is not correct. I have attended two, thank you, (**Mr Birmingham:** Thank you.) (**The President:** Thank you.) and made comment.

605 **Mr Birmingham:** Thank you. I stand corrected, Mr Jean.

Mr Jean: Thank you very much.

Mr Birmingham: I am delighted that you managed to attend two of the meetings.

610 **The President:** Mr Birmingham, continue.

Mr Birmingham: Yes, sorry, I was just finding my place in my speech; my apologies.

615 So now the gentlemen want to make a last-minute amendment, that has not gone through due process, to a Plan that their voting record suggests they were not going to support anyway. Curious, to say the least, and if you think about it you can only come to some damning conclusions.

I have to say that I am going to miss a section in my speech because I think I have gone on quite long enough relating to some parts of this, but I will just add one final thought: what if this letter and proposed amendment had come from another developer – say FAB Link? I am quite sure that the public would have something to say about that, but of course they would not be able to

620 because this amendment has been snuck through at the last minute and I am quite sure it has been brought to the States without any ability for the public to discuss the matter at the People's Meeting and no chance to comment. It is simply disgraceful sharp practice.

The reality is that it does not matter who the developer is. The problem would be the breach of public trust in the process that passing this amendment would do. In the consultations into the amending Ordinance that we will be debating soon, the fundamental concern was about the action of a rogue States. Well, in my view, tonight we have two rogue States Members acting exactly in the way that the public are concerned about. This amendment brings the body into complete disrepute and I urge the remaining States Members to throw this amendment out and support the principle of proper process; otherwise, I can only see the public's already damaged confidence in the States being totally shattered.

630 I make my position totally clear. My views on good governance and process I think are well known and if the States pass this amendment, make no bone about it, you will be looking for a new Chairman of the Building and Development Control Committee.

635 **The President:** Thank you very much, Mr Birmingham.
Do you wish to speak on this amendment?

Mr McKinley: Could I just ask a couple of questions, Mr President?
Your Excellency, Mr President, fellow States Members, a question for Mr Birmingham first is that with the reduction in the Braye –

The President: Mr Birmingham will not be responding to questions during the amendment. He has made his speech. It is now your chance to make your speech.

645 **Mr McKinley:** All right, fine. On that basis, I will ask that question later.
Could I ask a question of Mr Jean and Mr Tugby on the amendment, which is it talks about a 'broadleaved woodland; small isolated patches around the island': are we talking specifically about the Arsenal, or are we talking about generally around the Island, because that actually brings a much possible greater problem. If we are talking specifically about the Arsenal, I would ask again why the Braye opportunity area has been reduced; but are we talking specifically about the Arsenal and about the beach area around the Arsenal and about the area that might be used as a marina, which I understand is a possibility in the near future, another proposal coming forward for that specific area?

655 **Mr Birmingham:** Point of order?

The President: Point of order, yes, please.

660 **Mr Birmingham:** Yes, thank you. I would just like to correct a comment that Mr McKinley actually made there. He was talking about the reduction of the Braye opportunity area. That is incorrect. The Braye opportunity area in the Land Use Plan covers the entire are of Braye Bay. There has been no reduction in it. Part of the discussions that I undertook were about a potential reduction and as part of the Land Use Plan inquiry it has not been reduced. The entire area of Braye Bay is still the opportunity area.

665 **The President:** Thank you.

Mr McKinley: Thank you for the clarification, sir.

670 **The President:** Is there any other Member? Mrs Paris.

Mrs Paris: Thank you, sir.

675 Sir, Your Excellency, fellow States Members, I step warily into this one. Whilst I have some sympathy for what Mrs Pearson has said, I am afraid it does seem to me that this amendment flies in the face of all the public consultation and the careful consideration of the evidence which has been the hallmark of the Land Use Plan process. I think it is important that the LUP is seen as the result of an open, transparent and collaborative process, which I truly believe it was.

680 I think to bring this amendment at this point in time is a bad start to the LUP. A last-minute amendment of this nature simply cannot be regarded as good practice when there is so much in the Land Use Plan that has been so thoughtful, so well thought through and so carefully considered, and I am afraid I do not feel I can vote for this amendment.

The President: Thank you, Mrs Paris.

685 Does any other Member wish to speak on the amendment? Mr Dean, do you wish to speak on the amendment? Anybody else? Does any other Member wish to speak on the amendment? No. In that case, Mr Jean, do you wish to exercise your right of reply?

Mr Jean: Thank you, sir.

690 Well, that was interesting. I think what we heard from the Chairman of Building and Development was that we do support this amendment. More than ever now I believe we should. He referred to 'developer' constantly, right throughout. Not 'developer', oh, no. Bypassing, no right to appeal, open, fair, transparent ... How did this happen? How *did* this happen, that this slipped away, that this family – not developer – were not written to? Why weren't they written to? Desktop survey? Do we know?

695 **Mr Birmingham:** Point of information? Point of order?

The President: Point of order.

700 **Mr Birmingham:** Thank you. I am afraid I do have to correct Mr Jean – he does need to get his facts right. What Mrs Pearson was talking about was that under the considerations for the heritage assets people were contacted in relation to potential efforts that the BDCC might make for added protections. There was no consultation relating to the natural environment matters because there was no requirement to do so. There was no need. This, as I have said previously, was a mapping process which basically outlined a baselining study of what habitats there are on the Island. The suggestion would be that we would have to contact every single landowner on the Island to get them to agree.

705 **The President:** Mr Birmingham, I think you have made the point adequately, as you made it before.

710 Please continue, Mr Jean.

Mr Jean: Thank you.

715 Why has the definition been altered, do you know? There was no need to alter it. It should be the same as the other four. That is what this is about.

We have heard words like 'disgraceful' and 'fatuous' and 'must not be allowed to pass'. This is an opportunity to pass this. This is a time when it should be dealt with now and put right the last grievance. Three hundred other people apparently have been satisfied in the process and the Land Use Plan itself has been praised. Indeed, I want to round it off. I am critical of how far this process has gone – yes, I always have been – but we have got the product now. We hear that 300 people have been satisfied, their complaints: why still this one and why such a big one? And why in such an area where ...? And, since Mr Tugby actually mentioned it, the possibility that a marina development may take place there, why suddenly should the conditions be changed? The land

use inspector himself has actually not recommended that. He is actually of a different mind and believes that the opportunities should be the same.

725

Mr Birmingham: Point of information?

The President: Make sure it is a good one, Mr Birmingham.

730

Mr Birmingham: Yes, thank you. It relates to marinas, because Mr Jean has brought them up. The reason there is no –

The President: Can we just –

735

Mr Birmingham: – part in there is because no one brought forward anything in the Call for Sites relating to a marina

The President: Thank you very much, Mr Birmingham.

740

Mr Jean: I thank Mr Birmingham –

The President: Can we stop referring to potential developments which, as I said to Mr Dean, are things which are conjecture.

Please continue.

745

Mr Jean: Yes, that is perfectly okay. Thank you, Mr President, for that point.

I am not trying to put anybody on trial here, I am really not, but somehow the owner was not spoken to and that, I have to say, is a pity.

750

To say that myself and Mr Tugby were mentioned in dispatches as ‘two ‘rogue States Members’, well, that is a disgrace. I have never been described as that before and I totally refute it and object to it. I simply read a letter and I felt that there really was something in that letter that needed answering and this person had a right to some assistance and a right to know that with the significant holding that that family has – and they have had it for years, for generations they have had that holding – they have a right to be listened to. Somehow it did not happen and they did not know until too late, and that is quite clear and something should be done about it.

755

Mrs Paris, I am sorry that you cannot see what is going on here and you cannot see that this, in the round, if done for this family-owned property and a family that has done significant good for Alderney over the years ... that if we cannot make this small alteration to put right a wrong, in my opinion, then it is a poor day and the States is not listening, and perhaps I might possibly pass the aspersion that the rogue agency in the States would certainly not be me if I and Mr Tugby are voting for it. I include Mr Tugby in that as well and I say that we would not be rogue elements of the States.

760

Please give this your support. I have not taken it up for fun. I have not got a Vice-President alongside me assisting me with it. I am grateful to everyone who has helped me and understands, and I appeal on behalf of this family that we must do this now.

765

I am very sorry, Mr Birmingham, and I apologise if I have offended you. I have been to the Land Use Plan – perhaps possibly I might go into that later. My appearance there was somewhat disappointing, just as tonight – and I ask you not to take offence – I am disappointed that I am in a situation where I have to pick up and bring this amendment when I think it would have been dealt with in the proper way if letters has been received. The lady would have known and she could have made her appeals on both parts of the amendment in her own good time. That was obviously not the case and that is why the States must act, and I really hope you will support me in this amendment, please.

770

Thank you very much, sir.

775 **The President:** Mr Jean ... Mr McKinley, please be seated.

Mr McKinley: But I asked a question, Mr President, and it has not been answered.

The President: If he has decided not to answer it, that is up to him.

780

Mr McKinley: Well, then I ... Fine.

Mr Jean: Please, would he care to repeat it and I will try and ... I am sorry.

785

The President: Yes, enough, Mr Jean, okay?

Mr Greffier, would you please put the amendment to the vote.

The Greffier: Thank you, sir.

790

The amendment reads as follows: 'In proposition 1, immediately after 'To agree in principle to the approval of the Land Use Plan 2017 subject to' insert 'the deletion of the Development principles as set out at OA4 and their replacement by the wording of Development Principles set out at OA3 and also to the deletion of areas marked at Section 5.3 as "Broadleaved woodland; small isolated patches around the island" and "Coastal grassland" at the Arsenal outlined in the associated green index notation on Map reference Figure 5.5: Hierarchy of Biodiversity Designations: Regional Tier, and also subject to'.

795

A vote was taken and the results were as follows:

FOR	AGAINST	ABSTAINED
Mr Tugby	Mr Birmingham	None
Mr Jean	Mrs Paris	
Mr Roberts	Mr McKinley	
	Mr Dent	
	Mr Snowdon	
	Mr Dean	
	Mr Barnes	

The Greffier: Sir, 3 votes for, 7 against. That motion fails.

The President: Thank you very much indeed.

800

We will now continue with the original debate as unamended. So we are now debating Item IV unamended. This Item has been proposed by Mr Birmingham and seconded by Mr Dean. Does any Member wish to speak on Item IV unamended?

Mr Birmingham: Mr President, procedurally do I now get the chance to speak?

805

The President: When you proposed the original thing, that is when you had the chance, but you get to exercise your right of reply after everybody has had a chance to speak.

Mr Birmingham: Sorry, I thought at the States in Committee yesterday you did actually say –

810

The President: No, what happens is when you propose it that is when you propose the main item.

Mr Birmingham: That is why I specifically asked the question whether we would be then going back to proposing the Item that is

815 **The President:** You do not go back to propose it; you go back to debate it.

Mr Birmingham: Okay, thank you.

The President: You will have your right to speak and your right of reply.
820 Does any other Member wish to speak on Item IV unamended? Mr McKinley.

Mr McKinley: Sir, could I just ask the question that I tried to ask earlier, which is very simple:
by adopting this, will the application and will the Arsenal area still be available and be allowed to
request a marina? Thank you, sir.

825

The President: Thank you.
Does any other Member wish to speak on Item IV unamended? Mr Tugby.

Mr Tugby: Seeing I am a rogue trader, I shall have my say well and truly tonight.

830 Mr Birmingham, I have been a States Member longer than anyone here and I have lived in Alderney, looking around this room, longer than anybody else, so I think I am entitled to have an opinion on what goes on in Alderney.

The Land Use Plan: you want to do all these rules and regulations and you say the States want the Island to be open to business. Well, with this Land Use Plan I am afraid you are putting so many obstacles in the way of any development and by the time they have jumped all through the
835 hoops they will get fed up, any developer, and just walk away because it is just so over the top that it's nearly cost so far and it will reach the half million. At the end of the year it was £408,799 but the planning and the building laws and everything that has been going on, which is way over the top ... What on earth could we have done with that money? An awful lot of good in Alderney.

840 For some unknown reason, and I have said it many times since I have been in the States over the years ... I blamed the Building Committee on a number of occasions for holding Alderney back, and that is what they are doing again this time, putting in so many rules and regulations because certain Members on that Committee do not want anything to happen. You can say what you like, that they can put in plans and everything, but at the end of the day the Building Committee will
845 have the final say.

We go on and on about rules and regulations – why on earth have we got so many crooked lines on the Land Use Plan? It must have taken hours to figure out these little dips in the Plan. You have put a red line straight through some buildings: are they in the building area or out of the building area? Another building, not mine, has been cut in half with a red line. It has been there
850 for 30-odd years to my knowledge. The red line is so wide it is debateable what side of the line we are supposed to be looking at, inside or outside.

In one of the inquiries a while ago, on Radio Guernsey somebody from the Wildlife Trust said we do not want industry in Alderney. To that I say Alderney was built on industry: we have the quarries, we have the steelworks, the meat products and many other things. And we have got the
855 Wildlife Trust saying we do not want industry in Alderney? If that is not giving a bad example to any potential developer or any entrepreneur who wants to bring in any business to the Island ... I am sorry, but it is absolutely ridiculous.

Okay, I might be against this because in my opinion anything in the greenbelt that could generate an income to the Island should be looked at seriously without taking a year – because
860 that is what it will take – to get anything through the Building, if not even longer by the time they have done all their inquiries and asked the public their opinion and everything else. If it could generate extra income for the Island that is what it has got to do.

At the moment, we are having great difficulties in the Island with the finance and the airlines and everything else, and this is not going to help it in any way at all. We moan that Guernsey is
865 not doing this and not doing that for us, but every time anybody comes here and puts forward – in the past as well – to do some development or do something, we put obstacles in their way.

Tourgis, they kept them waiting five years for it and what happened: the recession hit and they lost it. It just goes on and on.

870 That is why I do not support this and I never will support it, because I do not expect buildings to go up everywhere in a greenbelt or anything like that ... I do not like the greenbelt myself, but I do think that if there is a potential for it to go ahead we should not put too many obstacles in the way of something which can benefit Alderney. And if Mr Birmingham does not like it, tough. Unlike Mr Birmingham, I will not threaten to resign if I do not get my way because I have been in here too long now to know that you do not always win everything. In fact, I was noticing that the
875 public still seem to support me because I usually top the poll or come second, so over the years I have been a States Member I seem to have satisfied the majority of the public and that is why I will not vote for this.

No doubt I shall have some more to say on the rules and regulations later on, sir.

880 **The President:** Thank you, Mr Tugby.
Does anybody else wish to speak on Item IV? Mrs Paris.

Mrs Paris: Thank you.

885 Sir, Your Excellency, fellow States Members, I do not intend to speak again on the other sections to do with the Land Use Plan, you may all be quite relieved to hear, because I am supportive and will continue to be so.

I have watched and participated in what has been a really rather long but very professional process to get to where we have got to this evening, and I have had some reservations that the bulk and the detail contained within the Plan might be rather over the top for such a small
890 jurisdiction as ourselves, and I still do have some concerns which chime with Mr Tugby's. However, I do fully acknowledge that the argument put forward that the clarity that this work will bring to what we are doing will do away, hopefully, with the doubts and confusion which have beleaguered our current system from time to time. This updated, comprehensive, robust framework, underpinned as it is by evidence-based policies should lead – *will* lead – to better, more
895 transparent and joined-up decision making and this has to be a comfort to people who want to come here to develop things.

I think it is also quite a mark of respect that some of the LUP's most vocal opponents now seem to be quite content that what is before us is a sensible Plan; it incorporates sufficient checks and balances the give everybody the comfort that the policies are sensible and right for Alderney. I
900 think Mr Birmingham, the former members of the BDCC and the current members of the BDCC, Mr Young and several others as well, should be congratulated to have got us to this point in time.

And to try and lighten the atmosphere a little bit, there cannot be very many people, Mr Birmingham, who can claim to have received a very public proposal of marriage (*Laughter*)
905 directly as a result of their dedication and commitment to forging a Land Use Plan.

The President: Thank you very much, Mrs Paris.
Does any other Member wish to speak on Item IV? Yes, Mr Jean, you can.

Mr Jean: Thank you, sir.

910 My attendance at two, I think possibly three, Land Use inquiry meetings at which I brought up ... And I was tonight actually going to vote for this. I was, but partly because of my own feelings about the expenditure and the fact that we have never reined in the expenditure on this, we have never controlled it and it is a process that has got out of control ... We have got nine to 10 books at home.

915 I raised observations that keeping the C Permit system for the local population in place on the grounds that when eventually, if ever, the States does the right things and Alderney comes back – which it is not showing any signs of doing yet, at the moment, but I hope soon we will turn a corner – the C Permit system would, in my opinion, still have a very important place.

920 **The President:** Mr Jean, with all due respect, we are discussing the Land Use Plan as on the Billet and it does not contain anything about the C Permit plan, which has gone. We are here to talk about this.

Mr Jean: I do realise that, but what I am saying is here is the Land Use Plan – the culmination of all of these 10 books, which I was going to bring along tonight but actually were so heavy I would need a pack mule to carry them ...

I am not going to vote for this because of what I have seen take place here and I am going to refer to Mr Birmingham the compliment of the rogue States that voted against that woman and her family, and I am going to say because of it my vote in support of this is going to be against.

930 There we are – that is all I have to say. Thank you, sir.

The President: Thank you, Mr Jean.

Does any other Member wish to speak on Item IV? Last chance. No.

Mr Birmingham, do you wish to exercise your right of reply?

935

Mr Birmingham: Thank you, Mr President, I will.

So, after two and a half years of intensive work the BDCC now is in a position to put this finalised Land Use Plan to the States for adoption. There have been Land Use Plans in place for Alderney for almost two decades and a number of issues have been identified between those plans and the underlying law on which they are based, so it has become clear to the BDCC that we need a consolidation of both.

The 2014 ARUP review of the planning system also identified the need for a properly evidenced policy base for the adjudication of planning applications on clear guidelines in order to move away from decisions made on an ad hoc basis. This realisation was similar to that made by Guernsey planning some years ago, who identified the need for clear policy to protect itself from legal challenge to its decisions. After extensive discussion it was decided that the LUP process would be the best vehicle to address those issues, so work commenced on a plan in October 2015 by way of open, transparent, collaborative process with the full engagement of the community throughout. This provided a wealth of information, for which the Building and Development Control Committee is thoroughly grateful.

The final document consolidates planning policy in a wide range of areas, leading to the first complete comprehensive and integrated Land Use Plan for the Island that, through its guiding principles, supports the long-term preservation of the Island's heritage assets and conservation of our natural environment, but balances that with the future economic needs of the Island alongside the best future use of our land and buildings. It also fulfils previous recommendations on reforming and improving the planning system in Alderney. It sets out a vision for the future that defines the Island's aims and goals, the results of which can be measured against ongoing Plan outputs. It is comprehensive in its scope and provides a robust framework for the use of the Island's land assets. The Land Use Plan also maintains the designated area which has protected the Island since it was adopted in 1968, without which, that greenbelt control, our Island's environment could have suffered from damaging intrusions into its amenity, as has been seen in other locations, and that policy has successfully prevented sprawl of development into the Island's open spaces. This Plan ensures the designated area policy remains strong while recognising the need for flexibility to meet the future requirements of the Island.

965 There has been significant concern raised by the public that the proposed amendments to the law somehow weaken the designated area. This is a misconception. The proposed changes involve normalisation of what had been standard practice in the operation of the designated area since its inception, amends areas of the law that were clearly oversights from its original intentions and finally puts into place clear processes by which major intrusions into the designated area could be

970 judged when it is deemed in the Island's overwhelming interest. These changes bring clarity to the process that previously had been mired in chaos, leading to confusion and concern.

The removal of the States blanket exemption from the planning process to development, both in the building and designated areas, is also very significant. It will force the States to act as a responsible developer, making decisions on its proposed developments through a proper process based on best practice, not just on the cheapest, easiest or most convenient option available on the day.

980 The Land use Plan also recognises the fundamental issues of our aging population and declining economic activity, and we have endeavoured to ensure that the policies contained within the Land Use Plan are robust enough to help guide, manage and enable economic opportunities for the Island while making sure change and development takes place in the right place.

In my view, unlike Mr Tugby I believe this document will help developers, giving them clear guidance on what the planning department expects from them rather than what the variable opinions of the politicians of the day are. This means that the planning of a development should become a clearer process, which will help inward investment to the Island while discouraging the cowboy, ill-considered, knee-jerk development to which the Island has been prone.

985 New development needs to be balanced with the need to conserve our special heritage and natural environment, because that is not only central to our tourism economy but it is also to the quality of life of our residents. For the first time, States planning will have robust policy to deal with the Island's heritage assets and a baseline study of the Island's natural environment will help it make assessments on what is special about the Island's ecosystems. These pieces of the Plan are of huge significance and put in place solid foundations that can be built upon in the future.

I would like to express my thanks to the Alderney Society, the Wildlife Trust and all those committed individuals who have contributed to that part of the process. We are an Island and our land resource is limited, and while it is essential that we utilise it to its best ability we must protect it also.

995 Finally, I wish to express my thanks to the team from ARUP, especially Kieran Hyams, Chloe Salisbury and Dan Evans, for their expert assistance in preparing the Plan, Sam Osborne of the Planning Department for holding the fort, and especially of course John Young for his steady hand and steadfast commitment in getting this difficult process to its conclusion and without whom we simply could not have managed.

Some have suggested that the LUP is too complex or too sophisticated for Alderney. In general it seems to me those individuals either have not really taken part in the process or do not necessarily understand the point. I could not disagree more with that view and I am sure those who have actively taken part in the Plan's development would disagree also.

1005 I cannot say the process to get to the final Plan has not been challenging. It involved co-ordinating law with policy, balancing the competing aspirations of the pro- and anti-development lobbies, extensive public consultation on a huge range of issues, and of course a thorough examination through a nine-day independent public inquiry chaired by Mr Michael Hurley. But at the end of the process we have a much clearer, complete and considered basis for the Island's future planning function. That is not complexity; it is simply good government. A well-built house starts with solid foundations and these are the strong foundations that have been missing from the Alderney planning law for decades. I believe it will help simplify decision making for future members of the BDCC and give clear guidance to officers in assessing an application and promote good-quality development that will help improve Alderney's environment for future generations.

1010 I believe that the Land Use Plan is realistic and right for the Island and that it will help create the vision that underpins the Plan of a welcoming, resilient and sustainable Island with a buoyant economy and a happy and healthy community which values and protects its unique cultural and natural environment.

1015 A couple of points were raised, one by Mr McKinley relating to marina proposals. One of the major parts of this Land Use Plan has been the adoption of the major projects process. Quite obviously a marina is a major project, so any marina project that comes forward will immediately

slot into that process and there is a clear structure for a developer to be able to follow through to understand what they need to do.

1025 It all depends, of course, where that marina is going to be, because there are different considerations that have to be taken into account, particularly as to whether it falls fully within the designated area or falls fully within the building area, when different criteria will have to apply. The problems tend to occur when there is designated area involved and that is specifically why within the Land Use Plan we have developed the major projects policy.

1030 If you have a big project that comes forward, there is now a clear structure where a developer knows what they have to do, and that also means that proper clear evidence will be provided in terms of how that development will go forward. So, in terms of marina proposals – and in fact it goes beyond marinas, it goes beyond that; we could be talking about an Airport extension, we could be talking about perhaps something to do with solar energy production for the Island, it could be something to do with maybe a new tourism offer that comes in – there is now a process
1035 that is there within the law that did not exist previously.

One of the points that Mr Tugby made was that the Committee will just make arbitrary decisions. That is the whole point of this Land Use Plan. There are clear policies under which decisions can now be made. It will get rid of that ad hoc decision-making process. That is the entire point.

1040 I am just trying to think whether there was one more item that was brought up ... Oh, yes, there was the matter of Mr Tugby's view of cost. You do have to understand that the Land Use Plan process has also had a significant number of other challenges thrown at it while the process was ongoing, not least having to deal with issues relating to FAB Link. For example, as part of the process we had to undertake the creation of a full environment impact assessment policy to be
1045 able to deal with a project of that size. So while the costs have been substantial, there is a good proportion of that cost that has been rolled into the Land Use Plan process on planning issues that have related to other items.

1050 My understanding – and I am willing to be corrected – is that what was originally costed, the work that was originally undertaken for the Land Use Plan, has all come in on budget. There have been additional items that have ended up increasing the cost, but as I said, some of those have been out of the control of the Building and Development Control Committee.

All I would say is I would like to again thank the public for the effort that they have put in to helping formulate the Land Use Plan and I commend it to the States.

1055 **The President:** Thank you very much, Mr Birmingham.
Mr Greffier, would you please put Item IV part 1 in total to the vote.

The Greffier: Thank you, sir.

1060 The States of Alderney are asked to agree in principle to the approval of the Land Use Plan 2017 subject to prior approval of the Building and Development Control (Alderney) (Amendment) Ordinance, 2018, the Building and Development Control (Designated Area) (Alderney) Ordinance, 2018, the Building and Development Control (Exemptions) (Alderney) (Amendment) Ordinance, 2018 and the related amendments to the States of Alderney Rules of Procedure.

A vote was taken and the results were as follows:

FOR	AGAINST	ABSTAINED
Mr Birmingham	Mr Tugby	None
Mr Roberts	Mr Jean	
Mrs Paris		
Mr McKinley		
Mr Dent		
Mr Snowdon		
Mr Dean		
Mr Barnes		

The Greffier: Sir, with 8 votes to 2, that motion passes.

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The President: Thank you very much indeed.

V. Building and Development Control Legislative Changes – Item approved with amendment

Item V.

The State is asked, only if proposition 1 on Item IV is approved –

1. To approve:

- i. The Building and Development Control (Alderney) (Amendment) Ordinance, 2018;*
- ii. The Building and Development Control (Designated Area) (Alderney) Ordinance, 2018; and*
- iii. The Building and Development Control (Exemptions) (Alderney) (Amendment) Ordinance, 2018.*

2. And only if proposition 1 on this item is defeated, to direct the Building and Development Control Committee to return to the States of Alderney as soon as possible with advice on the implication of that decision of the States of Alderney for the proposed amendments to the legislation and the review of the Land Use Plan, taking into account any relevant requirements under the Building and Development Control Law, 2002.

The President: That moves us to Item V.

1070 **The Greffier:** Thank you, sir. Item V this evening is the Building and Development Control Legislative Changes.

1075 The following letters were received from Mr Birmingham in his capacity as Chairman of the Building and Development Control Committee and the States of Alderney are asked to approve the Building and Development Control (Alderney) (Amendment) Ordinance, 2018; the Building and Development Control (Designated Area) (Alderney) Ordinance, 2018; and the Building and Development Control (Exemptions) (Alderney) (Amendment) Ordinance, 2018. And, sir, there is a part 2 in the event that Proposition fails.

The President: Thank you very much indeed.

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Mr Birmingham, as Convener, were there any comments on this at the People's Meeting?

Mr Birmingham: Yes – thank you, Mr President – there were some comments.

The Convener clarified that the free-standing garage has been removed from the exemptions as it was not working within the old system and falling out of all remits.

It was noted that the main legislative changes are for the States works and utilities.

1085 The wording 'of strategic importance' and 'significant impact' and their definitions within the text of the LUP were discussed at length. It was suggested that a criteria or guidance framework should be set out for each.

It was noted that the correspondence and discussions between BDCC and the public worked well and that issues have been included within the Plan.

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The President: Thank you very much, Mr Birmingham. I believe you wish to propose this Item.

Mr Birmingham: In order for the new policy base that is contained within the LUP to be effective, it needs to be in harmony with the legal framework in which it sits. The LUP and the law have been in conflict with each other for many years and this situation of the Land Use Plan allows the BDCC to bring both facets of the planning system into line.

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1100 Many concerns have been raised about the changes to the designated area. In reality the majority of these changes are no more than normalising what has been accepted practice in dealing with types of development that have been caught up in the designated area prohibitions and that were never really intended to be there. Whether it was through omission, such as the absence of any reference to the Alderney Railway, impracticality, such as the States trying to apply for planning permission to itself when the States was entirely exempt from the process, or unintended consequences such as animal shelters for non-agricultural use being illegal in the designated area, this law change deals with all those known issues.

1105 In fact, the abolition of the full States exemptions from the planning system is a significant strengthening of the designated area and not the weakening of it. However, it is important that the States can still operate within the designated area on a day-to-day basis and a series of specific exemptions have been added to the Exempt Development Ordinance in order for that to happen.

1110 This Ordinance has undergone extensive consultation with utilities providers and the States Technical Officer to ensure that all foreseeable cases are covered to ensure that day-to-day operation and maintenance is not affected and that the new developments in relation to essential infrastructure are allowable through the planning process.

1115 What the amending Ordinance also seeks to do is set out clear process on how the States should proceed when it believes that a major incursion into the designated area may be required. It sets out clearly the process that the States should follow when approached by a developer promoting a project or by the States itself if it believes that the incursion into the greenbelt is required in the interests of the Island. It adds a protection of independent assessment through a public inquiry, which is a significant improvement on the current process. Why? Well, it is because there isn't one. There is just chaos and confusion that leads developers without a clue as to what they are supposed to do and the States veering from one opinion to another, depending on the information in the States of the day.

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1125 This process means that a States resolution must be sought to allow an incursion into the designated area to happen and that resolution has to be based on clear and credible independently assessed evidence, not on half-baked, back of a cigarette packet development proposals. I believe that this protocol will help the Island when it looks at larger-scale development in the future, as it sets a clear process that good developers can understand and at the same time gives comfort to the public in having clear levels of independent oversight.

1130 Be clear that the designated area is set by Ordinance of the States. Any area of land can be removed by the States from the designated area at any time by a majority of the votes of the States to do so. Good practice, however, would suggest that such an alteration should be done through the Land Use Plan, but the LUP and its inquiry do not set what the designated area is; only an Ordinance of the States can do that, and that is the designated Ordinance included here. It updates the designated area map, bringing it into line with the recommendations of the LUP inquiry.

1135 Does this amending Ordinance mean the end of the process to modernise the planning system? No, it does not. Further work must be undertaken, but that can only be done by introduction of

1140 new powers in relation to the appeals system and an improved enforcement regime, along with changes to the powers of protection for heritage assets, particularly areas of ecological interest. But the Law Officers inform me that these changes within this amending Ordinance are the extent to which they believe changes can be made under the amending powers of the current law following the guidelines that they follow from the Ministry of Justice. That final piece of work can follow on through consultation on those matters and finally complete the task of creating a modern planning framework for the 21st century. This set of amendments, however, sets the foundation for that work and I commend the Ordinances to the States.

1145

The President: Thank you very much.
Mr Dean, I believe you wish to second this.

1150 **Mr Dean:** Mr President, fellow States Members, I fully endorse everything Mr Birmingham has just said, and rather than just repeat everything ... it is slightly disappointing that we have to do an Ordinance. We are well aware we need to do a new Projet de Loi and there are a lot of issues that need to come up, but that will go through full public consultation and, like Mr Birmingham states, this is a foundation for us to be able to move forward and actually get a law that is fit for the 21st century.

1155 Thank you.

The President: If you wish to say anything else on this as well as seconding, now is your opportunity to do so.

1160 **Mr Dean:** No, that is fine.

The President: Thank you.
Mr Greffier, I believe we have an amendment on this Item.

1165 **The Greffier:** Yes, sir, an amendment has been received from Mr Dent. The amendment reads:

In Proposition 1i., immediately after 'The Building and Development Control (Alderney) (Amendment) Ordinance, 2018' insert 'subject to the following amendment— in paragraph 13(4) of the inserted Schedule 1 set out in Schedule 1 to the Ordinance, after "objective, credible and robust evidence" insert "(which may include, without limitation, relevant evidence relating to economic or social impacts of the development or other work or the financing, or other financial implications or risks, of the same)".

The President: Thank you very much.
Mr Dent, I believe you wish to propose this.

1170 **Mr Dent:** Your Excellency, Mr President, colleagues, I would like to thank first Mr Birmingham and the rest of the Building and Development Control Committee, and indeed all those who have worked on these legislative changes and the Plan. They have really set a fine example of how to proceed with difficult subjects.

1175 I have only one substantive point this evening and I would like to say three things by way of introduction. First, as many of you are aware, I have largely stayed out of the debates surrounding the Land Use Plan and the Planning Law. I have good reason: as the person negotiating commercial matters with FAB, it was important that FAB did not see me as a conduit for the changes that they may have wanted. I needed to make it clear that they could not lobby me. There had to be a Chinese wall between those progressing the Land Use Plan –

1180 **The President:** Mr Dent, can you stick to Item V, please, and your amendment.

Mr Dent: I have three points which I think are setting the scene for why I am bringing the amendment.

1185 **The President:** I would rather you just got to the amendment, please.

Mr Dent: Well, I am sure you would but I would like to –

The President: Okay, continue but be careful.

1190

Mr Dent: Second, the proposed changes to the building and development control legislation and the Land Use Plan will give us something so much better than we have now. We may all criticise specific aspects, myself included, but we owe an awful lot to Mr Birmingham and the other Members and to John Young and indeed ARUP for the work they have done.

1195 Third, since the publication of the draft documents, I have concerned myself with only one real issue and that is the role that P&F will have in declaring when a project is deemed to have strategic import. Like many others, I have wanted to protect the greenbelt and I am very pleased with the final changes that have been made to the Ordinances and in particular the requirement in paragraph 12A(2) that require that:

Before the Policy and Finance Committee make a recommendation under paragraph 13(1) (development or other work of strategic importance) of Schedule 1 it must cause to be carried out, by an appropriately qualified and independent person, an assessment that the evidence it proposes to rely upon in making the recommendation meets the requirements of paragraph 13(4) of Schedule 1.

1200 In other words, P&F must obtain professional advice, there can be no decisions on a whim and there can be no sweetheart deals.

And then there is, of course, paragraph 13(4) of Schedule 1 itself, which states:

For the avoidance of doubt, the States must reach their opinion ... on the basis of objective, credible and robust evidence ...

And there is subparagraph (2), which makes it clear that the development must be 'of significance for the whole of, or a significant part of, the Island' and that there must be 'a real possibility that the development ... will be of long term benefit to the public or to the Island ...'

1205

Mr President, colleagues, my specific concerns have always centred on the more detailed mechanism and processes P&F would undertake before a development might be declared strategically important. I was particularly concerned that such matters as an economic appraisal, financial or financing plan and a social impact study should, if necessary, be available to the Committee if they thought it appropriate. These are three of the four main categories that many external organisations use when undertaking a planning appraisal. The fourth is environmental impact, but this is of course part of the planning process itself. Incorporating these safeguards would, in my opinion, have avoided a great many of the problems that we have experienced recently with the FAB cable and ARE and indeed their incorporation into the Law might even at this late stage overcome some residual problems we have.

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So, what have I done about these concerns? As my colleague, the Chairman of the BDCC knows, over the last few weeks I have had a series of conversations with the Law Officers. My initial suggestion was for an additional requirement in section 14(4) of Schedule 1 –

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The President: Can we get to what your recommendation is now, please, not what your first one was.

Mr Dent: If you wish me to go straight, I will go straight.

1225 **The President:** Thank you.

Mr Dent: I would like to have explained the background. I think it is –

1230 **The President:** If you think it is relevant, then pray continue, but please be as precise as you can.

Mr Dent: I will try and do it as fast as I can.

1235 I suggested adding the words ‘The States must consider whether such evidence requires an economic appraisal, financial or financing plan or social impact assessment and, if necessary, to request any promoter to provide this information at their own cost.’

1240 The feeling of the Law Officers was that the existing wording would already allow P&F to commission independent reports that were relevant to the criteria in the particular case. They added this could be explained in statutory guidance and noted that if P&F or the independent assessor referred to in new section 12A(2) were not satisfied with the evidence which it proposed to rely on as objective, credible and robust, P&F would have to obtain such evidence before it can make any recommendation to the States. Also, it would be open to the States to direct P&F to obtain certain evidence if it were not reasonably satisfied that objective, credible and robust evidence had been obtained on all the criteria.

1245 They also stated that the BDCC might consider issuing statutory guidance under 74A(1) of the Law, of the existing provisions in section 12A and Schedule 1 paragraph 13. In this regard they noted that section 74A(1) is widely worded to cover any provision under the law, so it could be used to guide on the provisions in relation to strategic essential development, despite the fact that it was primarily intended for the BDCC to issue guidance on its own functions.

1250 The BDCC has to consult with such persons as it thinks is appropriate before issuing guidance under this section, so I suggest it should consult with P&F given their functions. It could be included in a major project’s guidance, although it would have to be clear that it would only –

The President: Mr Dent, can you tell us the purpose of your amendment, please?

1255 **Mr Dent:** I am trying to get to the point as to why –

The President: If we are going to quote rules all the time, there is a rule here which says that if someone is tediously repetitious I can ask them to sit down, so I would please advise you to get to the point of your amendment.

1260 **Mr Dent:** I will go to the end, if that is what you wish. I would have liked to have explained the background and the thinking. I am sorry if you are not so keen to hear those points.

1265 I think therefore that my initial concerns have been assuaged by the Law Officers. There is nonetheless one small matter that still niggles. The Law Officers have said the existing wording would already allow P&F to commission independent reports; they did not say that the existing wording would require P&F to commission independent reports. And so we are left with this: the wording is almost but not quite watertight. If we leave the wording as it now stands, it will need P&F to recognise without prompting the need to obtain economic, financial and financing or social impact reports before reaching a decision. If the independent assessor referred to in the legislation does not consider the evidence robust, relevant and objective, without an assessment of the need for these things the assessor to advise what information would be required to comply with the requirements and if such information was absent and deemed necessary for the assessor then to conclude that the evidence did not meet the statutory requirements, in which case the proposal to categorise it as a major project would fail.

1275 And so I am tabling an amendment. I want this Chamber to have the opportunity to decide whether or not it wishes to strengthen just that bit more the legislation that is before you today.

Mr President, colleagues, I propose that the words are incorporated into paragraph 13(4) in Schedule 1, so that it reads ... You have heard it already when I proposed, so I will not go through it again.

1280 Mr President, colleagues, I commend this amendment and, unlike Mr Jean, my overall support for the legislation is not contingent on support for this amendment.

Thank you.

The President: Thank you, Mr Dent.

1285 Mr McKinley, I believe you wish to second this amendment.

Mr McKinley: I do, sir, but I think that Mr Dent has probably explained it enough detail, (*Laughter*) so I am not going to say much more.

1290 **The President:** I could not possibly disagree with that. (*Laughter*) Thank you very much. Does any Member wish to speak on this amendment? Mr Birmingham.

Mr Birmingham: Thank you.

1295 Your Excellency, Mr President, fellow States Members, while I understand the motivation behind Mr Dent's amendment, I think I need to address the issue of whether an amendment of this type is appropriate in this case.

The Law has been drafted specifically to compel the Policy and Finance Committee to present a case of support for development based on robust and credible evidence. Mr Dent quite rightly believes that some of that credible evidence should include sound economic reasoning and clear financial assessments. Of course he would; he is, after all, an economist. And this view is entirely appropriate for a commercial scheme or a scheme that may involve the private sector and is about driving forward the Island's economy that Policy and Finance may find themselves wanting to support. The problem is that the Building and Development Control Law has to deal with the case for all development proposals and Policy and Finance might have to bring forward in some cases a project where economic and financial tests may not be appropriate for that development.

1305 States Members must understand the word 'development' under planning law does not mean commercial development alone; it means making a physical change to the environment and in some cases those physical changes could not or should not be subject to prescriptive tests laid out under the Law, specifically if they are designed for a specific and different kind of development.

1310 I suppose the best thing to do is to see if I can give you an example. It is a bit of a problem because obviously we do not know what might happen in future. That is why the Law Officers specifically drafted the Law to enable the Policy and Finance Committee to consider the widest possible range of evidence for the widest range of circumstances. But I will try and suggest maybe some examples, though some may seem a little far-fetched. What if there is a situation that occurs that has national security implications? In this case, economic and commercial considerations would not necessarily be valid. What about an issue in relation to energy security perhaps, or global sea level rise? Perhaps an issue relating to health and safety considerations in order to comply with legal obligations under health and safety law. Perhaps it might relate to a completely new technology that we are not currently aware of. Let's not forget that the internet was a twinkle in a programmer's eye when the designated area was formed. So the Law has to be wide enough to allow flexibility for those potential situations because other evidence might be needed in those cases that Mr Dent's amendment does not prescribe.

1320 The Law Officers, in their advice to Mr Dent, have recommended against this amendment and suggested that the right place for the issues that Mr Dent is raising is within statutory guidance, not within the Law. The BDCC now has the power to issue statutory guidance, and as part of the economic planning strand of the LUP process ARUP created a statutory guidance document for

major projects. This was released as part of the LUP consultation process, part of the many documents that Mr Jean was talking about earlier – I hope his back has improved from lifting them. However, it was drafted as the Law was prior to the consultation in relation to the legal reforms, so that guidance requires amending but we were waiting until the legal changes proposed within this Ordinance had been agreed so we know how to update that guidance. Simply put, you cannot write the guide until you know specifically what the guide is about.

These law changes add an extra layer that clearly does require guidance, specifically the process of assessment by Policy and Finance and of course the addition of the mandatory planning inquiry in the case of the designated area. The statutory guidance will allow the States to be more specific in the way that Mr Dent is intending with his amendment, and there you can indicate the kind of test the States will wish to apply in different circumstances for different kinds of development. If those tests are put directly into the Law, as Mr Dent is suggesting, a specific test then becomes mandatory whether or not it is actually appropriate to the development to be considered, but very importantly it can also potentially draw into doubt the validity of other tests that you may want, as an unintended consequence. The updated statutory guidance will require consultation and I suggest that the States Members should follow the professional advice from the Law Officers. They should vote against the amendment and then deal with these very valid issues but in the proper place as part of that consultation.

I would also point out one more thing. The whole major project policy and the law changes have been through thorough public consultation, the major projects policy itself through a public inquiry and the amending Ordinance through considerable public scrutiny. Of course this amendment has not undergone any of those tests and I firmly believe that the time for making these suggestions was part of that process, though I do understand Mr Dent's reticence for not doing so because of the other considerations that he mentioned earlier. All I would say is in the words of Radio Head "everything in its right place" and in my view this is not the right place for these particular matters; the right place is leaving it in the statutory guidance.

The President: Thank you, Mr Birmingham.

Does anybody else wish to speak on the amendment? Any other Member of the States, that is. No.

Mr Dent, do you wish to exercise your right of reply?

Mr Dent: Mr President, I shall be very brief.

The President: Good!

Mr Dent: I had, as Mr Birmingham knows, substantial discussions with the Law Officers on this amendment and it was on the Law Officers' advice that the words 'without limitation' were inserted, I think to assuage some of the points that Mr Birmingham has just made.

My point really is that P&F should always consider whether an economic, financial or social impact study is required. It is not incumbent that they should order one if it is a matter of a project that does not hit the ground or if it is under the circumstances that Mr Birmingham has pointed out. I think it was the Law Officers' advice that in these cases there would be room to simply say, 'This is not appropriate.' I do not believe that Mr Birmingham's points are relevant.

The President: Thank you very much, Mr Dent.
Mr Greffier, would you please put the amendment to the vote.

1375 **The Greffier:** Thank you, sir.
For clarity, the amendment reads:

The Building and Development Control (Alderney) (Amendment) Ordinance, 2018 be amended in that paragraph 13(4) of the inserted Schedule 1 set out in Schedule 1 to the Ordinance, after 'objective, credible and robust evidence' insert '(which may include, without limitation, relevant evidence relating to economic or social impacts of the development or other work or the financing, or other financial implications or risks, of the same)'.

A vote was taken and the results were as follows:

FOR	AGAINST	ABSTAINED
Mr Tugby	Mr Birmingham	None
Mr Jean	Mr Dean	
Mr Roberts		
Mrs Paris		
Mr McKinley		
Mr Dent		
Mr Snowdon		
Mr Barnes		

The Greffier: Sir, 8 votes to 2. That amendment passes.

1380 **The President:** Right, so the amendment now having been passed we move to the debate on Item V as amended by the one you have just all voted for. So, that being the case, that having been proposed and seconded, we now move on to the debate with regard to Item V as amended.
Does anybody wish to speak on Item V as amended? Mr Jean.

1385 **Mr Jean:** I am not going to speak for long. I am not going to be able to vote for this because the Arsenal is mentioned here along with two other forts and they are being treated differently, except for the Arsenal, so I shall be voting against.

The President: Thank you very much.
Does any other Member of the States wish to speak with regard to Item V? Mr Tugby?

1390 **Mr Tugby:** Sir, why do we always have to go over the top with rules and regulations? We always make life so difficult for everybody. As an example, we had rules on building and construction before and now we have to upgrade them and make them all different, giving more powers to the Building and Development Committee. It just goes on and on. Why is it when people get on the Building Committee they always seem to want to do up more powers than anybody else? It just goes on and on.

1395 In the previous one, various people went to the presentation on the greenbelt who have houses in the greenbelt. Well, they should not have been allowed to have any say in there, because they have got a vested interest in it. If they feel so strongly about building in the greenbelt, well maybe they should knock down their houses that they have had extensions and everything put on –
1400

The President: Mr Tugby, as interesting as your speech is, legislative changes we are talking about now. We have already done the principle of approving of the Land Use Plan.

1405 **Mr Tugby:** I know that, sir. I'm having a dig, that's all.

The President: Thank you.

Mr Tugby: I push the boundaries occasionally, as you know, but you will not have to put up with me for many more months.

1410

The President: No, I want to hear about the legislative changes which we are debating.

Mr Tugby: We just seem to want more and more rules and regulations, and Alderney goes backwards farther and farther. It just goes on and on.

1415

I will finish with that, sir, because I think no matter what I say they will not take any notice. And it might make you happy if I shut up, sir.

The President: Thank you very much, Mr Tugby.

1420

Does any other Member of the States wish to talk about Item V as amended? Please, Mr Roberts.

Mr McKinley: Oh, God!

Mr McKinley: Sorry, that is not acceptable.

1425

The President: Mr Roberts, please.

Mr McKinley: He won't be long, sir.

1430

Mr Roberts: People on the Building Committee do not necessarily want more power – I have been trying to get off it, remember! *(Laughter)*

This culminating and final piece in the complicated jigsaw of the Land Use Plan is one I feel we should be really proud of. **(A Member:** Hear, hear.) A lot of it is very complicated and many simply do not understand it all, not in every sphere, but it is a reference for the future.

1435

I have had many meetings with ARUP. Kieran and Chloe work seemingly tirelessly, and working with our own John Young, who fast became our friend. Matt and Sam fell over backwards to supply and meet the demands of other bodies who objected and asked for amendments; back and forth like a game of ping-pong ball to the Law Officers until the finished document was finally agreed by all.

1440

FAB Link was a driving issue. This clouded it and delayed completion of the finished article.

The cost was huge. I did not realise the costs would be that big, but to vote against it would be to lose that investment that we put in, it would be gone, so we have to.

We need a plebiscite, as promised, to be set in place as soon as possible to get Alderney what they want and find out what they want, and the sooner the better.

1445

Some of the changes I do not agree with; however, other people live here, so I must ride the consensus. Some, I feel, are bending over backwards perhaps too far.

But this excellent Plan should be a credit to the States and mostly due to the dedication of Mr Birmingham and Mr John Young, who is now trying for election in Jersey in May. Mr John Young particularly has to be commended, and if you are listening tonight –

1450

The President: Mr Roberts, I am sure Mr Young can do his own electioneering in Jersey. *(Laughter)*

Mr Roberts: I know. If you are listening, thank you, John. *(Laughter)*

1455

But the proof of the pie is in the eating – *(Interjection by Mr McKinley)*

The President: Mr McKinley, we have somebody speaking. Order, please.

Mr McKinley: Sorry, that's very rude!

1460 **Mr Roberts:** But the proof of the pie is really in the eating of it and time will tell if it works. It is designed to aid the economy in time of decline. The ship is launched; let's hope it floats.
Thank you, sir.

The President: Thank you very much, Mr Roberts.
1465 Mr McKinley, you seem to have something to say about this – is that correct?

Mr McKinley: No, whether it is 'commended' or 'commanded', I was –

Mr Roberts: [inaudible]
1470

The President: Thank you very much. Enough, thank you.
Anybody else wish to speak on this issue? Please go ahead.

Mr Snowdon: Your Excellency, Mr President, States Members, it has been a most interesting
1475 ... I will be quick. I would like to thank everyone involved, in particular John Young and Matt Birmingham for taking this to the final stages. It has been a long process.

Just touching on the comment Mr Roberts made, I did try and bring an amendment on the plebiscite. Unfortunately, we could not quite get it right but hopefully I will work on it and then bring it back to the States with support for colleagues. I think it is important that the public have
1480 a say in going forward with things, so it will come back to the States soon, fingers crossed.
Thank you.

The President: Thank you, Mr Snowdon.
Does any other Member wish to speak on Item V as amended?
1485 Mr Birmingham, do you wish to exercise your right to reply?

Mr Birmingham: Yes, if I may. Thank you for some very kind words by some of the Members.
I am going to actually just say one thing to Mr Tugby here. You might not believe this, Mr Tugby,
1490 but actually I am a bit of an anti-regulation guy myself. *(Laughter)*

Mr Tugby: You must be joking! *(Laughter)*

Mr Birmingham: You actually do not believe me, but unfortunately the problem I have, as
1495 Chairman of the Building and Development Control Committee, is I have a Law and the problem with the Law at the moment is that there are issues and one of the biggest issues ... I suppose 'issue' is the wrong way of putting it, but we have a very bespoke planning law. The designated area is completely unique. Other areas do not have this same prohibition on development. Because of that, it makes it complicated planning law.

I think we know that Mr Tugby's position on things is he is a libertarian, he is anti-regulation –
1500 a perfectly acceptable position and not one that I disagree with, but unfortunately we have a Law that we have to try to operate. So what I have to tell you is that many of the changes in here are actually enabling; they are not actually preventing. I made the comment earlier, for example, on the situation around the fact that the way that the designated area law is framed at the moment, it accidentally prevents certain things from happening under the law, and many of the changes in
1505 here are to stop that from happening. I gave the example about **(The President: You did.)** *(Laughter)* shelters for horses but there are a number of other ones in here that are all relating things that have been missed out. So I think it is important that you have to realise that this is not necessarily about prevention; there is a bit of enablement in here as well.

1510 As to whether it is too complicated a process, well, I would not necessarily disagree with you,
because I am the Chairman who has actually had to deal with all those issues over the last three
years and I can tell you I wish it was not as complicated as it is, but unfortunately we have to deal
with it as it is.

1515 One point raised by Mr Snowdon was in terms of plebiscite. Well, obviously P&F have already
made a commitment to having a plebiscite in relation to FAB Link, so I would just make this point –
that if you have already made a commitment there, you really do need the requirement for some
proper statutory guidance on how that is going to operate. Obviously the situation would be in
the future that if you have got good statutory guidance you would be able to use it in
circumstances when the Committee felt it was appropriate. So I would certainly say that I think
that statutory guidance in that area is important. And as I have already said, we need to reconsider
1520 the statutory guidance, particularly that in relation to the major project proposal, and we will be
dealing with that shortly.

Apart from that, I have nothing else to add and I commend the legislative changes for the
required implementation of the Land Use Plan.

1525 **The President:** Thank you, Mr Birmingham.
Mr Greffier, would you please put that to the vote – that is Item V as amended.

The Greffier: Thank you, sir.

1530 The States of Alderney is asked to approve the Building and Development Control (Alderney)
(Amendment) Ordinance, 2018; the Building and Development Control (Designated Area)
(Alderney) Ordinance, 2018; and the Building and Development Control (Exemptions) (Alderney)
(Amendment) Ordinance, 2018. And only if proposition 1 on this item is defeated, to direct the
Building and Development Control Committee to return to the States of Alderney as soon as
possible with advice on the implications of that decision of the States of Alderney for the proposed
1535 amendments to the legislation and the review of the Land Use Plan, taking into account any
relevant requirements under the Building and Development Control Law, 2002.

A vote was taken and the results were as follows:

FOR	AGAINST	ABSTAINED
Mr Birmingham	Mr Tugby	None
Mr Roberts	Mr Jean	
Mrs Paris		
Mr McKinley		
Mr Dent		
Mr Snowdon		
Mr Dean		
Mr Barnes		

The Greffier: Sir, 8 votes to 2. That passes as amended.

The President: That is item I approved, yes?

1540

The Greffier: Yes, sir.

The President: Thank you very much.

**VI. Rules of Procedure States of Alderney: Amendments –
Item approved**

Item VI.

The States is asked:

To approve in exercise of their powers to prescribe rules of procedure applicable to meetings of the States under section 45(1) of the Government of Alderney Law, 2004, that the following amendments are made to the States of Alderney Rules of Procedure, as amended:

(a) in Rule 3 (3 day-Billet) after ‘any matter’ insert ‘(except for a letter to which Rule 4A applies)’;

(b) in Rule 4(a)(i) (Matters for inclusion in the Billet), after the first reference to ‘the President’ insert ‘, except for a letter to which Rule 4A applies,’;

(c) immediately before Rule 5 (Billet to Bailiff) insert the new rule 4A as set out in this item above;

(d) in the definition of ‘President’ in Rule 25, after ‘4’ insert ‘4A’.

The President: We now move to Item VI, please.

1545

The Greffier: Thank you, sir. Item VI this evening is the Rules of Procedure.

1550

A letter has been received from Mr Dent in his capacity as Chairman of the Policy and Finance Committee and the States of Alderney are asked to approve in exercise of their powers to prescribe rules of procedure applicable to meetings of the States under section 45(1) of the Government of Alderney Law, 2004, that the following amendments are made to the States of Alderney Rules of Procedure, as amended. Those amendments are: (a) in Rule 3 after ‘any matter’ insert ‘(except for a letter to which Rule 4A applies)’; (b) in Rule 4(a)(i) (Matters for inclusion in the Billet), after the first reference to ‘the President’ insert ‘, except for a letter to which Rule 4A applies,’; (c) immediately before Rule 5 insert the new rule 4A as set out in the item as provided by Mr Dent; and (d) in the definition of ‘President’ in Rule 25, after ‘4’ insert ‘4A’.

1555

The President: Thank you very much indeed.

Mr Birmingham, as Convener, were there any comments on this Item?

1560

Mr Birmingham: The Convener stated that this was procedural and it was noted that there is a need for further information on where and when this information will be published.

The Chief Executive advised that improved communication is needed and will be reviewed.

The President: Thank you very much, Mr Birmingham.

1565

Mr Dent, I believe you wish to introduce this. I would ask you to do so in as concise a manner as possible, please.

Mr Dent: Thank you.

1570

Mr President, colleagues, although this matter comes from myself as Chairman of P&F, it is a matter that has its roots in the BDCC, in that it was their original suggestion, but it is nonetheless a matter about which I am very happy.

1575

In summary and in short, the revisions as proposed in the Rules of Procedure for the Policy and Finance Committee are to ensure that any recommendation that it makes to the States for a potential project regarded as having strategic importance will have to be published along with any supporting evidence at least 28 days before the matter is debated in the States. This is an increased length of time specifically for projects with strategic importance and is, in my mind, an appropriate period.

Thank you.

The President: Thank you, Mr Dent.

1580 Mr Barnes, I believe you wish to second this.

Mr Barnes: I do, Mr President, and I would say I certainly do second this report to revise the procedure as Mr Dent has proposed. I have nothing to add because I think we have gone on too far.

1585 Thank you.

The President: Thank you very much, Mr Barnes.

You will be relieved to know there is no amendment to this Item and we can move directly into the debate. Does any Member wish to speak on Item VI? Mr Birmingham.

1590

Mr Birmingham: Thank you, Mr President.

Don't worry, I will be quick. I was just going to say that the members of the Building and Development Control Committee fully support this amendment.

1595 **The President:** Thank you very much.

Mr Snowdon, you wish to speak? Anybody else wish to speak on this matter?

There being nobody having spoken against Item VI, there is no need for you to exercise your right of reply and I declare that it has been passed.

**VII. Land Use Plan 2017 –
Formal Approval –
Item approved**

Item VII.

The States is asked:

To approve, under section 30 of the Building and Development Control (Alderney) Law, 2002, (the Law), the Land Use Plan 2017 prepared under Part IV of the Law in replacement of the Land Use Plan approved by the States of Alderney on the 20th July 2016.

The President: Can we move on to the next Item, please.

1600

The Greffier: Thank you, sir. Item VII this evening is the Land Use Plan 2017, Formal Approval.

A letter has been received from Mr Birmingham in his capacity as Chairman of the Building and Development Control Committee and the States of Alderney are asked to approve, under section 30 of the Building and Development Control (Alderney) Law, 2002, the Land Use Plan 2017 prepared under Part IV of the Law in replacement of the Land Use Plan approved by the States of Alderney on 20th July 2016.

1605

The President: Thank you very much.

Mr Birmingham, as Convener, were there any comments on this?

1610

Mr Birmingham: There were no comments on this Item.

The President: Thank you very much.

I would just advise all the States Members this is merely formal approval of everything which you have debated before, so if you do wish to have any last-minute thoughts on this, please keep them brief.

1615

Mr Birmingham, you wish to propose this.

Mr Birmingham: Thank you, Mr President.

1620 I would just quickly comment. As you have said, this is a procedural requirement. After discussion with the Law Officers, their view was that we needed to ensure that the legal changes had been approved before we had a formal adoption of the Land Use Plan, and so I hope that you will all now formally approve the Land Use Plan.

1625 **The President:** Thank you very much.
Mr Dean, you wish to second this?

Mr Dean: Yes, I will second this motion and I have nothing to add.

1630 **The President:** Thank you very much, Mr Dean.
Does any other Member wish to speak on Item VII?
There being nobody wishing to speak, Mr Birmingham, you have no need to exercise your right of reply.
Nobody has spoken against this motion; I will therefore declare it passed. Thank you very much.

VIII. Questions and Reports – None

1635 **The President:** Can we move on to Item VIII, please.

The Greffier: Item VIII this evening is Questions and Reports and I confirm, sir, that I have received no Questions or Reports.

1640 **The President:** You will be glad to know that I have received no Questions and Reports.
That will close the formal part of the meeting.

Thanks to Mr Adrian Lewis for services to Alderney

1645 **The President:** I would, however, like to take this opportunity to thank Mr Adrian Lewis, who is here with us this evening, (**Two Members:** Hear, hear.) for the assistance he has given to this Island over the last nine or 10 months, and possibly longer than that. (**A Member:** Hear, hear.) I would like to thank him on behalf of myself, the Members of the States and the people of Alderney. Mr Lewis, thank you very much indeed.

On that note, would you please close the meeting.

PRAYERS

The Greffier

The Assembly adjourned at 7.41 p.m.