

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR THE ENVIRONMENT & INFRASTRUCTURE

**PLANNING PANEL – THE RE-ELECTION OF MEMBERS OF THE PLANNING PANEL AND TO
RESCIND RESOLUTION 5 OF BILLET D’ÉTAT VI OF 2015**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "Planning Panel – The re-election of members of the Planning Panel and to rescind Resolution 5 of Billet d’État VI of 2015" dated 8th February, 2021 they are of the opinion:-

1. To re-elect:
 - (a) Mr Stuart Fell as a professional member of the Planning Panel for a further term of six years from 1st April, 2021;
 - (b) Mr David Gwyn Harry as an ordinary member of the Planning Panel for a further term of six years from 1st April 2021; and
 - (c) Advocate Mark Gideon Andrew Dunster as an ordinary member of the Planning Panel for a further term of six years from 1st April 2021.
2. To designate:
 - (a) Mr David Gwyn Harry as the Chairman of the Planning Panel; and
 - (b) Mr Stuart Fell as the Deputy Chairman of the Planning Panel.
3. To rescind Resolution 5 of Billet d’État VI of 2015, Article II (“The Planning Panel – Re-Election of Panel Members and Amendments to the Terms of Office for Panel Members”) for the reasons set out in paragraphs 3.1 to 3.4 of this policy letter.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

COMMITTEE FOR THE ENVIRONMENT & INFRASTRUCTURE

PLANNING PANEL – THE RE-ELECTION OF MEMBERS OF THE PLANNING PANEL AND TO RESCIND RESOLUTION 5 OF BILLET D'ÉTAT VI OF 2015

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port
Guernsey

8th February, 2021

Dear Sir

1. Executive Summary

1.1 The purpose of this Policy Letter is three-fold, namely, to ask the States:

(i) To re-elect:

- (a) Mr Stuart Fell as a professional member of the Planning Panel for a further term of six years from 1st April, 2021;
- (b) Mr David Gwyn Harry as an ordinary member of the Planning Panel for a further term of six years from 1st April 2021; and
- (c) Advocate Mark Gideon Andrew Dunster as an ordinary member of the Planning Panel, for a further term of six years from 1st April 2021.

(ii) To designate:

- (a) Mr David Gwyn Harry as the Chairman of the Planning Panel; and
- (b) Mr Stuart Fell as the Deputy Chairman of the Planning Panel.

(iii) To rescind Resolution 5 of Billet d'État VI of 2015, Article II ("[The Planning Panel – Re-Election of Panel Members and Amendments to the Terms of Office for Panel Members](#)") for the reasons set out in paragraphs 3.1 to 3.4 of this policy letter.

2 Background

2.1 The Land Planning and Development (Guernsey) Law, 2005 ("the 2005 Law") came into force on 6th April, 2009. Section 86 of the 2005 Law explains the requirements for establishing the Planning Panel:

Establishment of Planning Panel.

- 86.** (1) The States shall, on the recommendation of the Committee *for* the Environment & Infrastructure, draw up and maintain a panel to be called the Planning Panel which shall consist of nine independent persons and from which the members of the Planning Tribunal shall, from time to time, be appointed.
- (2) A recommendation of the Committee *for* the Environment & Infrastructure under subsection (1) may be amended by resolution of the States to the intent that persons other than those recommended by the Committee *for* the Environment & Infrastructure may be elected to the Planning Panel.
- (3) Of the members of the Planning Panel –
- (a) not less than four shall be permanently resident within the Channel Islands,
 - (b) not less than two, who shall be designated by States' resolution as the "professional members", shall be persons with such qualifications and experience in planning matters as in the opinion of the States is necessary for the hearing and determination of appeals to the Planning Tribunal,
 - (c) one shall be designated by States' resolution as the Chairman of the Planning Panel, and
 - (d) one shall be designated by States' resolution as the Deputy Chairman thereof.
- (4) The members of the Planning Panel shall, subject to the provisions of subsection (5), hold office for a term of six years, and a person may be elected for more than one term of office.

Such appointments must be made by the States upon the recommendation of the Committee *for* the Environment & Infrastructure.

2.2 Under the provisions of Section 4 of the Land Planning and Development (Appeals) Ordinance, 2007, the following individuals are precluded from serving as a member of the Panel:

- (a) a Member of the States of Deliberation within the meaning of the Reform (Guernsey) Law, 1948;
- (b) an employee of the States who is employed by the States within the Development & Planning Authority, a member of the Authority or a person who carries out work for, or provides services to the Authority in relation to any functions of the Authority under the 2005 Law or the repealed enactments;
- (c) a member of the Strategic Land Planning Group;
- (d) a person who holds appointment to any judicial office in Guernsey; or

- (e) any person who has been such a person at any time within the period of two years ending on the date of the proposed election.

3. Re-election of Planning Panel Members

- 3.1 The Committee agreed to recommend to the States of Deliberation the re-election of Mr Stuart Fell as a professional member of the Panel and Mr David Harry and Advocate Mark Dunster as ordinary members of the Panel with effect from 1st April 2021 for a further six-year term. All three Panel members have indicated their willingness to serve a further term.
- 3.2 Further, the Committee has agreed that Mr Harry should be re-appointed as the Panel's Chairman and Mr Fell as the Vice Chairman. Both Mr Harry and Mr Fell have overseen the work of the Panel collaboratively drawing on their respective professional qualifications and experience. The Committee is confident that the combination of a legally qualified Chairman and an experienced planner as the Vice Chairman provides a sound basis for the Panel to discharge its duties fairly, independently and transparently.
- 3.3 The Committee has agreed, in consultation with the Panel, to advertise for up to two new Panel members to bring the Panel membership back up to its full establishment of six. An advert will be placed in the Guernsey Press in February 2021 and the vacancies will also be advertised via the States website and social media. The members of other Guernsey-based tribunals have also been invited to apply as they will have the key skills and experience required of tribunal members, including the ability to critically and independently review evidence, weigh it and reach reasoned and evidence-based decisions.
- 3.4 The Committee anticipates that it will be interviewing suitable candidates during February 2021 and will bring a further policy letter seeking the appointment of one or two new Panel members in April or May 2021.

4. Rescind Resolution 5 of Billet d'État VI of 2015, Article II

- 4.1 In March 2015, the States, having considered a policy letter "The Planning Panel – Re-Election of Panel Members and Amendments to the Terms of Office for Panel Members", agreed to amend section 86(4) of the Land Planning and Development (Guernsey) Law, 2005 to:
 - (a) reduce the term of office from six to four years subject to any prior requirement to retire as set out below;
 - (b) introduce a retirement age of seventy years for the Chairman and members of the Planning Panel, unless otherwise extended by the Policy Council, and in any case they shall retire on reaching their seventy second birthday; and

- (c) set a maximum term of office for members of 12 consecutive years, except where a person is appointed as Chairman from amongst the Planning Panel, in which case the appointment should be limited to 16 consecutive years, subject in either case to the retirement requirement above.
- 4.2 This Resolution has not been progressed for a number of reasons, including the work to progress anti-discrimination legislation. Most recently, the preparation of the legislation to give effect to the Resolution was paused following the Resolution to remove a retirement age for members of the Employment & Discrimination Tribunal ([P.2017/61 – Employment and Discrimination Tribunal: Removal of the retirement age of Panel members and designation of the Convenor and Deputy Convenor](#)).
- 4.3 The Committee, as part of its review of extant Resolutions and its priorities under the Government Work Plan, has concluded that in order to ensure it is able to attract an adequate number of appropriately skilled and experienced people interested in appointment to the Panel, there should be no fixed retirement age. In not imposing a retirement age, the relatively small pool of people who have the required qualifications and expertise to be Panel members will be extended. This approach aligns with the direction of policies related to longer working lives, which recognise that increasing numbers of people wish to continue working past state pension age. It also recognises the value of retaining older people's knowledge and expertise in the workplace.
- 4.4 Further, in agreeing to rescind this extant resolution, the criteria for membership of the Panel will be broadly aligned with that for the Employment & Discrimination Tribunal.

5 Compliance with Rule 4

- 5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 5.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 5.3 In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee has written to the Policy & Resources Committee to request that this policy letter be scheduled for debate at the March 2021 States meeting.
- 5.4 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.

5.5 In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, the Propositions relate to the duties of the Committee *for* the Environment & Infrastructure in respect of land use and planning, and its duties under the Land Planning and Development (Guernsey) Law, 2005, as amended.

Yours faithfully

H L de Sausmarez
President

S P Haskins
Vice-President

A Cameron
S Fairclough
A Gabriel

APPENDIX 1

Curriculum Vitae for Mr. David Gwyn Harry

Mr. Harry was appointed as an ordinary member of the Planning Panel in 2009 and as its Chairman in 2017.

In September 2018, Mr. Harry was appointed as the Chief Executive of the Priaulx Library. This post is a part-time appointment.

Mr. Harry qualified as a solicitor in 1977 and retired from professional practice in 2014. Throughout his professional career he specialised in property matters and gained wide ranging commercial and private client legal experience including advocacy before courts and tribunals and considerable property and planning experience in connection with residential and commercial property situated in England and Wales.

In addition, since moving to Guernsey, Mr. Harry has been actively involved in Island life and has served on the St. Peter Port and St. Andrew's Douzaine (he stood down from the St. Andrew's Douzaine in December 2016). He has also been actively involved in sport in Guernsey, especially cycling. He is also chairman of the Guernsey Commonwealth Games Association and is a member of the panel of legal advisers appointed to advise the Commonwealth Games Federation.

Curriculum Vitae for Mr Stuart Fell

Mr Fell was first appointed to the Planning Panel in March 2009 as one of its professional members. In September 2011, Mr Fell was appointed as the Panel's Vice Chairman. He was re-appointed to both roles in March 2015.

Mr Fell is now semi-retired and is actively involved in the work of Jersey Heritage as an architectural advisor and is a member of the Executive Committee of La Societe Jersiaise. Prior to retirement, he worked as a consultant in a Jersey-based architectural practice and was involved with a wide range of development work. His special interests include historic building projects and design work. Before moving into private practice, he worked for 10 years for the States of Jersey Planning Service in the role of conservation architect and urban designer, and for a period he headed up the development control service.

Mr Fell trained originally as an architect, but quickly developed an interest in heritage matters. Following specialist training, he subsequently worked in conservation officer posts in Halifax, Chester and Newark, before appointment as the Chief Technical Officer at Tunbridge Wells Borough Council. This managerial post included responsibility for architectural and quantity surveying services, as well as the repair of the Council's public housing stock of several thousand dwellings. On leaving Tunbridge Wells, Mr Fell worked as a Planning Inspector with the UK Planning Inspectorate, where he determined a wide

range of planning appeals in the name of the Secretary of State. These appeals were dealt with by means of written representations, informal hearings, or formal public inquiries. Mr Fell left the Inspectorate to take up his position in Jersey.

Curriculum Vitae for Advocate Mark Gideon Andrew Dunster

Advocate Dunster was first appointed as an ordinary member of the Planning Panel in March 2014.

Advocate Mark Dunster is a partner with Carey Olsen specialising in litigation, compliance and financial regulatory matters. He undertakes a wide variety of commercial and civil litigation including insolvency work. He also advises institutions on regulatory matters including anti-money laundering, data protection, employment law, eGaming and renewable energy. He is an author of books on anti-money laundering and data protection.

Advocate Dunster was called as a barrister in 1994 and practised in London before returning to Guernsey where he qualified as an advocate in 1997 and he became a Notary Public in 2006.

Advocate Dunster is also the Vice President of the Parochial Appeals Tribunal and a member of the Social Insurance Appeals Tribunals. He was a member of the former Health and Social Services Department between 2004 and 2008. He was formerly Connétable of St. Pierre du Bois and is currently a Douzenier for that parish.

Advocate Dunster is the former Bâtonnier of the Guernsey Bar Association, and previously served as a non-States Member of the Legislation Review Panel.



Committee *for the*
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8 February 2021

Dear Deputy Ferbrache

Policy Letter - Planning Panel – The re-election of Members of the Planning Panel and to rescind Resolution 5 of Billet d'État VI of 2015

In accordance with Rule 4(2) of the Rules of Procedure for the States of Deliberation and their Committees, it is requested that the Policy Letter entitled "Planning Panel – The re-election of members of the Planning Panel and to rescind Resolution 5 of Billet d'État VI of 2015" be considered by the States of Deliberation at its meeting on Wednesday 24 March 2021.

The request is made to ensure that the three members being proposed for re-election to the Planning Panel, namely Mr David Harry, Mr Stuart Fell and Advocate Dunster, remain in post when their current terms expire on 31 March 2021 and so enable the Panel to continue to discharge its duties without interruption.

Yours sincerely

H L de Sausmarez
President
Committee *for the* Environment & Infrastructure