

STATES OF JERSEY



WATERFRONT PLANNING APPLICATION: ZEPHYRUS SCHEME (P.1/2010) – COMMENTS

**Presented to the States on 19th January 2010
by the Minister for Transport and Technical Services**

STATES GREFFE

COMMENTS

Introduction

The Deputy of St. Mary has lodged P.1/2010 which includes criticisms of Transport and Technical Services management of the La Collette Energy from Waste Facility. This response is to inform States Members of the inaccuracies within P.1/2010.

Executive Summary

The Deputy's allegations regarding the Energy from Waste facility environmental management process are so full of inaccuracy and innuendos that I consider a response is called for. They are either simply untrue, totally inaccurate or concern small matters blown entirely out of proportion and serve to unnecessarily undermine public confidence for no tangible benefit in what is proving to be a successful development of a crucial new piece of state-of-the-art infrastructure for the Island.

- The Deputy's statements about the Environmental Impact Assessment process are not based on meaningful evidence.
- The statements made about the Construction Environmental Management Plan indicate a lack of understanding of the purpose of this document, which is to set the framework of environmental control on site, and of the form of contract employed, which allows flexibility for the Contractor to employ a number of methodologies to maximise efficiency.
- The Deputy does not accept that the management processes implemented were adequate, but they have proved to be very robust and to work successfully on site where there has been no consequential environmental damage.
- The Deputy makes serious allegations about an investigation being conducted by the Regulator of the Water Pollution Law. Given the ongoing investigation of this alleged incident, the Minister for Transport and Technical Services cannot and will not be drawn into further discussion, except to point out that it is wholly inappropriate and improper for the Deputy of St. Mary to use information subject to investigation in his Report and Proposition that may prejudice the outcome of that investigation.
- The employer (Fichtner Consulting Engineers) of the Energy from Waste Site Supervisor who was dismissed has entirely refuted the allegations made within the Report and Proposition regarding the reasons for this dismissal. Indeed, Fichtner Consulting Engineers have praised the former Site Supervisor for his conduct of environmental management on site.

The proposition appears to pre-empt the Environment Scrutiny Panel report into the "Energy from Waste Project and RAMSAR: Review of Planning Process" which is shortly to be published, and it would seem curious that the Deputy of St. Mary appears to be seeking to undermine his own Scrutiny Panel's report's conclusions.

Comments on the Introduction to P.1/2010

In paragraph 5, the Deputy alleges that the La Collette Energy from Waste facility has had massive problems with regard to pollution. This is not the case. A sub-contractor caused minor damage to an ash pit cover fabric flap and in another area the Contractor identified some infill which had been contaminated by diesel. Both of these issues were dealt with quickly and professionally in accordance with environmental management procedures agreed with, and to the satisfaction of, the Regulators of the Water Pollution and Waste Management Laws. They did not cause any consequential environmental damage.

There is also an alleged pollution incident which is under investigation and, therefore, the Minister is unable to comment on this until the investigation is complete. The Deputy of St. Mary, through the inferences and innuendo within his Report and Proposition, runs the risk of prejudicing the investigation and undermining the good governance he indicates he wishes to secure.

In paragraph 6, the Deputy makes serious, but entirely unfounded allegations about the environmental management documentation for the Energy from Waste facility and these are entirely refuted.

These allegations will be dealt with in turn:

The Environmental Statement was “wholly inadequate”

The Deputy alleges that the Environmental Impact Statement was wholly inadequate. This is inaccurate, as the Minister for Planning and Environment accepted that the Environmental Statement did identify the significant risks to the Environment and how they would be mitigated when approving the Planning Consent for the development.

The Deputy suggests that the scoping procedure for the Environmental Impact Assessment was inadequate on the alleged grounds that insufficient consultation with third parties and confusion over terminology occurred. This is not accepted.

Transport and Technical Services consulted with all parties identified as necessary with the Planning and Environment Service prior to submission of the planning application, and then conducted an extensive public consultation campaign subsequent to application. There was a 9 month period during which any party could have responded to the application. The limited response, both during that period and subsequently, demonstrates that the Environmental Statement was robust.

Whilst the Deputy may be confused as to the terminology adopted within the scoping process, Transport and Technical Services was entirely clear as to what the scope included and what was required by the Minister for Planning and Environment, and this was converted into a comprehensive Environmental Statement. Environmental risks were identified and then either avoided or mitigated.

The Deputy alleges that the possible impacts on the RAMSAR site were not described adequately. The Environmental Statement deals, (in over 500 pages of detail), with the key environmental impacts of the proposed development, and is prepared in line with the requirements of the Planning and Building (Environmental Impact) (Jersey) Order 2006. The approach taken to the neighbouring RAMSAR site was to avoid all impacts

as far as possible. Therefore Planning and Environment accepted the level of detail given within the Environmental Statement as entirely reasonable.

The Deputy again refers to the discredited allegations about incineration made by Dr. Stephen Funk, whose statements about health impact were countered during the planning process in full and shown to be entirely erroneous. Similarly, the concerns raised by Dr. Funk about the effect of air pollution on the RAMSAR environment were shown to be unfounded and so small as to justify their exclusion from the Environmental Statement as not having been a key impact.

The statements made by the Deputy with regard to “set conditions” within the existing Jersey Electricity Company Power Station discharge consent are misleading. The consent conditions may not be defined in relation to absolute values for pollutants, but this is irrelevant in relation to the Energy from Waste Facility Environmental Statement which was referring to the potential thermal impact of the Energy from Waste Facility, for which the set conditions are well understood by both Planning and Environment and the Jersey Electricity Company. The wording is therefore entirely reasonable in context.

The Deputy alleges that there was “no testing for ground contamination” as part of the Environmental Impact Assessment process or consideration of the potential impact. This is entirely untrue. The Environmental Statement makes clear that the site was composed of inert fill, but that there was a possibility of pockets of bonded asbestos contamination (such as garage roof sheeting), as regulation at the time of infill did not require this material to be separated. Ground investigations carried out prior to planning application and referred to in the Environmental Statement confirmed these conclusions.

This is not a “schizophrenic statement”, as is suggested by the Deputy of St. Mary in the Report and Proposition. The vast majority of fill is inert and the site is therefore classified as such by the Regulator.

Management procedures identified within the Environmental Statement then set out the precautionary approach to excavation that would be adopted to ensure that any unforeseen contamination was managed without damage to the RAMSAR. These procedures were implemented successfully during the construction.

A further allegation is that the Environmental Statement put off potential problems for later resolution. The Deputy conveniently overlooks the air quality, traffic, noise, landscape and visual impact, biodiversity and ground investigation works that were undertaken prior to application and are set out in comprehensive detail within the Environmental Statement. These were the key environmental impacts.

The Construction Environmental Management Plan was “defective”

The Environment Scrutiny Panel Adviser’s Report is not yet available to States Members, and I have responded with 7 pages of factual inaccuracies, which will shortly be considered by the Environment Scrutiny Panel. To pre-empt the publication of a formal Scrutiny Report, of which the Deputy is himself party, with a Report and Proposition on which alleged facts are based, appears a poor approach and not in keeping with good Scrutiny practice.

The specific allegations made about the Energy from Waste Facility Construction Environmental Management Plan are also unfounded and indicate a fundamental misunderstanding of the management approach taken and the design and build contract involved. It would not have been appropriate to dictate the dewatering approach to be used by the Contractor within the Construction Environmental Management Plan approved by the Minister for Planning and Environment. Instead, the approach taken was to define the outputs required and processes necessary to demonstrate good management on site.

It is inaccurate to imply that there was “a delay of 3 months” due to any inadequacy of the Construction Environmental Management Plan. The Deputy does not make clear who he alleges delayed, and I do not accept that there was any delay in responding to any party on behalf of TTS. The construction process followed by the Contractor tested various methods of dewatering until the most efficient was confirmed and consents for the adopted process were obtained from the Regulator of the Drainage Law.

It is also misleading to suggest that the ash pits presented a “major pollution risk”. The Contractor was provided with details of the ash pits and the approach taken to their avoidance clearly set out within the Environmental Statement. There was no requirement to detail how to manage incursions near ash pits within the Construction Environmental Management Plan, because the approach taken was to avoid damage. Details of the locations of all ash pits had been conveyed to the Contractor and Regulators. When superficial damage was incurred to ash pit cover fabric by a sub-contractor, the incident was quickly and successfully addressed with the full involvement of the Regulator and, indeed, myself.

The site management procedures were inadequate

The Deputy’s allegation that the exclusion of the ash-pit incident within the Contractor’s site records constitutes poor site management is refuted. The ash pit incident was identified by the Project Manager, not the Contractor, and reported directly to Transport and Technical Services Officers who immediately contacted Planning and Environment Officers. A collective and successful response to the incident was then made. The Contractor had not recorded this consistently in their record of environmental incidents, but there was considerable other record-keeping of the incident by the Construction Team, which was not reflected in the Deputy’s summary. In the Minister’s view, this single exclusion does not warrant the allegation expressed by the Deputy that there were inadequate procedures or any cover-up of issues of concern.

Alleged water pollution during construction

The Deputy makes serious allegations “that leachate was then pumped to sea illegally”. Given that the Regulator of the Water Pollution Law is still investigating this alleged incident, I will not be drawn into discussion of this incident further, except to point out that it is inappropriate and improper for the Deputy of St. Mary to use information that may be subject to the investigation in a Report and Proposition that may prejudice the outcome of that investigation.

Dismissal of the Project Site Supervisor

The following statement has been received from Fichtner Consulting Engineers concerning the dismissal of the former Site Supervisor:

There is continued speculation in the public arena regarding the termination of the former Site Supervisor's employment on the La Collette Energy from Waste plant. We believe it is necessary to end this speculation by stating the actual position.

The former Site Supervisor was employed on a fixed term contract by Fichtner Consulting Engineers to act as our site supervisor at the La Collette Energy from Waste plant. He was employed from December 2008 to July 2009.

In July 2009, Fichtner Consulting Engineers took the decision to terminate his contract as he was unable to develop a working relationship with the main parties on the site. This is a fundamental part of any site supervisor's role, and after much consideration we took the decision that this was damaging the overall project and therefore replaced him. Contrary to various comments made by others, Fichtner Consulting Engineers can state unequivocally that the termination of the former Site Supervisor's contract had absolutely nothing to do with any environmental issues at the site. In fact, the former Site Supervisor behaved in a very responsible and pro-active manner regarding the supervision of environmental issues on site during his time.

Allegations of misleading statements, secrecy and lack of communication

The Deputy interprets an interview with the former Chief Officer of Transport and Technical Services to suit his own ends, when the Officer was attempting only to clarify the basis for environmental regulation at La Collette in the context of on-going development adjacent to the RAMSAR site.

In conclusion, I would urge members to consider the report accompanying this proposition in the light of the corrections. It simply demonstrates a lack of comprehension of the professional approach being taken by highly qualified personnel who are undertaking their responsibilities in an entirely diligent manner, whilst under a constant barrage of criticism from the Deputy of St. Mary, whose motives the majority find difficult to understand.