

STATES OF JERSEY

Environment Panel Ramsar Review Hearing

FRIDAY, 18th SEPTEMBER 2009

Panel:

Deputy P.J Rondel of St. John (Chairman)
Deputy D.J.A. Wimberley of St. Mary (Vice Chairman)
Connétable J.M. Refault of St. Peter
Connétable P.F.M. Hanning of St. Saviour
Mr. R. McInnes (Panel Adviser)
Mr. M. Orbell (Scrutiny Officer)
Mr. M. Haden (Scrutiny Officer)

Witnesses:

Connétable M.K. Jackson of St. Brelade (The Minister for Transport and Technical Services)
Deputy K.C. Lewis of St. Saviour (Assistant Minister for Transport and Technical Services)
Mr. J. Rogers (Acting Chief Officer for Transport and Technical Services)
Mr. W. Gardiner (Director, Waste Strategy Project)
Mr. J. Richardson (Deputy Chief Executive, Chief Minister's Department)
Mr. J. Weatherby (Managing Director, Babtie Fichtner Consultants)

Deputy P.J Rondel of St. John (Chairman):

Good morning, ladies and gentlemen. This hearing is a continuation of the Ramsar hearing. We officially open the hearing at 8.48 a.m. Firstly, we will start off by going around the table stating positions and your names, please. I am the Chairman, Deputy Phil Rondel; Chairman of the Scrutiny Panel.

Mr. R. McInnes:

I am Rob McInnes, adviser to the panel.

Mr. M. Orbell:

Malcolm Orbell, Scrutiny Officer.

Mr. M. Haden:

Mike Haden, Scrutiny Officer.

Mr. J. Rogers:

John Rogers, Acting Chief Officer for Transport and Technical Services.

Connétable M.K. Jackson of St. Brelade:

Mike Jackson, Minister for Transport and Technical Services.

Deputy K.C. Lewis of St. Saviour:

Deputy Kevin Lewis, Assistant Minister for Transport and Technical Services.

Mr. J. Richardson:

John Richardson, Deputy Chief Executive for the State, ex-Chief Officer for Transport and Technical Services.

Mr. W. Gardiner:

Will Gardiner, Director of Waste Strategy Projects.

Mr. J. Weatherby:

John Weatherby, Managing Director of Fichtner Consulting Engineers.

Deputy D.J.A. Wimberley of St. Mary:

Daniel Wimberley, Deputy for St. Mary.

Connétable P.F.M. Hanning of St. Saviour:

Peter Hanning, Constable for St. Saviour.

Connétable J.M. Refault of St. Peter:

John Refault, Constable for St. Peter. I am also on the Scrutiny Panel.

The Deputy of St. John:

Thank you. Prior to starting, I think the Deputy Chief Executive of the States wants to make a statement.

Mr. J. Richardson:

Thank you, Chairman. I just want to put on record that officers are here today to assist the Minister and Assistant Minister and they are not here to redeem themselves as mentioned on the radio by one of your panel members. I believe that was wholly inappropriate behaviour and it will be subject to a formal complaint.

The Deputy of St. John:

Thank you, officer. All right, we will start off with the first question this morning. Was the department requested to undertake a specific scoping exercise prior to undertaking the Environmental Impact Assessment (E.I.A.) for the Energy from Waste plant?

The Connétable of St. Brelade:

If I may answer these questions, Chairman, and you may pass supplementaries around as appropriate. Following discussions with Development Control and Environmental Department representatives, the scoping exercise was agreed as necessary by the Transport and Technical Services Department, Babbie Fichtner and the Planning and Environment Department. Informal scoping was subsequently undertaken by the department on an ongoing basis to the point at which a statement with regards to the adequacy of the scope of Environmental Statement was provided by the relevant

Environmental Department representative. No formal scoping report was submitted for approval or was considered necessary.

The Deputy of St. John:

Are there any supplementary questions?

The Connétable of St. Peter:

Really just for clarification of the last point you made there, Minister, no formal request was made obviously.

The Connétable of St. Brelade:

No. No formal scoping report was submitted or was considered necessary.

The Connétable of St. Peter:

No formal scoping document was submitted nor considered necessary by whom?

The Connétable of St. Brelade:

By the Transport and Technical Services Department.

The Connétable of St. Peter:

Right, so T.T.S. (Transport and Technical Services) made that decision?

The Connétable of St. Brelade:

In conjunction with Planning and Environment.

The Connétable of St. Peter:

In conjunction with Planning and Environment.

The Connétable of St. Brelade:

Indeed.

The Connétable of St. Peter:

Thank you.

Mr. R. McInnes:

Just to get clarification, the statement it appears in the E.S. (Environmental Statement) that says the scope of the assessment was agreed with the Environmental Department, that was a mutual agreement between T.T.S. and ...

The Connétable of St. Brelade:

Indeed. It was a good example of departmental co-operation. We adopted a team approach and we considered it was very effective.

The Deputy of St. John:

Are there any other questions? No. All right, I will move on. What evidence was utilised during the scoping stage to evaluate the potential impact of the proposed project on the marine environment and the Ramsar site in particular?

The Connétable of St. Brelade:

During the scoping stage, the potential impact of the proposed plant on the marine environment was considered. The process involved in scoping the Ramsar impact was one of identifying impacts and providing a response to significant impact changes or, in fact, scoping out those that were not significant. A number of reference documents listed within the Environment Statement were referred to. Subsequent consideration as a potential impact included review of the airborne emissions from the new plant via dispersion modelling, runoff from the plant both during construction and operations, and review of the excavation and aqueous discharges from the plant. The impact of cooling water during the operational phase was also considered. The approach taken was to place controls during construction and operations to prevent potential contamination of the sea from runoff and aqueous discharge and to control the excavation and removal of any soil from the site during construction.

Mr. R. McInnes:

You said the reference documents listed in the E.S. were used to help inform that process.

The Connétable of St. Brelade:

They were referred to, yes, indeed.

Mr. R. McInnes:

They were referred or were they assessed or analysed and the evidence within them taken into account?

The Connétable of St. Brelade:

I might just pass that on to Will. What would your comment be on it?

Mr. W. Gardiner:

It is fair to say those documents were the ones referred to and reviewed in assessing the impact.

Mr. R. McInnes:

Can I just say - what form did that review take?

Mr. J. Weatherby:

They were read, looked through. Within the basic point of how we consider the Ramsar was we looked at what impacts could occur on the Ramsar, so in reading documents it was really just looking at supporting documents to see was there something we had missed or what was the impact or potential impact, so ... It was a slightly vague question.

Mr. R. McInnes:

Basically the documents that were reviewed, they were used as a baseline to understand what was in the Ramsar site which could be affected by other things.

Mr. J. Weatherby:

Yes, and therefore to look back and see what the ... The approach taken was really to say we are building a plant here, we intend to build a plant here, and, therefore, are there any potential impacts we need to take into account when we look at the Ramsar site and, therefore, yes, you are basically right.

Mr. R. McInnes:

Those reports cited in the E.S. were effectively the baseline as the receptor of ... If you take a source pathway receptor model, would that be correct?

Mr. J. Weatherby:

To some extent but still that has to be ... Yes. The basic approach is still what impact are we adding to the Ramsar circle so, yes, to some extent.

Mr. R. McInnes:

Yes, but you must understand you have to set a baseline, yes?

Mr. J. Weatherby:

You have to set a baseline if you consider there is an impact so, yes.

Mr. R. McInnes:

Yes, that is right.

The Deputy of St. Mary:

I am a bit puzzled here. We are talking about scoping, are we not? We are not talking about the detailed E.S. We are talking about what we are going to look at in the course of writing the statement and considering things and so I am just ... For instance, if you take the effect of airborne emissions on people living downwind or if ... and that implies that you would need a baseline as well. At the stage of thinking about what you are going to consider, would that have been taken into account? Would that have been part of the scope, the impact on people living downwind?

Mr. J. Weatherby:

Yes, of course.

The Deputy of St. Mary:

So that would be included at the scoping stage and also the impact of airborne pollution on Ramsar approved at the scoping stage.

Mr. J. Weatherby:

I mean I guess this was not a formal scoping process. The point of the scoping process is to agree how the statement will be put together and what we will consider so we intend ...

The Deputy of St. Mary:

We are talking about pre-scoping now?

Mr. J. Weatherby:

Well, there is an informal scoping so whether we call it pre-scoping or informal scoping. In terms of airborne dispersion and the impact on people living downstream, clearly that was an impact which we had to consider so that was without doubt something, you know, that we were aware of you would also have to consider in this sort of statement and it was thoroughly considered.

The Deputy of St. Mary:

The same would go for possible effects during construction, any possible effects.

Mr. J. Weatherby:

Yes, certainly.

The Connetable of St. Saviour:

Can I just take you back on this? You did an informal scoping. Can I ask who made the decision that a formal scoping was not necessary?

Mr. W. Gardiner:

It is fair to say that the informal scoping that we undertook, I arrived on the project in September 2006. I looked at the scope of the assessment and the work that had been undertaken that far over a 6-week period and because we had a level of comfort with discussions with the environment regulator that I was party to and we were able to get an undertaking from the Environment Department, the scope was adequate. That was the basis on which we took a view that a formal scoping report was not required. That was my decision, my recommendation.

The Connetable of St. Saviour:

Can I just follow up on that? Given the scale of the works being done and the proximity to the Ramsar site, would that be normal practice to just do informal scoping?

Mr. W. Gardiner:

It is a difficult one to say in Jersey. This is the first E.I.S. (Environmental Impact Statement) and E.I.A. process that had been undertaken. We were guided by the Environment Department in determining the scope, the public consultation process, so it is fair to say that that was not something that was set in stone.

The Deputy of St. John:

Can I come in on that then? The level of comfort - was the level of comfort created because both departments knew each other well and you were comfortable working with each other, therefore you were quite happy or Planning were quite happy that this would not go ahead?

Mr. W. Gardiner:

Sorry, what would not go ahead?

The Deputy of St. John:

That the scoping would not go ahead.

Mr. W. Gardiner:

There was no formal discussion with the environment regulator as to whether a formal scoping report would be submitted, but there was discussion as to a confirmation from them that the informal scoping that had been carried out would be adequate and that is why we got an undertaking from that department which is in the Environmental Statement.

The Deputy of St. Mary:

You say that the department, i.e. the Planning and Environment Department, said that the scope was adequate. How could they say that?

Mr. W. Gardiner:

How could they say that?

The Deputy of St. Mary:

Yes. I mean I cannot visualise this conversation or this meeting where they can say the scope was adequate.

Mr. W. Gardiner:

As the Minister said, the scoping approach undertaken by the department was an ongoing approach with a high level of interaction with a variety of officers in the Planning and Environment Department. Through those discussions, a level of comfort was understood between the 2 departments that the extent of the Environmental Statement being produced and, indeed, drafted, that Environmental Statement was adequate.

Mr. R. McInnes:

Can I come back to the issue of the Ramsar site and the whole scoping process, and I agree you had better understand there is going to be an impact before you can then look at the receptor, but equally the sensitivity of the receptor needs to be understood before you can evaluate whether there is an impact. Would you agree?

Mr. W. Gardiner:

Yes.

Mr. R. McInnes:

If you have a baseline that the latest piece of data available is 2001 and we are doing a scoping exercise in 2006, 5 years before your most recent bit of information which is the list of data presented in the E.S., would you say that is adequately recent enough to understand the sensitivity of the receptor?

Mr. J. Richardson:

Can I just ask - are you referring to the construction phase or the operational phase?

Mr. R. McInnes:

No. I am referring to understanding why a detailed examination of the Ramsar site was scoped out and not dealt with further. It would cover both construction activities and long-term operational activities.

Mr. J. Richardson:

Right, in that case the answer needs to be broken into 2 distinct phases. The construction phase was subject to the normal controls that we would expect from the regulator during a construction for any civil engineering project on the east coast of Jersey which would have taken place ... There would be many records of that taking place in the period 2001 to 2006. We would expect the regulator to use the data they have used in previous civil engineering construction projects which would impact on the Ramsar site as a baseline for the work that we would be undertaking for the construction phase of this project.

Mr. R. McInnes:

Can I just get clarification? You are saying that as the applicant you would not be expected to look at the information, you would expect the regulator to inform you of whether that information exists?

Mr. W. Gardiner:

It is reasonable for us as applicant to rely on the competency of the regulator in determining whether the baseline that we are considering is adequate. In addition to that, we were aware of monitoring that the Environment Department were undertaking at the Ramsar site.

Mr. R. McInnes:

Can I just say - you might be aware of that but it was not cited within the E.S. as documentation that was used.

Mr. W. Gardiner:

Correct.

Mr. R. McInnes:

If you might be aware of it but it was not actually used that is not the same thing. Also coming back to the point about construction and the E.I.A. process, the subsequent E.S. production should assess impacts within the construction phase and the operational phase so the assessment should be the same irrespective of whether other projects are going on so the impact assessment should be made of the construction activities.

Mr. J. Richardson:

Absolutely, but the difference is the construction phase is similar to many other constructions that are taking place on the Island in that period in that area. The operational phase is very different and I do not think ... There would be very few other projects of this nature that clearly the operational phase and the emissions during an operational phase would be subject to more review and more opportunity for review. But the construction side of it is very similar to all other construction projects that are taking place on the Island that could impact on the Ramsar site.

Mr. W. Gardiner:

It is also important to point out that the baseline that we establish should be looking at the impacts that are specific to the Energy from Waste plant and in particular the impact that we were concerned with is cooling water impact and that is why the nature of the baseline material was what it was.

Mr. R. McInnes:

If by referring to the Planning and Building (Environmental Impact) (Jersey) Order 2006 which came in during the course of this project, that order does not anywhere say there is an obviation of need for an Environmental Impact Assessment of construction impacts because there are other projects which have had a similar impact. You still, for an individual project, have to assess the environmental impact of construction. You cannot just say there are other projects so it is the same, so the

E.S. should pick up bespoke Environmental Impact Assessment to do with construction. Would you agree with that?

Mr. J. Richardson:

Yes, I would, but we are mixing 2 points here. There is no difference between us in terms of what the environmental scoping exercise and Environmental Statement should contain or the Energy from Waste project but there is a distinction between the 2 elements of it. Certainly from the construction phase of it there is a lot more data available in Jersey from previous constructions in terms of establishing a baseline position than there would be from an operational phase. I think it is reasonable to assume that in the discussions that took place between the department and the regulator for our particular project in accordance with the regulatory procedures described there would be more knowledge available for the construction element, background baseline knowledge, than there would be for the operational phase. That is all I am saying.

Mr. R. McInnes:

Can I just try and summarise and see if I am correct in my analysis that because there have been several construction projects of a similar nature excavating into made ground directly adjacent to a Ramsar site, that the regulator would have a good understanding of what the impacts might be; therefore, within the Environmental Impact Assessment and subsequent E.S. projection for the Energy from Waste plant, there is no need to provide an impact assessment on those construction activities?

Mr. W. Gardiner:

That is not what I am saying. It would be reasonable for us to have relied on the regulator to have a good knowledge of that information in determining whether the scope that we have set out is adequate.

Mr. R. McInnes:

So the regulator, therefore, is using their knowledge to say there is no need to scope in an assessment of those construction impacts on the Ramsar site.

Mr. W. Gardiner:

That is not what we are saying. What we are saying is it is reasonable for us to rely on the environment regulator in determining whether the scope was adequate.

Mr. R. McInnes:

Okay. Just out of those other projects, how many of them are directly contiguous with the Ramsar site?

Mr. J. Richardson:

The ones I know of in the last 10 years it is probably about 6 or 7 but you have also got to consider the surface water catchments of the area in the Island and the discharges that would take place through the surface water system, and for that there will be many, many.

The Deputy of St. Mary:

Can I recap on that question because I noted a similar question? I am surprised to hear you say that there are other similar projects because in my mind the incinerator is

unique for many reasons, so can you specify which other similar projects on similar ground with similar excavation requirements there have been in Jersey?

Mr. J. Richardson:

If you look at the east coast between La Collette and Green Island there are 7 or 8 very large civil engineering construction projects that have taken place in the last 10 years all of which have had some degree of ground works. There are other civil engineering projects all of which had ground works for water, et cetera, which would feed into the surface water system.

The Deputy of St. John:

Could you identify some of those that you mention, please?

Mr. J. Richardson:

Individual sites, you have only got to look at all the construction that is taking place on the Greve d'Azette coast road over the last 10 years; there will be many there.

Mr. R. McInnes:

Sorry, I am not that familiar with the geography of the Island. Could someone clarify for me?

Mr. J. Richardson:

Yes. At the Le Dicq slipway, between the Le Dicq slipway and Greve d'Azette, there are 8 or 9 large scale developments that have taken place in the last 10 years, all of which would have required significant earthworks of some description, be it piling or excavation, of which the spoil would have had to have been managed and possibly dewatering, so ...

Mr. R. McInnes:

Right, so they are all excavated into a fill?

Mr. J. Richardson:

No. No, they are into ground work ... going into made ground.

Mr. R. McInnes:

How many were excavated into inert fill?

Mr. J. Richardson:

Each of those sites would have had significant excavation into ground works. Each of those ground works would have needed to have been analysed in order to assess the impact of any spillage, spoil, et cetera, it would have had into the Ramsar site.

Mr. R. McInnes:

Again, if the regulator is using their experience of these other projects as a way of informing and helping inform the scoping, if none of those projects are excavated into inert fill they cannot be used as a comparative surely.

Mr. J. Richardson:

Well, would you like to try the inert fill when you are digging on a site that has been there for 100 years and you do not know what is below it?

Mr. R. McInnes:

No, the Environmental Impact Assessment process should define what inert fill is.

Mr. J. Richardson:

Exactly, and that is exactly why on those previous sites the regulator would have taken a view at the time of doing those Environmental Impact Assessments what the nature of that fill was.

The Deputy of St. John:

What form did the consultation with the Planning and Environment Department take to develop the scoping required assessment of the Ramsar site?

The Connetable of St. Brelade:

A number of meetings took place at which scoping was discussed, including the potential for impact on the Ramsar site, and these are detailed in the Environmental Impact Statement. Consultation was carried out using an ongoing scoping approach which involved regular and frequent dialogue with representatives of the Planning and Environment Department.

The Deputy of St. John:

Thank you. Are there any supplementaries, gentlemen?

Mr. R. McInnes:

Just a quick question on this as well - looking at the list that was produced of the summary of the consultation meetings with the various departments, called "Table of Consultee Meetings", the first meeting, however, was with the principal ecologist and the research ecologist looking at Energy from Waste and the Ramsar designated site in February 2006. This was before any other meetings were held. It seemed to be the first one in the list of consultation meetings. I do not know if anyone can verify if that was correct. It appears on the document that was produced as part of E.S. so one must assume it is correct. Coming back to your point about understanding the impacts, I agree you need to understand an impact before you then go and look at the receptors, but the ecology report that was commissioned by the department that came out shortly after that meeting and prior to the other meetings which looked at the rest of the whole project had already stated within it there would be no impact on the Ramsar site. How can you have drawn that conclusion at that stage prior to having the other consultation meetings with, for example, Environmental Protection, looking at ground water or surface water? How can a consultant have already come to that conclusion?

Mr. W. Gardiner:

In terms of the statement made in the report, that is for the consultant to comment on, but in relation to ...

Mr. R. McInnes:

But that report was produced as an appendix to the E.S. submitted by the department.

Mr. W. Gardiner:

Correct.

Mr. R. McInnes:

So the department submitted the E.S. without a supporting statement so I think it is for the department to answer.

Mr. W. Gardiner:

In terms of the statement made in the report, the approach taken and the reason why that meeting took place first was because if there were ecology impacts on the site itself, some of those may have taken a long time, perhaps a year, to identify because of the seasonal variation that is necessary in determining ecological impact. But the approach taken on the project throughout has been to avoid impact on the Ramsar site and that was the principle which we followed throughout and we continue to follow on the project. Therefore, it would not be unreasonable for the ecological consultant to make that statement. Now, that may have reflected the approach undertaken and you are quite right to say that has been modified during the other consultations.

The Deputy of St. John:

Are there any other questions?

The Deputy of St. Mary:

I may be missing something. Are you saying that the meeting with the States ecologist which is listed in the appendix as the first consultee meeting is the consultation with the Planning Department on this matter of the required assessment at the Ramsar site?

Mr. W. Gardiner:

No, what we are saying is that that was the first meeting and the Minister has already said that there was an ongoing continuous approach of consultation with a variety of members of the Planning and Environment Department to determine the full impact.

The Deputy of St. Mary:

I suppose I could ask - I do not know if it comes up later - but it appears that the conclusion of this ongoing consultation was that there would not be any impact on the Ramsar site.

Mr. W. Gardiner:

That is a fair statement. The principle that was followed was that there should not be an impact on the Ramsar site and we would ensure that there was not an impact on the Ramsar site.

The Deputy of St. Mary:

No, no, I asked whether the ongoing consultations proved to you that there would not be or that there were no possible impacts so that you did not need to write about them, not that there should not be.

Mr. W. Gardiner:

It is not correct to say that we did not write about them. We did write about how those potential impacts would be controlled and avoided.

Mr. J. Weatherby:

I think the approach taken in the consultation was to say to the consultees that our aim was to show them that there would not be an impact and that is why ... and so by doing that obviously we say to the Planning Department we are going to get rid of impacts or avoid impacts then our view will be coloured by that, but I think they then plainly when they review the Environmental Statement they are going to see have we convinced them that there are no impacts, if you can understand what I mean. The general approach taken was there is a Ramsar site there, let us avoid wherever possible and show where there is some slight impact that it is insignificant. Within the Environmental Statement we have to show that and that was the approach taken with the consultations; avoid any significant impact on the Ramsar site.

The Deputy of St. Mary:

Can I follow up on that? Can you tell us in your view was scoping something in as worthy of consideration and we have to look at this? What does that then entail in terms of writing the statement, in terms of doing the research on writing the statement once you have scoped something in as there is a potential impact here? What then has to be done within the E.I.S.?

Mr. J. Weatherby:

The purpose of the scoping for me, whether it is formal or informal, is to say this is going to be our approach, this is what we are going to consider and it allows the consultees, particularly the Planning Department at that point, to say we either agree that is a good approach or we disagree totally and that is the wrong thing or we think you also need to consider this. It does not ... because something has been scoped in or out it does not then mean that it is ... we still have to deal with it within the Environmental Statement so we are making statements during the scoping process, we have to ... you know, that does not become fact at that point.

The Deputy of St. Mary:

No, no, no. I ask further down the line if you ...

Mr. J. Weatherby:

The purpose of scoping is to assist the process to decide what approach is to be taken. It is a lot of discussion about methodology and it is also about does everybody agree what the key impacts are. Clearly, when the Environmental Statement itself is produced it then has to be reviewed and considered as the Environmental Statement is a standalone document.

The Deputy of St. Mary:

But once something is scoped in, topic X is scoped in so okay we are going to address that. What then happens within the preparation of the E.S. going one step beyond the scoping? I am not clear how you see this business of moving on from the scope, what ...

Mr. J. Weatherby:

I mean within the scoping process you identify the methodology and you identify the importance, so you would be saying ... for example, taking your example on airborne emissions, in discussions at the scoping stage we explain the methodology we are going to use to carry out the airborne dispersion modelling. We explain the process we are going to minimise emissions from the plant in the first place and we described

how we were going to deal with the existing background emissions and, therefore, we are basically agreeing that there is an impact to start with because, clearly, there is an impact from airborne emissions and then we are describing the methodology we are going to follow in the Environmental Statement. We then produce the Environmental Statement and that has to substantiate opposition.

The Deputy of St. Mary:

Would that process include baseline studies?

Mr. J. Weatherby:

If there is an impact, yes. There are 2 methodologies I guess, 2 general principles. You either say we are going to show you that we do not believe there is an impact, in which case there is little point in carrying out a lot of additional baseline work because if there is no impact to consider, the baseline is unchanged or insignificantly changed, and if there is an impact then, yes, we do have to consider the baseline.

Mr. R. McInnes:

Can I just come in there? I agree with that process but that process depends on the sensitivity of the receptor. It is not just the impact; you have to understand the impact and the sensitivity of the receptor. Given there is an internationally designated site adjacent to the Energy from Waste plant, there is a highly sensitive receptor. Would you agree with that?

Mr. J. Weatherby:

Of course, yes.

Mr. R. McInnes:

So, therefore, the impacts should be looked at in a slightly different way to ... if it was an alternative receptor, if it was just a piece of non-designated land, therefore when you are looking at the impacts you need to take into account the sensitivity of that receptor. Was that taken into account during the scoping discussions?

Mr. W. Gardiner:

I was not party to the scoping discussions but, yes, the highly sensitive nature of the Ramsar site if you look at the documentation was taken into account and continues to be taken into account all the way through the process.

Mr. R. McInnes:

One approach that could be taken, again looking at the wording of the Environmental Impact Order, is there a significant effect. The Ramsar site is not designated just because it is an area; it is designated on qualifying features. Were those qualifying features discussed as they are the sensitive receptor within the Ramsar site during the scoping exercise?

Mr. W. Gardiner:

I do not think we have anybody here who can comment on that. We can confirm that for you during discussion with other consultants.

Mr. R. McInnes:

Well, would you expect them to be assessed because if you are trying to understand the impact, you need to understand the receptor and these receptors within the context of the Ramsar site are the features of qualifying interest?

Mr. J. Weatherby:

I believe they were, but I mean if you want to get into the detail on that you will have to ask a more specific question. I mean clearly the people we are consulting in the Environmental Department understood why the Ramsar site was there, so my view is they must have been but I was not at that meeting so I cannot confirm what the conversation was but, you know, I would say that without any doubt it must have happened in that way.

Mr. R. McInnes:

You would expect that to happen.

Mr. J. Weatherby:

I would expect that to happen, yes, certainly, because, you know, it is not as if people did not know why the Ramsar site was there and the people we are consulting with clearly did not know why the Ramsar site was there so, yes, that discussion must have taken place.

Mr. W. Gardiner:

We have evidenced that through the types of reference documents that were considered which relate to types of sensitive flora and fauna that are in the Ramsar site.

Mr. R. McInnes:

I beg to differ on that completely. The data presented in the E.S. - first of all, the date of it is suspect that the earliest piece is about 4 or 5 years post the actual date of the application, some of it dates back to the 1980s. Most of those documents do not refer to a whole variety of qualifying features so the evidence produced and stated within the Environmental Statement does not address the qualifying features.

Mr. W. Gardiner:

Are you saying that just because a piece of evidence is from the 1980s it cannot be relevant because in every area of science there could be elements of data that is still relevant from the 1980s?

Mr. R. McInnes:

I would say an Ecological Impact Assessment, under best practice if you were to present a survey result from 15 to 20 years previous, it would be deemed as not useable and would not be valid. It might form part of a long-term baseline but not as a one-off.

Mr. J. Weatherby:

I am slightly struggling to understand where we are heading here. I mean you seem to be saying we should have commissioned a new baseline study to understand what was in the Ramsar site. In our view and what we planned to say to you is that our approach was to say what are the impacts on that and our approach was to say those

... we will either show there is no impact because we will mitigate or remove those impacts, or we will show that they are insignificant, so ...

Mr. R. McInnes:

You can only do that ... you can only assess significant effect if you understand the sensitivity of the receptor.

Mr. W. Gardiner:

We have explained to you that the regulator understands that intimately and it is for the regulator to decide whether our Environmental Statement is adequate or not.

Mr. J. Weatherby:

We carried out similar approaches on other plants in the U.K. (United Kingdom) and it is a very similar approach we adopt so, you know, this is not like it is the only Ramsar site we have ever come across in the whole world. It is a fairly standard approach. You have to show what an impact is and I think it would be poor of us to say to our client do a lot of work when we do not think there is any point in it. So I guess that is the basis here, that unless there is an impact to consider why would we want to commission an extensive survey of something. It just would not be good advice for the client and that is our standard approach.

The Deputy of St. Mary:

Someone said earlier, I think it was Mr. Gardiner, that it was normal practice that the way the scoping was done and the Planning Department said the scope was adequate and it was done on an informal basis, this would be normal practice and then I think he qualified it by saying: "In Jersey." Would you agree that was normal practice elsewhere? You know, normal practice in Jersey for an incinerator that is unprecedented, is a slightly odd statement so what would normal practice be elsewhere in projects of a similar size with regarding to scoping?

Mr. J. Weatherby:

I think nowadays you probably would ask for a formal scoping process and the purpose of that is really to assist the applicant rather than anybody else. I mean if you do not have a formal scoping process in the U.K., it just assists the process. You can then have some reliance when you are producing an Environmental Statement to say that we did not discuss that because it was scoped out but it does not ... in neither case, whether you had a formal scoping or an informal scoping, does it stop somebody saying, well, the Environmental Statement still is not good enough so I think the scoping is a very useful process at the early stages of preparing a planning application and its basic intention is to try and concentrate on where there are issues but it does not negate the purpose of the Environmental Statement and it is really the Environmental Statement which is the key document in the end. If you do not produce an adequately consistent Environmental Statement the applicant is always open to somebody saying it is not good enough, it is not correctly done. You know, you cannot just rely on somebody said 2 years ago in a scoping but we will scope it out; that is not ...

The Deputy of St. Mary:

So to summarise, scoping does not offer full protection but it does offer a certain security because you know that you are writing about what the regulator or the planning authority wants ...?

Mr. J. Weatherby:

Correct. If it is correctly done, it identifies where the key issues are and where you should be spending your time and effort in a sensible manner. It does not mean that when you submit your Environmental Statement somebody cannot say either I disagree totally with the scoping decision or it is not just right what you are saying, you know, the Environmental Statement has to stand upon its own.

Mr. W. Gardiner:

But to be clear we are operating in Jersey in line with Jersey requirements and whether it is a common practice now in the U.K. to formalise scoping or not, that was not a requirement based on us as applicant.

Mr. R. McInnes:

Could I just come in on one point? I agree there is no point in producing a whole lot of work and getting a client to pay for a whole load of work which is not necessary, but if either at the scoping stage or in the production of the E.S. and undertaking the Environmental Impact Assessment that an impact is identified, by your admission earlier on you would then look at mitigation and then say whether there would be any residual impact on that. In several locations within the E.S. there are statements which say there will be a potential risk of impact to the Ramsar site. That is clearly stated within the E.S. and then it follows on to say they will be mitigated, which is consistent with your view of the environmental impact and you are going to propose mitigation. What is normal within the E.I.A. process is to assess the impact and then propose the mitigation because you cannot propose mitigation until you have assessed the impact in the first place. Would that make sense?

Mr. W. Gardiner:

Yes.

Mr. R. McInnes:

Where then in the E.S. has the impact on the Ramsar site of potentially polluted waters been put in so that the appropriate mitigation can then be proposed?

Mr. J. Richardson:

Polluted waters during construction or operation?

Mr. R. McInnes:

It could be both.

Mr. J. Richardson:

Would you specify? I mean the question you are asking, are you asking it for ...

Mr. R. McInnes:

I will ask that once for construction and once for operation.

Mr. W. Gardiner:

It is specified in section 11, I believe, on the ground water(?).

Mr. R. McInnes:

In terms of the impact on the Ramsar site?

Mr. W. Gardiner:

In terms of identifying that there is a potential impact and what mitigation is proposed is set out in the environmental site.

Mr. R. McInnes:

The impact on the sensitive receptors within the Ramsar site, where does that appear?

Mr. W. Gardiner:

That is not specific to the detail.

Mr. R. McInnes:

You are saying there is an impact to be recognised and mitigation has been proposed but you do not define what the impact on the receptors are?

Mr. W. Gardiner:

You are correct to say it is not defined in the Environmental Statement. That does not mean to say it was not considered. We have already outlined to you how the sensitivity of the Ramsar site has been considered in conjunction with the regulator.

Mr. R. McInnes:

But an Environmental Statement should be a document that not just the regulator but members of the public, a consultant, can pick up and understand. I cannot see how the regulator let alone members of the public can understand what the impact on the Ramsar site was going to be in terms of, let us say, construction for the time being, and that the mitigation is appropriate because that evidence, as you say, clearly is not in the E.S.

Mr. W. Gardiner:

I think that is not strictly correct. There are good descriptions of why the Ramsar site is sensitive and there are documents which refer to the sensitivity of the Ramsar and then there are further sections of the statement which set out, admittedly not in excessive detail, but do set out the mitigation undertaking or proposed to be undertaken.

Mr. R. McInnes:

Where is the assessment within the E.S. or where is the presentation of the assessment of the impact of, let us say, water-vectored contaminants on the Ramsar site in terms of the sensitive receptors within the Ramsar site?

Mr. W. Gardiner:

That section I referred to there is a description that that would be controlled.

Mr. R. McInnes:

No, that is being controlled. That is not an assessment of the impact.

Mr. W. Gardiner:

The approach taken is to avoid an impact.

Mr. R. McInnes:

No, but you cannot avoid an impact unless you know what the impact is going to be and it states there will be an impact; there is a risk of an impact.

Mr. W. Gardiner:

There is a risk of an impact which can be avoided through the process set out in the statement.

Mr. R. McInnes:

But you need to understand what the risk is.

Mr. W. Gardiner:

I ...

Mr. R. McInnes:

A risk of an impact ...

The Deputy of St. Mary:

Can I perhaps help by just reading out a little bit from the E.I.S. 11.4.2, Potential Contamination, which sort of sums up the approach that we are asking about really: "The site is a former inert waste tip and contamination testing has not been carried out." So the first question is, why not? "However, it is possible that potentially harmful substances may have inadvertently been tipped on the site during in-filling. Consequently, it is proposed to adopt a watching brief approach to identifying potential contamination during construction." How can you square: "It is proposed to adopt a watching brief approach" with the requirement to define the risk in order to mitigate the risk? There are 2 questions there.

Mr. W. Gardiner:

Yes, so the first question is about contamination testing. The site is not defined as contaminated land. It contains inert waste fill. There is good knowledge within the T.T.S. Department of the nature of that fill, but there was no requirement under any element of the law that we were aware of to set out what inert fill has been tipped where, but it was an inert waste site. There were controls on reception of material in that site; however, those controls may not have been 100 per cent successful in avoiding rogue deposits of potential contaminant. Therefore, although we have no knowledge under where we have done ground testing which has not revealed any indication of contamination and we are not aware of any contamination, there is a necessity because of the potential risk if such contamination were discovered to adopt a watching brief, and that is the approach that was taken.

The Deputy of St. John:

Can I come in there, please? What records were held on the actual fill and have they been forwarded to the department?

Mr. W. Gardiner:

The records were held by the department. They are not detailed records such as you might find in the United Kingdom of individual waste transfer notes.

The Deputy of St. John:

Why not?

Mr. W. Gardiner:

There was no requirement when the tip first started, or subsequently under the Jersey Law, to record inert fill deliveries to the landfill sites in Jersey. In the U.K. there is a requirement to have waste transfer notes.

Mr. J. Richardson:

I think we have to go back to the time at which the site was opened. It was mid 1995 and you need to look at the information that was in place or, in this case, not in place at the time and the permit that was issued by the Planning Department for inert fill of that site in 1995. The conditions were placed as part of the permit. That was the regulation in place at that stage. But in terms of fill and monitoring, the site was monitored with a tip head attendant so there was always an individual present at the tip so if a contaminated or a potentially contaminated load was seen, the process of filling was that the material was tipped on the head before it was pushed into the site. So, if there was a potential contaminated load or a suspect load was seen, before it was pushed into the site the tip head attendant had the opportunity to spot it and have it removed for separate investigation.

The Deputy of St. John:

Has the procedure changed since 1995? Are you still using the same procedure?

Mr. J. Richardson:

There is always a tip head attendant on site.

Mr. J. Rogers:

Can I just clarify? The procedure is robust and I think what we have found in the excavation has proved that, but there is no legal requirement for us to ask people bringing the material in to even ask where they have got it from and that process is not in place. It is very hard for us to put any regulatory or control mechanism in place there. What the team have done is they have applied a precautionary principle to this based on the fact that human error could have occurred.

The Connétable of St. Peter:

Just confirming, there are no records of the loads brought in and any possible contaminated loads?

Mr. J. Richardson:

The only records that exist at that time in 1995, which is the area we are talking about ... so let us be absolutely clear, we are talking about the initial area of fill, the only records that existed were the charging records, which was the number of loads. It was based on a charge basis, based on loads deposited, and those loads were then checked by a tip head attendant. What was specified as part of the licence is that no ash from an incinerator would be put into the site and, as I am sure you are aware, that was always processed in a completely different fashion.

Mr. W. Gardiner:

There are also records of where non-licensed asbestos is tipped and photographs of that and that is why within the process or excavation specific controls were placed on the discovery, identification and removal of asbestos. That material is not high risk asbestos. This is material that, at the time, was not licensed and is now subsequently licensed.

Mr. R. McInnes:

Can I just come back? I am still slightly puzzled. I will read you something from section 10.3(2) of the E.S.: "The only potential impact on the Ramsar site would be water pollution risk in the construction and operation of the new facility." Very clearly it is in there. It is stated there is a risk for pollution during both phases, construction and operation, just to get clarity on that. It then goes on to talk about mitigation without assessing what that risk is and what that impact is. Can you explain why?

Mr. J. Weatherby:

The purpose is we have identified it as a potential risk and, therefore, we say we are going to avoid it so that all our efforts are put in to controlling, to make sure the water discharge is not going to be a problem and similarly with the potential contamination. The same approach is taken. It may happen, therefore, let us avoid it happening and, therefore, the controls particularly through the contractor, and our supervision of the contractor, has been aimed to avoid any of this occurring.

Mr. R. McInnes:

But you felt it was appropriate not to understand in more detail what that impact might be to make sure your mitigation was robust?

Mr. W. Gardiner:

If the approach had been taken to have an impact on the Ramsar site it would have been appropriate to understand the level of risk. It is not appropriate to do that because our intention was to avoid ...

Mr. R. McInnes:

The intention is but you need to understand what the impact could be. Now, the Ramsar site is not a homogenous entity. The marine environment is not a homogenous entity; therefore, different receptors are in there that might be tolerant to different levels of risk, different levels of pollution, different levels of contamination. Therefore, to understand what the risk is you need to understand the sensitivity of the receptor; therefore, your mitigation would be appropriate.

Mr. W. Gardiner:

Only if you want to cause some form of pollution to those receptors which we wanted to avoid.

Mr. R. McInnes:

But basically you are saying there is a risk that that could happen.

Mr. W. Gardiner:

Correct.

Mr. J. Weatherby:

If we did not do anything, if we just blithely allowed a contractor the cheapest possible way to dig up where he wants and do whatever he wants and allow water to run off in an uncontrolled manner, there would definitely be a risk. Our decision at the time was to say that risk is extremely hard to quantify because even though we know it is largely inert, there is a possibility that there is some area of contamination and, therefore, our approach is to say to the contractor: “We are aware that this is basically an inert site, but there are many potential hot spots and, therefore, when you are excavating you need to be extremely careful.” That has been our approach all the way through. We do not want, in any circumstances, any potential contamination to be allowed to be released to the Ramsar site. That is what we have done all the way through and that is the adopted process to say there is a risk and, therefore, we need to take ... it would have been almost saying that our preferred approach is to allow the stuff to be released and identify that it will not really do any harm. We had a much better approach, let us avoid the risk occurring by putting those controls on the contractor.

Mr. W. Gardiner:

The logic of what you are saying there is also that you would determine what the scale of risk is for particular receptors from a pollution source and our approach is to avoid any of those pollution sources, so what would be the point of setting out the potential impact of wading birds, of a type of pollution impact, arrange a pollution impact, apart from just saying it would be completely unacceptable.

The Connétable of St. Saviour:

Can I just come in here? I can understand what you are saying and the logic of saying we are going to deal with it and we are going to prevent it, but I can only understand that that is acceptable if you can then guarantee 100 per cent success and are you able to do that, because if you are, then there is no point in saying there is a risk?

Mr. W. Gardiner:

No process can completely guarantee 100 per cent impact but ...

The Connétable of St. Saviour:

Sorry, could I just interrupt you? Having said that, how can you then say that we do not need to look at the results of that risk?

Mr. W. Gardiner:

What we can say is that the impact of any such event would be unacceptable. It is reasonable to say that and it is then reasonable to set out the mitigation that you are going to take to minimise that risk.

The Connétable of St. Saviour:

But you do not know what the impact is.

Mr. W. Gardiner:

We know that the impact would be unacceptable.

Mr. J. Richardson:

This comes back to the point of, and this is why I keep stressing the point that separating construction from the operation, the construction phase is no different to any of the other constructions that have taken place along that coast in the last 10 years. I am challenging why this is a different case to any of the other constructions. If the other construction projects in the last 10 years have been subject to the same level of scrutiny investigation during environmental impact assessment for those sites, one would expect that all the baseline data that your expert referred to that was not there, to be there. It was not. Why was it not there? Because it had not been deemed necessary to undertake that level of investigation. So, if it had not been deemed necessary for those sites, why is it deemed necessary for this site when there is no evidence to suggest that the material in this site is any different? In fact, if anything, the material from this site was better known because it had been monitored visually by an operator at every point of infill, whereas the material that was in the ground on other sites that could have been there for 100, however many years, was unknown at the point of excavation.

The Connétable of St. Peter:

I think, from my point of view, John, that I have slight difficulty in so much that whilst you are quite right, the other sites like Greve d'Azette, we do not know what was there from 100 years ago, but what we do know is that we are now building on landfill sites, the reclamation, and as a result of that a lot of inert waste is coming from very many different areas and sources potentially, and is it reasonable to expect that if there is a 5 per cent pollution element within a 7 ton load off the back of a lorry that an operator standing there at the tip is going to see that 5 per cent? I would suggest that probably he would not. I think to be able to say that we know what is going ... I think we have good knowledge was the term that Will used earlier, you have a good overall expectation, but one cannot say that you know exactly what it is going on because there is always the element of a very small amount of contaminate within that load which would not be necessarily visible.

Mr. J. Richardson:

I would entirely agree with you, but I would challenge you back by saying that if there was 5 per cent of one load, one 7 ton load, compare that to the many thousands of tons that have been excavated on all sites of which there is no knowledge.

The Connétable of St. Peter:

I agree. I am using one load there as an example but there could be many of those within the whole site.

Mr. J. Richardson:

I am using the knowledge of the material that went into our site was visually inspected on every load. It was not known of the content of those sites. I can give you an example. I drove past a site yesterday which is subject to significant earthwork which is adjacent to a very large surface water system and how much knowledge is there of the content of that material?.

The Connétable of St. Peter:

I think just coming back again, John, with all due respect, the reclamation site, and I am talking about West and East of Albert, has become a sensitive area from the point

of view that we know that there was on the west of Albert from incinerator waste so, therefore, the whole of that area of reclamation is a public concern, shall we say, that there are potentially current contaminants somewhere down there. This is why we need to

Mr. J. Richardson:

No, I am sorry, you are making an assumption. You have no evidence. Provide me with the evidence.

The Connétable of St. Peter:

I think the fact that we have those people that are sitting in the back row that represent the S.O.S. (Save Our Shoreline), all these sort of people, that there is evidence out there to say there is a level of public concern.

Mr. J. Richardson:

Would you provide the evidence?

The Connétable of St. Peter:

No, no, I am saying to you there is evidence of public concern and they are sitting behind you today.

Mr. J. Richardson:

I know the evidence of public concern but I am asking for evidence that there is contamination.

The Connétable of St. Peter:

No, no, no, I ...

Mr. J. Richardson:

Sorry, I am going to finish because I do not like to cross each other. There may be evidence of public concern. I would accept that and there clearly is. That is something we have to be very aware of. I am asking for the evidence of there being contamination of the material that was put into the La Collette 2 site in 1995 and 1996 which was the area of the site which is currently where the waste pump is being constructed.

The Connétable of St. Peter:

I totally accept that. All I am saying, though, whilst what you are saying is absolutely precisely correct there nevertheless is an element of public concern. It may be unfounded, but there is an element of public concern.

The Deputy of St. Mary:

May I ask a question now? You have said that each load is visually inspected. You have said that you do not know what was on the other sites, what was the amount of the other sites, but what we do know about this site is the analysis of the pit water and 54 times ambient lead, 130 times more iron, 32 times more manganese. Now, that was one sample taken on one day. We do not have a series, we do not have a data series. I do not know whether that is publicly available, the data series of the pit water, but I would just wonder what your explanation is for those levels of heavy metals in the water in the pit. We are talking about the excavation pit.

Mr. J. Richardson:

I think you need to be very careful about the methodology used for that test and something you are basing your comments on are based on one particular sample taken in a particular way using a particular analytical method.

Mr. W. Gardiner:

The sample taken was analysed by the States Analyst. It is an acid stripping technique which mobilised the metals in the suspended solids within that sample. Subsequently, when the analyst's methodology, which did not involve acid stripping, was taken the levels of metals that you have referred to were found to be within safe levels. So, that sample was analysed using a technique which is not appropriate for the explanation that you have given it there. The elevated levels of metals were not active in the excavation water.

The Deputy of St. Mary:

Are you saying that acid stripping, this methodology what it is, reveals metals that are not there?

Mr. W. Gardiner:

No, it reveals metals that are trapped within the suspended solids within the fill so they are not active and, therefore, they are not available for uptake unless it is acid stripped. Obviously when you acid strip soil excavation material that is going to mobilise metals that are within that fill. That does not mean that those levels of metals will be actively transferred into the Ramsar site or anywhere else.

The Connétable of St. Saviour:

Can I just check on that? Are you saying that we can discount those results?

Mr. W. Gardiner:

What I am saying is that the implication put upon them in that suggestion is wrong. The subsequent assessments which have been provided to the panel indicate that those levels, the levels of active metals within those samples, were within acceptable levels and levels that we would expect to see in excavation water.

The Connétable of St. John:

I am going to move on now. I will move down a couple of questions, Minister. The air statement states clearly that the States of Jersey research ecologist advised a specific baseline survey of the Ramsar site were not required, section 10.2(1) in the absence of the undertaking ecological studies. To what extent were the existing data sources listed under 10.2(1) evaluated as part of the E.I.A.?

The Connétable of St. Brelade:

The data sources were reviewed. The key part in determining what was required was the States Ecologist who would use local knowledge and was experienced to guide the requirements.

Mr. R. McInnes:

Really, as a clarification, because it seems as part of the process in correspondence which was sent between Sarah Le Claire of Planning and Environment and I think it

actually went to Quintin Murfin, a list a flip chart notes. This is going back to the previous question about scoping in and scoping out. I just want to get clarity on a section on some water resources and coastal waters, which I take to mean the Ramsar site. What do you understand by scope out? These are flip charts issued following a meeting between Quintin Murfin, and I think is that Steve Davis from Babbie Fichtner and Sarah Le Claire. There is a whole list of issues, some are scoped, past participle, scoped out and some are scope out. Do you understand any difference between those 2 terms?

The Connétable of St. Brelade:

Can I respond to him, Chairman? I take scoped out to be the term used when an issue is either not applicable or possible impacts are considered to be significant. Simple as that.

Mr. R. McInnes:

And scope out?

The Connétable of St. Brelade:

Same thing. No difference. Just a matter of recording.

Mr. R. McInnes:

So basically scoped out, that means it is dealt with because we do not expect a significant environmental impact.

The Deputy of St. Mary:

Can I ask a question of parallel to this, which is essentially the same question of were there specific baseline surveys of air quality carried out?

Mr. W. Gardiner:

There are background air quality records held by the Public Health Department and consultations took place with the Public Health Department to determine whether the proposed air quality monitoring undertaken in the environmental statement were adequate to enable comparison with those benchmark air quality records. It was decided that additional benchmark air quality monitoring was necessary both prior to construction, during construction and operation, and that air quality monitoring was made a condition of the planning consent and has been implemented at La Collette and is continuously monitored at the moment.

The Deputy of St. Mary:

What substances are being tested for in this air quality monitoring?

Mr. W. Gardiner:

In agreement with the public health regulator, we are monitoring particulates which are commonly referred to as P.M. (Particulate Matter) and nitrogen dioxide.

The Deputy of St. Mary:

And that is it?

Mr. W. Gardiner:

That is what we have been asked to monitor.

The Deputy of St. Mary:

What size particulates?

Mr. W. Gardiner:

The monitoring technique involved captures all particulates. The analysis of it goes down to P.M.2.5, but also provides evidence of P.M.10.

The Deputy of St. John:

Can I come to the report of 10.3(2) Potential Impact on Marine Habitat. Given that the cooling water, et cetera, would be going to the Ramsar site, why did you not contact Ramsar secretariat given that there could be potential damage to the marine life in that area?

Mr. J. Weatherby:

First of all, the applicant would not contact the Ramsar secretariat in my experience and you would only do it in any case if there was something to report, i.e. an impact. Therefore, if you cannot determine an impact it would be fairly pointless to ring the Ramsar secretariat and say that we are going to do something but there is no impact. I have checked this with the other U.K. projects that we have worked on recently with the planning consultant who led them and they honestly looked at me as though I had 2 heads and said: "We would not even consider contacting the Ramsar secretariat."

The Deputy of St. John:

Therefore, did you contact D.E.F.R.A. (Department of Environment, Food and Rural Affairs), for instance?

Mr. J. Weatherby:

No, because in exactly the same position, you would only contact them if you wanted to report that there would be an impact.

Mr. J. Richardson:

A significant impact.

Mr. J. Weatherby:

Yes. It is the same approach, I think.

Mr. J. Richardson:

I also think we had to consider the scale of impact, potential impact, from the E.f.W. (Energy from Waste) discharge compared to the last 40 years of discharge from the Jersey Electricity Company.

The Deputy of St. Mary:

Any other questions?

Mr. R. McInnes:

Can I just pick up on that one? You said against the baseline surely? Yes, and that baseline exists then to be able to do that?

Mr. J. Richardson:

Jersey Electricity Company has been discharging there for 40 years.

Mr. R. McInnes:

So the change of having the new Energy from Waste plant, the change on that baseline that you just said that has been happening for all these years, would have been assessed?

Mr. W. Gardiner:

No, the Jersey Electricity Company power station was in place before the Ramsar designation was set so it is part of the Ramsar baseline. Our approach to cooling water is set out very clearly in the environmental statement. The impact of the Energy from Waste facilities is less than 10 per cent of the consented level identified for the J.C.(?) power station, the level of operation of the J.C. power station is produced and any subsequent discharge from the Energy from Waste facility is subject to a discharge consent application so the environmental statement sets out the principles. The detail will be determined through a discharge consent application.

Mr. R. McInnes:

From our previous discussions, Mr. Gardiner, we discussed the discharge consent issue. I think it is somewhere around about 23 times it is referred to in the E.S. discharge consent. The new Energy from Waste plant would not breach the existing discharge consent. Do you accept that as being correct?

Mr. W. Gardiner:

That is the approach we have been taking.

Mr. R. McInnes:

It is also correct that the discharge consent has no contamination levels set in either temperature or concentrations?

Mr. W. Gardiner:

My understanding is the written discharge consent does not have those levels, but there has been a lot of correspondence between the Environment Regulator and the company concerned which we are not party to which defined very clearly what levels are acceptable and what are not.

Mr. R. McInnes:

When the E.S. says it will not exceed the existing levels within the discharge consent or not, and it will comply with the existing discharge consent, there is no commitment there in terms of a thermal limit or a concentration limit because there are no levels set?

Mr. W. Gardiner:

There are no levels set in the written documentation is my understanding but there is a good understanding from the Environment Regulator and discussions took place between themselves and the Environment Regulator to identify what the scale and impact of both those factors would be from the Energy from Waste facility and, therefore, the principle that we have set out in the approach set up within the Environment Statement was accepted as reasonable by the Environment Regulator but, as I have said, that would be subject to a detailed application discharge consent.

The Deputy of St. Mary:

Would you agree that this process of referring to correspondence that is not in the E.S. which members of the public or Members of the States or even the regulator does not have access to because it is not in the statement, is less than transparent?

The Connétable of St. Brelade:

No, there has to be a certain point where correspondence becomes public and I think in the lead-up to the process it probably would not be but when it comes to the point where the study is agreed with, it all comes into the public domain and we have no desire in the department to shield anything, to be quite frank.

Mr. W. Gardiner:

I think in relation to certain areas of the Environmental Statement of course more detail could have been provided and a number of those areas that have been discussed this morning. With the benefit of hindsight, one of the areas that we could have provided more detail on may be the impact on the Ramsar and why, in fact, that was scoped out and why the controls that we have identified were adequate, but I would refer you to the fact that we undertook extensive public consultation both before and after submission of the outlying planning application and before termination of the reserve matter consideration. Those issues were not raised prior to the original approval of the outline planning application at all with us and this document was in the public domain before that determination was made. For 9 months it was extensively consulted upon and we believe adequate opportunity was given to any party to make representation on that point.

The Deputy of St. Mary:

I know it is going into the consultation section, but just on that point we raised I think we established at the last hearing that the actual E.S. was sent to 4 people. Is my memory correct?

Mr. W. Gardiner:

No, that is a statement relating to who the Environment Regulators consulted on outside of the department. Our consultation was much wider than that.

The Deputy of St. John:

We are going to move on. The next section will be taken by the Constable of St. Peter on ground conditions, the next group of questions.

The Connétable of St. Peter:

Apparently the ground investigation report was included as an appendix to the E.S. appendix 8. This report clearly demonstrates that made ground at present and that water levels within monitoring bore holes mimic a dampened type of response. At any point between initial submission of the E.S. and determination was the department requested by the Planning and Environment Department to undertake any further ground investigation to clarify either the nature of the made ground or the hydrological connectivity with the marine environment?

The Connétable of St. Brelade:

This was not necessary. The department, as applicant, had the available information with regard to the nature of the made ground and the initial ground investigation had indicated that further ground investigation works would be necessary.

The Connétable of St. Peter:

Basically the Department has concluded that the use of the borehole mimics the same sort of connectivity to the marine environment with the significantly increased water volumes during the construction phase?

The Connétable of St. Brelade:

As I have indicated, the department had the available information so it was not felt necessary to duplicate it.

The Connétable of St. Peter:

This really comes back to the previous comments of the previous Chief Officer of T.T.S. a moment ago that there was not believed to be any by visual reference to what was coming in, in that fill.

The Connétable of St. Brelade:

That is correct.

The Deputy of St. Mary:

Could I just read out the last paragraph in section 1 of appendix 7? It is the one about the ground condition survey. This review is limited to the information listed in section 7 references: "Many of the risks identified relate to ground conditions. To be able to quantify and categorise these risks, further site ground investigation is required." What further investigation was carried out?

The Connétable of St. Brelade:

The contamination assessment would require the site location map with a grid reference site plan for the current plan and proposed plan, past users of the site, historic mapping and local history collection, soils and geology, controlled waters, location quality, ground water vulnerability, underground services on or near the site, pollution incidence, location of former landfills, review of the previous site reports and, of course, the need to contact with regulatory bodies.

Mr. W. Gardiner:

In section 4.5 of the E.S. of that same document you are referring to sets out a number of additional activities that would be necessary to identify and understand and then mitigate those risks.

The Deputy of St. Mary:

Sorry, that would be necessary or that were carried out?

Mr. W. Gardiner:

That would be necessary and were carried out.

The Deputy of St. Mary:

Section 4.5 in the appendix 8.

Mr. R. McInnes:

Just for clarity again, when the E.S. was submitted obviously its initiative process was a 2-way process between yourselves and Planning and Environment to move this forward. When the E.S. was submitted with the accompanying appendix 8 on ground investigations, did the department come back for any further investigations to be done?

Mr. W. Gardiner:

The answer is no, but it was understood, in relation to that appendix, that further investigations would be done and those were set out.

Mr. R. McInnes:

Those were set out?

Mr. W. Gardiner:

In section 4.5.

The Deputy of St. Mary:

On the last bullet of 4.5: "If there is no evidence of control of the materials placed in the fill, there may also be a need for contamination testing the fill" is it fair to say or can you confirm that because you thought there was evidence of controlled materials placed in the fill, there was not a need for contamination testing of the fill?

Mr. W. Gardiner:

Correct.

The Connétable of St. Brelade:

Is that the position?

Mr. J. Weatherby:

That is not quite right. In the second site investigation report carried out in June/July, there was contamination testing.

The Connétable of St. Brelade:

June/July of ...?

Mr. J. Weatherby:

2007.

The Deputy of St. Mary:

There was some contamination testing? Did the results of that make their way into the E.S.?

Mr. R. McInnes:

Which report was that?

Mr. W. Gardiner:

The Geo-technics report.

The Deputy of St. Mary:

So, this research was done after the E.S. went to the regulator?

Mr. W. Gardiner:

Correct. The initial ground investigation report was submitted with the Environmental Statement. It was made clear what further investigations would be necessary and those investigations were subsequently carried out.

Mr. J. Weatherby:

I think we will just come back to why we did it this way so it is clear. The approach we identified and I think we have discussed quite a lot already was this was inert fill with some potential areas that we were not sure where they were. I am sure you know that a large area of land and there is a hot spot in there, you cannot guarantee you are going to find it so the approach taken was a sequential one that we would say this is the position. We identified it at an early stage that there was some risk that if we just allowed a contractor to dig up the land without any controls in place that we could not guarantee that it was inert so we had to do more than that. Therefore, throughout the whole process the process was not to say we know we can identify that there is no contamination because we were pretty confident that we could not do that. We, therefore, had to impose controls on the contractor so on the basis if there eventually was contamination and that, therefore, that would be a controlled process throughout the construction stage, which is exactly what has happened. So, we did some contamination testing just to confirm were we about right that it was very limited and the site investigation confirmed that, but even then obviously when you do contamination testing all you do is drill a number of boreholes or dig some trial pits. Clearly if you have got a hot spot 2 metres away from where you have dug you will not find it so that still is not good enough, so the basic protection here is to impose a controlled construction phase which is exactly what has been done. Throughout the excavation the contractor has been very good and very clear about contamination issues and that has been a complete control process so there is no potential for the contractor to be just allowed to dig up the soil and put it close to Ramsar and then allow things to run into Ramsar. That has been the approach all the way through and it is the only approach we could recommend because however much testing we did at any stage, we can never guarantee that just a little bit away from where we did the testing there could not be some small amount of contamination.

The Connétable of St. Peter:

Okay, Will? Are you happy with that?

Mr. W. Gardiner:

Yes, happy with that.

The Connétable of St. Peter:

Right, moving on. Would it be fair to consider that the ground investigations undertaken as part of the E.I.A. process as representing a stage 1 contaminated land assessment?

The Connétable of St. Brelade:

Just to repeat what I said earlier on really, the stage 1 contamination assessment would require the following, as I previously indicated: a site location map with reference site plan, current and past uses of the site, soils and geology, controlled

waters, underground services, pollution incidence, review of previous site reports and identify the contact with regulatory bodies. Whilst this information was all considered as part of the ground investigation, it is not the department's understanding that the preliminary ground investigation was considered a stage 1 contaminated land assessment by the Environment Department.

The Connétable of St. Peter:

Sorry, can I stop you? Did you say it was not considered?

The Connétable of St. Brelade:

We did not consider it was.

The Connétable of St. Peter:

You did not consider it was a stage 1?

The Connétable of St. Brelade:

Correct. The site was filled by inert waste and the definition in previous regulatory regimes included asbestos sheet. It was, therefore, not classified as contaminated land.

The Connétable of St. Peter:

The difficulty I have with that is that certainly there was a statement that came from an officer at P. and E. (Planning and Environment) that it was effectively a stage 1 contaminated land condition. That is different to what you are saying at the moment.

Mr. W. Gardiner:

Effectively it carried out the same level of analysis, but it was not a formal stage 1 contaminated land assessment process.

The Connétable of St. Peter:

Thank you for clarifying that for me, Will. Any other questions? No. Did the ground condition assessment as presented within the E.S. provide sufficient information in order to complete a risk assessment on the sources, pathways, receptors and to recommend appropriate mitigation measurements?

The Connétable of St. Brelade:

The ground condition assessment assessed the prevailing on-site ground conditions and identified the further information that may be required for subsequent assessment. It did not attempt to identify sources, pathways, receptors as would be required in a contaminated land assessment as this was not relevant to this area of land and had not been indicated as a requirement by the Minister for Planning and Environment. The ground condition assessment identified the following additional studies as necessary: cable percussion boreholes to permit sampling, laboratory testing and *in situ* testing in the fill and proven rock to provide properties for the floor foundations and excavation, the extension of a number of the borings using rotary coring methods to obtain detailed information as to the nature of rock particularly close to the rock head, trial pits to provide additional information regarding the nature of the fill, ground water monitoring, *in situ* testing for pavement design, and if there is no evidence of control of the materials placed in the fill, there may also be a need for contamination testing of the fill. These were addressed through subsequent ground investigations

undertaken on the site. The majority were undertaken before approval of reserve matters.

The Deputy of St. John:

We move on now to the process and the questions will be put by the Constable of St. Saviour.

The Connétable of St. Saviour:

Part of the way through the E.I.A. process the Policy Manager from the Planning and Environment Department went on maternity leave. Who became your point of contact within the Planning and Environment Department at this point?

Mr. W. Gardiner:

The interim Policy Manager was in place for the period up until the outline submission was made in the process but the precise dates we do not know.

The Connétable of St. Saviour:

In the experience of the Project Director and Lead Consultant, in both a U.K. and Jersey context, would it be considered necessary to assess the potential effects of the proposed Energy from Waste plant on a site designated as being important for nature conservation?

The Connétable of St. Brelade:

Yes, it is important to consider the impact on a site designated as being important for nature conservation, in this case the Ramsar site. This was considered and the proposed development was designed to avoid impact on the Ramsar precisely because of its importance. The proposals put forward for controlling the impact both during construction and operation were considered by the Environment Department and accepted as sufficient to allow further investigation to be scoped out of the Environmental Impact Assessment. The primary protection is avoidance of impact on the marine environment. During the construction phase, a high level of importance has been placed on avoiding impacting on environment. This requirement has been passed on to the contractor and is monitored on a daily basis.

The Deputy of St. John:

Could I come in on that one, please? The consultation done through this on the hazard assessment, et cetera, I see you have all the utility companies, et cetera, petrol, water, et cetera, over and above, and the Water Enterprise Board and a workshop was held with emergency services, harbours, et cetera, et cetera. Could you explain why, within any workshop or any consultation, Save Our Shoreline was not included?

Mr. W. Gardiner:

Our approach on consultation was to consult with those bodies which were identified to us by the Environment Department. Save our Shoreline was not one identified to us by the Environment Department. Our understanding is that that group was not active up and to the point of immediate consideration of the reserve matters in September 2008.

Mr. R. McInnes:

Can I just come back to the question about whether this was a designated site for nature conservation? It has been raised already this morning that as the lead consultant you have talked to your colleagues and they said: "You look like a 2-headed monster to even talk about the impact on a Ramsar site."

Mr. W. Gardiner:

That is not correct. What was said it was not appropriate to consult the Ramsar Directorate in Switzerland.

Mr. R. McInnes:

Sorry, I stand corrected, yes. But you said that a similar approach within the U.K. you have taken that you have looked at the impact and you have assessed that there is an impact. You then have not taken it any further in terms of assessing that because you have effectively scoped that impact out. In terms of both operation and construction, to clarify that, for other Energy from Waste plants that you have been involved in, bearing in mind that an impact assessment can show positive as well as negative impacts and quite often that gets confused and lost in the process, for other schemes that you have been involved in, do you feel that the assessment of both positive and negative impacts within this E.S. has been as robust?

Mr. W. Gardiner:

Yes.

Mr. R. McInnes:

Yes. And you think it has used ... again the words from the Environmental Impact Order, it has shown demonstrable techniques of how you would assess that?

Mr. W. Gardiner:

Yes.

Mr. R. McInnes:

For both construction and operation impacts?

Mr. W. Gardiner:

Yes.

Mr. R. McInnes:

Can you point to where they are in the E.S.?

Mr. W. Gardiner:

Not at this moment, no. They are throughout the document.

Mr. R. McInnes:

The demonstrable techniques in terms of ... indulge me. This is the baseline. Let us say air quality over the Ramsar site currently. This is what it is going to be.

Mr. W. Gardiner:

Yes. Volume 3 of the E.S. has numerous maps and drawings which were publicised to States Members and at all public events which we have held - numerous public

events - which show the baseline, the current air quality from Bellozanne and the impact of the new plant based on modelling.

Mr. R. McInnes:

Showing a positive impact?

Mr. W. Gardiner:

Showing a positive impact.

Mr. R. McInnes:

Right.

Mr. J. Weatherby:

I mean over the past 3 or 4 years we have probably supported planning consultants on 10 similar applications. Our approach has been almost identical. Obviously not completely identical because you have to look at the specifics of any case but the basic approach, particularly on things like dispersion, is entirely similar. The approach from the beginning was let us mirror what is done in the U.K. as best practice.

Mr. R. McInnes:

Yes. So, under the chapter on biodiversity, why did it not say necessarily to put an assessment of the positive impacts on biodiversity within that chapter?

Mr. W. Gardiner:

I think it is to do with the scope. Any environmental statement has to set out significant impacts and it has to be proportionate. In relation to if you were to talk about air quality impact on the flora and fauna in the Ramsar site, for example, the level of improvement probably is not majorly significant mainly because of the flushing of the tidal range in Jersey. Obviously we could write for ever in terms of Environmental Statement; you can see before you the Environmental Statement is very significant. We cannot include everything.

Mr. R. McInnes:

Volume should not be an issue. You can include everything as a process and ...

Mr. J. Weatherby:

I mean I agree totally. I managed this process. I was not the person who put together the Environmental ... I just remember several discussions about do not always be negative, just do not always take negative impacts all the time. It is just a feature of any planning application at the moment that people always consider the negative as the key thing because that is basically what you are trying to convince people, that the negatives are not bad enough to disallow the planning. I agree with you, people underestimate the benefits and often do not really put them in on the basis that it will make a lot of difference in the planning consideration. I think you are right. It probably should be stressed more. We apologise if we did not make more stress of the benefits because they are absolutely substantial. A lot of the things we did we did not necessarily put in the Environmental Statement. We had a supporting statement as well where we put in a number of benefits. I think if you are not careful sometimes if you try and oversell the benefits ... not necessarily oversell. If you state benefits,

people think it is ... they criticise you for the fact that you are glossing over everything and just saying how great everything is. It is a very difficult judgment. As I am sure you are aware, because I think you have looked at a lot of these, it is an absolute tendency for the experts doing the work to just consider the negatives and show that it has been dealt with and that the negatives are not substantial and to underplay the positives. Apologies if we have done that.

The Deputy of St. Mary:

Can I ask the question then about the positive impacts? I am quite puzzled that these are a sort of major element and quite happy for you to sing the praises just to get a balanced picture. But what would be the positive impacts of a new incinerator?

Mr. J. Weatherby:

I mean the 2 obvious benefits on Jersey is that you have an old incinerator. The new one will be far, far better. It will comply with all current E.U. (European Union) legislation and it will be much more energy efficient. Because of the way the old incinerator was built, it does not recover as much energy as the new one will by quite a long way.

The Connétable of St. Brelade:

Is it your wish to re-run the incinerator debate?

The Deputy of St. Mary:

No, I was just wondering where that would fit in in terms of the E.S.

Mr. J. Weatherby:

In the E.S. we do not consider it because if you look at the dispersion model in contours, what we have tried to show is the contours from the old incinerator are compared with what the new ones are. When you look at them, even allowing for the different location, the new contours of dispersion will be lower than the old one. The worst position if you sort of understand the ...

The Deputy of St. Mary:

Will be lower where?

Mr. J. Weatherby:

The worst position, so if you compare some of the emissions and where the peak for the new plant will be, it will be lower than the corresponding emission from the old plant, which is quite remarkable because the locations are quite significantly different. Without any doubt, our dispersion modelling in the whole of the quality section, the new plant will be a substantial improvement in the air quality.

The Deputy of St. Mary:

Generally it might be but are you saying that the 2 worst positions are the same?

Mr. J. Weatherby:

No.

The Deputy of St. Mary:

No, surely not. So the 2 worst positions ...

Mr. J. Weatherby:

If you take the worst position of the new plant and compare it with in the same position what the impact of the old plant is, the peak of the new plant is lower for many pollutants. If the peak of the new plant is lower than ... at the same point the contribution at the old plant. If you compare the 2 peaks, there is obviously a much more significant improvement in the new plant.

Mr. W. Gardiner:

Suffice to say there is a radical, massive improvement in air quality. There are also a large number of smaller improvements which we probably do not want to go through today but varying from recycling to control of waste coming in to control of process. There are an enormous number of improvements from the Energy from Waste facility.

Mr. R. McInnes:

Yes. I think sort of leading on from that, in terms of the potential construction impacts, which you very clearly state the intention was clearly to mitigate, to reduce, the question of 100 per cent. You can never reduce to 100 per cent and I acknowledge that. You can put in the best practices possible. That was then obviously passed over into the reserve matters issues as a Construction Environmental Management Plan. So that document becomes very important if you are going to hold the position that you stated was your intention. Would you agree?

Mr. W. Gardiner:

Absolutely.

Mr. R. McInnes:

Therefore, the content, the management and the implementation of that Construction Environmental Management Plan is absolutely seminal to upholding the position of minimising the impacts. Would you agree with that?

Mr. W. Gardiner:

In addition to requirements set out in the Environment Statement and requirements of that in our contract with the subsequent contractor, yes.

Mr. R. McInnes:

Okay. We have been trying for a while to get a copy of the Construction Environmental Management Plan.

Mr. W. Gardiner:

That was provided to you on disc at our meeting when you met with me in June.

Mr. R. McInnes:

That is the revision 6 document produced by Babbie Fichtner as part of the reserve matter submission?

Mr. W. Gardiner:

Correct.

Mr. R. McInnes:

Right. That document, if I can quote from it, says that one of the key things is monitoring and reporting as would be in any environmental management system.

Mr. W. Gardiner:

Correct.

Mr. R. McInnes:

And that there would be review environmental performance, there would be meetings held, record keeping, reporting.

Mr. W. Gardiner:

Correct.

Mr. R. McInnes:

And it is a live and dynamic document. It is not a static document. Would you agree?

Mr. W. Gardiner:

It has to be updated as changes occur on site, yes.

Mr. R. McInnes:

Yes. So the document submitted as a reserve matters submission cannot be seen purely as a Construction Environmental Management Plan because it is not a live document.

Mr. W. Gardiner:

Correct. What the Construction Environmental Management Plan does is it sets out the requirements for the contractor to follow on site. The contractor then has to introduce his own environmental action plan and management arrangement to implement that on site, in addition to the contractual requirements that we have and the requirements set out in the Environmental Statement.

Mr. R. McInnes:

Right. Who is responsible to ensure that that happens, that the contractor designs and implements that system?

Mr. W. Gardiner:

Ultimately it is the department's responsibility. We discharge that responsibility through a project manager on site.

Mr. R. McInnes:

Right, okay. We requested the information that is in that live document which gets updated, that reporting. A document was provided I think it was yesterday morning which shows 2 record forms. It shows a pro forma for recording incidents. Is that the full sweep of incidents that have occurred?

Mr. W. Gardiner:

No, there are other incidents which are subject to investigation by the Environment and Pollution Regulator which we have not provided because they are provided under caution to the Regulator.

Mr. R. McInnes:

Right. So the 2 that we are provided with, which I think one was a fuel leak and one was a hydraulic hose going, relatively minor, quite easy to mitigate for following normal practice. You are saying there are other incidents that we do not have the records of because of ongoing legal issues?

Mr. W. Gardiner:

Yes.

The Deputy of St. John:

How many, please?

Mr. W. Gardiner:

The records provided to me by the contractor, there were 2 others referred to in those records.

Mr. R. McInnes:

So you are saying the sum total of incidents that have been recorded within the C.E.M.P. (Construction Environmental Management Plan) since construction started are 4?

Mr. W. Gardiner:

What has been provided to me by the contractor, there were 4 in total, 2 of which have been provided to you and 2 of which ...

Mr. R. McInnes:

And 2 which are pending.

The Deputy of St. John:

Does that include the tearing of the liner in February?

Mr. W. Gardiner:

It does not.

The Deputy of St. John:

So is that under investigation currently?

Mr. W. Gardiner:

My understanding for that is that the Environment Regulator is satisfied with the response that we have given in relation to the management of that and subsequent remediation of that ash pit breach.

The Deputy of St. John:

Therefore, have you supplied us those documents?

Mr. W. Gardiner:

We provided you with documentation up to the point of a method statement being produced for the remediation. We can provide you, if requested, with the method statement for remediation and subsequent documents, if you wish.

The Deputy of St. John:

All right. And the findings of the investigation if that is as far as it has got, I would have thought we would have had them forwarded by now if it has been dealt with. Connétable?

The Connétable of St. Peter:

Yes. No, sorry, I was going to ... you have oversight there, Rob, with that one. Do you want to carry on with that?

Mr. R. McInnes:

Yes, I did not want to get into the detail of mentioning the ash pit because I was not sure whether that was one of the incidents under investigation, but if I am free to mention it as the Chair has raised it as well, I do not quite understand why we were not sent one of these reporting forms for that incident. That is an environmental incident that involved not just the regulator in mitigation. It was an environmental incident that should have been reported. Why was that not within the suite of reports submitted?

Mr. W. Gardiner:

I do not have the answer for that. We would need to check with the contractor as to why it was not ... I must apologise for the late provision of that information.

Mr. R. McInnes:

Sorry to interject but you are responsible. I asked who was responsible and you said the department is responsible.

Mr. W. Gardiner:

Ultimately responsible, yes.

Mr. R. McInnes:

So these responses have come through you. Surely you are aware of that incident. I know you are aware because we walked that site together.

Mr. W. Gardiner:

Correct.

Mr. R. McInnes:

Surely you would recognise there is an omission in here in this report, which has been through several alterations in the last few days anyway, that you would be aware that that report was not in here and surely would ask the question as a director of the project why is there not a reporting form on that incident?

Mr. W. Gardiner:

My focus on looking at the information provided by the contractor was to remove information which was subject to environmental investigation, and I did that. You are quite right to point out that there may be a report on that ash pit incident available but I did not challenge that particular matter because I was focussing on ensuring that information which is subject to that investigation was not provided.

Mr. R. McInnes:

But equally you should have been focussing on information to provide to scrutiny so scrutiny can do a thorough job. If that ash pit, which is quite a major incident that received quite a lot of coverage, if that is not in here ...

Mr. W. Gardiner:

It was not a major incident.

Mr. R. McInnes:

Okay. It was an incident that received coverage. How do we know that this whole suite of other environmental incidents if that one is missing ...

Mr. J. Rogers:

Can I interject here, please? The mitigation and the remediation of the ash pit was not undertaken by the contractor. It was undertaken by ourselves, T.T.S. We took that on board because we understood the construction and the mitigation in place. So the overall environmental impact of that and the solution of that was not just from the Energy from Waste contractor, information we have available and we can forward that to you.

Mr. R. McInnes:

I think the issue here is not one of the nature and magnitude of that incident and how it was dealt with. It is one about reporting and about implementing a reserve matters commitment Construction Environmental Management Plan, given that the C.E.M.P. is predicated on protecting the environment. So if the records are not being kept and if the process is not transparent and clear between the contractor and yourselves as the department responsible and from the records we have received ...

Mr. W. Gardiner:

From the records you have received it was perfectly clear because we set out to you what happened in relation to that incident. What happened was the subcontractor on the site in digging a cable trench hit the ash pit. The regulator was immediately informed. We were immediately informed by the contractor who had informed our project manager who informed us immediately. We then informed the regulator immediately. Subsequent to that, the regulator was involved at every stage in ensuring that the safety of that incident and environmental risk was managed throughout the process. So if your point is, was a form filled out in relation to the Construction Environmental Management Plan requirements and that has been omitted, then I would suggest that (a) the level of risk from the incident involved was very small; (b) that the management of that incident was correctly done in accordance with the Construction Environmental Management Plan; and (c) we have provided those records to you already.

Mr. R. McInnes:

The Construction Environmental Management Plan, just from my experience elsewhere, is as you say a live and dynamic document which has regular records, with up-keeping every week, routine meetings that ensures both from a contractor's point of view and as a responsible client's point of view that the project is proceeding correctly, especially given the importance of mitigating potential impacts on marine environment. We can only go on the information that we have been provided.

Mr. W. Gardiner:

You were provided with information on that.

Mr. R. McInnes:

But we requested information from the Construction Environmental Management Plan. Not on how other incidents have been dealt with subsequently and the correspondence to deal with that, the actual live document which reports and documents all environmental impacts or environmental incidents on the site.

Mr. W. Gardiner:

Surely it is important to the Scrutiny Panel as to how the incident was managed and whether the environmental risk was mitigated. If a form has not been completed, and I cannot confirm that today the form was not completed adequately, then that is an omission from the contractor. But given the fact that the regulator was immediately involved, we were immediately involved, the project manager was immediately involved, the level of safeguard as we have documented to you was significant and was in conformity with the Construction Environmental Management Plan. Surely that is the point.

The Connétable of St. Peter:

I think from my point of view, speaking on behalf of the Scrutiny Panel, our concern is that there appears to be or there could be a lack of process in dealing with incidents down there. That is our concern, process. We are delighted to hear that the department managed the incident with the ash pit and brought that to a successful conclusion, but the fact that there is no detail of that ever occurring within the suite of documents you have given us and the fact there are only 2 others shown coming via a particular company. Now we know there are a number of other subcontractors. Do they feed in their incidents through the main contractor or not? We do not know the answer to that. So are there then, from the Scrutiny Panel's point of view, more incidents which are remaining either unreported or that are not being fed through to you in the final case so, therefore, they are not coming through to us? Our concern from a Scrutiny Panel is a matter of process.

Mr. W. Gardiner:

Sure.

The Connétable of St. Peter:

Is there a robust process down there that ensures that every incident, no matter whether it is a subcontractor, a sub-subcontractor or the main contractor, feeds up through a central conduit and ends up on your desk?

Mr. W. Gardiner:

The information provided to you ... admittedly belatedly and I must apologise, the contractor did not provide that to me in a timely fashion to enable consideration in detail, but that information did include a weekly record undertaken by a subcontractor, a health and safety and environmental specialist with experience on the Island who do weekly monitoring on the site which is external quality assured. Those records have been provided to you. That should give you a level of comfort about the procedures being operated by the contractor on site and also the environmental

matters that we have discussed already. The ash pit incident should give you comfort that there are robust procedures both within the contractor, within our project management and within our reporting procedures to the Environment Regulator.

The Connétable of St. Peter:

We accept all that and thank you very much for that. But I come back to the fact from our point of view, looking at the information we have got there, there does not appear to be a seamless process.

Mr. W. Gardiner:

I agree that in relation to the ash pit incident there may be an omission of provision of a document.

Mr. J. Richardson:

Can I just clarify? Are you saying that you have not received documentation covering the ash pit management or are you saying that the information you received does not necessarily comply with the detail of the Construction Environmental Management Plan? I am slightly at a loss as to what you are saying here.

The Deputy of St. John:

This was documentation that we requested.

Mr. R. McInnes:

I think what we are saying is that the Construction Environmental Management Plan should be this live, dynamic document that gets updated. An incident occurs; there should be a report of it. That should go in there. We have this pro forma which I assume - because that is all I can assume - that that is the sort of pro forma that gets filled in and logs an incident. So any environmental incident should be logged in. That is part of this live, dynamic element of the Construction Environmental Management Plan which has grown out of the reserve matter submission which set the scope and range for that. What we are saying is we are looking to have the confidence that that reporting process is rigorous enough to pick up incidents. Therefore, to fulfil your obligations which are clearly stated, which was to minimise impact on the Ramsar site, given the documentation we have received to date in relation to that reporting process, we have 2 forms which report 2 relatively minor incidents which were dealt with appropriately, which is fine. We know there are other incidents which I would expect to have received similar documentation. If this is the key reporting process within that live and dynamic document, we would expect to see those.

Mr. W. Gardiner:

Two things on that. One is that the reporting process on that particular ash pit incident has been explained to you and it has been documented to you. So whether it has been documented in accordance with that particular form, it has been documented and it has been documented in accordance with the reserve matters requirement. So you should be satisfied that that is the case in that particular incident. There may well be a form which the contractor holds in relation to that particular incident as well of that particular type that they may not have submitted because they may have considered it to be still under investigation by the regulator.

Mr. R. McInnes:

And by conjecture, there might be others.

Mr. W. Gardiner:

There might be but if there are, if they are subject to an investigation by the regulator then it is not appropriate for those to be provided ...

Mr. R. McInnes:

But correct me if I am wrong, the ash pit incident is not the subject of the investigation at the moment?

Mr. W. Gardiner:

The ash pit incident in relation to outcome for the regulator, there is a requirement for us to demonstrate to the regulator that subsequent works relating to the ash pit were adequately dealt with moving forward. We have not completed that completely in relation to satisfying the regulator on that but in terms of documenting the information, we have prepared that information. That has not fully been completed.

Mr. R. McInnes:

Okay.

Mr. J. Rogers:

My understanding is the regulator basically took a tranche of information from the contractor and from ourselves between 2 dates so that might be where some of the confusion is coming from because that may have related to other issues and incidents which you have not been party to.

The Deputy of St. John:

Have you got an incident book - if it is kept on electronic file or whatever - of all the incidents because we have identified one that has not been given to us? You mentioned there are 4 in total. How often is that inspected?

Mr. W. Gardiner:

We do not hold an incident log book because that would replicate what is held by the contractor. There is a site diary held by the project manager for us which would detail those incidents. We also prepare summaries for the Minister in relation to incidents.

The Deputy of St. John:

Could we have a copy of the site diary held by the project manager which would show all these incidents so that we can satisfy ourselves that in fact the information is 100 per cent; that there have been 4 incidents reported plus the one we know about?

Mr. W. Gardiner:

Apart from those under investigation that would be appropriate, yes.

The Deputy of St. John:

I am not saying under investigation, whether they are or not. It would be a line that there is an investigation going against a particular incident but I would like to see a copy of that diary where this diary states whatever action is being taken.

Mr. W. Gardiner:

Okay.

The Deputy of St. John:

Whether it is being investigated by somebody at the time and we cannot get the paperwork, that is fine. We just need the overall ... to know that this exists.

Mr. W. Gardiner:

That would be a reasonable request for those which are not subject to investigation at the moment.

The Deputy of St. John:

But even if they are subject to investigation, there would just be an investigation note against it. So we would not necessarily receive the paperwork involved.

Mr. J. Weatherby:

Can I maybe just explain the process slightly? What we have is we have a full-time site supervisor who is on site who keeps a regular site diary of whatever happens on site. That might be this many loads of concrete arrived today. If there is any environmental issue or concern, he would note that. It may be a health and safety issue. His diary is handwritten, very long and it is basically something we insist on to keep a set of records.

Mr. R. McInnes:

Is that the contractor or is that the project manager, yourself ...

Mr. J. Weatherby:

No, that is our site supervisor. We have a separate project manager who is not based on site. He is based in Stockport because ...

The Deputy of St. John:

I would expect the project manager to have all that information.

Mr. J. Weatherby:

Yes, he does.

The Deputy of St. John:

That is ... what is his name ...

Mr. R. McInnes:

And that information gets passed through to T.T.S., yes?

Mr. W. Gardiner:

If it is a significant incident, yes.

Mr. J. Weatherby:

The site supervisor will have a daily meeting with the people on site to discuss what is happening. He has regular meetings with their environmental people and health and safety people. There is a monthly progress meeting at which things like environmental concerns or what is happening environmentally and health and safety

are absolutely key and prominent. Then the rest of it is about is the plant being built correctly. It is a long meeting with lots and lots of issues. As you can imagine it is a very big project. There is an enormous amount of information. If there is an environmental issue at all then it should go through a more formal reporting process. I think there is something. What I am not clear here is what ... as you can imagine, everything that is a serious environmental issue has to go to the regulator. Our approach is always to discuss things with the regulator. I am sorry, I just do not understand practically how scrutiny fits in.

The Deputy of St. John:

The project manager has overall responsibility, correct? I believe you said he was off Island.

Mr. J. Weatherby:

Our project manager - the Fichtner project manager - is responsible for managing the contract, therefore, sometimes he is Germany, sometimes he is in France, sometimes he is in the U.K.

Mr. W. Gardiner:

Let us be clear. The project manager ...

The Deputy of St. John:

Who is on site 24/7?

Mr. W. Gardiner:

The project manager keeps a representative on site at all times.

The Deputy of St. John:

There is someone on site 24/7?

Mr. W. Gardiner:

Not 24/7. While the site is operational.

The Deputy of St. John:

While the site is operational, right. Mr. Richardson, you want to say something?

Mr. J. Richardson:

The conversation is going to become ... not is going to become. It has become very confused. I am concerned that in terms of a transcript and a public record, this last 5 minutes of discussion sounds awful. I have been sitting back listening to it. It is dreadful. I think we should backtrack and we should clarify exactly where we are in terms of who does what and what responsibilities are. What I would ask is for John Weatherby to describe the process of site management from our side, as the client with our consultant, and site management from the contractor's side and the liaison that takes place. That should be the matter of public record. If the Scrutiny Panel then wants to ask for specific information around that discussion, I think that is appropriate.

The Deputy of St. John:

I will respond to that, Mr. Richardson. You have seen our terms of reference and the Scrutiny Panel can go anywhere within those terms of reference. Your officers are here to answer questions from the Scrutiny Panel. I accept what you are saying. You do not like the last 5 minutes. As far as I am concerned, we will control this meeting. It will not be the officers or the Assistant Chief Officer of the States to try and control this meeting. The meeting is controlled from here.

Mr. J. Richardson:

Chairman, I am not suggesting that I am trying to control the meeting. I am making an observation about the confusion that has been expressed in the last 5 minutes.

The Deputy of St. John:

I understand what you are saying.

Mr. J. Richardson:

I want to ensure that for the record we have clarity. I am suggesting that we should go back and we should just restate the relative positions of the different parties.

The Deputy of St. John:

Constable?

The Connétable of St. Peter:

I think what I would like to do is more or less go down the lines you are suggesting, John, but go back to where I came in that it was about process. From my point of view, there does not seem to be a process. For example, within the contract did T.T.S. ever specify that there should be a robust reporting conduit which came back with all the environmental and health and safety issues and ended up on a desk and, if so, which desk that is? Picking up another comment you made in one of the answers subsequent to that ... no, sorry, it was John that made that comment. If they are considered to be significant in that they are passed to the regulator, who makes that judgment? Or should they not all go and let the regulator make the judgment? My thing is about process. Was a process ever put in place to report environmental incidents specifically that came all the way through to the T.T.S. desk and wherever, in my view, all the way back to environment to make the judgment on whether it was investigable or not?

Mr. W. Gardiner:

I think that is the key point and it is a helpful summary. To answer that, the contract between T.T.S., as the purchaser, the applicant, and the contractor sets out requirements in relation to schedule 4 - which has been provided to you - of the contract; sets out health and safety and environmental reporting requirements. Those refer to and supplement and replicate the requirements set out in the planning consents. So that is seamless between the approval of the planning consent and the contract. The project manager - and we are saying there it is a number of people who are the consultant appointed to project manage the contract on behalf of the department, which is Fichtner - then follows and ensures that that documentation trail is delivered by the contractor and reports back to the client on a weekly basis as to whether that is being followed adequately. The contractor is required to follow schedule 4 and keep various records on site, some of which have been provided to you, and is monitored by the project manager on site in doing so. As John Weatherby

has set out, from the bottom up, if there is an incident on site, the contractor is required to report it in the pro formas which have been provided to you which reflects the requirements of the planning consent.

The Deputy of St. John:

To whom?

Mr. W. Gardiner:

They are required to report it to whichever party is relevant. For example, if there is an immediate risk to the environment, they should inform the regulator. That is a requirement of the law. They would be required to do that under the law. They should also report any incident, small or large, to the project manager. It is then for the project manager to determine whether we need to be informed as a client if it is a significant incident. The process that we have agreed between the project manager and ourselves is that we would jointly inform the regulator. That process has been followed. For example, in the ash pit incident, the contractor and our representative on site observed that a potential pollution incident had occurred and immediately informed us. We were on site within minutes. We informed the regulator within minutes. The regulator was on site within an hour of that pollution incident occurring. That is an example of that process being followed on site.

The Connétable of St. Peter:

I understand and thank you for that. However, I still remain perturbed because at the eleventh hour we have had 2 incidents produced. If there is a process which enforces that all incidents are reported then we should not have got these 2 incidents at the eleventh hour which go back to June.

Mr. W. Gardiner:

Correct.

The Connétable of St. Peter:

So if there is a process perhaps someone needs to look at the process and make sure it is being done properly because the evidence at the moment suggests that it is not. Do you understand my concern now?

Mr. W. Gardiner:

I do, but in relation to the pollution incident that was referred to as being an example of the exclusion, we have demonstrated that that process was followed correctly.

The Connétable of St. Peter:

Absolutely. But the doubt that we have got ... I applaud the way that everything was done with regard to the ash pit incident and the way it was concluded. But there is potential for other incidents which have happened, maybe not in the same scale but they are not recorded and not reported through the process.

Mr. W. Gardiner:

Right. The evidence has been provided to you in relation to the ash pit, as we discussed.

The Connétable of St. Peter:

Absolutely. Can we close that one off?

The Connétable of St. Brelade:

I think, Chairman, if I may just come in on this. I mean these few incidents ... I am fully aware of all serious incidents that occur down there. I am quite happy to share them with scrutiny. There may be the need to develop a better process to do that. I have no difficulty in ensuring that takes place.

The Deputy of St. John:

Thank you, Minister, thank you.

The Deputy of St. Mary:

Can I take a slightly different tack in the same area? Just briefly, why were Babtie Fichtner chosen as the consultants to project manage? It is £6.85 million. Why was that decision taken and how was it taken they were to be the project managers?

Mr. J. Richardson:

I will answer that. I am going to have to take you back a bit in history, I am afraid, because the process it takes that we get to that stage. In 1999, a decision was taken that we should undertake a solid waste strategy review in order to determine the right solution for the current Bellozanne incinerator. That review was undertaken by a set of consultants following a competitive tender and evaluation with politicians sitting on the evaluation panel. Those consultants reported in April 2000. That report was subsequently presented to the joint Policy and Resources and Finance and Economics Committee. They then requested that a technical appraisal be undertaken of the condition of the existing Bellozanne plant and a further review undertaken by independent consultants of the first ones, as to the recommendations that were contained in the draft waste strategy. At that time a second round of competitive interviews were held from the submissions from several consultants. At that stage Babtie Fichtner were appointed as the consultants to undertake the technical appraisal of Bellozanne and the appraisal of the draft waste strategy. The reason for their appointment was because Fichtner were lead experts in Energy from Waste plants and could do the technical evaluation of the Bellozanne incinerator and Babtie had extensive experience in waste management. A combination of that consortium of 2 consultants was deemed at the time to be the best appointment. They undertook that review and as a result of that they produced the waste strategy which was subsequently approved by the States in 2005. I cannot remember the exact date but at some stage just around that point a question was raised by a States Member as to whether or not it was appropriate for the consultants that undertook the solid waste strategy to continue to deliver the final outcome of the project. There could, in some eyes, have been thought to have been a conflict of interest. In order to avoid any potential conflict of interest, consultants were then asked to resubmit and were subject to full re-evaluation on a competitive basis. The then Chair of the Public Accounts Committee acted as independent scrutineer of that interview process. That interview process unanimously reappointed with that Chair's confirmation that Babtie Fichtner were the best people to continue with that process. That is how they were then reappointed to undertake the work post implementation or post approval of the solid waste strategy which then led through to all of the site evaluation debate that took place in 2006 and then subsequent preparation of the Environmental Statement, et cetera.

The Deputy of St. Mary:

Thank you.

Mr. R. McInnes:

I still want to come back to this Construction Environmental Management Plan. I apologise. In the documentation that was sent through to the scrutiny office yesterday which, Mr. Gardiner, you admit you have checked it so I can refer to the pages in here without any concerns of being prejudicial towards any legal arrangements. There are records of tankered water going off the site and subsequent chemical analysis of that.

Mr. W. Gardiner:

Yes.

Mr. R. McInnes:

That is the removal of potentially polluted water to have subsequent treatment which is another environmental incident that does not seem to have one of the pro forma reporting forms.

Mr. W. Gardiner:

It is not an environmental incident. It is a process that was undertaken on site to manage the excavation of water.

Mr. R. McInnes:

So having potentially contaminated water in the hole in the ground is not seen as a possible environmental incident?

Mr. W. Gardiner:

No.

Mr. R. McInnes:

Okay. When I look at chapter 6 of the Environmental Management System which you also provided, which I think is subject to some commercial confidentialities ... I do not want to go into great detail.

Mr. W. Gardiner:

Yes.

Mr. R. McInnes:

But it lists a whole range of ... it lists very well - I give it credit - the receptors and sensitivity of those receptors and potential impacts. It does address the whole issue of ground water and ground water contamination under that as something that should be picked up under the Environmental Management System.

Mr. W. Gardiner:

Yes.

Mr. R. McInnes:

Therefore, how can that not be recorded as an environmental incident?

Mr. W. Gardiner:

It is because it is part of the excavation process. Therefore, environmental management and the control of that should have been carried out as part of the excavation. It was always understood that there would be some water in the excavation and that that water would have to be managed by the contractor. Therefore, it is not an incident. It is part of a process. I would define an incident as being something which was unforeseen or was causing damage.

The Deputy of St. Mary:

Can I ask what sort of water that was? What sort of water?

Mr. W. Gardiner:

It is water that is found in the excavation that flows ... it is an inter-tidal site so there is water within the lower levels of the inert waste site.

The Deputy of St. Mary:

I still want you to define exactly what water this is. Is it water that is there because you dug a hole deep enough for there to be water there or is it some other kind of water?

Mr. J. Rogers:

It is similar to digging up part of the beach. You will find what I believe is a combination of surface water and also the sea coming in with a hydrate differential on it into the exclusion ...

The Deputy of St. Mary:

I was going to ask you to explain the sudden appearance of 3 or 4 feet of water across the whole site.

Mr. W. Gardiner:

It is not sudden.

The Deputy of St. Mary:

Like when the tide comes in?

Mr. W. Gardiner:

It was understood that there was a tidal area, yes.

Mr. J. Rogers:

It is an inter-tidal area. It is inevitable that there will be water coming in and seepage through the ...

The Deputy of St. Mary:

And knowing what we also know about the test result, which I know you have cast doubts about, but the fact is there must be a data series which you say you have given to us. But do you not think that that is an environmental incident where sea water is coming in, flooding a site which is being excavated and then going out again?

Mr. W. Gardiner:

No.

The Deputy of St. Mary:

In a site that might be contaminated.

Mr. W. Gardiner:

It is not an environmental incident in the way that we define it.

The Deputy of St. John:

Can we move on, please? We will take the public consultation section next and the questions will be put by the Deputy of St. Mary.

The Deputy of St. Mary:

Yes. I suppose the first question is a wrapping question. Can you explain, can you tell us what the public consultation was before the submission of the Environmental Statement?

The Connétable of St. Brelade:

Prior to the consideration of the statement, public meetings were advertised and held, leaflets distributed to every public office and parish hall and information promoted on the States of Jersey website. There had been a long-term and ongoing process of the department discussing its solid waste strategy at a number of public meetings and throughout other publicity over several years. This meant that the proposed Energy from Waste facility at the La Collette site was known about across the Island and had been subject to substantial public discussion. The proposals were also promoted at other public events, and because of the impact of the hazard impact assessment, required following submission of the outline planning implication, the consultation period was considerable. That was between January and October of 2007. Press coverage was near constant giving ample opportunity for all parties to make their views known on the development. A community liaison group was also established in 2007 which invited local residents and businesses to discuss the proposals and invite speakers they wished to attend to consider the proposals further. In addition, the health impact assessment process - again this was the first to be carried out on the Island - involved an extensive public consultation process.

The Deputy of St. Mary:

Going back to only before the submission of the Environmental Impact Statement, can you tell us what efforts were made to consult specifically with groups that one might consider to be more expert in the various areas that the incinerator might impact on, like environmental groups or Ramsar groups? What specific measures were taken to consult with these groups?

The Connétable of St. Brelade:

It is quite difficult to establish who the groups were, bearing in mind I think particularly some of them had lain dormant for several years. I think we took the current groups as the ones to be consulted and that was clearly done. Subsequently, of course, various groups have come out of the woodwork and it is very difficult to work in retrospect. But it was felt at the time, it is my appreciation of the situation, that sufficient consultation was done with appropriate groups.

The Deputy of St. Mary:

For instance, was any reference made to the membership of the group which designated the offshore reefs?

The Connétable of St. Brelade:

Are you aware of that?

Mr. W. Gardiner:

Yes, presentations were made to the environment forum which is an established group of a number of different organisations established by the Environment Department. Société Jersiaise was also directly consulted and presentations were made to them as ... yes, the environment section of Société Jersiaise. The group that designated the Ramsar site that you are talking about there, as the Minister has already explained, were dormant at the time. We consulted the Environment Department as to who it was appropriate to consult with. As already has been made clear by Mr. Weatherby, it would not have been appropriate to consult the Ramsar Inspectorate themselves.

The Deputy of St. Mary:

No. Can I be clear? Are you saying that the membership of the steering group which was involved in designating the reefs, that list was not looked at or consulted?

Mr. W. Gardiner:

As I say, we took advice from the department directorate. I am not aware of that group being active at the time. In fact, I understand it was not active.

The Deputy of St. Mary:

And none of its members were active either?

Mr. W. Gardiner:

I do not know that.

The Deputy of St. Mary:

Like the Jersey Fishermen's Association.

Mr. W. Gardiner:

I have set out who was consulted and the process in which we consulted. The Minister has explained the process on its own.

The Connétable of St. Brelade:

In practice the Department of Environment has a direct link with the Fisheries and Marine Resources Panel and that has a representation by the Jersey Fishermen's Association on it. I would naturally think there would be a conduit through that panel.

The Deputy of St. Mary:

Chair, could we have a list of the presentations? You said you made a presentation to ... I do not know who "you" is but the department made a presentation to the environment section of the Société and you said there were other presentations. Can we have a list of those presentations?

Mr. W. Gardiner:

Those have been provided to you.

The Deputy of St. Mary:

Those have been provided?

Mr. W. Gardiner:

Correct.

The Deputy of St. Mary:

Right. The second question - you may have answered it - is did the department receive any comments or advice on the public consultation process from the Planning and Environment Department as far as pre submission of the Environmental Statement is concerned?

The Connétable of St. Brelade:

Yes. The draft proposal was discussed with the development control officer concerned who advised that a communications approach would be considered appropriate and that this was once again the first such application to be considered so it is a little difficult to judge.

Mr. R. McInnes:

The States have produced quite a useful environmental Who's Who. I wonder whether that was pointed in the direction of the applicant at any point.

Mr. W. Gardiner:

It was not ... that was part of our discussion when you discussed that with me. I was not aware of that and we were not made aware of it, unfortunately.

Mr. R. McInnes:

Okay.

Mr. J. Rogers:

Can I just point out there were many meetings and weekend meetings where the officers around here and our representatives sat in hotels in Havre des Pas and went through many, many hours of consultation. It is probably the most amount of consultation I have ever seen in my career. I was party to that. It was a very open process and it was open and free for anybody on this Island to come to and it was very heavily publicised.

Mr. R. McInnes:

In terms of the nature of the consultation from the applicant's point of view - from T.T.S.'s point of view - what was the objective of the consultation?

Mr. W. Gardiner:

The objective of the consultation was to inform people about the Environmental Statement, to highlight the areas that were covered in the Environmental Statement, to make people aware that there was an opportunity to comment and to receive comments and feedback from people as to what their concerns were and to try and address those in the process.

Mr. R. McInnes:

If people held maybe information which could be useful - for instance, there might be someone out there who collects, I do not know, wind speed direction in their back garden - in determining impacts, would that sort of request have been made as well?

Mr. W. Gardiner:

Yes. For example, in the consultations that took place at Havre des Pas there were some reports made to us of smuts that had been identified on washing. We asked for those to be provided to us. Then we subsequently identified that that was not the impact of the La Collette infill site at all. It was from another source.

The Connétable of St. Brelade:

I think if I can just comment on that. One of the necessary ingredients for States debate on significant subjects such as this is that consultation does take place and we will feed those States Members making that debate with the right sort of information to enable them to vote in a proper democratic way.

The Deputy of St. John:

Anything else?

The Deputy of St. Mary:

Not on that topic.

The Deputy of St. John:

That completes the questions. If anyone else has a final question, you can put it but we are running out of time and we have our next meeting coming through shortly. Anything else, adviser?

Mr. R. McInnes:

Yes, just really to pick up on that final point about consultation. Consultation is a 2-way process. It is not a one-way process. Quite often it is seen as a one-way process and people interpret it as a one-way process but it is a 2-way process. It is a good example of getting information back. What is slightly at odds is when we had a hearing with 2 members of the Community Liaison Panel and they were asked a direct question about the nature of that panel as something that was set up as part of this process. They were asked the direct question whether it was empowering, whether it was participatory. Absolutely adamant in their response: one word, no. Why do you think that could be the case?

Mr. J. Richardson:

The very simple answer is because that panel was set up after all of the pre-application pre-planning had taken place, Environmental Statements, et cetera. It was set up as a panel, as an advisory ... exactly what the title says; a liaison group to keep that particular area of residents informed during the construction phase of the project to create the linkage between the residents of the area who might be impacted upon because of construction, et cetera, so that they could be kept up to date regularly. It was not about the pre planning process to undertake the Environmental Statement, et cetera. That was taking place with the Havre des Pas residents and I hope there is no confusion between the 2 here. There were specific meetings set up with Havre des Pas residents groups. The Acting Chief Officer has already identified those where we

located ourselves in a hotel in Havre des Pas to enable local residents specifically to come to that meeting. I think one of the first evening meetings that we advertised was very much around inviting local residents to come to that meeting in order that they could express their concerns. As he has exactly said, a 2-way process taking place. A liaison group is a very different group.

Mr. R. McInnes:

Yes, but the liaison group was still there to be kept informed. Sorry, liaison to me is a 2-way process as well.

Mr. W. Gardiner:

It was a 2-way process.

Mr. R. McInnes:

But I am just ... I am slightly struggling to understand how people involved in that from the public side of it - one side of the process - can feel they were not empowered and it was not participatory. It was more that they were being informed this is how it is rather than being a liaison.

Mr. W. Gardiner:

That is not correct.

Mr. R. McInnes:

Sorry, no, on the transcript it is. On record we have asked and interviewed members of the Community Liaison Panel very clear questions and they have said no to it was not empowering and no to it was not participatory.

Mr. W. Gardiner:

That is their view and, of course, they are entitled to that.

Mr. R. McInnes:

But why would that happen?

Mr. W. Gardiner:

It is a very good question. The answer is from our perspective those 2 particular people were the most active members of the Community Liaison Group. We had 7 meetings I believe at which those 2 people were present and are present here today. They asked for particular matters to be presented on the agenda and those matters were presented on the agenda. The evidence is, because you have seen the minutes, that there was a participatory process. Clearly they were not happy with the proposal - the Energy from Waste facility in principle - and I would suggest that might be one of the reasons why they do not think it was an inclusive and participatory process. But if you consider the amount of time dedicated particularly to that Community Liaison Group, which was a handful of very active members in the Havre des Pas area, at which the previous Minister was present at every meeting, and we invited everybody from the ... the Medical Officer for Health. We had presentations from the Jersey Electricity Company. We had presentations from a number of other people. So we took considerable steps to address that group's concerns. If they are not happy at the end, that is unfortunate.

Mr. J. Richardson:

I also think it is very important to note that your transcript shows 2 members of that group had concerns. What you are not representing and I do not think was represented appropriately is that there were other members of that group who were very appreciative of the participatory nature of those meetings, got a lot of benefit out of them and came to those meetings with very much an openness approach and used it for exactly the forum it was set up to be, which is participatory. Unfortunately, one or 2 individual members were not happy with it and that is what you have got a transcript of.

The Deputy of St. John:

Thank you. Time is up, gentlemen. We have run over your slotted period. Minister, I would like to thank you very much for coming along and answering the questions. Mr. Richardson, I am sorry if you did not like the way I was chairing the meeting, but I am who I am and I do things the way that Scrutiny Panels do things. Thank you.

The Connétable of St. Brelade:

Thank you, Mr. Chairman. On behalf of myself and my officers, thank you for listening to us. Also to the public, to suggest that we are open to public interest in the development of the plant down there, we welcome public interest in it and are really open to public participation and visits if they so wish.

The Deputy of St. John:

Thank you very much indeed. Thank you.